

STANDARD CONTRACT AGREEMENT

This agreement is made on the ____ day of ____ between the National Highways Authority of India, having its registered office at G-5 & 6, Sector-10, Dwarka, New Delhi-110075 (hereinafter called 'the Employer' of the one part and _____. having its registered office at _____. (here in after called 'the Contractor') of the other part.

AND WHEREAS the Employer invited bids from eligible bidders (empanelled plantation agencies) for the execution of _____ along _____, viz. RFP dated 05.07.2018 on the basis of Quality cum Cost Based Selection (QCBS) Model.

AND WHEREAS pursuant to the bid submitted by the Contractor, vide _____ (here in after referred to as the 'BID' or 'OFFER') for the execution of works, the Employer by his letter of acceptance dated ____ accepted the offer submitted by the Contractor for the execution and completion of such works and remedying of any defects thereon, on terms and conditions in accordance with the documents listed in para 2 below.

AND WHEREAS the Contractor by a deed of undertaking viz. dated ____ has agreed to abide by all the terms of the bid, and also to comply with such terms and conditions as may be required from time to time.

AND WHEREAS the contractor has agreed to undertake such works as mentioned in the agreement and has furnished a performance security equal to _____.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this agreement words and expressions shall have the same meaning as are respectively assigned to them in the conditions of contract hereinafter referred to;
2. The following documents shall be deemed to form and be read and construed as part of this agreement viz.
 - (a) Agreement,
 - (b) Letter of Acceptance
 - (c) Contractor's Bid including Financial Bid Form,
 - (d) Contract Data,
 - (e) Conditions of Contract
 - (f) Technical Specifications,
 - (g) Drawings, if any
 - (i) Scope of Work
 - (j) Bill of Quantities, and
 - (k) Any other document listed in the Contract Data.
3. The foregoing documents shall be construed as complementary and mutually explanatory one with another. Should any ambiguity or discrepancy be noted then the order of precedence of these documents shall be subject to the order as listed above and interpreted in the above order of priority.
4. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the contract.
5. The employer hereby covenants to pay the contractor in consideration of the execution and completion of the works and remedying of defects therein, the contract price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

6. *Scope of the Work:*

The scope of the work shall mean and include the plantation, maintenance, and allied activities as set forward in the work order issued by Employer to the contractor by letter no. _____ dated _____ .. but not limited to:

- a) Undertake plantation and allied activities along with its maintenance for next five years from the date of signing of MoU as per the contract data
- b) to plant only trees/shrubs species as specified under the plantation species matrix of the guidelines or those species which have been specifically approved by employer
- c) to update/upload progress of the work on the ó Green Highways Appô in web based platform developed by the employer.
- d) to be present during field verification whenever employer or its authorised representative intends to conduct quality inspection.
- e) to ensure security of permanent assets and materials created/procured during the course of project execution such as drip irrigation facility, bore well / hand pumps, tree guards, trees and other materials required for proper maintenance of roadside plantations.
- f) to ensure compliance with all statutory rules and guidelines of government departments with respect to hiring of labor, payment and maintenance of PF.
- g) any other work relevant to project awarded to the contractor.

IN WITNESS WHEREOF the parties here to have caused this agreement to be executed the day and year above written. Signed, sealed and delivered by the said Employer through his Authorized Representative and the said Contractor through his Power of Attorney holder.

Binding Signature of Employer _____

For and on behalf of National Highways Authority of India, New Delhi ñ 110 075

Binding Signature of Contractor _____

For and on behalf of M/s. _____

In the presence of

1. Name :

Address:

2. Name :

Address:

In the Presence of

1. Name:

Address:

2. Name:

Address:

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CONDITIONS OF CONTRACT

A. General

1. Definitions

1.1 Terms which are defined in the Contract Data are not defined in the Conditions of Contract will keep their defined meanings. Capital initials are used to identify defined terms.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.

Compensation Events are those defined in Clause 41 hereunder.

The Completion Date is the date of completion of the Works as certified by the Engineer, in accordance with Clause 49.1.

The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3.

The Contract Data defines the documents and other information, which comprise the Contract.

The Contractor is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer.

The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer and includes technical and financial bids.

The Contract Price is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; months are calendar months.

A **Defect** is any part of the Works not completed in accordance with the Contract.

The **Defects Liability Certificate** is the certificate issued by Engineer, after the Defect Liability Period has ended and upon correction of Defects by the Contractor.

The **Defects Liability Period** is the period named in contract data and calculated from the Completion Date.

Drawings include calculations and other information provided or approved by the Engineer for the execution of the Contract.

The **Employer** is the party as defined in the Contract Data, who employs the Contractor to carry out the Works. The Employer may delegate any or all of its functions to a person or body nominated by him for specified functions.

The **Engineer** is the person named in the Contract Data (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and administering the Contract.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time after the approval from Employer in the manner provided in the Contract Data.

Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.

Plant is any integral part of the Works that shall have a mechanical, electrical, electronic, chemical, or biological function

The **Site** is the area defined as such in the Contract Data.

Site Investigation Reports are those that were included in the bidding documents and are factual interpretative reports about the surface and subsurface conditions at the Site.

Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Engineer in the manner provided in the Contract Data.

The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

A **Sub-Contractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

A **Variation** is an instruction given by the Engineer after the approval from NHAI, which varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, maintain, and handover to the Employer, as defined in the Contract Data.

2. Interpretation

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer will provide instructions clarifying queries about these Conditions of Contract.

2.2 If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

2.3 The documents forming the Contract shall be interpreted in the following order of priority.

- (a) Agreement,
- (b) Letter of Acceptance
- (c) Contractor's Bid including Financial Bid Form, (d) Contract Data,
- (e) Conditions of Contract
- (f) Technical Specifications,
- (g) Drawings, if any
- (h) Scope of Work
- (i) Bill of Quantities, and
- (j) Any other document listed in the Contract Data.

3. Language and Law

3.1 The language of the Contract and the law governing the Contract are stated in the Contract Data.

4. Engineer's Decisions

4.1 Except where otherwise specifically stated, the Engineer will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

5. Delegation

5.1 The Engineer, duly informing the Employer, may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

6. Communications and Notices

6.1 Any notice or other communications to be given by any party to the other party under or in connection with the matters contemplated by this agreement shall be in writing and shall;

- (a) in the case of the contractor, be given by facsimile, e-mail, by letter delivered by hand, or by registered post with acknowledgement due to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Employer
- (b) in the case of the Employer, be given by facsimile, e-mail, by letter delivered by hand, or by registered acknowledgement due and be addressed to the authorised representative to the employer or such other person as the Employer may from time to time designate by notice to the Contractor;
- (c) any notice or communications by a party to the other party, given in accordance herewith, shall be deemed to have been delivered when in normal course of post, it ought to have been delivered.

7. Subcontracting

7.1 The Contractor may subcontract any portion of work, up to a limit specified in Contract Data, with the prior approval of the Employer in writing. The Contractor may sub-contract maximum to 3 Nos. of Sub-Contractors. Preference will be given to NGOs and local self help group for capacity building and employment generation. Subcontracting shall not alter the Contractor's obligations.

7.2 The Contractor shall not be required to obtain any consent from the Employer for:

- a. the provision of labour or labour component.
- b. the purchase of Materials which are in accordance with the standards specified in the Contract.

- 7.3** The Engineer should satisfy himself before recommending to the Employer whether;
- a) the circumstances warrant such sub-contracting; and
 - b) the sub-Contractor so proposed for the Work possess the experience, qualifications and equipment necessary for the job proposed to be entrusted to him in proportion to the quantum of Works to be sub-contracted.

8. Other Contractors

8.1 The Contractor shall cooperate and share the Site with other Contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the Contract Data. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

8.2 The Contractor should take up the works in convenient reaches as decided by the Engineer to ensure there is least hindrance to the smooth flow of traffic including movement of vehicles and equipment of other Contractors till the completion of the Works.

9. Personnel

9.1 The Contractor shall employ the technical personnel named in the Contract Data. The RO, NHAI will approve any proposed replacement of technical personnel (except Project Manager) only if their relevant qualifications and experience are substantially equal to or better than those of the personnel stated in the Contract Data. If the personnel stated in the contract data are not deployed on site by the contractor within 3 months of the notice issued in this respect, it will be treated as a breach of contract and action will be taken as per clause 53. The replacement of Project Manager will be approved by NHAI, HQ.

9.2 If the Engineer asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the Works in the Contract.

10. Employer's and Contractor's Risks

10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

11. Employer's Risks

11.1 The Employer is responsible for the excepted risks which are:

(a) in so far as they directly affect the execution of the Works in the Employer's country, the risks of war, hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot commotion or disorder (unless restricted to the Contractor's employees), natural calamities and contamination from any nuclear fuel or nuclear waste or radioactive toxic explosive, or (b) a cause due solely to the design of the Works, other than the Contractor's design.

12. Contractor's Risks

12.1 All risks of loss of or damage to physical property and of personal injury and death, which arise during and in consequence of the performance of the Contract other than the excepted risks are the responsibility of the Contractor.

13. Insurance

13.1 Deleted

14. Site Investigation Reports

14.1 The Contractor, in preparing the Bid, may rely on any Site Investigation Reports referred to in the Contract Data, supplemented by any other information available to him, before submitting the bid.

14.2 The contractor acknowledges that prior to the execution of this agreement, the contractor has, after careful and complete examination, made an independent evaluation of the tender notice, scope of the

project, specification and standards, site, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Employer or obtained, procured, or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of the performance of its obligations hereunder. The employer makes no representations whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the contractor confirms that it shall no claim whatsoever against the employer in this regard.

14.3 The contractor acknowledges and hereby accepts the risk of inaccuracy, mistake or error in or relating to any of the matters set forth in Clause 14.2 above and hereby acknowledges and agrees that the employer shall not be liable for the same in any manner whatsoever to the contractor, or any person claiming through or under it.

15. Queries about the Contract Data

15.1 The RO will clarify queries on the Contract Data.

16. Contractor to Plant the Avenue Plantation and Median Plantation & do Maintenance

16.1 The Contractor shall do avenue plantation and Median Plantation and maintain the Works in accordance with the documents forming part of the contract.

17. The Works to Be Completed by the Intended Completion Date

17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion Date.

18. Approval by the Engineer

18.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Engineer, who is to approve them if they comply with specifications and drawings.

18.2 The Contractor shall be responsible for the design of Temporary Works.

18.3 The Engineer's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

18.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

18.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Engineer before their use.

19. Health and Safety

19.1 The Contractor shall be responsible for the health of all the persons and safety of all activities on the Site.

19.2 The contractor shall comply with the provisions of this agreement, applicable laws and applicable permits and confirm to good industry practice for securing the safety at the project site. The contractor shall develop, implement and administer a safety program for providing safe environment on and about the project the site.

19.3 Precautions no less onerous than those already in existence and being maintained by the Employer shall be taken by the contractor to ensure the health and safety on or about the project site whilst performing duties required by the Contractor under this Contract. The Contractor shall, in accordance with the requirements of the local health authorities and Applicable Laws, ensure that at all times medical facilities are available in the Project site. The contractor shall ensure that suitable arrangements are made for all necessary welfare, sanitation and hygiene requirements and for the prevention of epidemics.

19.4 The Contractor shall send to the employer details of any accident notified to it, as soon as practicable after its occurrence.

20. Discoveries

20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.

21. Possession of the Site

21.1 The Employer shall give complete possession of the Site to the Contractor on the date of signing of agreement.

22. Access to the Site

22.1 The Contractor shall allow access to the Site and to any place where work in connection with the Contract is being carried out, or is intended to be carried out and to any place where material or plant are being manufactured /fabricated / assembled for the works to the engineer and any person/persons/agency authorized by:

- a. The Engineer
- b. The Employer

23. Instructions

23.1 The Contractor shall carry out all instructions of the Engineer, in accordance with the terms of the contract and which complies with the applicable laws where the Site is located.

23.2 The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by Auditors appointed by the Employer if so required by the Employer.

24. Deleted

25. DISPUTE RESOLUTION

25.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this agreement (including its interpretation) between the parties and so notified in writing by either party to the other party (the dispute) shall, in the first instance, be attempted to be resolved amicably. The designated representatives of the Employer and the contractor shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such disputes.

25.2 If the dispute is not resolved as evidenced by the signing of written terms of settlement within 30 days of the notice in writing referred to in clause 25.1 or such longer period as may be mutually agreed by the parties, either party may refer the dispute to arbitration in accordance with the provisions of this agreement.

25.3 Arbitration- Any dispute which is not resolved amicably in accordance with clause 25.1 and clause 25.2 shall be finally decided by reference to arbitration as set forth below;

- (i) The Dispute shall be finally referred to Society for Affordable Resolution of Disputes (hereinafter called as SAROD), a Society registered under Society's Act, 1860 vide Registration no. S/RS/SW1049/2013 duly represented by Authority and National Highways Builders Federation (NHBF). The dispute shall be dealt with in terms of Rules of SAROD. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time.

The Dispute shall be governed by Substantive Law of India

- (ii) The appointment of Tribunal, Code of conduct for Arbitrators and fees and expenses of SAROD and Arbitral Tribunal shall also be governed by the Rules of SAROD as amended from time to time. The rules of SAROD are as per Annex-I

- (iii) Arbitration may be commenced during or after the Contract Period, provided that the obligations of Authority and the Contractor shall not be altered by reason of the Arbitration being conducted during the Contract Period.
- (iv) The seat of Arbitration shall be New Delhi or a place selected by governing body of SAROD and the language for all documents and communications between the parties shall be English.
- (v) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.

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

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

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

25.7 Adjudication by Regulatory Commission or Authority

In the event of constitution of a statutory Regulatory Commission or Authority with powers to adjudicate upon disputes between the Contractor and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 25, be adjudicated upon by such Regulatory Commission or Authority in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

B. Time Control

27. Programme

27.1 The Engineer shall issue the indent of work in stages specifying the time limit for the same as and when required. The Contractor shall submit to the Engineer for approval a programme within the time stipulated in the Contract Data showing the general methods, arrangements, order, and timing for all the activities in the Works, along with monthly cash flow forecasts.

27.2 An update of the Programme shall be a programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining Works, including any changes to the sequence of the activities.

27.3 The Contractor shall submit to the Engineer for approval an updated Programme at intervals. If the Contractor does not submit an updated Programme within this period, the Engineer may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.

27.4 The Engineer's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Engineer again at any time. A revised Programme shall show the effect of Variations and Compensation Events.

28. Extension of the Intended Completion Date

28.1 The Engineer shall extend the Intended Completion Date only after the approval of NHAI if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining Works, which would cause the Contractor to incur additional cost.

28.2 The Engineer shall decide whether and by how much time to extend the Intended Completion Date within 21 days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new intended Completion Date.

29. Delays Ordered by the Engineer

29.1 The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.

30. Management Meetings

30.1 Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for the remaining Works and to deal with matters raised in accordance with the early warning procedure.

30.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all those who attended the meeting.

C. Quality Control

31. Identifying Defects

31.1 The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are noticed. Such checking shall not absolve the contractor from its obligations and its responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work (existing work/work executed by the contractor) that the Engineer considers may have a Defect.

31.2 The Contractor will also be responsible to update the progress of works on the Green Highways Mobile App. The Engineer shall check the update and notify Employer and the Contractor of any defect that are noticed.

32. Tests

32.1 The Contractor will be responsible to prepare Soil Health Card for every one km NH stretch. The Engineer shall verify the Soil Test Report and shall prescribe necessary measures for soil enrichment.

33. Correction of Defects noticed during the Defect Liability Period.

33.1 The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

33.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the reasonable time specified by the Engineer's notice as per good industry practice.

34. Uncorrected Defects/ Incomplete Works

34.1 If the Contractor has not corrected the Defect, to the satisfaction of the Engineer, within the time specified in the Engineer's notice/indent, the Engineer will assess the cost of having the Defect corrected and get the defects rectified through some other agency and the Contractor will pay 2 times of this amount.

34.2 If the Contractor has not completed the work to the satisfaction of the Engineer, within the time specified in the Engineer's notice/indent, in no case exceeding one month, the Engineer will assess the cost of having the work completed and get the work completed through some other agency and the Contractor will pay this amount in addition to the damages specified as per clause 45.

D. Cost Control

35. Bill of Quantities

35.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning and maintaining works to be done by the Contractor.

35.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rates in the Bill of Quantities for each item for the work executed as per the payment schedule.

35.3 Changes in the Quantities

Any change in Bill of Quantities due to unavailability of desired width in ROW for median or avenue or plantation may only be considered by Employer on the recommendation of Engineer along with justification for increase or decrease in Bill of Quantities.

36. Variations

36.1 All variations shall be included in updated programmes produced by the Contractor. The Engineer shall, having regard to the scope of the Works and the sanctioned estimated cost, have power to order +/- 25% of original BOQ quantity of single BOQ item subject to maximum of +/-5% of original Contract value.

37. Payments for Variations

37.1 If rates for Variation items are specified in the Bill of Quantities, the Contractor shall carry out such work at the same rate.

37.2 If the rates for Variation are not specified in the Bill of Quantities, the Engineer shall derive the rate from similar items in the Bill of Quantities and if it cannot be derived from similar item in Bill of Quantities then the rate will be derived as per Clause 37.3.

37.3 The Contractor shall, within 14 days of the issue of order of Variation work, inform the Engineer the rate which he proposes to claim, supported by analysis of the rates. The Engineer shall assess the quotation and determine the rate based on prevailing market rates within one month of the submission of the claim by the Contractor and approval from NHAI will be taken. As far as possible, the rate analysis shall be based on the standard data book and the current schedule of rates of the district public works division.

38. Cash Flow Forecasts

38.1 When the Programme is updated, the Contractor shall provide the Engineer with an updated cash flow forecast.

39. Payment Certificates

39.1 The Contractor shall submit to the Engineer monthly statements of the value of the work executed less the cumulative amount certified previously supported with detailed measurement of the items of work executed.

39.2 The Engineer shall check the Contractor's monthly statement within 7 days and certify the amount to be paid to the Contractor after taking into account any credit or debit for the month in question.

39.3 The value of work executed shall be determined, based on measurements by the Engineer.

39.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

39.5 The value of work executed shall also include the valuation of Variations and Compensation Events.

39.6 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information to rectify the mistakes with detail justification acceptable to Employer.

39.7 The final bill shall be submitted by the contractor within one month of the actual date of completion of the work; otherwise the Engineers certificate of the measurement and of the total amount payable for work accordingly shall be final and payment made accordingly as per the payment schedule.

40. Payments

40.1 Payments shall be adjusted for deductions for advance payments, security deposit, other recoveries in terms of the Contract and taxes at source, as applicable under the law. The Employer shall pay the Contractor the amounts Engineer had certified within 7 days of the date of each certificate.

40.2 Payments to contractor shall be in phased manner as per following payment schedule

S.no	Stage	Payment (in percentage of project cost)
1	Signing of Agreement	0
2	First Year (Completion of Procurement of planting material and site protection, tree protection activities)	30
3	First Year (Completion of Planting, insecticide, watering and manure procurement and application)	15
4	Second Year (completion of soil working, weeding, watering and Casualty Replacement activities)	15
5	Third Year (completion of soil working, weeding, watering, Casualty Replacement activities)	10
6	Fourth Year (completion of soil working, weeding, watering activities for third year)	10
7	Fifth Year (completion of soil working, weeding, watering for fourth year)	10
8	Project Completion (Successful completion of project deliverable as per agreement)	10
Total		100 %

40.3 Deleted.

41. Compensation Events

41.1 The following shall be Compensation Events unless they are caused by the Contractor:

- a) The Employer modifies the Schedule of other contractors in a way which affects the work of the contractor under the Contract.
- b) The Engineer orders a delay or does not issue drawings, specifications or instructions required for execution of works in reasonable time
- c) The Engineer instructs the Contractor to uncover or to carry out additional tests upon work which is then found to have no defects.
- d) The Engineer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- e) Other contractors, public authorities, utilities or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- f) The effect on the Contractor of any of the Employer's Risks.

41.2 If a Compensation Event would prevent the Works being completed before the Intended Completion Date, the Intended Completion Date shall be extended. The Engineer shall decide whether and by how much the Intended Completion Date shall be extended after the approval of the employer.

41.3 The contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Engineer/Employer.

42. Taxes & Currencies for payments

42.1 The rates quoted by the Contractor shall be deemed to be inclusive of the sales and other levies, duties, royalties, cess, toll, taxes (except service tax) of Central and State Governments, local bodies and authorities that the Contractor will have to pay for the performance of this Contract as applicable from time to time. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law. The service tax shall be reimbursed (if applicable) subject to production of proof of such payment by the contractor (proof should contain name of work).

42.2 All payments will be made in Indian Rupees.

43. Price Adjustment

43.1. Deleted

43.2 Deleted

44. Security Deposit / Retention Money

44.1 The Employer shall retain security deposit of five percent of the amount from each payment due to the Contractor until Completion of the whole of the Works.

44.2 The security deposit/retention money and the performance security will be released to the Contractor when the Defect Liability period is over, and the Engineer has certified that the Defects, if any, notified by the Engineer to the Contractor before the end of this period have been corrected.

44.3 If the contractor so desires then the Security Deposit/retention money can be released on submission of unconditional Bank Guarantee at the following two stages:-

- (a) At a point after the progress of work in financial term (gross value of work done) has reached 50% of the contract amount
- (b) After the retention money has been deducted to the full value (5% of the Contract Amount).

45. Liquidated Damages

45.1 The Contractor shall pay liquidated damages to the Employer at the rate or part thereof stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's other liabilities.

45.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting in the next payment certificate. The contractor shall not be paid interest on the over payment of liquidated damages.

46. Advance Payment

46.1 Deleted

47. Securities

47.1 Deleted

48 Cost of Repairs

48.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Period shall be remedied/ rectified by the Contractor at their cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

49. Completion

49.1 When the whole of the works has been completed as per the provision of the Contract, the Contractor shall request the Engineer to issue a certificate of Completion of the Works. The Engineer shall, within 14 days of the date of receipt of such request, either issue to the Contractor, with a copy to the Employer, a completion certificate, stating the date on which, the works were completed in accordance with the contract, or give instructions in writing to the contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such certificate.

50. Taking Over

50.1 The Employer shall take over the Site and the Works within seven days of the Engineer's issuing a certificate of Completion.

51. Final Account

51.1 The Contractor shall supply to the Engineer with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a payment certificate within 56 days of receiving the Contractor's revised account.

52. Operating and Maintenance Manual

52.1 The Contractor will be required to follow the plantation and monthly maintenance schedule as prescribed by the Engineer.

53. Termination

53.1 The Employer may terminate the Contract if the Contractor causes a fundamental breach of the Contract.

53.2 Fundamental breaches of Contract include, but shall not be limited to, the following:

- a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Engineer;
- b) the Contractor is declared as bankrupt or goes into liquidation other than for approved reconstitution or amalgamation;

- c) the Engineer/Employer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;
- d) the Contractor does not maintain a Security, which is required;
- e) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in clause 45;
- f) Deleted
- g) if the Contractor, in the judgement of the Employer, has engaged in the corrupt or fraudulent practice in competing for or in executing the Contract.

For the purpose of this paragraph, “ **Corrupt practice**” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (For avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with Bidding Process, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process);

“**Fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

- h) if the Contractor has not completed at least thirty percent of the value of Work required to be completed after half of the completion period has elapsed;
- i) if the Contractor fails to set up a field laboratory with the prescribed equipment, within the period specified; and
- j) any other fundamental breach as specified in the Contract Data.

53.3 Without prejudice to any other right or remedies which the Employer may have under this contract, upon occurrence of a Contractor’s fundamental breach of contract, the Employer shall be entitled to terminate this contract by issuing a Termination Notice to the Contractor ; provided that before issuing the Termination Notice, the Employer shall by a Notice inform the Contractor of its

intention to issue such Termination Notice and grant 15 days to the Contractor to make a representation, and may after the expiry of such 15 days, whether or not it is in receipt of such representation, issue the Termination Notice.

53.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

53.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible but in no case later than 7 days.

54. Payment upon Termination

54.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer shall issue a certificate for the value of the work done less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. Additional Liquidated Damages shall not apply.

55. Property

55.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer for use for completing balance work if the Contract is terminated because of the Contractor's fundamental breach of contract.

56. FORCE MAJEURE

56.1. Definition of Force Majeure

"Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance under this Contract impossible or so impractical as to be considered impossible under the circumstances, including but not limited to:

- (i) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- (ii) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- (iii) rebellion, revolution, insurrection, or military or usurped power, or civil war or terrorist attack or sabotage;
- (iv) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly; or
- (v) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to (i) employees of the contractor (ii) excluding local body Employees; and (iii) any local body staff who are part of a local body /state wide strike who are not engaged under this Contract but are required to provide essential services to the local body/state Employees or of any of its sub-contractors, engaged on operating and maintaining the Facilities.

56.2 Effect of Force Majeure Event

Subject to right to terminate the Contract contained in Clause 53, no Party to this Contract shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by a Force Majeure event.

56.3 Contractor's Responsibility

Upon occurrence of any Force Majeure event which may affect performance of the contractors obligations, it shall promptly notify the employer, and shall endeavor to continue to perform its obligations as far as reasonably practicable. The contractor shall also notify the employer of any proposals to overcome the constraints caused by an event, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of the employer.

56.4 Employer's Responsibility

Upon occurrence of an event considered by the employer to constitute Force Majeure and which may affect performance of the obligations of the contract, the employer shall promptly notify the contractor and shall endeavour continuance of such obligations.

56.5 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of the Employer or the Contractor, the Engineer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

F. Other Conditions of Contract

57. Labour

57.1 The Contractor shall, make arrangements of his own cost and expenses for the engagement of all staff and labour, local or others; for their payment, housing, feeding and transport; and for compliance with various labour laws/ regulations.

57.2 The Contractor shall, as asked by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such other information as the Engineer may require.

58. COMPLIANCE WITH LABOUR REGULATIONS

58.1 During the currency of the Contract, the Contractor and his sub Contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be notified already or that may be notified under any labour law in future

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

58.2 SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK.

- a) **Workmen Compensation Act 1923:** - The Act provides for compensation in case of injury by accident arising out of and during the course of employment.
- b) **Payment of Gratuity Act 1972:** - Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed the prescribed minimum years (say, five years) of service or more or on death the rate of prescribed minimum daysö (say, 15 days) wages for every completed year of service. The Act is applicable to all establishments employing the prescribed minimum number (say, 10) or more employees.
- c) **Employees P.F. and Miscellaneous Provision Act 1952:** The Act Provides for monthly contributions by the Employer plus workers at the rate prescribed (say, 10% or 8.33%). The benefits payable under the Act are:
 - i. Pension or family pension on retirement or death as the case may be.
 - ii. Deposit linked insurance on the death in harness of the worker.

iii. Payment of P.F. accumulation on retirement/death etc.

- d) **Maternity Benefit Act 1951:** - The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.
- e) **Contract Labour (Regulation & Abolition) Act 1970:** - The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by Law. The principal Employer is required to take Certificate of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer if they employ prescribed minimum (say 20) or more contract labour.
- f) **Minimum Wages Act 1948:** - The Employer is to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the Act if the employment is a scheduled employment. Construction of buildings, roads, runways are scheduled employment.
- g) **Payment of Wages Act 1936:** - It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.
- h) **Equal Remuneration Act 1979:** - The Act provides for payment of equal wages for work of equal nature to male and female workers and for not making discrimination against female employees in the matters of transfers, training and promotions etc.
- i) **Payment of Bonus Act 1965:** - The Act is applicable to all establishments employing prescribed minimum (say, 20) or more workmen. The Act provides for payments of annual bonus within the prescribed range of percentage of wages to employees drawing up to the prescribed amount of wages, calculated in the prescribed manner. The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. States may have different number of employment size.

- j) **Industrial Disputes Act 1947:** - The Act lays down the machinery and procedure for resolution of industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.
- k) **Industrial Employment (Standing Orders) Act 1946:** - It is applicable to all establishments employing prescribed minimum (say, 100, or 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get these certified by the designated Authority.
- l) **Trade Unions Act 1926:** - The Act lays down the procedure for registration of trade unions of workmen and Employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities.
- m) **Child Labour (Prohibition & Regulation) Act 1986:** - The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulations of employment of children in all other occupations and processes. Employment of child labour is prohibited in building and construction industry.
- n) **Inter-State Migrant Workmen's (Regulation of Employment & Conditions of Service) Act 1979:** - The Act is applicable to an establishment which employs prescribed minimum (say, five) or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as Housing, Medical-Aid, Travelling expenses from home up to the establishment and back etc.
- o) **The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996:** - All the establishments who carry on any building or other construction work and employs the prescribed minimum (say, 10) or more workers are covered under this Act. All such establishments are required to pay cess at the rate not exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the building or construction work and other

welfare measures, such as canteens, first-aid facilities, ambulance, housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.

- p) **Factories Act 1948:** - The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing the prescribed minimum (say, 10) persons or more with aid of power or another prescribed minimum (say, 20) or more persons without the aid of power engaged in manufacturing process.

59. Drawings and Photographs of the Works

59.1 The contractor shall do photography/videography of the site firstly before the start of the work, secondly mid-way in the execution of different stages of work and lastly after the completion of the work. No separate payment will be made to the contractor for this.

59.2 The Contractor shall not disclose details of Drawings furnished to him and works on which he is engaged without the prior approval of the Engineer in writing. No photograph of the works or any part thereof or plant employed thereon, shall be taken or permitted to be taken by the Contractor or by any of his employees or any employees of his sub-Contractors without the prior approval of the Employer in writing. No photographs/ Videography shall be published or otherwise circulated without the approval of the Employer in writing.

60. The Apprenticeship Act 1961

60.1 The Contractor shall duly comply with the provisions of the Apprenticeship Act 1961 (III of 1961), the rules made there under and the orders that may be issued from time to time under the said Act and the said Rules and on his failure or neglect to do so he shall be subject to all liabilities and penalties provided by the said Act and said Rules.

61. ASSIGNMENT

61.1 This agreement shall not be assigned by the contractor to any person, save and except with the prior consent in writing of the employer, which consent the employer shall be entitled to decline without assigning any reasons.

61.2 The contractor shall not create nor permit to subsist any encumbrance or otherwise transfer or dispose off all or any of its rights and benefits under this agreement except with the prior consent in writing of the employer, which consent the employer shall be entitled to decline without assigning any reasons.

61.3 Assignment by the Employer

Notwithstanding anything to the contrary contained in this agreement, the employer may, after giving 60 days notice to the contractor, assign any of its rights and benefits and/or obligations under this agreement; to an assignee who is, in the reasonable opinion of the employer, capable of fulfilling all of the employer's then outstanding obligations under this agreement.

62. NON-DISCLOSURE

62.1 No party shall disclose any information to any third party concerning the matters under this agreement. Any proprietary information (properly identified as such by the disclosing party) to be contained in reports or disclosed by one party to the other party, shall be kept strictly confidential by the receiving party, and shall not be disclosed to any third party without the prior written consent of the original disclosing party. This clause shall not apply where:

- a) Disclosure is made to the employees, or
- b) Disclosure to any court, the government or other statutory authorities or other bodies to the extent required by law, guidelines, rules or regulations applicable to any party
- c) required to consultants, advertisers engaged by a party
- d) information is already in public domain but not as a result of the breach of the agreement
- e) already available with the party from other lawful source

This clause shall survive the termination of this agreement.

63. EXCLUSION OF IMPLIED WARRANTIES, ETC

63.1 This agreement expressly excludes any warranty, conditions or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the parties or any representation by either party not contained in a binding legal agreement executed by both parties.

64. SEVERABILITY

64.1 If for any reason whatever, any provision of this agreement is/or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, or enforceability of the remaining provisions shall not be affected in any manner, and the parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

65. No Partnership

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

66. Third Parties

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

67 Successors and Assigns

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

ANNEX-I

ARBITRATION RULES OF SAROD

Rules

1. Scope of Application
2. Definitions
3. Notice, Calculation of Periods of Time
4. Commencement of Arbitration
5. Response by Respondent
6. Filing of Case Statements
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10. SAROD to Provide Assistance
11. Appointment of Tribunal
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21. Fees of SAROD and Arbitral Tribunal
22. Transmission of File of the Tribunal
23. Juridical Seat of Arbitration
24. Language of Arbitration
25. Conduct of the Proceeding
26. Communications between Parties and the Tribunal
27. Party Representatives
28. Hearings
29. Documents - only Arbitration
30. Witnesses
31. Experts Appointed by the Tribunal
32. Rules applicable to substance of dispute
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34. Additional Powers of the Tribunal
35. Deposits to Costs and Expenses
36. Decision Making by the Tribunal

- 37. The Award
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- 43. Waiver
- 44. Exclusion of Liability
- 45. General Provisions
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PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between NHAI and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Redressal of Disputes (SAROD) has been formed as a Society under Societies Registration Act, 1860 with registration No.S/RS/SW/1044/2013. It has been formed by National Highways Authority of India (NHAI) and National Highways Builders Federation (NHBF) with founding members as mentioned in the Memorandum of Association of SAROD.

SAROD ARBITRATION RULES

Rule 1 - Scope of Application

- 1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Redressal of Disputes (SAROD), or under the Arbitration Rules of the SAROD and where the case is a domestic arbitration shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD where the amendments take effect before the commencement of the Arbitration. Parties may adopt following clause for inclusion in the contract:-

Any dispute or difference whatsoever arising between the parties and of or relating to the construction, interpretation, application, meaning, scope, operation or effect of this contract or the validity or the breach thereof, shall be settled by arbitration in accordance with the rules of arbitration of the SAROD and the award made in pursuance thereof shall be final and binding on the parties subject to Provisions of The Arbitration and Conciliation Act, 1996.
- 1.2 These rules shall come into effect from the day of approval by Governing Body of SAROD.

Rule 2 - Definitions

- 2.1 These Rules shall be referred to as the SAROD Arbitration Rules.
- 2.2 In these Rules:

“Act” means the Arbitration and Conciliation Act 1996 of India and any statutory modifications or re-enactments thereof.

“SAROD” means the Society for Affordable Redressal of Disputes.

“SAROD Arbitrator Panel” means the list of persons admitted to serve as arbitrators under these Rules.

“**NHAI**” means National Highways Authority of India.

“**NHBF**” means the National Highways Builders Federation.

“**GOVERNING BODY**” means Governing Body of SAROD as defined in Article 9 of Memorandum of Association.

“**PRESIDENT**” means President of Governing Body of SAROD as defined in Rules & Regulation of SAROD

“**SECRETARY**” means Secretary of SAROD as defined in Rules & Regulation of SAROD.

“**TRIBUNAL**” means either a Sole Arbitrator or all arbitrators when more than one is appointed.

“**PARTY**” means a party to an arbitration agreement,

“**E-Arbitration**” means submission of pleadings, defence statement etc by E-mail and holding of proceedings via video conferencing.

Rule 3 - Notice, Calculation of periods of Time

- 3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee’s last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.
- 3.4 The transmission is deemed to have been received on the day of transmission.

Rule 4 - Commencement of Arbitration

- 4.1 Any party wishing to commence an arbitration under these Rules (the Claimant) shall file with the Secretary and serve on the other party (the Respondent), a written Notice of Arbitration (the Notice of Arbitration) which shall include the following:
 - a. a request that the dispute be referred to arbitration;
 - b. the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
 - c. a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;

- d. a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
- e. a brief statement describing the nature and circumstances of the dispute;
- f. the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice of Arbitration is filed;
- g. a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
- h. the name of the Claimant's nominated arbitrator.

4.2 A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration

4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

Rule 5 – Response by Respondent

- 5.1 Within 14 days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including
 - a. A confirmation or denial of all or part of the claims;
 - b. Brief statement of the nature and circumstances of any envisaged counterclaims
 - c. A comment in response to any proposals contained in the Notice of Arbitration; and
 - d. The name of the respondent's nominated arbitrator.
- 5.2 A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.
- 5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

Rule 6 – Filing of Case Statements

- 6.1 Within 30 days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case alongwith all documents to be relied upon by the Claimant.
- 6.2 Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defense and counterclaim (if any) alongwith all documents to be relied upon by the Respondent.
- 6.3 Within 30 days after the service of the statement of Respondent's defense, if the Claimant intends to challenge anything in the statement of Respondent's defense and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defense to counterclaim.
- 6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has

not been appointed, the Secretary.

- 6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule,

6.6 Thy party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

Rule 7 – Contents of Case Statements

- 7.1 The case statements must contain the detailed particulars of the party's claim, defence or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.
- 7.2 It must:
- a. Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
 - b. State fully its reasons for denying any allegation or statement of the other party.
 - c. State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.
- 7.3 A case statement must be signed by or on behalf of the party making it.

Rule 8 - Default in Filing and Serving Case Statements

- 8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.
- 8.2 If the Respondent fails to submit a Statement of Respondent's Defense, the Tribunal may nevertheless proceed with the arbitration and make the award.

Rule 9 - Further Written Statements

- 9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.
- 9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

Rule 10 - SAROD to Provide Assistance

- 10.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.
- 10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

Rule 11 - Appointment of Tribunal

- 11.1 The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 Crores or less.
- 11.2 In all cases of disputes claimed for more than Rs. 3 Crores, the tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties, The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.
- 11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defence and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,
- 11.4 An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD Arbitration Panel as at the date of the appointment,
- 11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

Rule 12 - Multiparty appointment of the Tribunal

- 12.1 If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.
- 12.2 If the parties are unable to do so, upon the lapse of the 21 day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

Rule 13 - Appointment of Substitute Arbitrator

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

Rule 14 - Independence and Impartiality of the Tribunal

- 14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial, and shall not act as advocate for any party.
- 14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- 14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

Rule 15 - Code of Ethics for Arbitrators

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

Appointment

15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,

15.2 In this code, the masculine includes the feminine.

Disclosure

15.3 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances.

15.4 A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:

- (a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
- (b) The extent of any prior knowledge he may have of the dispute.

Bias

15.5 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

15.6 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

Communications

15.7 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

15.8 No arbitrator shall confer with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.

15.9 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

Fees

- 15.10 In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD.

Conduct

- 15.11 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

Confidentiality

- 15.12 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

- 15.13 This Code is not intended to provide grounds for the setting aside of any award.

Rule 16 - Challenge of Arbitrators

- 16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he or she has committed any misconduct.
- 16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,
- 16.3 A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.
- 16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.
- 16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.
- 16.6 The Notice of Challenge must state the reasons for the challenge.
- 16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.
- 16.8 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

Rule 17 - Decision on Challenge

- 17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.

- 17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

Rule 18 - Removal of the Tribunal

- 18.1 The Governing Body may on the application of a party remove an arbitrator:
- a. Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
 - b. Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
 - c. Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD.
- 18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.
- 18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.
- 18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

Rule 19 - Re-hearing in the Event of Replacement of the Tribunal

If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

Rule 20 - Jurisdiction of the Tribunal

- 20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.
- 20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. In either case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated, or participated in the appointment of an arbitrator.
- 20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.
- 20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration not with sanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

Rule 21 – Fees of SAROD and Arbitral Tribunal

Fee Schedule

Registration Fee (Non - Refundable): Rs, 10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

Rule 22- Transmission of File to the Tribunal

- 22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.
- 22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

Rule 23 - Judicial Seat of Arbitration

- 23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.
- 23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

Rule 24 - Language of Arbitration

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

Rule 25 - Conduct of the Proceedings

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10.AM to 5PM with a recess of one hour.

Rule 26 - Communication between Parties and the Tribunal

- 26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.
- 26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or all other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.
- 26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.
- 26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

Rule 27 - Party Representatives

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

Rule 28 - Hearings

- 28.1 Unless the parties have agreed on documents-only arbitration, the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.
- 28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g. submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the time table with without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the tribunal.
- 28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.
- 28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.
- 28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

Rule 29 - Documents Only Arbitration

- 29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.
- 29.2.1 Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the parties or either of them intends to apply for an oral hearing.
- 29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

Rule 30 - Witnesses

- 30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.
- 30.2 No party shall call any expert witness without the leave of the Tribunal.
- 30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,
- 30.4 A Witness may be required by the Tribunal to testify under oath or affirmation.
- 30.5 Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,
- 30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails

to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,

- 30.7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

Rule 31 - Experts Appointed by the Tribunal

- 31.1 Unless otherwise agreed by the parties, the Tribunal may:
- a. appoint one or more experts to report the Tribunal on specific issues;
 - b. require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.
- 31.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.
- 31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

Rule 32 - Rules applicable to substance of dispute- (1) Where the place of arbitration is situated in India,

- 32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

Rule 33 - Closure of Hearing

- 33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.
- 33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

Rule 34 - Additional Powers of the Tribunal

- 34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to:-
- a. Allow any party, upon such terms (as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
 - b. Extend or abbreviate any time limits provided by these Rules;
 - c. Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
 - d. Order the parties to make any property or thing available for inspection
 - e. Order any parties to produce to the Tribunal, and to the other parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power which the Tribunal determines to be relevant;
 - f. Make orders or give directions to any party for interrogatories;
 - g. Make orders or give directions to any party for an interim injunction or any other interim measure;

- h. Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.
- 34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

Rule 35 - Deposits to Costs and Expenses

- 35.1 The Tribunal's fees and SAROD administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.
- 35.2 The Claimant shall deposit with the SAROD half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD one-half of the fees payable at the time of filing the Statement of Respondent's Defence and Counterclaim (if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.
- 35.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of.
- 35.4 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.
- 35.5 All deposit(s) shall be made to and held by the SAROD. Any interest which may accrue on such deposit(s) shall be retained by the SAROD.
- 35.6 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non-complying party, although it may proceed to determine claims or counterclaims by any party who has complied with orders.
- 35.7 The parties shall remain jointly and severally liable to the SAROD for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

Rule 36 - Decision Making by the Tribunal

- 36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.
- 36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting Arbitrator alone as if acting as a sole arbitrator.
- 36.3 However, in the case of a three-member Tribunal the presiding arbitrator may, after consulting the other arbitrators, make procedural rulings alone.

Rule 37 - The Award

- 37.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.
- 37.2 The Tribunal shall assemble at the assigned place in SAROD and shall exercise utmost secrecy and confidentiality in writing the award,
- 37.3 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the arbitrator or arbitrators.
- 37.4 The Tribunal may make interim awards or separate awards on different issues at different times.
- 37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.
- 37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.
- 37.7 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD.
- 37.8 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.
- 37.9 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

Rule 38 - Additional Award

- 38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- 38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make an additional award, and complete the additional award within 30 days after the receipt of the request.

Rule 39 - Correction of Awards

- 39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.
- 39.2 If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.
- 39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own initiative within 30 days of the date of the Award.

Rule 40 - Settlement

- 40.1 If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,
- 40.2 The Parties shall:
- a. Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated:
 - b. Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD and the Tribunal.
- 40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.
- 40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

Rule 41 - Interest

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of Sate Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

Rule 42 - Costs

- 42.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.
- 42.2 In this Rule, ócosts of the arbitrationô shall include:
- a. The fees and expenses of the Tribunal and the administration fees of the SAROD as determined by the Secretary in accordance with the Schedule of Fees;
 - b. The costs of tribunal appointed experts or of other assistance rendered: and
 - c. All expenses which are reasonably incurred by the SAROD in connection with the arbitration.
- 42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc) of one party shall be paid by the other party.

Rule 43 - Waiver

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing to such non-compliance shall be

deemed to have waived its right to object.

Rule 44 - Exclusion of Liability

- 44.1 The Tribunal, the President, the SAROD and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,
- 44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD and any of its officers a witness in any legal proceedings arising out of the arbitration.

Rule 45 - General Provisions

- 45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.
- 45.2 The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

Rule 46 - Amendment to Rules

These Rules may from time to time be amended by the Governing Body of SAROD.

Contract Data

Clause Reference

Items marked “N/A” do not apply in this Contract.

1.1

1. The Employer is [Cl.1.1]
Chairman, NHAI
Address: G-5 & 6, Sector-10, Dwarka, New Delhi
Name of authorized Representative : (Will be intimated later)
 2. The Engineer is: (Will be intimated later)
Designation:
Address: [Cl.1.1]
 3. The Intended Completion Date for the whole of the Works is --- months [Cl.1.1, 17&28]
from start date.
 4. The Site is located at
ë .
[Cl.1.1]
 5. The Start Date shall be within 15 days after the date of issue of the Notice to [Cl.1.1]
proceed with the work.
 6. (a) The name and identification number of the Contract
Providing Avenue Plantation and Median Plantation along National Highways of -----
in the state of -----.
[Cl.1.1]
(b) The Work consist of
ó.....
[Cl.1.1]
- 3.1** (a) The law which applies to the Contract is the law of Union of India. [Cl.3.1]
- (b) The language of the Contract documents is English [Cl.3.1]
- 7.1** The limit of subcontracting is 60% of initial contract price [Cl.7.1]

8.1 Schedule of Other Contractor – NIL**[Cl 8.1]****9.1 The Technical Personnel are:****[Cl.9.1]****In case of Periodical Renewal**

Sl. No.	Personnel	Minimum Qualification and Experience	Particular Experience (minimum requirement)	No. of Persons
1.	Project Manager	Post-Graduation/Graduation in Forestry/Agriculture/Horticulture or other relevant stream	3 yearsö Experience in Plantation/Transplantat ion/Landscaping Activities	1
2.	Supervisor	Post-Graduation/Graduation in Forestry/Agriculture/Horticulture or other relevant stream	2 yearsö Experience in Plantation/Transplantat ion/Landscaping Activities	1

14.1 Site Investigation Report ñ NIL**[Cl 14.1]****27.1. (A) The period for submission of the programme for approval of Engineer shall be 30 days from the issue of Letter of Commencement.** **[Cl.27.1]****(B). (a) Identified indented work**

- (1) Weekly Indent, Monthly Indent, Quarterly Indent and Bi-annual Indent ñ 3 days before start of week; 7 days before start of month; 15 days before start of quarter and 28 days before bi-annual period concerned

- (2) Emergent Indents ñ Within 24 hours

27.3 Amount to be withheld for delays in submission of updated programme : 1% of value of work corresponding to the updated programme.**32 Deleted****33 The Defect Liability Period will be 60 months for maintenance of Avenue Plantation and Median Plantation.****35.2 Payment Schedule**

S.no	Stage	Payment (in percentage of project cost)
1	Signing of Agreement	0
2	First Year (Procurement of planting material and site protection, tree protection)	30
3	First Year (Planting, insecticide, watering and manure procurement and application)	15
4	Second Year (soil working, weeding, watering and Casualty Replacement)	15
5	Third Year (soil working, weeding, watering and Casualty Replacement) (Maintenance, Casualty Replacement etc.)	10
6	Fourth Year (soil working, weeding, watering)	10
7	Fifth Year (soil working, weeding, watering)	10
8	Project Completion (Successful completion of project deliverable as per agreement)	10
Total		100 %

[Cl. 35.2 & 39.7]

45.1 (a) Amount of liquidated damages for delay in completion of works

For identified Indented work
0.1 percent of the
Indented value, rounded
off to the nearest
thousand, per day with
the minimum of
Rs. 10000/- per day

(b) Maximum limit of liquidated damages for delay in completion of work.

10 per cent of the Initial
Contract Price rounded
off to the nearest
thousand

[Cl.45.1]

53.2 (j) Other fundamental breach is that the contractor has failed to complete 75% of value of indented work in any 3 indents issued by the Engineer.

[Cl 53.2 (j)]

54.1. The percentage to apply to the value of work not completed representing the Employer's additional cost for completing the work shall be 20%.

[Cl.54.1]



SCOPE OF WORK

*(Scope of work may be amended as per site specific conditions)

SCOPE OF WORK

- 6.1** The scope of work include but not limited to **Densification along Chas-Ramgarh section of NH-23 from km ÷ . To km ÷ .. / Ranchi-Hazaribagh section of NH-33 from km ÷ to km ÷ . and Maintenance works along National Highways.**

Densification means enrichment of existing plantation. The number of plants are already mentioned for this enrichment.

The contractor shall provide and maintain all new trees, plants, shrubs and other suitable vegetation planted by them in the right of way strictly according to the desired density and ensure the conservation of all trees, shrubs and similar vegetation within the right of way by promptly replacing the casualties as per IRC-SP-21-2009. The Contractor shall also take adequate and appropriate measures, during the various seasons, to ensure the survival of the vegetation.

6.2 PLANT MATERIAL & PLANTING SPECIFICATIONS

6.2.1 WORK INCLUDES:

- I. The contractor shall arrange all labour, materials tools and equipment's necessary to complete and maintain the work as indicated on the drawings or as specified herein.
- II. The contractor shall supply plant, maintain and replace all plant material specified in the plant schedule in accordance with the plants and specifications or as directed by the Engineer in charge.
- III. The contractor shall be liable for any damages to property caused by planting and transplanting operations and all areas and disturbed construction shall be restored to their original condition to the satisfaction of the client.
- IV. Work shall be performed and supervised at all times by qualified personnel.

6.2.2 PLANT MATERIAL INSPECTION

- i. Furnish plant materials inspected by Horticulturist/Engineer in charge at the nursery and tagged after approval for delivery
- ii. Inspection at growing site does not preclude right of rejection at the site of plantation.

6.2.3 TOP SOIL INSPECTION:-

- I. After contract award, furnish source for top soil to Horticulturist/Engineer in charge for purpose of soil inspection.
- II. Take representative soil samples from area under consideration.
- III. Test soil samples for pH, alkalinity, total soluble salts, porosity, sodium content and organic matter.

6.2.4 DELIVERY STORAGE AND HANDLING OF PLANT MATERIAL

A. DELIVERY : -

- I. Do not deliver more plant materials than can be planted in one day
- II. Deliver plants with legible identification labels.
- III. Protect during delivery to prevent damage to root ball or desiccation of leaves.
- IV. Notify Horticulturist/Engineer in charge of delivery schedule in advance, so that plant material may be inspected upon approval at job site.
- V. Remove unacceptable plant material immediately from job site.

B. STORAGE

- I. Store plants in shade and protect from weather.
- II. Maintain and protect surplus plant material within four hours.

C. HANDLING :-

- I. All earth balls shall be firm and intact and contained in Hessian. Do not drop balled and burlapped stock at any time.
- II. All balled and Hessian covered plants and container grown plants shall at all times be handled by the ball or by the container and not by the plant stem.

6.2.5 GUARANTEE :

- 1) Guarantee new or existing, moved plant material through one full growing season after all plants are installed.
- 2) Replacement of plants shall be guaranteed for one full growing season from date of plantation.
- 3) Repair damage to other plants or lawns during plant replacement at no cost to the Authority.

6.2.6 SCHEDULING: Install trees, shrubs and ground cover plants before lawns are installed.

6.3 PLANT MATERIALS :

- 1) All plants to be sized as shown on schedules or as specified herein.
- 2) All plants shall be healthy, free from pests and diseases and be representative of their normal species or variety. All plants shall be well shaped, have vigorous root system and free from disease, wind burn, injuries, abrasion or disfigurement.
- 3) All plants shall be true to name and one plant of each bundle or lot shall be tagged with the name and size of the plants. In all cases, botanical names shall take precedence over common names,
- 4) All plants shall be nursery grown unless otherwise stated; they shall have been grown under the same climatic conditions as the location of this project for at least two years prior to the date of contract.

6.4 TOP SOIL (GOOD EARTH) :

Top soil or good earth shall be friable soil of loamy texture, typical of cultivated top soils of the locality containing at least 3% of organic decayed matter. It shall be taken from a well drained arable site. It shall be free from subsoil, kankar, mooram, shingle, stones, brick or other objectionable matter. It shall have pH value ranging between 6 to 8.5 No. top soil be delivered in a muddy condition.

6.5 FERTILIZER :

- 1) **Chemical type:** Commercial fertilizer uniform in composition, dry and free flowing shall be delivered in original unopened containers and shall be mixed as specified by the manufacturer.
- 2) **Organic type:-** Dry Okhla sludge shall be used. It shall be free from extraneous matter, harmful bacteria, insects or chemicals.

6.6 PLANTING SOIL MIX :

Planting soil mix (Mixing of good Earth and sludge/ Manure). The stacked earth shall, before mixing, be broken down to particles of sizes not exceeding 6 mm in any direction, good earth shall be thoroughly mixed with sludge in the following proportions :

- i. For trees and shrubs 2:1 (2 parts of stacked volume of earth after reduction by 20%: 1 part of stacked volume of manure after reduction by 8%).
- ii. Beds for hedge and shrubbery 8:1 (8 part of stacked volume of earth after reduction by 20% 1 part of stacked volume of manure after reduction by 8%)

6.7 INSPECTION

Prior to all planting work, carefully inspect the installed work and verify that all earth work is complete to the point where planting may properly commence.

6.8 PREPARATION :

- 1) Stake out locations for plants and outlines of planting beds on ground.
- 2) Do not begin excavation until stake out of plant location and plant locations and plant beds are acceptable to Horticulturist/ Engineer-In-charge.

6.9 EXCAVATION FOR PLANTING : Digging of Pits

- 1) The bottom of the pit shall be forked to loosen the soil. In case the soil is clay, a layer of broken bricks and stones shall be sprayed on the bottom of the hole and this layer shall be covered with dried leaves or straw.
- 2) In case the site is infested with white ants, the sides of the pits shall be brushed with a mixture of B.H.C. (10% concentration) or Chlorpyrifos 20 EC.

6.10 PLANTING

- 1) Planting shall be performed in accordance with recognized best horticulture practice.
- 2) Plants shall be set plumb and at such a level or elevation that after settlement they will bear same relation to level of surrounding ground as they bore to ground from which they were dug. All plants shall be planted on and in soil mix. All ropes, stones etc. shall be removed from the pit before back filling. Soil for back filling shall be loose and friable.
- 3) Earth balled and hessian covered plants or container plants shall be handled so that the ball will not be loosened. All plastic and other imperishable containers should be removed before planting. The burlap shall be cut away from the upper half of the ball and the remaining burlap shall be firmed at 150 mm to 200 mm. Do not plant if ball is cracked or broken before or during planting process.
- 4) Plants with exposed roots shall be placed in the proper position in the center of pit after the soil in the bottom of the pit has been firmed. Roots shall be arranged in their natural position

and loose friable, topsoil worked in among them, firms at intervals and thoroughly settled with water. Care shall be taken to avoid bruising or breaking the roots when tamping the soil; all large and fleshy roots which are bruised or broken shall be pruned with a clean cut before planting.

6.11 FINISHING SURFACE AFTER BACK FILLING :-

- 1) The contractor shall cultivate and rake over finished plant areas and shall leave them in an orderly condition. A shallow basin, larger than the diameter of a planting pit as directed by the horticulturist should be prepared. On steep slopes the soil on the lower side of the plant shall be graded in such a manner that it will catch and hold water, as directed by the horticulturist.
- 2) No deduction shall be made for the value of topsoil displaced by balls. This displaced top soil shall be used in its entirety to build the above described watering basins on level ground or slight slopes and shall be used for grading around trees on steep slopes.
- 3) All work done in preparing shallow basin, or grading of tree pits on steep slopes, and re-grading and re-seeding of the tree saucers shall be deemed and included in the unit price per tree.
- 4) STAKING: All staking shall be done immediately after planting. Plant shall stand plumb after staking. Drive stake perpendicularly, 60 cm- 90 cm as require to resist forces of the wind in to ground at edge of root ball. Single stake shall be located on the windward side of the tree. For balled root should be used to probe through the root system, to make a pilot hole, in to which the stake can be driven with minimum disturbance.

6.12 PRUNING :

Broken or badly bruised branches shall be removed with a clean cut. Each plant shall be pruned to preserve its natural character and in a manner appropriate to its particular requirements. The amount of pruning shall be limited to the minimum necessary. All pruning shall be done with sharp tools in accordance with instruction of the Engineer-in-charge. Pruning cuts shall be painted with recommended paints.

6.13 WATERING :

During and after planting, the plants shall be watered in order to eliminate air voids around the roots and watered regularly as required for planting to become established.

6.14 SHURB PLANTING:

Shrubs shall be positioned in the location and numbers shown on plan or specified and placed to achieve even spacing and proper matching of shapes related in a random fashion at approximately equal centers to obtain a natural dense cover.

The pits for shrubs shall be 60 cm in diameter and 60 cm deep at exact positions as marked on the drawing.

Polythene and other non-perishable containers should be removed and any badly damaged roots should be carefully pruned. The shrubs should then be set in pits so that the soil level, after settlement, will be at the original mark on the stem of the shrub.

The planting pit shall be backfilled with planting soil mix to half its depth thoroughly firmed around the roots by treading to eliminate air voids. The remainder of the soil can then be returned and again firmed by treading.

Tall shrubs may need staking; which shall be approved by the Horticulturist/Engineer in charge, depending upon the conditions of individual plant specimen.

6.15 HEDGE PLANTING : Hedge shall be planted as described under shrubs

6.16 Execution:

The landscape contractor shall maintain all planted areas within the landscape contract boundary until the area is handed over in whole or in phases.

Maintenance shall include but not be limited to watering, weeding, cultivating, control of insects of diseases by means of spraying with approved insecticides, herbicides, or fungicide, pruning, adjustment and repair of anchors and wire, repair of minor washouts and other horticultural operations necessary for the proper growth of plants and for keeping the contract area in appearance.

6.17 Scope of Work for General Maintenance of horticulture work:

The scope of the contract covers all landscape maintenance work in respect of existing landscape features which includes plants, shrubbery beds, topiary and shrubs, trees, in the specified areas, plantation and then maintenance of ornamental plants and removal of rank vegetation and bushes etc. within a planted area.

The maintenance shall include watering, manuring, fertilizing, plant protection for pests and diseases, sweeping, weeding, and disposal of garden refuse, cultivation and cutting of edges, pruning and clipping of hedges, etc. and stacking, minor repair works and all other

landscape operations necessary for the proper growth for horticulture features and maintaining them in proper standard of maintenance.

The quoted rates will be inclusive of cost of all materials like water, labor, tools, plants, equipment, transportation, taxes & levies etc.

Contractor/Agency will execute the work as per approved specification. However, where specification is not available, work shall be executed as per sound Engineering practices/direction of Engineer.

If the agency fails to arrange the sufficient quantities of material/ manure /pesticides/manpower/equipment (in good working condition) required to maintain the work in good condition within 4 days of its notification, then Employer reserve the right to get it arranged at their risk and cost and will charge extra 20% on the actual expenditure incurred in house or outsource (material, manpower, machinery In exceptional cases, Engineer may consider to extend the time limit mentioned above. The decision of Engineer shall be final and binding on the contractor in respect of extension of time for rectification of defects. However, all complaints will be attended promptly and within the time limit specified by Engineer.

6.18 On duty, all staff are to wear distinctive standard jackets having company LOGO, with night visibility. They are to deal with public and hence should be well trained to be courteous and helpful.

6.19 Watering:-

- 1) For the period from November to June [period shall be changed by Engineer depending on site condition] contractor shall prepare monthly plan for deployment of water tankers in consultation with Engineer and shall submit the same eight days prior to next month. It is obligatory on contractor to deploy the number of water tankers as per plan. If Engineer observes number of water tankers deployed (as per plan) are not being sufficient as per site condition, he shall instruct to increase in water tanker. Engineers decision shall be final.
- 2) If contractor fails to deploy the water tankers as per Engineer's instructions and as per monthly plan each incidence of non deployment penalty shall be imposed of Rs. 10000 / day / incidence.
- 3) The methodology suggested vide (i) to (ii) shall not relive contractor from his obligation of non-wilting of any hedge / shrub / flowering trees of median. If any existing hedge, shrub, flowering tree etc. got dead it should be replaced by contractor at his own cost. Engineers decisions in this context is final
- 4) Deployed water tanker shall be fitted with red electric blinking signal and red flag at top of LHS back end. The safety measures as per IRC 112 shall be taken while watering
- 5) The contractor shall maintain log books of each deployed water tankers and submit the Xerox copy's along with each monthly statement of work done.

6.20 Trimming of plantation and application of insecticides / pesticides

- 1) Trimming of hedges and flowering trees shall be done as and when required and as ordered by Engineer.
- 2) Supplying and application of insecticides / pesticides shall be done as and when required and as ordered by Engineer.
- 3) Each incidence of failure of trimming and application of insecticides / pesticides shall be penalized at the rate of Rs. 1000 / Km. / incidence. Engineers decision shall be binding on the contractor.
- 4) **The contractor shall** submit the daily reports (on next day) of out put of various man and machinery deployments for median maintenance in the formats approved by Engineer. Failure of which shall impose penalty of Rs. 1000/ incidence.

6.21 Other related conditions and schedule of charge of services

- 1) The contractor shall employ technically sound man power. The total Nos. of malis/workers to be engaged shall not be less than theoretical requirement for the actual quantities.
- 2) The staff should have experience & the normal working hours will be 8 hours a day from 9 a.m. to 5 p.m. with half hour lunch break from 1.30 p.m. to 2.00 p.m., subject to staggering of duty hour as per actual requirement during Sundays and other holidays contractor must deploy essential staff to ensure minimal maintenance particularly for watering of plants.
- 3) If the avenue and median plants die due to careless operation or negligence the contractor is required to replace the plants at his own cost until they are well established. Payment will be made for those plants, which are grown and developed properly for the period under consideration as outlined in the bill of quantities.
- 4) If the Contractor fails to replace the plant within 10 days the client reserves the right to replace it and recover the cost for the same from the Contractor's bill / security deposit.
- 5) The contractor shall arrange at his own expense all tools, required for maintenance of complete horticulture feature. No work should suffer due to absence of tools etc.
- 6) In plant maintenance period if any plant to be found infected from fungus and virus etc. diseases, in that case whole cost as estimated by the Engineer would be deducted from the running bill, or whole plant may be replaced by the contractor at his own cost in the shape & size.
- 7) Contractor will have to make his own arrangements for protecting the plants maintenance within ROW.
- 8) The whole area should be kept neat and clean and be maintained to the optimum level throughout the contract period and area should kept ready for inspection.

- 9) The instruction of departmental staff is to be carried out promptly. In case of any difference of opinion/ interpretation of specification & conditions, the matter is to be referred by the contractor to the Engineer In-charge for his decision, which shall be final & binding.
- 10) Where an item of work not mentioned in a particular bill of quantities, is required to be executed and where the rate for such an item of works is quoted under different bill of quantities forming part of this contract, then the Contractor being called upon shall execute the work and shall be paid at the rate so quoted. Nothing extra over shall be payable of this account.
- 11) The Horticulture In-charge / Engineer In-charge have the full right to modify or change the specification as per physical conditions of site.
- 12) The Contractor shall be bound to perform the assigned jobs even though the same may not have been included in the schedule of services.
- 13) Cleaning of wastage material on every day will have to ensure by the Supervisors of the contractor and the waste is to be disposed off as per direction the officer In-charge of area.
- 14) If contractor fails to keep median and road side plants without weeds, unwanted vegetation, debris, within 7 days as instruction/notice given by the Engineer In-charge, (as per provision of BOQ) recovery of Rs. 5000/ km shall be imposed. Engineer decision in this context is binding on contractor.
- 15) The contractor shall be responsible for good conduct and behavior of its employees, In case of any misconduct by any employee, the contractor shall have to terminate the service of such employees forthwith at their own risk and responsibility.

6.21.1 SCHEDULE OF CHARGE OF SERVICES

S.no	Work	Description
1	Maintenance of plants	Watering, Training, Pruning, Hoeing, Weeding, Making basin, Manuring, Plant protection etc. as per direction of Engineer In-charge. manuring as per direction Engineer In-charge.

2	Maintenance of Hedges	Cutting or clipping hoeing / weeding 1-2 times in months, watering
3	Disposal of Garbage	All Horticulture waste generated by hoeing, weeding, mowing of lawns, cutting grass sword, clipping of hedge, dead leaves and annuals are to be disposed off at anyplace in the campus as directed by Engineer In- charge so as to maintain the tidiness of the area.
4	Watering	Three tanker (mounted with truck) each of 10000 liter capacity or 6 tanker (mounted with tractor) each of 5000-6000 liter capacity with proper safety light is required deployed every day for watering the median plants or as per plantation and maintenance schedule provided by the Engineer.
5	Training & Pruning	To provide desired form and size to plants, regular training and pruning by cutting and removing undesired part/ of twinges/ over crowding and to make desired form, shape and size of plants and to prevent the glare of vehicle, the plant should be multi branch from ground at 1.5 to 2 meter height with oval shape. Time of pruning: - Generally, two pruning is required in a year i.e. December to January and May to June. (Light pruning can be done anytime as required) Pruning tools: - Pruning knife, pruning saw, secateurs and pruning shear etc.
6	Basin Hoeing & Weeding	Making of basin of size 60cm dia & 15 cm deep,(for shrubs)120cm dia (for tree) hoeing & weeding of plants, 1 times should be done every month per plant.
7	Manureing / Feeding	Minimum two feeding is require per year @ of 5 cum per 1200 plants (Sept, Oct & Feb, March.

6.21.2 Plantation and Maintenance Schedule

First Year	
January to March	• Surveying of area • Making of species wise inventory of trees and shrubs available at site • Limited cleaning of the area from unwanted growth where ever required • Plantation protection strategy as per site requirement - chain link fencing; barbed wire fencing; Individual tree guard fencing with wire mesh / cement / bamboo sticks / wood sticks. • Digging of pits in rows at prescribed interval leaving pits point where natural plants exist • Planting if irrigation facilities provided
April to June	• Soil testing to prepare soil health card of plantation site • Purchase of farmyard manure (FYM). Purchase of fertilizer/insecticide as per site soil health requirement • Filling of pits with FYM/fertilizer/insecticide • Plantation protection fencing as per site requirement • Transport of plants from nursery at appropriate temporary site to facilitate fast planting in rainy period • The plant should be minimum thumb sized at its collar girth (upto 60 from base) and the height should be about 4 to 6 ft. The bamboo rhizomes should be more than a year old. • Collection of seeds from tree species available locally in that region. • Sowing of seeds before rains with little soil working at appropriate spacing. • Sowing of seeds on site boundary for live fencing. • Sowing of seeds of small size flowering trees like Minigulmohar (<i>Caesalpinea pulcherrima</i>), <i>Euphorbia pulcherrima</i>, Ratanjot, etc. on median site.
July to September	• Planting in June-July after first rainy spell • Weeding and hoeing with water conservation saucer formation around every plant. Removal of weeds hampering plantation growth. • Application of fertilizer • Identification and Listing of naturally growing plants and their selection for adoption and after care as planted saplings.
October to December	• Weeding, hoeing and mulching on 1 meter diameter ground around planted sapling • Watering, if provided in DPR, to be done at interval • Thinning of saplings grown out of seed sowing of local tree species.

Second Year	
January to March	• Weeds eradication and cleaning of area in strips to ensure protection of plantation from fire incidents. • Watering and maintenance
April to June	• Fire protection • Watering and maintenance • Maintenance of fencing • Assessment of plants survival and their growth as per defined parameters.
July to September	• Plantation casualty replacement with tall plants • Weeding to remove unwanted weeds in 1 meter diameter of plants • Application of fertiliser and insecticides
October to December	• Weeding, hoeing and mulching on 1 meter diameter ground around planted saplings • Irrigation if provided in DPR
Third Year	
January to March	• Weeds eradication and cleaning of area in strips • Controlled burning of debris around plantation site to ensure protection of plantation from fire incidents • Irrigation as provided in DPR ; general maintenance
April to June	• Maintenance and special care for protection from fire • Irrigation as provided in DPR • Maintenance of fencing • Assessment of plants survival and growth of planted saplings, seed origin plants and naturally growing adopted plants. • Cutting back of deformed, stunted and damaged plants 5 centimeters above ground before first rains in May- June to facilitate coppicing of new shoots.
July to September	• Casualty replacement of dead plants. • Weeding to remove unwanted weeds in 1 meter diameter of plants • Application of fertilizer, insecticides • Soil-Water conservation to ensure maximum rain water availability to the plants.
October to December	• Weeding, hoeing and mulching in 1 meter diameter of surviving plants • Irrigation as provided in DPR.

Fourth and Fifth Year	
January to June	• Weeds eradication and cleaning of the area in strips to ensure fire protection • Controlled burning of debris around plantation site in February to eliminate chance of stray fire. • Irrigation as provided in DPR • Maintenance of fencing • Assessment of plants survival and growth of planted saplings, seed plants and naturally growing adopted ones.
July to December	• Weeding and hoeing • Soil- Water conservation to ensure maximum rain water availability to growing plants. • Irrigation as provided in DPR

TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS

7.1 PREAMBLE:

The Technical Specifications contained herein shall be read in conjunction with the other Bidding Documents as specified.

7.2 GENERAL REQUIREMENTS

The Technical Specifications in accordance with which the entire work described hereinafter shall be executed and completed by the Contractor shall comprise of the following:

7.2.1 PART – I – GENERAL Guidelines

The General Guidelines on Landscaping and Tree Plantation IRC:SP:21-2009 issued by Indian Roads Congress

PART – II – SUPPLEMENTARY GUIDELINES

When an Amended/Modified/Added Clause supersedes a Clause or part thereof in the said guidelines, then any reference to the superseded clause shall be deemed to refer to the Amended/Modified/Added Clause or part thereof.

In so far Amended/Modified/Added Clause may come in conflict or be inconsistent with any of the provisions of the Guidelines under reference, the Amended/Modified/Added clause and the additional specifications shall always prevail.

BILL OF QUANTITIES

The Appendix forms part of Bid. Bidders are required to fill up all the blanks in the form of Bid and Appendix thereto)

FINANCIAL BID FORM

To
RO
NHAI, Ranchi

DESCRIPTION OF WORKS: Densification along Chas-Ramgarh section of NH-23 from Km 0 to Km 10 / Ranchi-Hazaribagh section of NH-33 from Km 0 to Km 10 in the State of Jharkhand Reference letter No. 0000000000 ..

Dear Sir,

Having examined the site of works and EoI Documents, comprising Instructions to Bidders, Scope of works, Conditions of Contract, Technical Specifications, Bill of Quantities and schedules for the execution of the above named works, we, the undersigned offer to execute and complete such works and remedy any defects therein in conformity with the said bid documents for the sum of -----ZERO -----% below or above or such other sum as may be ascertained in accordance with the said Bid documents.

2. We undertake, , to commence the work within fifteen (15) days of receipt of the order to commence, and to complete and deliver the sections and whole of the works comprised in the Contract within the period stated in the bid hereto.
3. We confirm our agreement to treat the Bid documents and other records connected with the works as secret and confidential documents and shall not communicate information contained therein to any person other than the person authorised by the Employer or use such information in any manner prejudicial to the safety and integrity of the works.
4. Unless and until an agreement is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding Contract between us, but without prejudice to your right to withdraw such acceptance without assigning any reasons thereof.

5. We understand that you are not bound to accept the lowest or any bid you may receive.

Dated this _____ day of _____ 20---

Signature _____ in the capacity of _____ duly authorised **

To sign Bid for and on behalf of _____
(In block capital letters)

Address : _____

Signature of Witness _____

Name of witness _____

Address of witness _____

** Certified copy of Power of Attorney/authorization for signature shall be furnished by the bidder.

Bill of Quantities

9.00 Preamble

9.01 The Bill of quantities shall be read in conjunction with the Instructions to Bidders, Conditions of Contract, Scope of Work and Specifications.

9.02 The quantities given in the Bill of quantities are estimated quantities. The basis of payment will be actual quantities of work indented and carried out and valued at the rates and prices tendered in the priced Bills of quanti

ties, where applicable and otherwise at such rates and prices as the Engineer may fix with in the terms of Contract.

9.03 The rates and prices tendered in the priced Bill of Quantities shall include all equipment, plant, tools, spares, labour, supervision, overheads, consumables, materials, erection, maintenance, testing of input material delivered, profit, taxes and duties together with all general risks, liabilities and obligations set out and implied in the Contract and other incidentals to comply with the requirements of technical specifications and scope of work.

9.04 The rates and prices shall be quoted entirely in Indian Currency.

9.05 A rate or price shall be entered as a single rate as Tender Premium % above / below on the amount in General Abstract.

9.06 The whole cost of complying with the provisions

of the contract shall be included in the items provided in the priced Bill of Quantities and where no rates are provided the cost shall be deemed to be distributed among the rates and prices entered for the related items of work.

- The staff of the contractor shall wear safety jackets, shoes, helmets etc. while on duty and any violation will attract a fine of Rs. 5,000/- for each incident.
- Failure to erect safety signage or trying to carry out the works without proper precautions/safety measures as required will attract a fine of Rs. 5,000/- for each incident.

- 9.08 The Tendered rate for the work shall include all equipment, labour, material, consumable, tools, spares and other incidentals to comply with the requirement of the scope of the work and technical specifications.
- 9.09 General directions and descriptions of work and materials are not necessarily repeated or summarized in the Bill of Quantities. Reference to the relevant sections of the bidding document shall be made before entering rates or prices against each item in the Bill of Quantities.

DESCRIPTION OF WORKS :**ABSTRACT OF COST**

S.No.	Description	Amount
1	Grand Total of BOQ Number of Plants ÷ ÷ with unit rate Rs ÷ .÷ ..per plant	Rs. ----- (In words)
	I/We agree to execute the above works on the tender premium zero % above/below the Grand Total of the project Cost as given above.	(In words) -----percent Above / Below

BOQ for Plantation and Maintenance for 5 years 1000 plants						
S.N	Description of work	Rate	Quantity	Labour cost	Material cost	Total
1	Site clearance	168*/manday	40 manday (1 ha)	6720		6720
2	Demarcation of site	.20 per m	12000 m	2033	500	2533
3	Pit digging (.60x.60x.60 m)= .216 cu.m	90.48 per cu.m 19.54 per pit	1000 pit	20909		20909
4	Manure or Vermi compost	10 per plant	1000		10000	10000
5	Transportation of Fertile soil	5.89 per pit	1000	3360	2750	6110
6	Single Super Phosphate	6.6 per Kg	500 Kg (500 gm per plant)		3300	3300
7	Muriate of Potash	17.80 per Kg	250 kg (250 gm per plant)		4450	4450
8	Neem Cake	20 per Kg	200 Kg (200 gm per plant)		4000	4000
9	Thimet, Foret or Chloropyrifos	59 per Kg	25 Kg (25 gm per plant)		1475	1475
10	Cost of plant	30 per plant	1200 (including 20% gap filling)		36000	36000
11	Soil mixing, pit filling, planting, irrigation and gap filling	10 per plant	1000	10701		10701
12	Bamboo Tree guard (sieve size ñ 70.5cm x 70.5cm) height 2.0m and width .45m	260 per plant	1000	100000	160000	260000
13	Live fencing	10 per plant	1000	10701		10701

14	GI wire for tying plant	100 per Kg	20		2000	2000
15	Plant Protection chemicals	10 per Kg	1000		10000	10000
16	DAP as top dressing	25 per Kg	120 Kg		3000	3000
17	MoP as top dressing	17.8 per Kg	60 Kg		1068	1068
18	Urea as top dressing	6.6 per Kg	120 Kg		792	792
19	Complete supervision (Irrigation, weeding, hoeing, chemical spraying)	15 per plant per month	1000 (11 months after plantation)	84000	86500	170500
20	Irrigation facility (Rikshaw with 200 L tank, 50 ft pipe .75 inch)	For 1 km, upto 500 plants	2		16000	16000
21	Equipment for plantation					0
	Miscellaneous (Temporary shed at site (2), pots for 6-8 L water (1100), etc)			1680	60000	61680
22	Total Expenditure in Second year					
	20% gap filling	50 per plant	200		10000	10000
	Expenditure on Fertilizer	10 per plant	1000		10000	10000
	Expenditure on Plant protection	10 per plant	1000		10000	10000
	Irrigation facility (Arrangement of rikshaw)				2500	2500
	Complete supervision (Irrigation, weeding, hoeing, chemical spraying)	15 per plant per month	1000	84000	101500	185500

23	Total Expenditure in Third year					
	10% gap filling	50 per plant	100		5000	5000
	Expenditure on fertilizers	10 per plant	1000		10000	10000
	Expenditure on plant protection	10 per plant	1000		10000	10000
	Irrigation facility (Arrangement of Rikshaw)				2500	2500
	Complete supervision (Irrigation, weeding, hoeing, chemical spraying)	15 per plant per month	1000	84000	101500	185500
24	Total Expenditure in Fourth year					0
	Expenditure on fertilizers and plant protection	10 per plant	1000		10000	10000
	Complete supervision (Irrigation, weeding, hoeing, chemical spraying)	15 per plant per month	1000	84000	101500	185500
25	Total expenditure in Fifth year					
	Expenditure on fertilizers and plant protection	10 per plant	1000		10000	10000
	Complete supervision (Irrigation, weeding, hoeing, chemical spraying)	15 per plant per month	1000	84000	101500	185500
	Total			576103	887835	1463938
	Contingency					53192
	Grand Total					1517130

Payment Schedule

S.no	Stage	Payment (in percentage of project cost)
1	Signing of Agreement	0
2	First Year (Completion of Procurement of planting material and site protection, tree protection activities)	30
3	First Year (Completion of Planting, insecticide, watering and manure procurement and application)	15
4	Second Year (completion of soil working, weeding, watering and Casualty Replacement activities)	15
5	Third Year (completion of soil working, weeding, watering, Casualty Replacement activities)	10
6	Fourth Year (completion of soil working, weeding, watering activities for third year)	10
7	Fifth Year (completion of soil working, weeding, watering for fourth year)	10
8	Project Completion (Successful completion of project deliverable as per agreement)	10
Total		100 %