

**REQUEST FOR PROPOSAL (RFP) FOR LANDSCAPING WORKS AT POLICE OUTPOST AT THE  
BENGALURU INTERNATIONAL AIRPORT**

## Tender

### Execution of landscaping works for the Police Outpost at the Bengaluru International Airport

Name and address of contracting entity:

Bangalore International Airport Limited  
Project Office, Bengaluru International Airport  
Devanahalli, Bangalore 560 300, India  
Phone:  
Fax:

Person responsible for tender process and additional information:

Suresh K N, Asst. Vice President - Contracts  
E-Mail: [suresh.kn@bialairport.com](mailto:suresh.kn@bialairport.com)

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## SCHEDULE OF BIDDING PROCESS

Sl. NO.	EVENT DESCRIPTION	DATE
	Issue of RFP to prospective bidders	22 <sup>nd</sup> Nov, 2011
	Last date for receiving queries	24 <sup>th</sup> Nov, 2011
	Last date for submission of proposals (proposal due date)	28 <sup>th</sup> Nov, 2011

## DISCLAIMER

1. This Request for Proposal (RFP) is issued by Bangalore International Airport Limited (“BIAL”).
2. The information contained in this RFP document or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of BIAL or any of their employees or advisers, is provided to Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.
3. This RFP is neither an agreement nor an offer by BIAL 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 the formulation of their proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by BIAL in relation to the scope of Works. 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 BIAL, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who read or use this RFP. The assumptions, assessments, statements and information contained in this RFP 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 and information contained in this RFP and obtain independent advice from appropriate sources.
4. Information provided in this RFP to the Bidders is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. BIAL accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.
5. BIAL, its employees and advisers make no representation or warranty and shall have no liability to any person including any 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, reliability or completeness 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 in this selection process.
6. This RFP, along with its Annexures, is not transferable. The RFP and the information contained therein are to be used only by the person to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient’s professional advisors). In the event that the recipient does not continue with its involvement in the project in accordance with this RFP, this RFP must be kept confidential.
7. BIAL also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Bidder upon the statements contained in this RFP.

8. BIAL may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.
9. The issue of this RFP does not imply that BIAL is bound to select an Bidder or to appoint the selected Bidder, as the case may be, for the consultancy and the BIAL reserves the right to reject all or any of the proposals without assigning any reasons whatsoever. This RFP may be withdrawn or cancelled by the BIAL at any time without assigning any reasons thereof.
10. The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by BIAL or any other costs incurred in connection with or relating to its proposal. All such costs and expenses will remain with the Bidder and BIAL shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Bidder in preparation for submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

## **SECTION 1**

## **NOTICE INVITING TENDER**

**RFP for execution of Landscaping works around Police Outpost at Bengaluru International Airport.**

You are hereby invited to tender for providing, constructing and completing the above works as per the provisions in the RFP.

### **Details of the RFP are as stated below:**

1. Name of the work: Execution of **landscaping works around police outpost** at the Bengaluru International Airport (“**Works**”)
2. Employer: Bangalore International Airport Limited
3. Scope of Work: As detailed in the RFP
4. Completion period: 2 months from the date of Issue of Order
5. Validity of Proposal: 90 days from the Proposal Due Date

## SECTION 2

### GENERAL OVERVIEW:

#### 1. The Bengaluru International Airport

Bangalore International Airport Limited (“**BIAL**”) is the owner and operator of the Bengaluru International Airport (the “**Airport**”) in Bangalore. The Airport has been built and operated at the best international standards under a public-private partnership model. It is designed in a modular manner so as to facilitate easy expansion based on the current and future growth of air traffic demand. This project is the first international airport in India built, owned and operated under a public-private partnership model with private shareholders holding a majority stake.

BIAL has entered into a Concession Agreement with the Government of India, whereby the Government of India has granted the exclusive right and privilege to BIAL to carry out the development, design, financing, construction, operation and management of the Airport.

BIAL is committed to establish the Airport as India’s leading airport in terms of quality and efficiency and in this connection, BIAL is looking for an experienced contractor for the execution of landscaping works around the police outpost at the Airport. BIAL hereby invites qualified companies/firms/individuals (hereinafter referred to as the “**Applicant/s**”) to participate in the RFP.

#### 2. Scope of Works

BIAL is interested in receiving proposals from suitably qualified contractors for the execution of landscaping works around police outpost (“**Works**”) at the Airport and the maintenance of the same, on the terms and conditions contained in this RFP. The detailed specifications for the execution of the Works are attached herewith as **Annexure-10**. The Works shall be executed as per the drawings attached herewith as **Annexure-3**. The duration for the construction and completion of the Works shall be a period of **2 months** from the date of award of the contract, unless terminated earlier under the provisions of the agreement, which will be entered into between BIAL and the successful applicant as per the terms and conditions contained in this RFP. The duration of the agreement shall include the time required for completion of the Works in complete, as well as time required for the maintenance of the Works.

The proposal in the bids shall comply with all the requirements stated in this RFP. Based on final evaluation, a detailed Work Order will be raised and order placed on one contractor for the Works. The notification of award of the contract by BIAL shall be followed by execution of a construction agreement between BIAL and the successful applicant.

#### 3. Execution of Construction Agreement

Pursuant to the selection of the successful bidder (“**Contractor**”), BIAL will issue a work order. Thereafter, the Contractor shall take necessary steps so as to ensure execution of the Construction Agreement with BIAL as per the standard format attached to this RFP as **Annexure 1**.

## SECTION 3

## INSTRUCTIONS TO BIDDERS

### 1. Tender preparation

1.1 Filled in proposal along with all issued documents shall be submitted in a sealed envelope super-scribed with the details of the Proposal to the address stated below.

1.2 The proposal shall contain the following: -

- a) Details of plant and equipment, tools, tackle proposed to be deployed for the execution of Work as per the details contained in **Annexure 6**.
- b) Manpower organisation along with qualifications and experiences of key persons to be employed for the execution of work.
- c) Descriptive literature for major equipment offered.
- d) **WORK SCHEDULE & METHOD STATEMENT** for the completion of the Work showing all activities and incorporating completion schedule for different milestones called for as per the format attached herewith as **Annexure 7**.
- e) Deviations, if any, from stipulated RFP conditions, as per the format attached herewith as **Annexure 4**.
- f) Priced Bill of quantities with unit price for the design proposed to be filled in as per the format attached herewith as **Annexure 11**.
- g) The quoted rates shall be inclusive of all taxes, royalties, levies etc. but exclude applicable VAT & Service Tax as prevailing on three days prior to last date of submission of Proposal. Applicable rate of VAT & Service Tax and amount thus calculated shall be added separately and shown.
- h) Any other submission required as per the document.

1.3 The language for all written communication shall be English and unless mentioned otherwise the currency shall be Indian Rupee.

1.4 The proposal should be signed on each page by the Bidder or his duly authorised representative. The proposal should be accompanied by a certified true copy of a power of Attorney in favor of signatory to the documents.

1.5 Any discrepancies, omissions, ambiguities or conflicts in or among contract documents or any doubt as to their meaning should be called to the attention of the contact person as mentioned in the NIT within 5 days of issue of the RFP. Where information sought is not clearly indicated or specified, the clarifying bulletin/s shall be issued to all Bidders which will become part of the agreement. BIAL will not make or be responsible for any oral instructions.

### 1.6 Cost of tendering

The Bidder shall bear all costs associated with the preparation and submission of its Proposal and BIAL shall, in no case, be responsible or liable for such costs, regardless of the outcome of the tender process.

### 1.7 Site Inspection and Conditions

The Bidder is advised to visit and inspect the Site and its surroundings, and obtain for itself on its own responsibility and cost, all information regarding all existing and expected conditions and matters that may be necessary for preparing the Proposal

and entering into a contract for the Works. The Employer shall use every effort to procure that the Bidder and any of its personnel or agents with prior intimation, are granted permission to enter the Site for the purpose of such inspection, but only upon the express condition that the Bidder, its personnel and agents, will exercise due care and will be responsible for personal injury or death, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of such inspection. The Bidder, its personnel and agents will release and indemnify BIAL and its personnel and agents from and against all liability in respect thereof.

- 1.8 It is obligatory on the part of the Bidder to tender for all the component parts and submit all information required as per document.

## **2. Validity**

- 2.1 The Proposal shall be valid for a period of ninety (90) days from the Proposal Due Date and the Bid Security shall be valid upto 60 days beyond the proposal validity period. If any Bidder withdraws his proposal before the said period or makes any modification in the Price Bid or terms and conditions of the proposal then, BIAL, without prejudice to any other right or remedy will be at liberty to forfeit the whole of the earnest money.
- 2.2 In exceptional circumstances, prior to expiry of the bid validity period, BIAL may request the bidder for a specified extension in the period of validity. The request and the response thereto shall be made in writing. A bidder may refuse the request without forfeiting his bid security. A bidder agreeing to the request shall not be permitted to modify his bid, but shall be required to extend the validity of his bid and bid security correspondingly. All the terms of the bidding shall continue to be applicable during the extended period of validity.

## **3. Bid Security**

- 3.1 Proposals need to be accompanied by a Bid Security of 10% of the Bid Value. The Bid Security shall be kept valid for 60 days beyond the Proposal Validity period including any extensions in the Proposal Validity Period.
- 3.2 The Bid Security shall be in the form of demand draft drawn in favour of “Bangalore International Airport Limited payable at Bangalore”. BIAL shall reject the Proposal, which does not include the Bid Security.
- 3.3 The entire Bid Security shall be forfeited in the following cases:
- (i) If the Bidder withdraws any of its Proposal within the Proposal Validity Period;
  - (ii) If the Successful Bidder fails to provide the Performance Security for the Project within the stipulated time or any extension thereof provided by BIAL.
  - (iii) As per the provisions of the Construction Agreement.

The Bid Security of those Bidders whose Proposal gets rejected will be returned within a period of thirty (30) days from the date of such rejection.

## **4. Performance Security**

The Bidder shall for due and faithful performance of its obligations during the Construction period furnish Performance Security by way of an irrevocable Bank

Guarantee issued by a Bank, as defined in this RFP for an amount equal to 10% of the Bid Value. The Bidder shall provide the Performance Security within the period mentioned in the draft Construction Agreement. Till such time the Bidder provides the Performance Security, the Bid Security shall remain in full force and effect.

## 5. Insurance Policies

All insurance policies shall be taken in the joint name of the owner and the contractor and the original policies shall be submitted to the owner.

Before commencing the execution of works, the contractor, without limiting his obligations and responsibilities under this Construction Agreement shall insure against his liability for any material or physical damage, loss or injury which may occur to any property, including that of the owner to any person including any employee of the Owner or a member of the general public, by or arising out of the execution of the works or in carrying out the contract. It shall be obligatory for the contractor to obtain the insurance cover under the following policies:

- a] Contractor's All Risk Insurance Policy to cover the following:
  - 1) Entire contract value for the period of completion including defects liability period
  - 2) Third party insurance to cover for any damages to third party. This shall be up to the end of the defects liability period and shall include for any damage to the properties and / or injury [including death] to the persons of the general/ public/consultants and anyone else deemed to be third party.
  - 3) Civil commotion, fire, lightning, collapse, defective workmanship and/or materials, flood, storm, theft, burglary, malicious damage, subsidence, Riots, War and other disturbances.
- b] Policy to cover contractor's liability under Workmen's compensation Act 1923, Minimum Wages Act 1948, Contract Labour (Regulation and Abolition) Act 1970 and other relevant Acts listed elsewhere. This shall be for the period up to final completion of work, including the defects liability period.
- c] Insurance cover against damage, theft or any other loss of all materials and equipment brought to site for which advance payment is claimed - Limit of liability not less than the value of such materials at any stage of the Construction Agreement.
- d] Owner materials and all materials supplied by the owner for incorporation in the works.

The Contractor shall insure against all such liabilities and shall continue such insurance during the currency of the Construction Agreement including defects liability period. Premium for all insurance policies shall be paid and borne by the contractor and shall NOT be reimbursable.

The contractor shall produce to the Engineer-in-charge all certificates of Insurance. These certificates shall be fully executed and shall state that the policies cannot be

cancelled until ten [10] days after written notice of such cancellation has been given to the Owner.

The Contractor shall obtain written confirmation of similar certificates from all sub-contractors and thereby assume responsibility for any claims or losses to the Owner resulting from failure of any of the sub-contractors to obtain adequate insurance protection in connection with their work.

## **6. Liquidated Damages**

In the event of the Bidder after commencement of the Works, fails to complete the Works by the date stipulated in the Construction Agreement, it shall be liable to pay BIAL Liquidated Damages calculated at **1% (one percent) of the Contract Price per week** or part thereof as detailed in the format of the Construction Agreement.

## **7. Defect Liability Period**

In this RFP, the expression “**Defects Liability Period**” shall mean 12 months from the date of the issue of the Completion Certificate as detailed in the Construction Agreement.

8. All proposals in whom any of the prescribed conditions are not fulfilled or are incomplete in all respect are liable to be rejected.
9. This is a closed RFP and BIAL does not bind itself to divulge any information regarding the processing of the proposals.
10. BIAL does not bind himself to accept the lowest or any proposal and reserves the right to reject, negotiate any or all of the proposals received or annul the tendering without assigning any reason and creating no liability whatsoever.

## **11. Format and Signing of Proposal**

- 11.1 The Bidder would provide all the information as per this RFP. BIAL reserves the right to evaluate only those Proposals that are received in the required format, complete in all respects and in line with the instructions contained in this RFP.
- 11.2 The Bidder shall prepare and submit one original proposal along with an additional copy.
- 11.4 The Proposal shall be signed and each page of the Proposal shall be initialed by a person or persons duly authorized to sign on behalf of the Bidder and holding the Power of Attorney.
- 11.5 RFP submissions must be received no later than **16:00 hrs on 22<sup>nd</sup> Nov,2011 (Proposal Due Date)** in the manner specified in the RFP document at the address given below. The Proposal shall contain no alterations or additions, except those to comply with instructions issued by BIAL or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Proposal.
- 11.6 One set originals of all documents in hard printed format along with the proposal duly signed by the Bidder shall be submitted.(This will become the part of the agreement to be executed on award of work).

The envelop and proposal should clearly mention the following details

**BID for Execution of Landscaping works around police outpost at Bangalore International Airport.**

To  
Mr. Suresh K N  
Bangalore International Airport Limited.  
Administrative Block,  
NH-7, Devanahalli, Bangalore-560300, India.

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**12. Sealing and Marking of Proposal**

- 1) The Bidder shall seal each PART (Qualification Proposal and Financial Proposal) of the Proposal in separate envelopes duly marking each envelope as “QUALIFICATION PROPOSAL” or “FINANCIAL PROPOSAL” as appropriate.
- 2) The Bid Security shall be sealed in a separate envelope marked “BID SECURITY” and this envelope placed inside Envelope marked "Part I: QUALIFICATION PROPOSAL".
- 3) The Bidder shall put the above two separate envelopes in a single outer envelope and seal the envelope.
- 4) The outer envelope shall clearly bear the following identification.
  - “Proposal for Landscaping works around police outpost”
  - Each of the envelopes shall indicate the complete name, address, telephone number and facsimile number of the Bidder.

**13. Proposal Due Date and Time**

BIAL may, in exceptional circumstances and at its sole discretion, extend the Proposal due Date by issuing an Addendum uniformly for all Bidders.

**14. Questions during the Bid phase:**

All enquiries or comments regarding this bid, and any other related matters must be made in writing by e-mail to Mr. Suresh K N-suresh.kn@bialairport.com. BIAL may, to the extent necessary and deemed fit, respond in writing to any questions and concerns of the bidders regarding any element of the issued bid documents.

**15. Responsibility of the Bidder:**

It is the sole responsibility of the bidder to

- i) Examine and understand the bid documents, including all the Annexures and to verify their completeness. In the event that there are any pages or documents obviously missing or erroneously inserted in the documents supplied, the bidder shall promptly apply to BIAL in writing to have any such discrepancy rectified well before the bid closing date;
- ii) Familiarise itself with the premises at which the services will be conducted and any relevant fixtures, fittings and equipment there to be utilised or that may otherwise be relevant, make all relevant investigations in relation to the performance of its obligations pursuant to the Bid;

- iii) The bidders should inform BIAL of any concerns implied or related to but not specifically mentioned in the Bid or other documentation.

**BIAL reserves its right to accept any Bid and to reject any or all the Bids/proposals received without any reason or can change the process of the selection at any time during or after the Bid process.**

**16. Confidentiality:**

BIAL and contractor should ensure the confidentiality of all documents supplied by either party to either side. The documents will be used in bidding process only.

**17. Assignment:**

Any assignment of the Purchase Order or of any rights hereunder, in any manner, or hypothecation of materials of construction by the contractor, in whole or in part, by operation of law or otherwise, without the prior written consent of BIAL, shall be void. Any such consent shall not relieve the contractor from his obligations under the Work Order.

**18. Law and Jurisdiction:**

The present Bid shall be considered, governed by and interpreted in accordance with the laws of Republic of India. The jurisdiction for the purposes of the bid shall be the courts in Bangalore only.

**19. Bankruptcy:**

BIAL may at any time by notice in writing summarily terminate the Construction Agreement without compensation if the contractor is declared bankrupt/insolvent and/ or faces any action of bankruptcy etc. In such an event, the contractor will be bound to refund all amounts received from BIAL. In addition to that BIAL is also entitled to invoke the guarantee bonds executed in its favour by the bank on behalf of the contractor.

**20. Government Regulations:**

- (a) The bidder shall be responsible for obtaining and maintaining permits as also for complying with all the laws, orders, regulations or other instructions issued by all statutory authorities in India.
- (b) The bidder shall not give, bargain, sell, assign or sublet or otherwise dispose off the bid or any part thereof, or the benefit or advantage of the contract or any part thereof to any third party.

## SECTION 4

### AWARD PROCESS

#### 2.01 General:

BIAL is conducting the award process in a fair and non-discriminatory manner. Canvassing in any form, unsolicited letter and post bid correction will invoke summary rejection of the Bid. Conditional Bids would be rejected.

BIAL however reserves the right to unilaterally and at its sole discretion to change the award process, certain elements of the bid documents or to annul the entire bidding process at any time, without assigning any reason and without incurring any liability towards the affected bidder. BIAL also reserves the right to change some elements of the planned set up for the work at the Airport, if governmental regulations change in a manner such that the objectives of BIAL cannot be met through the planned set up.

The bidder shall comply with all the terms and conditions set out in bid document and its appendices while submitting its proposal.

#### 2.02 Distribution of RFP/Bid Documents:

The RFP document shall be treated as confidential and the information given in the RFP is for the purpose of submitting a proposal only and shall not be used or distributed to any third-party at any time for any other purpose.

#### 2.03 Selection Criteria:

BIAL would evaluate the proposal based on the technical capabilities of the firm, financial soundness of the firm, relevant experience, price offered etc.; but will ensure a balance between technical and commercial aspects.

Key requirements for applications:

- Filled document As per Annexure 1

**Technical Conditions:**

- Similar Work experience for a period of Minimum 5 years as **Landscape Contractors** with renowned developers.
- Experience in India with Network of Maintenance/Spares Support along with the details of representative

**Legal conditions**

The Bidder is requested to issue a signed Confidentiality Agreement (CA), in the format provided by BIAL, not later than 14 days after receipt of this request for proposal, failing which the Bidder will not be allowed to participate in this RFP.

- The Bidder shall be a valid legal entity as per Indian laws.

BIAL will evaluate the different proposals based on the following criteria (in brackets the weightage of each criteria):

- Experience in the Landscaping work and competitive prices (25%)
- Quality of the Material and working procedure (including safety and security, quality assurance) (30%);
- Maintenance of the Landscape offered (30%)
- Innovativeness, quality and consistency of proposed Design and variety of services offered (10%)
- Quality and completeness of proposal (5%)

## SECTION 5

### INFORMATION TO BE PROVIDED BY BIDDERS

Bidders shall submit the proposal in two separate files with the following documents/information in the same order as set out below

#### File - 1

##### **Technical Information:**

##### a) Complete Offer

- List of similar works executed in the past 5 years.
- Minimum 2 Completion Certificates from Customers on the satisfactory completion of work/ Performance by the contractor during the past 3 years for the similar work/service.
- List of most important customers/Employers indicating the concerned person, telephone number and e-mail ID.
- Experience in India with Network of Maintenance/Spares Support along with the details of Indian representative (In case of overseas bidders only)
- Organisation structure, tools and plants, technical capability, skilled manpower to be engaged for the work etc.

##### **Financial Information:**

Financial statement which shall include minimum the following and to be submitted as a separate list in the same format as provided in the prequalification (EoI):

- Average annual turnover in the past three years
- Annual value of work undertaken for each of the last 4 years, projected forward for the current year
- Approximate value of work in hand
- Profit and Loss overview for the last 4 years and a forecast for the current year
- Annual Reports preceding 3 years the Bidding Financial Year

#### File - 2

1. Complete RFP, price duly filled in the schedule of work, duly signed by the authorised representative.

**ANNEXURE-1**

**STANDARD FORMAT OF CONSTRUCTION AGREEMENT**

**CONSTRUCTION AGREEMENT**

**BETWEEN**

**BANGALORE INTERNATIONAL AIRPORT LIMITED**

**AND**

***[Insert the Contractor's name]***

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (this 'Agreement') executed on this the [Insert date, month & year], (the "Effective Date") by and between:

**BANGALORE INTERNATIONAL AIRPORT LIMITED**, a Company incorporated under the Companies Act, 1956 and having its Office at Administration Block, Bengaluru International Airport, Bangalore 560 300, India (hereinafter referred to as the '**BIAL**', which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and assigns);

AND

[Please insert], a Company incorporated under the Companies Act, 1956 and having its Registered Office at [Please insert], (hereinafter referred to as the '**Contractor**', which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and permitted assigns).

BIAL and the Contractor are hereinafter referred to individually as a '**Party**' and collectively as the '**Parties**', as the context may require.

### WHEREAS

- A. [A brief description of the project for which this agreement is being entered into and the business of the Contractor should be inserted here.]

NOW THEREFORE, IT IS HEREBY MUTUALLY AGREED AS UNDER:

#### 1. DEFINITIONS

The following words used herein, shall have the meaning assigned to them herein, except, where the subject or context otherwise requires:

- 1.1 "**Affected Party**" shall have the meaning ascribed to such term in Clause 21.1 of this Agreement.
- 1.2 '**Agency**' means, GoI (defined later), GoK (defined later) or any ministry, department, commission, board, authority, instrumentality or agency, under the control of GoI or GoK having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of BIAL under or pursuant to this Agreement.
- 1.3 '**Agreement**' shall mean, this Construction Agreement entered into between BIAL and the Contractor for [insert purpose of the agreement].
- 1.4 '**Airport**' means, the greenfield international airport, constructed, to be expanded and operated by BIAL at Devanahalli, near Bangalore in the State of Karnataka.

- 1.5 “**Applicable Laws**” means, all laws, promulgated or brought into force and effect by Gol or GoK, including the regulations and the rules made thereunder, and judgments, decrees, injunctions, writs and Orders of any Court of record, as may be in force and effect, during the subsistence of this Agreement.
- 1.6 “**Applicable Permits**” means, all clearances, permits, authorizations, no objection certificates, consents and approvals required to be obtained or maintained under the Applicable Laws, in connection with the design, engineering, financing, procurement, construction, operation and maintenance of the Project during the subsistence of this Agreement.
- 1.7 “**BIAL’s Representative**” means, the person appointed by BIAL to act as BIAL’s Representative for the purposes of this Agreement, or such other person appointed from time to time, by BIAL and notified as such to the Contractor.
- 1.8 “**Commencement Date**” shall mean, the date on which the Contractor commences construction of the Works, being [*Please insert*].
- 1.9 “**Completion Certificate**” shall have the meaning ascribed to such term in Clause 12.6 of this Agreement.
- 1.10 “**Completion Date**” shall mean, the date on which, the Works are fully executed and completed to the utmost satisfaction of BIAL, which is specified in the Completion Certificate.
- 1.11 “**Contract Price**” shall have the meaning ascribed to such term in Clause 4.1 of this Agreement.
- 1.12 “**Contractor’s Equipment**” means, all appliances and things of whatsoever nature (other than non-movable materials, forming part of the Temporary Works (defined later)), required for the execution of the Works, but does not include the materials or other things intended to form or forming part of the Permanent Works (defined later).
- 1.13 “**Contractor’s Personnel**” means, the Contractor’s Representative and all personnel, whom the Contractor utilizes on the Project Site (defined later), who may include the staff, labour and other employees of the Contractor and of each subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
- 1.14 “**Defects Liability Period**” shall have the meaning ascribed to such term in Clause 15.1 of this Agreement.
- 1.15 ‘**Drawings**’ means, all of the drawings, designs, calculations and documents listed in Schedule D required to be followed by the Contractor for executing its obligations under this Agreement and shall include ‘**as-built**’ drawings.
- 1.16 ‘**Encumbrances**’ means, any physical encumbrance and encroachment, and other 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 pertaining to the design, procurement and construction of the -----.

- 1.17 **“Force Majeure”** shall mean, an act of God, war, civil disturbance, strike, lock-out, act of terrorism, flood, fire, explosion or legislation or restriction by any Government or other authority, or any other similar circumstance, beyond the control of any Party, which has the effect of wholly or partially suspending the obligations herein under, of the Party concerned during the continuance and to the extent of such prevention, interruption or hindrance. However, force majeure conditions shall not include rain related delays.
- 1.18 **‘Gol’** means, the Government of India.
- 1.19 **‘GoK’** means, the Government of Karnataka.
- 1.20 **‘O&M’** means, the operation and maintenance of the ---- during the Term (defined later), and includes, but, is not limited to functions of maintenance and performance of other services incidental thereto.
- 1.21 **“Performance Security”** means, the security (or securities, if any) obtained by the Contractor under Clause 35 of this Agreement.
- 1.22 **“Permanent Works”** means, the permanent works to be executed (including without limitation, all permanent structures and all work intended to form a continuing function after completion, and any other work contractually required to be left in situ) in accordance with this Agreement.
- 1.23 **‘Phases’** means, *[to be inserted if necessary, if the works are going to be constructed in phases or handed over in phases.]*
- 1.24 **‘Project’** means, the development, financing, procurement, engineering and construction of the ---- in accordance with the provisions of this Agreement.
- 1.25 **“Project Schedule”** means, the progressive Project milestones set-forth in Schedule B hereto, for the realization of the procurement and construction of the ----- complete in all respects by the Scheduled Project Completion Date (defined later).
- 1.26 **“Project Site”** means, the land on which, the Works as stipulated in this Agreement has to be executed, as set-out in Schedule A hereto.
- 1.27 **“Provisional Certificate”** shall have the meaning ascribed to such term, in Clause 12.7 of this Agreement.
- 1.28 **“Punch List”** shall have the meaning ascribed to such term, in Clause 12.7 of this Agreement.
- 1.29 **“Retention Money”** shall have the meaning ascribed to such term in Clause 34 of this Agreement.
- 1.30 **“Scheduled Project Completion Date”** means, ----- or such date, as may be varied from time to time, which shall be the date on which the Contractor shall complete the Works in accordance with this Agreement.
- 1.31 **‘Taxes’** shall mean, any and all taxes (including service tax), levies, imposts, duties, tariffs, charges, deductions, cess (including the building and other construction workers’ welfare cess),

surcharge or withholdings that are, or that are to be, imposed, levied, collected, withheld or assessed by either Gol or GoK, together with any and all interests, penalties, claims or other liabilities arising under or relating thereto, including any applicable stamp duty and registration charges.

- 1.32 “**Temporary Works**” means, all works required in or for the execution of the Works other than Permanent Works.
- 1.33 ‘**Term**’ shall have the meaning ascribed to such term in Clause 17 of this Agreement.
- 1.34 ‘**Tests**’ means, the tests to be carried-out as set-forth in and in accordance with Schedule J hereto, to determine the Project Completion and its certification by BIAL for commencement of operation of the -----.
- 1.35 ‘**Works**’ shall mean, the activities to be carried-out and the works to be executed in accordance with this Agreement, and shall mean, either the Temporary Works or Permanent Works, as more specifically defined in Schedule C hereto.

## 2. INTERPRETATION

- 2.1 Any reference to a statutory provision, shall include, such provision, as is, from time to time, modified or re-enacted or consolidated, so-far-as, such modification or re-enactment or consolidation applies or is capable of applying, to any transaction entered into hereunder, and whether before or after the date of this Agreement, and to all statutory instruments, orders and regulations for the time being made pursuant to it or deriving validity from it.
- 2.2 References to the Applicable Laws shall include, the laws, Acts, ordinances, rules, regulations, notifications, guidelines or byelaws, which have the force of law, and which are framed by Gol or GoK, and which are in force at the date of signing this Agreement, or are reasonably foreseeable, as likely to have the force of law during the currency of this Agreement.
- 2.3 The words importing singular shall include, plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity).
- 2.4 The headings are for convenience of reference only, and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.
- 2.5 The words beginning with capital letters and defined in this Agreement, shall have the meaning ascribed to it herein, and the terms and words defined in the Schedules and used therein, shall have the meaning ascribed thereto in the Schedules.
- 2.6 The words ‘include’ and ‘including’ are to be construed without limitation.
- 2.7 Reference to ‘construction’ include, unless the context otherwise requires, investigation, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction.
- 2.8 Any reference to any period of time shall mean, a reference to that according to Indian Standard Time.

- 2.9 Any reference to a day shall mean, a reference to a calendar day.
- 2.10 Any reference to a month shall mean, a reference to a calendar month.
- 2.11 The Schedules 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. Terms defined in the Schedules shall have the same meaning throughout this Agreement.
- 2.12 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.
- 2.13 References to Recitals, Clauses, Sub-Clauses, Paragraphs or Schedules in this Agreement shall, except where, the context otherwise requires, be deemed to be references to Recitals, Clauses, Sub-Clauses, Paragraphs and Schedules of or to this Agreement.
- 2.14 The words ‘written’ and “in writing” includes, a facsimile transmission and any means of reproducing works in a tangible and permanently visible form, with confirmation of transmission.
- 2.15 Any reference in this Agreement to any statute or statutory provision, shall be construed as including, a reference to that statute or statutory provision, as from time to time, amended, modified, extended or re-enacted, whether before or after the date of this Agreement, and to all statutory instruments, Orders and regulations for the time being made, pursuant to it or deriving validity from it.
- 2.16 In case of any ambiguity or discrepancy between the Clauses and the Schedules, the Clauses shall prevail.

### **3. SCOPE**

- 3.1 The Contractor shall complete the construction of the Works in strict compliance with the design and specifications furnished by BIAL and in accordance with terms and conditions of this Agreement and in consonance with the terms contained in Schedules A,-----etc.
- 3.2 The Contractor undertakes to discharge its obligations under this Agreement at its own cost and risk.
- 3.3 The Contractor shall comply with all instructions given by BIAL from time to time, with respect to the execution of the Works.
- 3.4 The Contractor shall make its own arrangements for obtaining the airside entry permits to its workmen, and shall strictly adhere to the safety guidelines / operational area limitations as set-out in Schedule L1.

### **4. CONTRACT PRICE**

- 4.1 The Contract Price shall be Rs.[Please insert] (the “**Contract Price**”) details of which, is as in **Schedule E**. BIAL shall make payments within thirty (30) days from the date of receipt of valid invoices from the Contractor. The Contractor shall be deemed to have satisfied itself before entering into this Agreement as to the correctness and sufficiency of the Contract Price to cover all its obligations under and in relation to this Agreement and all matters and things necessary for the proper execution of the Works, whether the same is expressly provided for in this Agreement, or is to be reasonably inferred therefrom, or necessarily incidental thereto. The Contract Price is a lump-sum fixed price, and will not be adjusted save, as expressly provided in Clause 4.2 and Clause 4.3 below.
- 4.2 The Parties hereto agree that, the Contract Price is inclusive and includes, any and all direct, indirect and ancillary Taxes, charges and costs of whatsoever nature, all profits, licenses, royalties and other fees, the cost of all spare parts, accessories, consumable materials and special tools to be provided hereunder, and export insurance premiums, export licence fees, re-export licence fees and other charges relating to, or arising out of this Agreement, and execution of the Works, and, in each case, all deductions and withholdings therefor. The Contract Price agreed in Clause 4.1 above, is based on the break-up proposals submitted by the Contractor as per Schedule E. Any refund or benefit that the Contractor gets after payment of the applicable Taxes, shall be refunded to BIAL, failing which, BIAL shall have the right to make the appropriate deductions from any payment due and payable to the Contractor by BIAL, in addition to other recovery modes that may be available to BIAL, either under law or contract. This right of BIAL to claim such reimbursements, shall survive the termination or expiry of this Agreement.
- 4.3 BIAL may withhold or deduct, from the payment of any amount, otherwise payable to the Contractor under this Agreement, and pay on the Contractor’s behalf, such Taxes and other sums, if any, as BIAL may be required to withhold or deduct as provided under the Applicable Law.
- 4.4 In the event that, the Contractor fails to make payment of any Tax required to be made by it, BIAL shall make such payment and recover the same by making a claim for indemnity under the provisions of this Agreement.
- 4.5 The Contract Price shall be paid in accordance with the payment terms and conditions and the payment milestones as contained in **Schedule F**.
- 4.6 Without prejudice to any other provision of this Agreement, where, in respect of any Tax, the benefit of any credit is available to the Contractor, BIAL or any other person, the Contractor shall ensure sufficient compliance with the Applicable Laws in relation to such Tax requirements, as would enable BIAL or other person, as the case may be, to avail of such credit to the fullest extent possible, including, where possible, reimbursing the same to BIAL. In the event of change in law at any time, during the Term of this Agreement with regard to payment of service tax or / and Value Added Tax (‘VAT’), as a result of which, there is an increase or decrease in the Contract Price, the same shall be made good or recovered by BIAL, to or from the Contractor, as the case may be, on submission of sufficient proof for the same, by the Contractor or BIAL, as the case may be. However, if any dispute arises between BIAL and the Contractor with regard to either the interpretation regarding change in law or calculation of amounts to be paid as service tax or / and VAT on account of change in law, the interpretation of the auditors / counsels of BIAL shall be final and binding on the Contractor.

#### 4.7 Advance Payments

Mobilization advance of 10% (ten percent) of the Contract Price against a bank guarantee from a nationalized bank in the format pre-approved by BIAL, shall be paid by BIAL to the Contractor within 30 (thirty) days from the Effective Date. This shall be recovered in [*Please insert the number of instalments*] instalments during payment of the ---- running account bills. However, in the event, the amount of the running account bills is less than the mobilization advance, the balance shall be recovered from the subsequent running account bills, till the mobilization advance is recovered in full or is adjusted in full.

#### 5. COMPLIANCE WITH LAWS

The Contractor shall, in performing this Agreement, comply with the Applicable Laws. With regard to such performance, the Contractor shall obtain all Applicable Permits, licences and approvals required by it, to perform its obligations under this Agreement. Where necessary, BIAL shall assist the Contractor in obtaining any Applicable Permit, license and approval required by the Contractor to perform its obligations under this Agreement.

#### 6. RIGHT OF USE OF PROJECT SITE

6.1 BIAL shall hand over to the Contractor permissive possession of the Project Site for execution of the Works. The Contractor shall have the right to enter upon, occupy and use the Project Site only for the purpose of execution of the Works, subject to:

6.1.1 Any right of public passage or access, existing over any part of the Project Site from time to time;

6.1.2 The rights and obligations of the persons or the authority under any Applicable Law and pursuant to any Applicable Permit;

6.1.3 The right of the users to use the Project Site, or of the public to use any other road or highway;

6.1.4 The rights of access for BIAL, authorised representatives of GoI, GoK, BIAL's lenders' representative, and any Agency having jurisdiction over the Project Site, including those concerned with safety, security or environmental protection, to inspect the Project, and to investigate any matter, within their authority, and upon reasonable notice. The Contractor shall provide to such persons, assistance reasonably required to carry-out their respective duties and functions.

6.2 The Contractor shall not part with, or create any Encumbrance, on the whole or any part of the Project Site.

6.3 The Contractor shall not, without the prior written consent or approval of BIAL, and BIAL's Representative, use the Project Site for any purpose other than for the purpose of execution of the Works and the implementation of the Project.

#### 7. ENGAGEMENT OF LABOUR

- 7.1 The Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.
- 7.2 The Contractor shall pay rates of wages and observe conditions of labour, which are not lower than those established for the trade or industry, where the Work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions, which are not lower than the general level of wages and conditions observed locally by BIALs, whose trade or industry is similar to that of the Contractor.
- 7.3 Neither Party shall, without the consent of the other Party, recruit or attempt to recruit, staff and labour from the other.
- 7.4 The Contractor shall comply with all the relevant labour laws applicable to the Contractor and the Contractor's Personnel, including the Applicable Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor shall require its employees to obey all the Applicable Laws, including those concerning safety at work.
- 7.5 Subject to the Applicable Laws, the Contractor may carry-out the Works on all days and at all times, including recognised days of rest and at night, as the Contractor deems fit. If contributory work or supervision services by BIAL on or at such days and times are required, they shall be provided by BIAL free-of-charge, unless otherwise, agreed to by the Parties in writing. BIAL shall provide such assistance as the Contractor shall reasonably require, when the Contractor applies for permits for overtime, night-work, shift-work and work on public holidays and days of rest.
- 7.6 The Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall not permit its personnel to set-up living quarters / facilities, anywhere within the Airport.
- 7.7 The Contractor shall at all times, take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that, medical staff, first-aid facilities, sick bays and ambulance services are available at all times at the Project Site and at any accommodation for the Contractor's and BIAL's Personnel, and that, suitable arrangements are made for all necessary welfare and hygiene requirements, and for the prevention of epidemics.
- 7.8 The Contractor shall appoint a safety officer at the Project Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide, whatever is required by this person to exercise this responsibility and authority. The Contractor shall send to BIAL details of any accident, as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as BIAL may reasonably require.
- 7.9 Throughout the execution of the Works, and as long thereafter, as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Work.

7.10 The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. Key Managers, Site Engineers / Engineers, etc., of the Contractor for the purpose of executing the Works, shall be appointed from among the persons detailed in Schedule L, and the escalation matrix shall be as per this Schedule L. Any change by the Contractor in the key personnel for the purpose of executing the Works, shall be done only after obtaining the prior written consent of BIAL. BIAL may require the Contractor to remove (or cause to be removed) any person employed on the Project Site, or in the preparation of the Works, including the Contractor's Representative, if applicable, who:

7.10.1 persists in any misconduct, or lack of care;

7.10.2 carries-out duties incompetently or negligently;

7.10.3 fails to conform with any provision of this Agreement; or

7.10.4 persists in any conduct, which is prejudicial to the safety, health or the protection of the environment,

provided, the person's misdemeanour is such that, BIAL cannot reasonably be expected to tolerate the person's further employment on the Project Site, or in the preparation of the Works.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

7.11 The Contractor shall submit, to BIAL, details showing the number of each class of the Contractor's key personnel, and of each type of the Contractor's major equipment on the Project Site. Details shall be submitted each calendar month, in a form approved by BIAL, until the Contractor has completed all work, which is known to be outstanding at the completion date stated in the Completion Certificate, for the final section comprised in the Works.

7.12 The Contractor shall at all times, take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of the persons and the property on the Project Site, or related to the preparation of the Works. The Contractor shall immediately remove and replace from the Works, any of the Contractor's Personnel, who engage in unlawful, riotous or disorderly conduct.

## **8. SUB-CONTRACTING OF WORKS**

8.1 The Contractor shall not subcontract any portion of the Works, without the prior written consent of BIAL.

8.2 The Contractor shall be responsible for the acts or defaults of any subcontractor, his agents or employees, as if, they were the acts or defaults of the Contractor. The Contractor shall inform BIAL in advance (and in writing) of the intended appointment of the subcontractor, with particulars and his relevant experience.

## **9. CONTRACTOR'S SUPERVISION OF WORKS**

- 9.1 The Contractor shall appoint the Contractor's Representative, and shall give him all authority necessary to act on the Contractor's behalf, under this Agreement.
- 9.2 Unless the Contractor's Representative is named in this Agreement, the Contractor shall, prior to the Commencement Date, submit to BIAL for consent, the name and particulars of the person, the Contractor proposes to appoint as the Contractor's Representative. If the consent is withheld or subsequently revoked, or if the appointed person fails to act as the Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.
- 9.3 The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Clause 3.3 above.
- 9.4 The Contractor shall supplement its staff with whatever additional supervisory personnel are required to ensure that, the Works shall be completed by the Scheduled Project Completion Date.
- 9.5 The Contractor shall be responsible for:
- 9.5.1 the accurate setting-out of the Works and the correctness of the position, levels, dimensions and alignment of all parts of the Works; and
  - 9.5.2 the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.
- 9.6 If, at any time, during the execution of the Works, any error appears in the positions, levels, dimensions or alignments of any part of the Works, the Contractor, on being required so to do, by BIAL's Representative, shall, at its own cost, and with no entitlement to any extension of time, rectify such error to the satisfaction of BIAL's Representative.
- 9.7 The checking of any setting-out, or of any line, or level by BIAL's Representative, shall not, in any way, relieve the Contractor, of its responsibility for the accuracy thereof, and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things / materials used in setting-out the Works.

## **10. PROTECTION OF WORKS AND MATERIALS**

- 10.1 The Contractor shall take full responsibility for the care of the Works from the Commencement Date until the Completion Certificate is issued, when responsibility for the care of the Works shall pass to BIAL.
- 10.2 After responsibility has accordingly passed to BIAL, the Contractor shall take responsibility for the care of any Work, which is outstanding on the date stated in a Completion Certificate, until this outstanding Work has been completed.
- 10.3 If any loss or damage happens to the Works during the period, when the Contractor is responsible for their care, except, as may be specified in this Agreement, or mutually agreed

beforehand, the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that, the Works conform to the requirements specified under this Agreement.

- 10.4 The Contractor shall obtain and maintain adequate insurance policies for the Works. The Contractor shall prove to BIAL, from time to time, that, it has taken-out all the insurance policies referred to in this Agreement, and has paid the necessary premiums for keeping the policies alive, till the expiry of the Defects Liability Period.

## 11. COMPLETION

- 11.1 The Works shall be completed by the Scheduled Project Completion Date. If there is any delay in completion of the Works, for any reason other than the conditions constituting Force Majeure, the Contractor shall pay to BIAL, Liquidated Damages (defined later) as specified in Clause 14.

- 11.2 The Works shall not be regarded as completed, unless, they have reached the stage that, inter alia:

11.2.1 the execution of the Works, other than the performance of obligations to be performed during the Defects Liability Period, has been completed, notwithstanding that, there may be Punch List items to be fully executed.

11.2.2 the conditions set-out at Clause 11.4 and Clause 12 (Tests) have been fully satisfied, to the satisfaction of BIAL and BIAL's Representative.

- 11.3 The Contractor shall serve on BIAL and BIAL's Representative, at least 2 (two) months notice of the date upon which, the Contractor anticipates that completion will be achieved.

- 11.4 Prior to making the request for the issue of the Provisional Certificate or the Completion Certificate (whichever is the earlier), the Contractor shall submit to BIAL's Representative the following:

11.4.1 the Operation and Maintenance Manual for the Project (the "O&M Manual") setting-out in detail the standards, schedules, procedures, types, periodicity and other details of the operation and maintenance activities to be carried-out for the Project, during the operations period, so as to meet the O&M requirements, in addition to details of the management information system to be incorporated, reports to be submitted and procedure for reviews;

11.4.2 the Operation & Maintenance Plan (the "O&M Plan") for the 1<sup>st</sup> (first) year of operations; and

11.4.3 the Contractor shall prepare and submit with reasonable promptness, and in such sequence, as is consistent with the Project Schedule, 3 (three) copies of all the Drawings to BIAL for review and comments, which shall be detailed, accurately scaled and sequentially numbered, covering all relevant engineering features, which in relation to structures, shall also include cross-sections in each Drawing, together with an 'as-built' survey illustrating the layout of the Works/Project Site, and setback lines, if any, of the buildings and structures forming part of the Works, reflecting the Works as actually designed, engineered and constructed.

## 12. TESTS

- 12.1 The Contractor shall with due diligence, carry-out the Tests, in accordance with the Applicable Laws and Applicable Permits, and under the supervision of BIAL's Representative. The Contractor shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- 12.2 The Contractor shall permit BIAL and BIAL's Representative to access the Project Site to inspect the Works on reasonable notice, after the Contractor has given such persons, notice of the date upon which, the Contractor considers the Tests shall be performed and will be completed.
- 12.3 BIAL shall monitor the Tests to determine the compliance of the Works with the specifications and standards. The Contractor shall provide to BIAL and BIAL's Representative with copies of all Test data, including detailed Test results.
- 12.4 The cost of carrying out any Test shall be borne by the Contractor.
- 12.5 At least 30 (thirty) days prior to the likely completion of the Works, the Contractor shall notify BIAL of the same, and shall give notice of its intent to conduct any final Test. The Contractor shall give to BIAL atleast 10 (ten) days' prior notice of the actual date on which, it intends to commence the Tests, and atleast 7 (seven) days' prior notice of the commencement date of any subsequent Test. BIAL shall have the right to suspend or delay any Test, if it is reasonably anticipated or determined during the course of the Test that, the performance of the Works or any part thereof, does not meet the specifications and standards.
- 12.6 Upon BIAL determining that, there has been completion of the scope of Works and completion of the outstanding items as per the Punch List and snag list in respect of the Works, and having been satisfied that, the Works can be legally, safely and reliably placed in commercial operations, BIAL's Representative shall, forthwith issue to the Contractor a Certificate (the "**Completion Certificate**") certifying the Project completion.
- 12.7 Notwithstanding that, certain works or things forming part of the Works are not complete, if following the completion of the Tests, BIAL's Representative determines that, the Works can be safely and reliably opened for operations, BIAL's Representative shall, and provided always that, the Contractor has fully complied with its obligations under Clause 11.4, issue to the Contractor, a Provisional Certificate (the "**Provisional Certificate**"). The Provisional Certificate shall have appended thereto, a list of outstanding items signed jointly by BIAL's Representative and BIAL (the "**Punch List**"). All Punch List items shall be completed by the Contractor within such time, as may be determined by BIAL's Representative, and in any event, not exceeding 30 (thirty) days of the date of issue of the Provisional Certificate. Upon satisfactory completion of all the Punch List items, BIAL shall use all reasonable endeavours to procure that, BIAL shall promptly, and in any case, within 10 (ten) days thereof, issue a Completion Certificate.
- 12.8 If the Contractor fails to complete the Punch List items, within the said period of 30 (thirty) days, then the Contractor shall pay / reimburse to BIAL, all the damages (subject to the limits specified in Clause 14.5) for not completing the Punch List items of the Work. In addition, BIAL shall also be entitled to appoint any third party for executing the Works covered under the

Punch List, and the cost incurred by BIAL, by itself, or by employing another contractor, in completing the Punch List items, as certified by BIAL's Representative shall, without any demur, be paid or reimbursed to BIAL by the Contractor within 30 (thirty) days from the date of receipt of a claim in respect thereof from BIAL.

### **13. EXTENSION OF TIME**

13.1 The Contractor shall closely monitor the progress of the Works, and shall give written notice to BIAL, with a copy to BIAL's Representative, as soon as it can foresee or ought reasonably to have foreseen any delay or / and a delay to the achievement of the Scheduled Project Completion Date.

13.2 Any notice given pursuant to Clause 13.1 shall, as precisely as possible, state the likely period of delay to the Scheduled Project Completion Date, and specify whether the Contractor considers that it is, or may become entitled to an extension of time for the completion of the Works.

13.3 Following the service of a notice pursuant to Clause 13.1, the Contractor must supply BIAL's Representative, with such further supporting documentation and information as BIAL's Representative may require, so as to support its claim for extension of time, for the completion of the Works.

13.4 In the event of any delay, the Contractor shall at all times, ensure that, it uses and continues to use all reasonable endeavours to avoid or reduce the effect of any delay, on the completion of the Works. After it has given notice under Clause 13.1, the Contractor shall, as soon as reasonably practicable, submit a further written notice to BIAL's Representative, stating the following:

13.4.1 full and detailed particulars of the cause and actual extent of the delay to the completion of the Works, or to the achievement of the Scheduled Project Completion Date; or

13.4.2 where a circumstance has a continuing effect, or where the Contractor is at any time, unable to determine whether the effect of a circumstance will actually cause delay to the completion of the Works, or to the achievement of the Scheduled Project Completion Date, a statement to that effect, with reasons and interim written particulars (including details of the likely consequences of the circumstance on the progress of design and execution of the Works, and an estimate of the likelihood of and likely extent of the delay); the Contractor shall thereafter, submit to BIAL's Representative, further interim written particulars at intervals of not more than 14 (fourteen) days, until the actual delay caused (if any) is ascertainable, when it shall thereafter within 14 (fourteen) days, submit to BIAL's Representative full and detailed particulars of the cause and actual extent of the delay; or

13.4.3 for approval, the details of the documents, the Contractor proposes to present, to support its claim for extension of time, for completion of the Works, so as to demonstrate its entitlement; or

- 13.4.4 for approval, details of the measures, the Contractor has adopted or proposes to adopt, to avoid or reduce the effects of such circumstance upon the completion of the Works, and the timely achievement of the Scheduled Project Completion Date.
- 13.5 Subject always to Clause 13 and subject always to proper compliance by the Contractor with the provisions of Clauses 13.1 to 13.3, if BIAL's Representative considers the Contractor to be reasonably entitled to such an extension of time, he shall determine the period of extension and shall notify BIAL and the Contractor, accordingly.
- 13.6 The Contractor shall not be entitled to an extension of time, in respect of any cause of delay, or for any period of delay which, by the exercise of all reasonable endeavours, could be avoided or reduced (to the extent that, such could have been reduced). The onus of proving that, the Contractor has exercised all reasonable endeavours, and that despite such endeavours, the delay could not be avoided or reduced, shall in all cases rest with the Contractor in this respect.
- 13.7 It shall be a condition precedent to the Contractor's right to any extension of time that, it shall have complied fully and strictly with any of the provisions of Clause 13 in respect thereof. In the event of the Contractor failing so to comply, it shall not be entitled to an extension of time, and any delay or / and disruption for which, the Contractor would otherwise, have been entitled to an extension of time, shall be deemed for the purpose of considering liquidated damages.
- 14. LIQUIDATED DAMAGES**
- 14.1 If the Contractor fails to complete the Works by the Scheduled Project Completion Date, then the Contractor shall forthwith, without any demur, pay BIAL Liquidated Damages calculated at **1% (one percent) of the Contract Price per week or part thereof, for such default for** every week or part of a week (in the event that, the Liquidated Damages are payable for part of a day, the Contractor shall be liable to pay the reasonable proportion pro-rata), which shall elapse between the Scheduled Project Completion Date and the date stated in the Provisional Certificate or Completion Certificate, as being the Completion Date. This right available to BIAL under Clause 14, is in addition to any other right available to BIAL under this Agreement, and under the Applicable Law.
- 14.2 BIAL shall notify the Contractor in writing, of the amount of the Liquidated Damages that may have become due. BIAL may deduct and retain the amount of any Liquidated Damages becoming due under Clause 14.1 from any sum due or / and which become due to the Contractor; or / and realise any sum or guarantee provided by the Contractor; or / and require the Contractor to pay such amount to BIAL within 28 (twenty-eight) days after receipt of the notice pursuant to Clause 13.1 notwithstanding any dispute between the Parties as to the amount due or the liability to make payment of the same.
- 14.3 If the payment of the Liquidated Damages is unenforceable by BIAL for any reason, the Contractor shall be liable to pay BIAL actual losses and costs caused, or to the extent contributed to, by the delay to the Scheduled Project Completion Date for which, the Contractor is responsible, save that, BIAL shall not be entitled to recover under this Clause, any sum, which is greater than the amount, which would have been recoverable as the Liquidated Damages, had the same not been unenforceable.

14.4 If BIAL's Representative grants, under Clause 13, any extension of time or further extension of time, which would result in a change in the Scheduled Project Completion Date, he shall recalculate the amount of any Liquidated Damage to which, BIAL is entitled, and shall forthwith, notify BIAL and the Contractor of the amount thereof, if any, or of any adjustment applicable to any such amount already notified, as the case may be. In-so-far-as any sum shall thereby be payable, by way of adjustment or otherwise, by the Contractor to BIAL, the Contractor shall within 30 (thirty) days of BIAL's Representative's notice, pay the same to BIAL.

14.5. The Contractor's liability under Clause 14, shall be limited to 10% (ten percent) of the Contract Price.

## 15. RECTIFICATION OF DEFECTS

15.1 In this Agreement, the expression "Defects Liability Period" shall mean, [to be inserted] from the date of the issue of the Completion Certificate.

15.2 The Contractor shall carry out, at its own cost, all works necessary for the rectification of any Contractor's defect in, or damage to the Works, caused by the Contractor's defect, during the Defects Liability Period, as BIAL's Representative may, during the Defects Liability Period, instruct, pursuant to an inspection made by BIAL's Representative, prior to the expiration of the Defects Liability Period.

The Contractor shall be responsible to make good and remedy at its own expense within:

15.2.1 7 (seven) days, any defect, which may be noticed before the taking-over of each Phase.

15.2.2 6 (six) hours, any defect, which may be noticed after the taking-over and before the Defects Liability Period, in case of operational urgency, as intimated by BIAL.

15.2.3 2 (two) days, any defect, which may be noticed after the taking-over and before the Defects Liability Period, in case of the other works, the intimation of which, has been sent to the Contractor by BIAL.

In respect of rectification works properly instructed by BIAL's Representative, the Defects Liability Period in respect of such defect(s) only, shall be extended until satisfactory completion of the rectification works.

15.3 When undertaking any work under Clause 15, which could affect the use of the Works or any part thereof, the Contractor shall observe all reasonable requirements that, BIAL or BIAL's Representative, or any duly authorised BIAL's Representative's delegate or assistant, or any of them may make in regard to the safety and efficient operation thereof. Subject to this requirement, the Contractor shall, until BIAL's Representative has issued the Provisional Certificate for the Works, have the right of access, but, not so as to cause any reasonably avoidable inconvenience.

15.4 BIAL's Representative shall issue to the Contractor, the Provisional Certificate for the Works, as soon after the expiration of the Defects Liability Period (or if more than one, then upon the expiry of the last of them), as the Contractor shall, in BIAL's Representative's opinion, have completed all its obligations whether under Clauses 15.2 and 15.3 or otherwise, which relate to

the Works or part thereof, as the case may be, including any work redesigned or amended, replacements and renewals, and shall state thereon, the date, when such obligations shall have, in his opinion, been so completed.

- 15.5 Notwithstanding the issue of the Provisional Certificate (or if more than one, then upon the issue of the last of them), the Contractor shall remain liable for the fulfilment of any obligation incurred under the provisions of this Agreement prior to the issue of the Provisional Certificate (or if more than one, then upon the issue of the last of them), which remains unperformed at the time such Provisional Certificate is issued, and for the purposes of determining the nature and extent of any such obligation, this Agreement shall be deemed to remain in force between the Parties to this Agreement.

#### 15.6 **Completion of Outstanding Work and Remedying Defects**

In order that, the Works and each Phase, shall be in the condition required by this Agreement (fair wear and tear excepted) by the expiry date of the relevant timeline specified by BIAL (the “Defects Notification Period”), or as soon as practicable thereafter, the Contractor shall:

- 15.6.1 complete any work, which is outstanding on the Completion Date, within the stipulated time as is instructed by BIAL, and execute all work required to remedy the defects or damage to the Works, as may be notified by BIAL or BIAL’s Representative, as soon as reasonably possible and in any event, on or before the expiry date of the Defects Notification Period. BIAL will notify the Contractor as soon as reasonably practicable, upon discovery of any such defect or damage; and
- 15.6.2 correct any error, omission, inconsistency, inadequacy or other defect, that is found in the Contractor’s documents. Subject as aforesaid, the Defects Notification Period for a Phase, shall not extend up to the expiry of the Defects Notification Period of any later Phase to be taken over. If a defect appears or damage occurs, BIAL shall notify the Contractor accordingly.

#### 15.7 **Cost of Remedying Defects**

All outstanding work and remedying defects shall be executed at the risk and cost of the Contractor, if and to the extent that, the work is attributable to:

- 15.7.1 the design of the Works, or the plants, the materials or the workmanship not being in accordance with this Agreement; or
- 15.7.2 improper operation or maintenance, which was attributable to the matters for which, the Contractor is responsible; or
- 15.7.3 failure by the Contractor to comply with any other obligation.

If and to the extent that, such work is attributable to any other cause, BIAL shall give notice to the Contractor accordingly, and Clause 16.10 (Deviations / Variations) shall apply.

#### 15.8 **Extension of Defects Liability Period**

BIAL shall be entitled to an extension of the Defects Liability Period for a Phase or any part thereof, if and to the extent that, the Phase or any part thereof (after taking-over), cannot be used by reason of a defect or damage in respect of which, the Contractor is liable in accordance with Clause 15. However, the Defects Liability Period of a Phase or part thereof, which has been successfully remedied, shall be extended by 6 (six) months from the date of the original Defects Liability Period expiry date.

#### **15.9 Failure to Remedy Defects**

The Contractor shall make its own arrangements to remedy the defects within the stipulated time period. If the Contractor fails to remedy any defect or damage within the stipulated time, BIAL may:

- 15.9.1 carry-out the work by itself or by others, in a reasonable manner and at the Contractor's cost, and the Contractor shall be liable to pay to BIAL the costs incurred by BIAL in remedying the defect or damage; or
- 15.9.2 agree or determine a reasonable reduction in the Contract Price; or
- 15.9.3 provided, BIAL cannot be reasonably expected to remedy the defect according to sub-paragraphs above, since the defect or damage deprives BIAL of substantially the whole benefit of an essential part of the Works, recover all sums paid for such part of the Works only, and the Contractor shall dismantle and remove such part at its expense.

#### **15.10 Removal of Defective Work**

If the defect or damage cannot be remedied expeditiously on the Project Site and BIAL gives consent, the Contractor may remove from the Project Site, for the purposes of repair, such items of work / plant as are defective or damaged. This consent may require the Contractor to provide appropriate security.

### **16. GENERAL TERMS AND CONDITIONS**

#### **16.1 Obligations and Responsibilities of Contractor**

- 16.1.1 Based on the operational descriptions provided in this Agreement, the Contractor shall come-up with a proposal for designing and building the systems as listed in Schedule C - Works with the guarantee for a fully functional system, and the same shall be "fit for the purpose". The design responsibility for the Project remains with the Contractor alone, and the Contractor has to guarantee compliance to the relevant standards, the requirement of the Project being state-of-the-art, and the operational requirements.
- 16.1.2 The Contractor shall render all services, which are required for the proper design and execution of the Works.
- 16.1.3 In principle, the Contractor is responsible for the execution of the warranty services within the Defects Liability Period. In special cases and limited circumstances, if desired by BIAL, the Contractor may perform warranty services under the guidance

and supervision of BIAL. However, it will be the sole responsibility of the Contractor to get all the warranty services executed through the contractors or their authorized representatives during the warranty-phase of the facility or system.

16.1.4 If BIAL sets-up contracts with other contractors for partial-maintenance services, the obligation for co-ordination of service provision lies with the Contractor.

**16.1.5 Security of and at Site**

Unless otherwise stated in this Agreement:

16.1.5.1 the Contractor shall be responsible for keeping unauthorised persons off the Site; and authorised persons shall be limited to the Contractor's Personnel and BIAL's Personnel, personnel employed by other contractors working on the Site, and to any other personnel notified to the Contractor, by (or on behalf of) BIAL, as authorised personnel of BIAL.

16.1.5.2 the Contractor shall also be responsible for protection of any and all the materials at the Site, including the materials supplied by BIAL, or quarried by the Contractor, and stored, or being processed, at any place outside the Site.

Any loss or / and damage incurred by the Contractor, due to entry by unauthorized persons onto the Site, or theft, or pilferage of any material, shall be borne by the Contractor, and any loss or / and damage suffered by BIAL due to failure on the part of the Contractor to protect such materials, shall also be the liability of the Contractor, and such losses or / and damages shall be reimbursed by the Contractor to BIAL.

**16.1.6 Quarrying**

16.1.6.1 The Contractor shall be liable to make a proper forecast of the total quantities of the materials that, it may require for completion of the Works, and shall quarry or / and crush only the requisite materials. Any excess material quarried or crushed by the Contractor shall belong to BIAL, without any cost.

16.1.6.2 All such costs involved for the purpose of quarrying, crushing, etc., of the materials shall be borne by the Contractor. Further, the applicable royalties and statutory payments for such quarrying, crushing, production of aggregates, etc., shall also be borne by the Contractor and BIAL shall not have any liability to make payments for the same. Any addition in Taxes or / and duties due to change in law, in-so-far-as they relate to the quarry operations and aggregate production, shall be the sole responsibility of the Contractor.

16.1.6.3 It is hereby expressly agreed by the Contractor that, the Contractor operates the quarry on behalf of BIAL, in accordance with the terms and conditions of the quarrying license granted to BIAL, and the Applicable

Laws, and shall in no event, be entitled to claim such benefit as a matter of right.

- 16.1.6.4 The Contractor shall obtain all requisite permits, licenses and approvals required by it, to perform the quarry operations and production of aggregates, at its own cost and time. Further, the Contractor shall be liable to liaison with the Department of Mines and Geology and other Agencies for obtaining the necessary approvals for the purpose of carrying out quarrying, crushing, etc.
- 16.1.7 The Contractor specifically agrees that, no construction vehicle or any other traffic, either to transport its personnel or materials, shall be allowed on the main access road to the Airport and the Contractor shall use only those access roads permitted by BIAL. Further, the Contractor concurs that, the construction logistics will have to be done according to the plans mutually agreed between the Parties to ensure smooth functioning at the Airport at all times.
- 16.1.8 For successful timely and completion of Works and for achieving the standards set by BIAL, the Contractor is required to have (either owned/leased) all the equipment as detailed in the list of equipment in Schedule M and such equipment shall be of the make detailed in Schedule M.
- 16.1.9 **LABOUR CAMPS**
- 16.1.9.1 The Contractor shall not be allowed to set up or maintain its labour camp at the Site. The Contractor has to make all arrangements of the workers entry and exit into the Airport and the same shall be as per the direction and rules specified by BIAL and the Contractor shall also obtain necessary labour licenses.
- 16.1.9.2 The Contractor should adhere to all the provisions of Contract Labour (Abolition & Regulations) Act, 1970. The Contractor has to ensure payment of wages as stipulated under the Minimum Wages Act.

## 16.2 **Guarantee and Liabilities of Contractor**

- 16.2.1 The Contractor is liable for the design with the guarantee to provide fully functional and “fit for the purpose” systems. The Contractor is liable for the damages to the property or the personal injuries equal to the Contract Price, which are a result from its assignment and directly caused by it, or its representatives. The Contractor provides itself with the business liability insurance, covering it, up to the liabilities as per the scope of this Agreement.
- 16.2.2 The Contractor shall adhere to the safety and other relevant regulations, relating to the infrastructure / equipment, as well as for carrying-out the task in connection with this Agreement.
- 16.2.3 Properly tested and marked material handling equipment only shall be used for execution of the Works. The Contractor shall provide all necessary supervision and quality control facilities. At all working times, the Contractor’s competent

representative shall be at the Project Site. All supporting arrangements and fixing details shall be checked periodically, and necessary rectifying actions are to be taken, in order to ensure safe handling of loads during different operations. All plant and machinery of the Contractor shall comply with the safety regulations needed for working in the Airport, where other contractors / subcontractors / agencies might also be working, so as not to interfere with the work of the other contractors, or foul with their constructions.

- 16.2.4 The Contractor shall take all precautions to avoid accidents by exhibiting / displaying necessary caution boards day and night, speed limit borders, red flags, red lights and providing barriers. No hindrances shall be caused to the traffic during execution of the Works. The safety guidelines are detailed in Schedule K.
- 16.2.5 The Contractor shall obtain necessary entry pass / token / identity card for the work-force and equipment, from BIAL / the Bureau of Civil Aviation Security / Central Industrial Security Force or the relevant agency in-charge of security at the Airport. It is the responsibility of the Contractor to fulfill all the relevant formalities in connection with obtaining of identity card for its employees, including, payment of necessary fees and carrying-out police verification, etc. In addition, the Contractor shall ensure that, the employees / work force adhere to the security rules / regulations in force at the Airport, and the Contractor is solely liable for the consequences arising out of any violation of the security rules / regulations by its employees / work-force.
- 16.2.6 From the commencement till the completion of the Works, the Contractor shall take full responsibility for taking precautions, to prevent loss or damage to the Works or the Project Site, and to minimize loss or damage to the greatest extent possible, and shall be liable for any damage or loss, that may happen to the Works or any part thereof, from any cause whatsoever, and shall, at the Contractor's own cost, repair and make good the same so that, at completion, the Works shall be in good order and condition and in conformity in every respect, with the requirements of this Agreement and instructions of BIAL.
- 16.2.7 The Contractor shall not be entitled to payment under the above provisions of this Agreement, in respect of such loss or damage as has been occasioned by any failure on the Contractor's part to perform its obligation under this Agreement, or which has occurred as a result of the Contractor not taking precautions to prevent such loss or damage or minimize the amount of such loss or damage. Further, in the event of the Contractor's failure to repair and make good such damage or loss, BIAL, at its sole discretion, shall retain the payments due and payable to the Contractor.
- 16.2.8 Where BIAL's building or a part thereof, is rented by the Contractor, the Contractor shall insure the entire building, if the building or any part thereof, is used by the Contractor for the purpose of storing or using the materials of combustible nature, as to which the decision of BIAL shall be final and binding.
- 16.2.9 The Contractor shall indemnify and keep indemnified BIAL against all losses and claims for injuries or damage to any person, or any property whatsoever, which may arise out of, or in consequence of the construction and maintenance of the Works

and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever, in respect of, or in relation thereto.

Before commencing execution of the Work, the Contractor shall, without in any way limiting its obligations and responsibilities under this Agreement, insure itself, against any damage, loss or injury, which may occur to any property (excluding that of BIAL, but, including BIAL's building rented by the Contractor, wholly or in a part, and any part of which, is used by the Contractor for storing the combustible materials), or to any person (including any employee of BIAL) by or arising out of carrying-out its obligations under this Agreement.

- 16.2.10 The Contractor shall at all times, indemnify BIAL against all claims, damages or compensation under the provisions of the various applicable labour legislations, or any modification thereof, or any other law relating thereto, and the rules made thereunder, from time to time, or as a consequence of any accident or injury, to any workman or other person, in or about the Works, whether in the employment of the Contractor or not, save and except, where such accident or injury has resulted from any act of BIAL, its agents or servants, and also against all costs, charges and expenses of any suit, action or proceedings, arising out of such accident or injury, and against all sum or sums, which may, with the consent of the Contractor, be paid to compromise or compound any claim. Without limiting its obligations and liabilities as above provided, the Contractor shall insure against all claims, damages or compensation payable under the Workmen's Compensation Act, 1923 or any modification thereof, or any other law relating thereto.
- 16.2.11 The aforesaid insurance policy / policies shall provide that, they shall not be cancelled, till BIAL has agreed to their cancellation.
- 16.2.12 Quality Assurance: The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of this Agreement. The system shall be in accordance with the details stated in this Agreement. BIAL shall be entitled to audit any aspect of the system.
- Details of all procedures and compliance documents shall be submitted to BIAL, for information, before each stage of the Works is commenced.
- Compliance with the quality assurance system shall not relieve the Contractor of any of its duties, obligations or responsibilities under this Agreement.
- 16.2.13 Monthly progress reports shall be prepared by the Contractor and submitted to BIAL in agreed electronic formats, within 10 (ten) days after the last day of the period to which, it relates. Details of the report shall be agreed upon commencement of construction of the Works.
- 16.2.14 The Contractor's design, the Contractor's documents, the execution of the Works and the completed Works shall comply with the International Civil Aviation Organization's Standards / International Standards.
- 16.2.15 Samples: The Contractor shall submit samples and mock-ups to BIAL, as specified in the Contractor's design or BIAL's Requirements, as the case may be, and listed by the

Contractor, for review and approval of visual impact, in accordance with procedures and specification to be adapted during execution, within 60 (sixty) days of the Commencement Date.

### **16.3 Obligations of BIAL**

- 16.3.1 BIAL has to grant the Contractor and its representatives, engaged for the purpose of this Agreement, safe access to the relevant infrastructure and equipment, provided that, the Contractor has submitted the application for the same within the required timeframe. BIAL will define the conditions and processes for access to the Airport's airside area.
- 16.3.2 In emergencies and exceptional conditions, BIAL, without previous explicit and written consent of the Contractor, may maintain or repair the infrastructure or equipment by it, or assign such a task to another third party. However, this will be done in exceptional situations with the aim of achieving desired level of serviceability of equipment or to ensure safe aircraft operation and passenger facilities.
- 16.3.3 In the event of the Contractor not fulfilling its obligations and the agreed execution levels, BIAL shall send a written notice to the Contractor requesting the Contractor to fulfill the agreed execution levels. If the Contractor does not follow the requested execution levels within the specified period, BIAL is entitled to either assign a third party with the execution of the task at the expense of the Contractor or to terminate this Agreement on short notice.
- 16.3.4 BIAL has to inform the Contractor immediately and in writing, on all changes of the designated infrastructure / equipment or their operating conditions, which could impair the maintenance work to be performed by the Contractor.
- 16.3.5 BIAL has to hand over to the Contractor, upon its demand, copies of all technical information in BIAL's possession as well as software, which are relevant and useful to the design and execution of the Work. These documents remain the property of BIAL at any time, and may be used by the Contractor only for the purposes of fulfillment of its obligations under this Agreement. In response, the Contractor has the obligation for adjusting and updating the technical information in its possession, in case the Contractor had to implement changes to the infrastructure / equipment in the context of its contractual assignment, after taking prior written approval from BIAL.

### **16.4 Notices to Local Bodies**

- 16.4.1 The Contractor shall comply with and give all notices required by any Governmental authority or Agency, rule or Order made under any Act of the Parliament, State laws or any regulation or bye-law of any local authority relating to the Works. The Contractor shall, before making any variation from the Drawings necessitated by such compliance, give to BIAL a written intimation giving reasons for the proposed variation and obtain BIAL's written instructions thereon.

16.4.2 The Contractor shall pay and indemnify BIAL against any liability in respect of any fee or charge payable under any Act of the Parliament, State laws or any Government instrument, rule or Order, and any regulation or bye-law of any local authority, in respect of the Works.

**16.5 Foreclosure of this Agreement in full or in part, due to Abandonment or Reduction in Scope of Work**

If, at any time after the commencement of the Work, BIAL shall, for any reason whatsoever, not require the whole Work thereof, to be carried-out, BIAL shall give notice in writing of the fact to the Contractor, who shall have no claim to any payment of compensation whatsoever, on account of any profit or advantage, which it might have derived from the execution of the Work in full, but which, the Contractor did not derive in consequence of the full work not having been carried-out, neither shall the Contractor have any claim for compensation by reason of any alteration having been made in the original specifications, Drawings, designs and instructions, which shall involve any curtailment of the Work as originally contemplated.

**16.6 Suspension of Work**

The Contractor shall, on receipt of the notice in writing by BIAL, suspend the progress of the Work or any part thereof, for such time and in such manner, as BIAL may consider necessary for any of the following reasons:

16.6.1 On account of any default on part of the Contractor; or

16.6.2 For proper execution of the Works or part thereof, for reasons other than the default of the Contractor; or

16.6.3 For safety of the Works or part thereof.

The Contractor shall, during such suspension, properly protect and secure the Works to the extent necessary and carry-out the instructions given in that behalf by BIAL.

**16.7 Liability for Damage, Defects or Imperfections and Rectification thereof**

16.7.1 If the Contractor or its workmen or employees shall injure or destroy any part of the Work in which, they may be working or any building, road, fence, etc., contiguous to the premises on which, the Work or any part of it is being executed, or if any damage shall happen to the Work while in progress, the Contractor shall, upon receipt of a notice in writing, in that behalf, make good the same at its own expense. If it shall appear to BIAL or BIAL's Representative at anytime during the construction or reconstruction or prior to the expiration of the Defects Liability Period, that any Work has been executed with unsound, imperfect or unskilled workmanship, or that any material or article provided by the Contractor for execution of the work are unsound, or of a quality inferior to that contracted for, or otherwise, not in accordance with this Agreement, or that any defect, shrinkage or other fault has appeared in the Work arising out of the defective or the improper materials or workmanship, the Contractor shall, upon receipt of a notice in writing in that behalf from BIAL, forthwith rectify or remove, and reconstruct the Work, so specified, in

whole or in part, as the case may be, or / and remove the materials or articles and provide other proper and suitable materials or articles at its own expense, notwithstanding that, the same may have been inadvertently passed, certified and paid for, and in the event of the Contractor's failing to do so, within the stipulated period in aforesaid notice, BIAL may rectify or remove and re-execute the Work or / and remove and replace with others, the materials or articles complained of, as the case may be, by other means at the risk and expense of the Contractor.

16.7.2 In case of repairs and maintenance works, splashes and droppings from whitewashing, painting, etc., shall be removed and surfaces cleaned simultaneously with completion of the items of work in individual rooms, quarters or premises, etc., where the work is done, without waiting for completion of all other items of work stipulated in this Agreement. In case the Contractor fails to comply with the requirements of this condition, BIAL shall have the right to get the work done by other means at the cost of the Contractor. Before taking such action, however, BIAL shall give 3 (three) days notice in writing to the Contractor.

## 16.8 Removal of Workmen

The Contractor shall employ, in and about the execution of the Works, only such persons as are skilled and experienced in their respective trades, and BIAL shall be at liberty to object to and require the Contractor to remove from the Works, any person employed by the Contractor, in or about the execution of the Works, who, in the opinion of BIAL, misconducts himself, or is incompetent, or negligent in the proper performance of his duties, and such person shall not be again employed upon the Works, without permission of BIAL. The Contractor shall immediately thereafter, depute a suitable replacement for such person.

## 16.9 Materials

### 16.9.1 Materials to be supplied by Contractor

16.9.1.1 The Contractor shall at its own expense, provide all the materials required for the Works, other than those, which are to be supplied by BIAL.

16.9.1.2 All the materials to be provided by the Contractor shall be in conformity with the specifications laid down in this Agreement and the Contractor shall, if requested by BIAL, furnish proof, to the satisfaction of BIAL, that the materials so comply.

16.9.1.3 The Contractor shall, at its own expense and without delay, supply to BIAL samples of the materials proposed to be used in the Works. BIAL, within the shortest possible time, will inform the Contractor, whether samples are approved or not. If the samples are not approved, the Contractor shall forthwith arrange to supply to BIAL, for its approval, fresh samples complying with the specifications laid down in this Agreement.

16.9.1.4 BIAL shall have full powers to require removal of any or all of the materials brought to the Project Site by the Contractor, which are not in

accordance with the specifications of this Agreement, or do not conform in character, or quality, to the samples approved by BIAL. All costs, which may attend upon such removal or / and substitution, shall be borne by the Contractor.

16.9.1.5 BIAL shall be entitled to have tests carried-out, as specified in this Agreement, for any of the materials supplied by the Contractor other than those for which, as stated above, satisfactory proof has already been furnished, at the cost of the Contractor and the Contractor shall provide, at its expense, all facilities, which BIAL may require for the purpose.

#### **16.9.2 Materials to be supplied by BIAL**

16.9.2.1 The Materials to be supplied by BIAL free-of-cost, are indicated in Schedule G herein, and all such items will be issued at BIAL's stores or BIAL's property.

16.9.2.2 If, after the execution of this Agreement, the Contractor desires BIAL to supply any other material, such materials may be supplied by BIAL, if available, at rates to be fixed by BIAL.

16.9.2.3 Such materials shall be supplied for the purpose of this Agreement only, and the value of the materials shall be deducted, as and when the materials are consumed in items of work for which, payment is being made to the Contractor, from any sum then due, or which may thereafter become due to the Contractor, under this Agreement. At the time of submission of bills, the Contractor shall properly account for the materials issued to the Contractor to the satisfaction of BIAL, and certify that, balance of the materials supplied is available at the Project Site.

16.9.2.4 The Contractor shall bear the cost of loading, transporting to the Project Site, unloading, storing under cover as required, assembling and joining the several parts together, as necessary, and incorporating, or fixing the materials in the Works, including all preparatory work of whatever description as may be required.

16.9.2.5 All the materials issued to the Contractor by BIAL for incorporation or fixing in the Works (including preparatory work) shall, on completion or on foreclosure of the Works, be returned by the Contractor at its expense, at the place of issue, after making due allowance for actual consumption, reasonable wear and tear or / and waste.

16.9.2.6 The surplus materials returned by the Contractor may be credited to it by BIAL, at rates not exceeding those at which, they were originally issued to the Contractor, after taking into consideration the usability of the materials by BIAL, any deterioration or damage, which may have been caused to the said materials, whilst in the custody of the Contractor.

16.9.2.7 If on completion of the Works, the Contractor fails to return the surplus materials out of those supplied by BIAL, then in addition to any other liability, which the Contractor would incur, BIAL will recover for such unreturned surplus materials at double the issue rates.

### 16.9.3 General

16.9.3.1 The materials required for the Works, whether brought by the Contractor or supplied by BIAL, shall be stored by the Contractor only at places approved by BIAL. Storage and safe custody of the materials, shall be the responsibility of the Contractor.

16.9.3.2 BIAL's Representative shall be entitled, at any time, to inspect and examine any material intended to be used in or on the Works, either at the Project Site or other place(s), where such materials are assembled / fabricated, manufactured or at any place(s), where these are lying, or from which, these are being obtained, and the Contractor shall give such facilities as may be required for such inspection and examination.

16.9.3.3 All the materials brought to the Project Site shall become and remains the property of BIAL, and shall not be removed from the Project Site, without the prior written approval of BIAL. But, whenever the Work is finally completed, and advance, if any, in respect of any such material is fully recovered, the Contractor shall at its own expense, remove from the Project Site all the surplus materials originally supplied by the Contractor and upon such removal, the same shall revert in and become the property of the Contractor.

16.9.3.4 The Contractor shall submit copies of purchase vouchers of bitumen, cement, paint and any other material, which are used in the Works, if so requested by BIAL.

## 16.10 Deviations / Variations

16.10.1 BIAL shall have right to make alteration in, omissions from, additions to, or substitutions for the original specifications, Drawings, designs and instructions that may appear to it, to be necessary or advisable during the progress of the Work, and to omit any part of the Works in case of non-availability of a portion of the Project Site, or for any other reason, and the Contractor shall be bound to carry out the Works in accordance with such requirements by BIAL.

16.10.2 Rates for such additional, altered or substituted work shall be determined by BIAL, by rate analysis, derived from the similar items available in this Agreement, or as per the Unit Rates detailed in **Schedule H** or by market rate analysis, or based on the verification of claim submitted by the Contractor, or any other method, mutually agreeable to both the Parties. However, the Contractor should furnish the documentary evidence such as, bill / invoice, purchase order, payment vouchers, etc., to substantiate its claim.

## 16.11 Extension of Time for Delay

- 16.11.1 The anticipated time allowed for execution of the Works is detailed in Schedule B, and time shall be of the essence of this Agreement. The execution of the Works shall commence from the day specified in the work order or on the day of actual handing over of the Project Site.
- 16.11.2 If the Works be delayed by Force Majeure, or excepted risks, or any other cause which, in the absolute discretion of BIAL, is beyond the Contractor's control, then upon the happening of any such event causing delay, the Contractor shall immediately give notice thereof, in writing, to BIAL, but shall nevertheless, use constantly, its best endeavors to prevent or make good the delay, and shall do all that may be reasonably required to the satisfaction of BIAL to proceed with the Works.
- 16.11.3 Any request for extension of time, to be eligible for consideration, shall be made by the Contractor in writing within 14 (fourteen) days of the happening of the event causing delay. The Contractor may also indicate in such a request the period for which extension is desired.
- 16.11.4 Prior to hand over, the Contractor is obliged to hand over all the Drawings and a documentation of the materials and the equipment used. Details and format for the same is to be determined in the project and design manual, to be prepared by the Contractor.

#### **16.12 BIAL's Claims**

If BIAL considers itself entitled to any payment under any Clause of the Agreement, or otherwise in connection with this Agreement, or / and to any extension of the Defects Notification Period, it shall give notice and particulars to the Contractor within a period of 15 (fifteen) days. However, notice is not required for payments due for the electricity and water charges, consumed for execution of the Works, or for other services requested by the Contractor.

BIAL shall be entitled to set-off against any money due, or to become due, to the Contractor, any amount that have been:

- 16.12.1 agreed to by the Contractor; or  
16.12.2 finally determined according to Clause 24 as payable by the Contractor to BIAL.

#### **16.13 Electricity and Water for execution of Works**

The Contractor shall be responsible for the provision of temporary electricity, water and other services that the Contractor may require, for the duration of the construction of the Works. All charges for consumption of power and water, including the charges for consumption of power and water for inspection and testing, till the issuance of the Provisional Certificate shall be borne by the Contractor.

The Contractor shall, at its own risk and cost, provide any apparatus necessary for use of these services, and for measuring, and making payment of the quantities consumed. BIAL shall be entitled to use such services upon reimbursement to the Contractor, at the rates incurred by the Contractor.

#### 16.14 Contractor's Claims

If the Contractor considers itself to be entitled to any payment under any Clause herein or / and to any extension of time, it shall give notice and particulars to BIAL within a period of 15 (fifteen) days. The Contractor is not entitled to claim any money due, or to become due, to the Contractor, if the stipulated period of 15 (fifteen) days is exceeded. The Contractor shall submit cost proposal for the works of claim.

#### 17. TERM

This Agreement shall commence on the Effective Date and shall be valid for a period of [*To be inserted*] years from the Commencement Date or until satisfactory completion of the Works, whichever is earlier (the 'Term'), unless terminated earlier under the provisions of this Agreement.

#### 18. TERMINATION BY BIAL

18.1 BIAL shall be entitled to terminate this Agreement if:

18.1.1 the Contractor abandons the Works for more than 45 (forty-five) consecutive days or otherwise, plainly demonstrates the intention not to continue performance of its obligations under this Agreement;

18.1.2 the Contractor without reasonable excuse fails to proceed with the Works;

18.1.3 the Contractor subcontracts the whole of the Works, or assigns this Agreement, without the required agreement / consent of BIAL;

18.1.4 an Order is made, or a resolution is passed for the liquidation, bankruptcy or dissolution of the Contractor, which is not, if capable of being so, discharged or, as the case may be, revoked within 90 (ninety) days thereafter; or

18.1.5 the Contractor is in material breach of its obligations under this Agreement, which breach, has a material adverse effect on BIAL and, if capable of remedy, is not remedied by the Contractor within 30 (thirty) days from the date of notice calling upon the Contractor to rectify the breach.

18.2 In any of these events or circumstances, BIAL may, upon giving 14 (fourteen) days' notice to the Contractor, terminate this Agreement and expel the Contractor from the Project Site. However, in the case of Clause 18.1.4, BIAL may, by notice, terminate this Agreement immediately.

18.3 Notwithstanding Clauses 18.1 and 18.2, BIAL has the right to terminate this Agreement at will, by giving 15 (fifteen) days written notice without assigning any reason thereof. Upon receipt of such notice and expiry of notice period, this Agreement shall stand terminated at the end of 15<sup>th</sup> (fifteenth) day of issue of such notice by BIAL, and the consequences of termination stipulated in Clause 18 shall apply.

- 18.4 The Contractor shall then leave the Project Site and deliver all documents made by or for it, to BIAL. However, the Contractor shall use its best efforts to comply immediately with any reasonable instruction included in the notice (i) for the assignment of any sub-contract, and (ii) for the protection of life or property or for the safety of the Works. After termination, BIAL may complete the Works or / and arrange for any other entity to do so. BIAL and these entities may then use any goods or document made by, or on behalf of the Contractor.
- 18.5 BIAL shall then give notice that the Contractor's Equipment and the Temporary Works will be released to the Contractor at, or near the Project Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time, the Contractor has failed to make a payment due to BIAL, these items may be sold by BIAL in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor. BIAL will have full liberty to take possession of the Project Site, and any material, constructional plant implement, stores, etc., thereon; or / and carry-out the incomplete work by any means, at the risk and cost of the Contractor.
- 18.6 As soon as practicable, after a notice of termination under Clause 18 (Termination by BIAL) has taken effect, BIAL shall determine the value of the Works and any other sum due to the Contractor, for the work executed in accordance with this Agreement based on the Unit Rates as contained in Schedule H.
- 18.7 After a notice of termination under Clause 18 (Termination by BIAL) has taken effect, BIAL may:
- 18.7.1 withhold further payments to the Contractor, until the costs of execution, completion and remedying of any defect, damage for delay in completion (if any), and all other costs incurred by BIAL have been reasonably estimated; or / and
  - 18.7.2 recover from the Contractor, any loss and damage incurred by BIAL, and any extra cost for completing the Works, after allowing for any sum due to the Contractor under Clause 15.5. After recovering any such loss, damage and extra cost under this Agreement, BIAL shall pay any balance, to the Contractor.
  - 18.7.3 Any excess expenditure incurred, or to be incurred, by BIAL in completing the Works, or part of the Works, or the excess, or damages suffered or may be suffered, by BIAL, as aforesaid, after allowing such credit, shall be recovered from any money due to the Contractor on any account, and if such money is not sufficient, the Contractor shall be called upon in writing to pay the same, and the Contractor shall pay such amount within 30 (thirty) days.
- 18.8 On termination of this Agreement, BIAL shall determine, what amount if any, is recoverable from the Contractor for completion of the Works, or part of the Works, by BIAL, or in case the Works or part of the Works, is not to be completed, the loss or damage suffered by BIAL. In determining the amount, credit shall be given to the Contractor for the value of the useful work executed by it, up to the time of termination, based on the Unit Rates as contained in Schedule H, the value of the Contractor's materials taken over and incorporated in the work, and use of the tools and machinery belonging to the Contractor.
- 19. TERMINATION BY CONTRACTOR**

- 19.1 The Contractor shall be entitled to terminate this Agreement if:
- 19.1.1 the Contractor does not receive the amount due within the relevant time period, within which payment is to be made (except for deductions made by BIAL in accordance with the terms and conditions of this Agreement); or
  - 19.1.2 BIAL is in material breach of its obligations under this Agreement, which breach has a material adverse effect on the Contractor and, if capable of remedy, is not remedied within 30 (thirty) days; or
- In any of these events or circumstances, the Contractor may, upon giving 14 (fourteen) days' written notice to BIAL, terminate this Agreement.
- 19.2 After a notice of termination under Clause 18 (Termination by BIAL), or Clause 19 (Termination by Contractor), the Contractor shall promptly:
- 19.2.1 cease all further work, except for such work as may have been instructed by BIAL for the protection of life or property or for the safety of the Works;
  - 19.2.2 hand over any document, plant, material and other work, for which, the Contractor has received payment; and
  - 19.2.3 remove all other goods from the Project Site, except as necessary for safety, and leave the Project Site.
- 19.3 After a notice of termination under Clause 19.2 has taken effect, BIAL shall promptly pay the Contractor, any sums due under this Agreement, after making such deductions which BIAL shall be entitled to make, till the date of termination.

## 20. INDEMNITIES

The Contractor hereby indemnifies BIAL against liability in connection with:

- 20.1 The Contractor committing any breach or contravention of its contractual obligations or the Applicable Laws;
- 20.2 Any act of commission or omission, or default on the part of the Contractor and / or its personnel;
- 20.3 Any death or illness of or injury to any person and the loss of or damage to any property arising out of or in connection with any act or default of the Contractor and / or its personnel; and
- 20.4 Any loss or damage caused either to BIAL or to any third party due to infringement or violation of any intellectual property right or disclosure of any Confidential Information (as hereinafter defined).

### 20.2 Limit of Liability

BIAL and the Contractor mutually waive all rights against each other for consequential and indirect damages of every kind resulting from the performance or non-performance of this Agreement, or related in any way to the Project. Consequential damages include, by way of example and not limitation, damages resulting from loss of use, profit, financing, future business, rent and reputation; hold over costs; and other speculative damages not directly caused by the negligence or breach of contract by BIAL, the Contractor or any party for whose conduct either Party is legally responsible.

## **21. FORCE MAJEURE**

- 21.1 Clause 21 shall apply if the performance by any Party (the “Affected Party”) of its obligations under this Agreement is prevented, hindered or delayed in whole or in part, by reason of Force Majeure.
- 21.2 Provided it complies with Clause 21.3, no Party shall be liable for any failure to comply, or delay in complying, with any obligation under or pursuant to this Agreement, and it shall not be required to perform its obligations to the extent that, the performance by such Party of its obligations under this Agreement is prevented, hindered, impeded or delayed in whole or in part, by reason of Force Majeure.
- 21.3 As soon as reasonably practicable, but not more than 72 (seventy-two) hours, following the date of commencement of any event of Force Majeure, if any Party desires to invoke such event of Force Majeure as a cause for delay or failure in the performance of any obligation hereunder, it shall notify the other Party in writing, of such date and the nature and expected duration of such event of Force Majeure. Within a reasonable time following the date of such notice of such event of Force Majeure, the Party having invoked such event of Force Majeure as a cause for such delay, shall submit to the other Party, sufficient proof of the nature of such delay or failure and its anticipated effect upon the time for performance.
- 21.4 The Affected Party shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of the event of Force Majeure, and take all reasonable steps to resume performance of its obligations immediately upon expiry of the event of Force Majeure.
- 21.5 If any event of Force Majeure continues beyond a period of 3 (three) months during the Term, any of the Parties hereto, shall have the right to terminate this Agreement.

## **22. AMENDMENT**

No amendment or modification to this Agreement shall be valid and effective, unless agreed to by all the Parties hereto and evidenced in writing. Any modification or amendment to this Agreement, must be in writing and be signed by the duly authorized representative(s) of each of the Parties.

## **23. WAIVER AND ASSIGNMENT**

- 23.1 The rights, which each of the Parties have under this Agreement, shall not be prejudiced or restricted by any indulgence or forbearance extended to another Party. No waiver by any Party in respect of a breach, shall operate as a waiver in respect of any subsequent breach.

23.2 The Contractor shall, without BIAL's prior written consent, transfer, assign its rights and obligations under this Agreement or grant any form of security over any of its obligations or rights under this Agreement.

## 24. DISPUTE RESOLUTION

24.1 Any dispute, difference or controversy arising under, out of, or in relation to this Agreement between the Parties, in the first instance, shall be attempted to be resolved amicably through the President / Chief Executive Officer / Managing Director, as the case may be, of the Parties.

24.2 Any dispute, difference or claim arising out of, or in connection with, or in relation to this Agreement, which is not resolved amicably pursuant to exhausting the procedure stipulated in Clause 24.1 above, shall be decided finally by reference to arbitration. In the event of a dispute arising under, or in relation to this Agreement, each Party hereto, shall have the right to appoint one (1) arbitrator each. The 2 (two) arbitrators so appointed by each Party, shall appoint the third arbitrator, who shall be the chairperson of the arbitral. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Bangalore, India. The award shall be final and binding on the Parties.

## 25. GOVERNING LAW

This Agreement shall be governed by and construed according to the laws of India.

## 26. COSTS

Each Party shall be solely responsible for its own legal, accounting, consulting and other professional fees and expenses incurred in connection with the negotiation and preparation of all agreements and documents required for implementing the terms herein.

## 27. NOTICE

Any notice, demand, complaint, request or other submission under this Agreement shall be in writing, and shall be given by personal delivery to the persons designated below, or by Indian Post, Certified, return receipt requested, with copies mailed as indicated.

For BIAL:

**Bangalore International Airport Limited**

Administration Block

Bengaluru International Airport

Devanahalli

BANGALORE 560 300

India

Attn: *[Insert name]*

For the Contractor:

*[Insert name of the representative and Contractor's address]*

**28. NO PARTNERSHIP**

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. No Party shall have any authority to bind the others in any manner whatsoever. This Agreement shall be construed to have been entered on a principal to principal basis.

**29. SURVIVAL**

The Parties hereby agree that, Clause 20 (Indemnities), and Clause 24 (Dispute Resolution) shall survive the termination of this Agreement.

**30. SEVERABILITY**

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

**31. EXCLUSION OF IMPLIED WARRANTIES, ETC.**

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

**32. ENTIRE AGREEMENT**

This Agreement and the Schedules attached hereto constitute the entire agreement between the Parties and supersedes all prior negotiations, commitments, representations, communications and agreements relating to this Agreement either oral or in writing, except to the extent, they are expressly incorporated herein.

**33. COUNTERPARTS**

This Agreement may be executed in two (2) counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement, but, shall together constitute one and only this Agreement.

**34. RETENTION MONEY**

34.1 An amount of 5% (five percent) of running account bill will be deducted from each bill as Retention Money.

34.2 Refund of Retention Money

Retention money as deducted under clause 34.1 above shall be released as under:

34.2.1 50% on completion of Works and along with certification of final bill by BIAL's Representative, against submission of Performance Bank Guarantee.

34.2.2 Balance 50%, less recovery, if any, towards cost of defects rectified by BIAL due to lack of response of the Contractor, on completion of Defects Liability Period and certification by BIAL.

### **35. PERFORMANCE SECURITY**

35.1 The Contractor shall furnish a Performance Bank Guarantee ('PBG') to the extent of --- (--- percent) of the Contract Price, not later than 30 (thirty) days from the Commencement Date. If PBG is not submitted within the stipulated period, interest at the rate of 12% (twelve percent) per annum shall be charged till the date of submission of PBG, and the amount @ 10% (ten percent) of the gross amount of each running bill would be withheld, till the total amount is recovered, against PBG. If the Contractor fails to extend the validity of PBG, the same can be realized / encashed by BIAL. PBG shall be issued by a bank pre-approved by BIAL, and shall be in the form attached as Schedule N to this Agreement. The Contractor shall keep PBG in force beyond 6 (six) months from the expiry of the applicable Defects Liability Period for the applicable sums, for civil works and electrical works as the case may be, by extending the same from time to time, whether or not the Contractor receives a reminder for the same from BIAL, failing which BIAL, without any limitation and without prior notice, shall have the right to realize PBG.

35.2 BIAL shall not make a claim under PBG, except in the event of:

35.2.1 a failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event BIAL may claim the full amount of the Performance Security;

35.2.2 a failure by the Contractor to pay BIAL an amount due, in accordance with this Agreement within 42 (forty-two) days of the due date;

35.2.3 a failure by the Contractor to remedy a default within 42 (forty-two) days after receiving BIAL's notice requiring the default to be remedied; or

35.2.4 circumstances, which entitle BIAL to termination under Clause 18 (Termination by BIAL), irrespective of whether notice of termination has been given.

35.3 BIAL shall return the Performance Security to the Contractor within 21 (twenty-one) days after the Contractor has become entitled to receive the Performance Certificate.

### **36. Change of Control**

- 36.1 Change of Control of the Contractor or any business division of the Contractor relating to the execution of the Works or otherwise, shall constitute an assignment of this Agreement and would therefore, require the prior written approval of BIAL.
- 36.2 "Change of Control" for the purposes of Clause 36 means, any agreement, resolution or transaction, or series of agreements, resolutions or transactions, to:
- 36.2.1 transfer or issue by sale, subscription, or any other disposition of more than 50% (fifty percent) of the corporate shares or assets of the Contractor, or of any parent corporation of the Contractor, so as to result in any change from that existing as of the date of execution of this Agreement; or
- 36.2.2 result in the change of management or change in the right to appoint the majority of the Directors of the Contractor from that existing, as of the date of execution of this Agreement;

to a Person (other than an Affiliate of the Contractor).

For the purposes of Clause 36, an 'Affiliate' shall mean, with respect to the Contractor, any entity which, Controls, is Controlled by or is under the common Control with the Contractor. Such entity shall be deemed to be an Affiliate only so long as such Control exists.

'Controls', 'Controlled by' or 'under common Control with' shall mean, the direct or indirect ownership of more than 50% (fifty percent) of the equity shares of such an entity and the power to direct the management of such an entity.

'Person' shall mean, any individual, partnership, unincorporated association, corporation or business entity.

IN WITNESS WHEREOF, BIAL and the Contractor have signed this Agreement through their authorised representatives, as above stated, as of the date first hereinabove mentioned.

<p><b>BANGALORE INTERNATIONAL AIRPORT LIMITED</b></p> <p>By</p>  <hr/> <p>Name:</p> <p>Designation:</p> <p>In the presence of:</p> <p>Witness:</p> <p>Name:</p> <p>Address:</p>	<p><i>{Insert name of the Contractor}</i></p> <p>By</p>  <hr/> <p>Name:</p> <p>Designation :</p> <p>In the presence of:</p> <p>Witness:</p> <p>Name:</p> <p>Address:</p>
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## ANNEXURE 2

### LIST OF APPROVED/RECOMMENDED MAKE OF MATERIALS

It is the prerogatives of the BIAL to choose the make. Contractor to obtain approval of the makes of all the materials before procurement.

Sl #	Description	Make
1.		
2.		
3.		

**ANNEXURE-3**

**LIST OF TENDER DRAWINGS**

No.	Dwg. No.	Drawing title	Ref sheet
1	LD-200P	Key Planting Plan	LD-200P
2	LD-202	Site Section Details	LD-202
3	IR-20	Irrigation Plan	IR-20

**ANNEXURE-4**

## LIST OF DEVIATIONS

1. Details of Critical Conditions and Deviations required: (to be submitted in the following format)

Sl. No.	RFP Page/ Para No:	subject	RFP clause	Deviation proposed	Reason for deviation

Note: 1. Deviation if any, shall be stipulated only in this format.

2. Any deviation stated elsewhere in the proposal shall not be taken into account and may render the proposal non-responsive and liable to be rejected.

## **PROJECT AND SITE ORGANISATION DESCRIPTION**

The Bidder must attach a description of the organisation proposed to be committed for execution of the work. Organisation chart must include full particulars and designations of key persons, number and categories of home office and field personnel along with qualifications and experience.

The description shall show lines of authority / responsibility / Communication together with a written description of the overall working of the organisation with particular emphasis on the Home office / site interface and monitoring and control of progress.

## **PROPOSED DEPLOYMENT OF PLANT AND EQUIPMENT, TOOLS, TACKLES, FACILITIES ETC.**

The bidder shall furnish with his proposal, the proposed deployment of various plant and equipment, tools, tackles, facilities etc. including testing lab equipment for the performance of work under the Construction Agreement. It is understood that the number and type of equipment etc. shall be augmented from time to time during execution of the Construction Agreement depending upon the requirement for timely completion of work as directed by BIAL without any additional cost to BIAL.

**ANNEXURE- 7**

**PROPOSED WORK SCHEDULE & METHOD STATEMENT**

The Bidder to enclose a detailed Program Chart indicating major milestones, such as mobilisation at site, Work schedules for various major activities such as excavation/ RCC structure/ Finishing items/ Internal water supply/ Electrical work/ Fire detection/ Fire protection, etc. as applicable along with method statement in order to complete the work as per schedule.

## **ANNEXURE- 8**

### **DETAILS OF PROPOSED MAJOR SUB-CONTRACTORS**

Applicable for all specialized works & other sub-contracts of estimated value more than 10% of the Contract Sum

Sl. No.	Scope of Work of Sub-Contractor	Proposed Sub contractor-Name & Address of	Experience of Subcontractor along with list works done With value

**ANNEXURE- 9**

**QUALITY ASSURANCE/CONTROL & EHS PROGRAMME**

- A. The Bidder to enclose a summary description of Quality Assurance / Quality Control program proposed to be implemented in the performance of work.
- B. The Bidder to enclose safety and EHS Program proposed to be implemented in the performance of work.

**ANNEXURE- 10**

**Scope of Work & Specifications**

**Attached**

**BOQ**

**Attached**

## Payment Terms

- Mobilization advance of 10% (ten percent) of the Contract Price shall be paid by BIAL to the Contractor within 30 (thirty) days from the Effective Date against submission of bank guarantee from a nationalized bank in the format pre-approved by BIAL.
- Balance against submission of running bills certified by BIAL and the payment shall be made within 30 (thirty) days from the date of certification.

## ANNEXURE- 13

### SAFETY CODE

1. Suitable scaffolds shall be provided for workmen for all work that cannot safely be done from the ground, or from solid construction except such short period work as can be done safely from ladders. When a ladder is used an extra mazdoor shall be engaged for holding the ladder and if the ladder is used for carrying materials as well, suitable footholds and hand-holds shall be provided on the ladder and the ladder shall be given an inclination not steeper than 1/4 to 1 (1/4 horizontal and 1 vertical).
2. Scaffolding or staging more than 3.25 meters above the ground or floor, swing or suspended from an overhead support or erected with stationary support, shall have a guard rail properly attached, bolted, braced and otherwise secured at least 1 meter high above the floor or platform of such scaffolding or staging and extending along the entire length of the outside and ends thereof with only such openings may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.
3. Working platform, gangways, and stairways shall be so constructed that they do not sag unduly or unequally, and if height of platform or gangway or stairway is more than 3.25 meters above ground level or floor level, it shall be closely boarded, have adequate width and be suitably fenced, as described in 2 above.
4. Every opening in floor of a building or in a working platform shall be provided with suitable means to prevent fall of persons or materials by providing suitable fencing or railing with a minimum height of 1 meter.
5. Safe means of access shall be provided to all working platforms and other working places. Every ladder shall be securely fixed. No portable single ladder shall be over 9 meters in length, width between side rails in a rung ladder shall in no case, be less than 30 cm for ladders up to and including 3 meters in length. For longer ladders this width shall be increased at least 6 mm for each additional 30 cm of length. Uniform step spacing shall not exceed 30cm. Adequate precautions shall be taken to prevent danger from electric equipment. No material on any of the sites shall be so stacked or placed as to cause danger or inconvenience to any person or the public. The Contractor shall provide all necessary fencing and lights to protect public from accidents and shall be bound to bear expenses of defence of every suit action or other proceeding at law that may be brought by any person for injury sustained owing to neglect of the above precautions and to pay any damages and costs which may be awarded in any such suit, action or proceedings to any such person or which may with the consent of the Contractor be paid to compromise any claim by any such person.
6. Excavation and Trenching: All trenches, 1.5 meters or more in depth, shall at all times be supplied with at least one ladder for each 20 meters in length or fraction thereof. Ladder shall be extended from bottom of trench to at least 1 meter above surface of the ground. Sides of a trench, which is 1.5 meters, or more in depth shall be stepped back to give suitable slope, or securely held by timber bracing, so as to avoid the danger of sides collapsing. Excavated material shall not be placed within 1.5 meters of edge of trench or half of depth of trenches whichever is more. Cutting shall be done from top to bottom. Under no circumstances shall undermining or undercutting be done.

7. Demolition: Before any demolition work is commenced and also during the process or the work:-
  - All roads and open areas adjacent to the. Work Site shall either be closed or suitably protected.
  - No electric cable or apparatus, which is liable to be a source of danger over a cable or apparatus used by operator, shall remain electrically charged.
  - All practical steps shall be taken to prevent danger to persons employed, from risk or fire or explosion, flooding. No floor, roof, or other part of a building shall be so overloaded with debris or materials as to render it unsafe.
  
8. All necessary personal safety equipment as considered adequate by BIAL shall be available for use of persons employed on the Site and maintained in a condition suitable for immediate use and the Contractor shall take adequate steps to ensure proper use of equipment by those concerned.
  - Workers employed on mixing asphaltic materials cement and lime mortars/ concrete shall be provided with protective footwear and protective goggles.
  - Those engaged in handling any material, which is injurious to eyes, should be provided with protective goggles.
  - Those engaged in welding works shall be provided with welder's protective eye-shields.
  - Stone breakers shall be provided with protective goggles and protective clothing and seated at sufficiently safe intervals.
  - When workers are employed in sewers and manholes, which are in use, the Contractor shall ensure that manhole covers are paned and manholes are ventilated at least for an hour before workers are allowed to get into them. Manholes so opened shall be cordoned off with suitable railing and provided with warning, signals or boards to prevent accident to public.
  - The Contractor shall not employ men below the age of 18 and women on the work of painting with products containing lead in any form. Whenever men above the age of 18 are employed on the work of lead painting, the following precautions shall be taken:
    - No paint containing lead or lead products shall be used except in the form of paste or readymade paint.
    - Suitable face masks shall be supplied for use by workers when paint is applied in the form of spray or a surface having lead paint dry rubbed and scraped.
    - Overalls shall be supplied by the Contractor to workmen and adequate facilities shall be provided to enable working painters to wash during and on cessation of work.

9. When work is done near any place where there is risk of drowning, all necessary equipment shall be provided and kept ready for use and all necessary steps taken for prompt rescue of any person in danger and adequate provision made for prompt first aid treatment of all injuries likely to be sustained during the course of the work.
10. Use of hoisting machines and tackle including their attachments, anchorage and supports shall conform to the following:-
  - These shall be of good mechanical constructions, sound material and adequate strength and free from patent defects and shall be kept in good repair and in good working order.
  - Every rope used in hoisting or lowering materials or as a means of suspension shall be of durable quality and adequate strength and free from patent defects.
  - Every crane driver or hoisting appliance operator shall be properly qualified and no person under the age of 21 years shall be in-charge of any hoisting machine.
  - In case of every hoisting machine and of every chain ring hook, shackle swivel and pulley block used in hoisting or lowering or as means of suspension safe working load shall be ascertained by adequate means. Every hoisting machine and all gear referred to above shall be plainly marked with safe working load. In case of a hoisting machine having a variable safe working load, each safe working load and the conditions under which it is applicable shall be clearly indicated. No part of any machine or of any gear referred to above in this paragraph shall be loaded beyond safe working load except for the purpose of testing.
  - In case of a departmental machine, safe working load shall be notified by BIAL. As regards Contractor's machines the /contractor shall notify safe working load of each machine to BIAL whenever he brings it to Site of work and get it verified by BIAL.
11. Motors gearing, transmission, electric wiring and other dangerous parts of hoisting appliances shall be provided with efficient safeguards, hoisting appliances shall be provided with such means as will reduce to the minimum risk of accidental descent of load adequate precautions shall be taken to reduce to the minimum risk of any part of a suspended load becoming accidentally displaced. When workers are employed on electrical installations which are already energised, insulating mats, working apparel such as gloves, sleeves and boots, as may be necessary shall be provided. Workers shall not wear any rings, watches and carry keys or other materials which are good conductor of electricity.
12. All scaffolds, ladders and other safety devices mentioned or described herein shall be maintained in a safe condition and no scaffold, ladders or equipment shall be altered or removed while it is in use. Adequate washing facilities shall be provided at or near places of work.
13. These safety provisions shall be brought to the notice of all concerned by display on a notice board at a prominent place at the work spot. Persons responsible for ensuring compliance with the Safety Code shall be named therein by the Contractor.
14. To ensure effective enforcement of the rules and regulations relating to safety precautions, arrangements made by the Contractor shall be open to inspection by BIAL or his representative and the Inspecting Officers as defined in the Contractor's Labour Regulations.
15. Notwithstanding the above conditions 1 to 14 the contractor is not exempted from the operation of any other Act or Rule in force.



## ANNEXURE- 14

### MODEL-RULES FOR LABOUR WELFARE

1. Definitions:
  - (a) 'Workplace' means a place at which on an average, twenty or more workers are employed.
  - (b) 'Large Workplace' means a place at which, on an average, 500 or more workers are employed.
2. First Aid: At every workplace, there shall be maintained in readily accessible place first-aid appliances including an adequate supply of sterilized dressings and sterilized cotton wool as prescribed in the Factory Rules of the State in which the work is carried on. The appliances, they shall be kept in good order and, in large workplaces, they shall be placed under the charge of a responsible person who shall be readily available during working hours. .
  - At large workplaces, where hospital facilities are not available within easy distances of the Works, First Aid posts shall be established and be run by a trained compounder.
  - Where large workplaces are remotely situated and far away from regular hospitals, an indoor ward shall be provided with one bed for every 250 employees. .
  - Where large workplaces are situated in cities, towns or in their suburbs and no beds are considered necessary owing to proximity of city or town hospitals, suitable transport shall be provided to facilitate removal of urgent cases to these hospitals. At other workplaces, some conveyance facilities shall be kept readily available to take injured person or persons suddenly taken seriously ill, to the nearest hospital.
  - At large workplaces there shall be provided and maintained an ambulance room of the prescribed sizes, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed. For this purpose the relevant provisions of the Factory Rules of the State Government of the area where the work is carried on may be taken as the prescribed standard.
3. Drinking Water: In every workplace, there shall be provided and maintained at suitable places, easily accessible to labor, a sufficient supply of cold water fit for drinking.

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

Every water supply storage shall be at distance of not less than 100 meters from any latrine drain or other source of pollution. Where water has to be drawn from an existing well, which is within such proximity of latrine drain or any other source of pollution, the well shall be properly chlorinated before water is drawn from it for drinking. All such wells shall be entirely closed in and be provided with a trap door which shall be dust and waterproof.
4. The Contractor shall, at his own expense, carry out all instructions issued to him by the Maintenance Manager (Airfield-Civil/Electrical) to effect proper disposal of soil

and other conservancy work in respect of Contractor's work people or employees on the Site. The Contractor shall be responsible for payment of any charges, which may be levied by municipal or cantonment authority for execution of such work on his behalf.

5. Canteen: A cooked food canteen on a moderate scale shall be provided for the benefit of workers wherever it is considered necessary.
6. Planning, siting and erection of the above mentioned structure shall be approved by the Maintenance Manager / Deputy Maintenance Manager, BIAL, and the whole of such temporary accommodation shall at all times during the progress of the Works be kept tidy and in a clean and sanitary condition to the satisfaction of the Maintenance Manager / Deputy Maintenance Manager, BIAL, and at the Contractor's expense. The Contractor shall conform generally to sanitary requirements of local medical, health and municipal or cantonment authorities and at all times adopt such precaution as may be necessary to prevent soil pollution of the Site.
7. Anti-malarial precautions: The contractor shall, at his own expense, conform to all anti-malarial instructions given to him by the Maintenance Manager / Deputy Maintenance Manager, BIAL; including filling up of any borrow pits which may have been dug by him.
8. Enforcement: The Inspecting Officer mentioned in the Contractor's Labour Regulation or any other officer nominated in this behalf by the Maintenance Manager (Airfield-Civil/Electrical) shall report to the Maintenance Manager / Deputy Maintenance Manager, BIAL, all cases of failure to comply with the provisions of these Rules either wholly or in part and Maintenance Manager / Deputy Maintenance Manager, BIAL, shall impose such fines and other penalties as are prescribed in the conditions.
9. Interpretations, etc.: On any question as to the application, interpretation or effect of these Rules the decision of the Chief Labor Commissioner or Deputy Chief Labor Commissioner (Central/State) shall be final and binding.
10. Amendments: Governments may, from time to time, add to or amend these Rules and issue such directions as it may consider necessary for the proper implementation of these Rules or for the purpose of removing any difficulty.