
GANGTOK SMART CITY DEVELOPMENT LTD

APPOINTMENT OF INDEPENDENT ENGINEER FOR IMPLEMENTATION OF MULTI-LEVEL CAR PARKING CUM COMMERCIAL DEVELOPMENT AT OLD WEST POINT SCHOOL ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT GANGTOK, EAST SIKKIM

**Request For Application
Document**

Agreement with Terms of Reference (TOR)

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Schedule-I:

1. Services

1.1. The Services

1. The Independent Engineer shall perform the services under this Agreement in accordance with the Terms of Reference as attached hereto and as per the terms and conditions of the Concession Agreement.
2. The Independent Engineer will also be required to take into consideration all the suggestions made by the Authority during each stage of the project. The Independent Engineer will be required to address all such suggestions/queries to the Authority for the Authority to perform its role as per the Concession Agreement.
3. The Independent Engineer hereby agrees to adhere to the terms of Concession Agreement, so far, they relate to functions of the Independent Engineer. A copy of Concession Agreement is attached to this document.
4. The Independent Engineer shall undertake inspections of the project site, at such time as it deems appropriate, to determine the progress in construction of the Multi-Level Car Parking and Commercial facilities and the extent of the compliance with technical standards stipulated for construction of facilities and notify the Authority and Concessionaire of any deviation there from within seven days of such inspection.
5. Certificates
The Independent Engineer shall decide upon, issue and sign all certificates required during the various stages in this Concession till the end of the construction period, including the Construction Completion Certificate or Provisional Certificate, in accordance with the provisions of Concession Agreement.
6. Cost of Construction
The Independent Engineer undertakes to determine the Cost incurred by the Concessionaire on the construction of the Multi-Level Car Parking and Commercial facilities on grant of the Construction Completion Certificate. The Independent Engineer may also be required by the parties to determine the Cost at any other stage of the project.
7. Compliance Date: The Compliance Date would be the date as defined in the concession Agreement.
8. Words and expression used in this Agreement, unless defined here, shall have the same meaning as assigned to them in the Concession Agreement.
9. In the event of any conflict between the clause/provisions of this Agreement and the Concession Agreement, the provision of the Concession Agreement would prevail.

1.2. Commencement Date

The Independent Engineer will commence the services as soon as possible but not later than 15 (fifteen) days after the date of signing of this Agreement.

1.3. Period of Services

- (1) The appointment of the Independent Engineer shall be for the Preparatory Period, Development Period, and first four years of Operation Period; thereafter the Independent Engineer shall provide the required service from twelve months before the expiry of the Concession period/extended

concession period.

- (2) In case the construction of the Multi-Level Car Parking Facilities and Commercial Facilities is not completed within the scheduled period from the Compliance Date for reasons not attributable to the Independent Engineer, the Independent Engineer would continue to provide services till the issue of the construction completion Certificate for the Whole Project and first four years of Operation Period; thereafter the Independent Engineer shall be appointed twelve months before the expiry of the Concession period/extended concession period.
- (3) If such additional period is less than three months, then the Independent Engineer would not be paid any extra amount for this period. If such additional period exceeds three months, the Independent Engineer would be eligible for additional monthly fees to mutually decided.

1.4. Additional Works

If in the opinion of the Authority, it is necessary to carry out work outside the Terms of Reference for the purpose of the project in addition to the services, the Independent Engineer shall carry out such additional work and with the prior authorization of the Authority. The fee for such additional work shall be mutually agreed between the Authority and the Independent Engineer in writing, prior to commencing such additional work.

(1) Personnel

2.1 Personnel

- (1) The Independent Engineer shall designate and notify to the Parties at least 2 (two) persons employed in its firm/company to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of such designated persons; provided that the Independent Engineer may provide a notice in writing indicating the substitution by any such designated persons by any of its employees.
- (2) The Independent Engineer shall employ appropriately qualified and experienced engineers and other professionals for discharging its responsibilities under this Agreement; provided such employees of the Independent Engineer shall have no right or claim against or create any obligation on the Parties in respect of their employment.
- (3) The Services shall be carried out by the personnel specified in RFA. The Independent Engineer may, with the prior approval of the Authority, make minor adjustments in this to ensure the efficient performance of the Services.
- (4) Except, as the Authority may otherwise agree, no changes shall be made in the Personnel. If for any reason beyond the reasonable control of the Independent Engineer it becomes necessary to replace any of the Personnel, the Independent Engineer shall forthwith provide a replacement, a person of equivalent or better qualifications and experience and which is found to be eligible and acceptable by the Authority. The

Independent Engineer shall ensure that such replacement of any of the Personnel is done with at least three months' notice period to ensure smooth transition.

- (5) In the event that any person specified in the Agreement is found by the Authority to be incompetent in discharging his assigned duties, the Authority may request the Independent Engineer to forthwith provide a replacement by a person with qualification and experience acceptable to the Authority. The decision of the Authority in this regard shall be final and binding on the Independent Engineer.

2.2 Team Leader

The Team Leader shall be responsible for reviewing the entire project preparation and implementation activities of the Concessionaire. He shall review the design prepared by the Concessionaire, ensure execution of the works on site as per the specifications and standards and continuously interact with the Authority and the Concessionaire. He shall undertake project site visit and guide, supervise, coordinate and monitor work of the other experts in his team as well as of the Concessionaire. The Team Leader and other key personnel shall remain present in monthly review meetings or other meetings as may be decided by the Authority.

2.3 Site Engineers

The Independent Engineer shall ensure that at all times during the implementation of the project, the Site Engineer and the Assistant Site Engineer acceptable to the Authority, shall remain present on the site on full time basis.

3. Undertakings of the Independent Engineer

3.1 General standards of performance by the Independent Engineer

- (1) The Independent Engineer shall carry out the Services with due diligence and efficiency, and shall exercise such skill in the performance of the Services as is consistent with recognized professional standards.
- (2) The Independent Engineer shall act at all times so as to protect the interest of the Authority and will take all reasonable steps to keep all expenses to a minimum. Consistent with sound consultancy practices.

3.2 Performance Security

- (1) The Independent Engineer would provide a Performance Security of Rs. Thirty lakhs in the form of an irrevocable and unconditional Bank Guarantee in favour of the Client. The Performance Security shall be valid till the end of this Agreement.
- (2) In the event of breach of any obligation of the Independent Engineer mentioned under this Agreement/Terms of Reference/Concession Agreement, this Agreement will be terminated and the Performance Security will be fortified.

3.3 Records

- (1) The Independent Engineer shall keep accurate and systematic stage wise details quantity records and accounts in respect of the Services in such form and details as is customary in the profession and as shall be sufficient to

establish accurately that the cost and expenditure incurred in the construction of the Multi-Level Car Parking Facilities and Commercial Facilities have been duly incurred as per the provisions of the Concession Agreement and shall be submitted time to time.

- (2) During the subsistence of this Agreement and two years from the date of completion of the study, (after reasonable advance notice is served on the Independent Engineer). The IE is to make copies from time to time and shall permit the Authority or any person authorized by the Authority from time to time, to audit such records and accounts during and after the services.
- (3) The Independent Engineer is required to keep all the records pertaining to surveys, tests, inspections & investigations, which needs to be carried out by the Concessionaire. The Independent Engineer is required to submit such details along with the report and certification of the surveys, tests, inspections and investigations.

3.4 Information

The Independent Engineer shall furnish such information relating to Services and the Project to the Authority from time to time.

3.5 Confidentiality

- (1) Except with the prior written consent by the Authority, the Independent Engineer and its personnel shall not at any time communicate to any third party or entity any confidential information disclosed to them for the purpose of the Services, nor shall the Independent Engineer or its personnel make public or inform any one, directly or indirectly, any such information received by them or any recommendation formulated in the course of or as a result of the Services. Confidential information for the purpose of this clause means all information that has been marked as confidential at the time of disclosure.
- (2) Authority agrees with the Independent Engineer that all information including information relating to Independent Engineer's trade secrets, know how, technical data, research products, strategies, internal procedures, employees and business opportunities and other proprietary information of Independent Engineer as described specifically as "Confidential Information" belongs to the Independent Engineer and shall not disclose or divulge such confidential information to any thirdparties or make use or allow others to make use thereof.

These clauses 3.5 (1) and (2) shall survive the termination of this Agreement, however, the reports submitted by the Independent Engineer to the Authority, become property of the Authority and the Authority is free to use any/all information in the reports.

3.6 Prohibition of Conflicting Activities

The Independent Engineer shall ensure that no member of the personnel assigned for the project shall engage, directly or indirectly, during the subsistence of this Agreement either in his name or in the name of his close relative or through the Independent Engineer, in any other business or professional activities which is likely to be conflict with the performance of his duties or assignment under this Agreement.

3.7 Independent Contractor

Nothing contained herein shall be construed as establishing or creating between the Authority and the Independent Engineer the relationship of master and servant or principal and agent, it being understood that the position of the Independent Engineer and of anyone else performing the Services is that of an Independent Contractor.

3.8 Insurance

- (1) The Independent Engineer shall at its cost take out and maintain comprehensive and adequate professional liability insurance as well as adequate insurance against third party liability and loss of or damage to equipment purchased in whole or in part with funds provided by the Authority. The Authority shall not be responsible or liable for damages and compensation.
- (2) The Authority undertakes no responsibility in respect of any life, health, accident, travel and other insurance which may be necessary or desirable for the personnel of its own or sub-contractors and specialists associated with the Independent Engineer for the purpose of the Services, nor for any members of the family of any such persons.

4. Prices and Payment Terms

4.1 Professional Fee

The total professional fees for providing the Services of the Independent Engineer for DESIGN, BUILT, FINANCE, OPERATE AND TRANSFER (DBFOT) FOR Implementation of Multi-Level Car Parking cum Commercial Development at Old Point School Area on Design, Build, Finance, Operate and Transfer (DBFOT) at Gangtok, East Sikkim shall be excluding the GST. GST shall be paid by the Authority and Concessionaire to the Independent Engineer and computed at the prevailing rates as per the applicable law.

The prices quoted are lump sum, firm and inclusive of all taxes and duties, excluding the GST or any upcoming other form or taxes for the Terms of Reference as mentioned including all expenses for personnel services, visits, transport charges, cost of collecting required data etc. and all the necessary services, materials, stationary, computer services, typing, printing, photocopying, generating weekly / monthly reports etc. to fulfill the requirement of the scope. Escalation on total professional fees may be given only once not exceeding 10% of the fees after the construction period as mutually agreed by the Authority, the Concessionaire and Independent Engineer.

4.2 Payment Terms

- (1) The Independent Engineer shall submit quoted amount of monthly bills as per the financial proposal for payment to the Concessionaire and Authority. The payment shall be corrected as per actual engagement of the personnel during the month of the claim as submitted in the technical bid. Thereafter, if found satisfactory, the Concessionaire and Authority would make payment to the Independent Engineer within ten days of next month.

5. Reports

All reports, recommendation and general correspondence from the Independent Engineer to the Authority prepared by the Independent Engineer under this Agreement shall be in English language.

Three copies of each report should be submitted along with soft copies of the final report and presentations to the Authority.

6. Liquidated Damages

In case the reports/certificates are not submitted within the requisite time period due to reasons attributable to the Independent Engineer or the requisite personnel are not available/unable to provide the requisite services, the Independent Engineer will be liable to pay at the discretion of the Authority, liquidated damages of 10% of the total monthly professional fees per week, subject to a maximum of 50% of the total monthly professional fees. Fraction of a week will be considered as a full week for the purpose of liquidated damages calculations.

7. Termination of Independent Engineer

- (1) The Authority and Concessionaire may in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer as provided hereinabove.
- (2) If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority, supported with necessary documents, and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall forthwith terminate the appointment of the Independent Engineer hereunder; provided that the substitute Independent Engineer has been appointed as provided hereinabove.
- (3) The replacement of the Independent Engineer shall be affected so as to maintain the continuity in supervision and monitoring of the Multi-level Car Parking Facility cum commercial development by the Independent Engineer.
- (4) The Authority and Concessionaire reserves the right to terminate the Agreement at any point if it is not satisfied with the Services of Independent Engineer or there is breach of any of the conditions of this Agreement by the Independent Engineer, provided a notice period of fifteen days, requiring it to be remedied by the Independent Engineer. In such event, the Independent Engineer shall not be entitled to receive any payments upon termination of the Agreement.
- (5) In the event of termination of this Agreement, the work done till then by the Independent Engineer shall be taken over by the Authority. Authority reserves the right to appoint the new Independent Engineer and hand over to him all the documents to complete the assignment.
- (6) The parties reserve the right to terminate this Agreement in the event any voluntary insolvency petition/intellectual property petition is filed by either party. Or if any proceedings are instituted against either party, property or assets under any bankruptcy, insolvency, receivership, debtors relief, winding up rehabilitation or similar statute or any effective resolution is passed for winding up of that party for any remedy under any such statute.

8. Performance Obligations

Independent Engineer shall be responsible for the soundness of service rendered. In

the event of any deficiency in these services, Independent Engineer shall promptly re- do/remedy the deficiency without any additional cost to the Authority, and carry out such modifications and /or rectifications as may be required.

9. Liability

In no event shall either party be liable for any direct, indirect, incidental, special, consequential damages, including but not limited to loss of profit, revenue, data or use, by the other party. In no event however shall the total liability of the Independent Engineer under this Agreement exceed the amount of fees received by the Independent Engineer from the Authority and Concessionaire. However, this clause will not prevent the Authority from levying liquidated damages as per clause 6.

10. Notices

Any notice or request required or permission to be given or made under this Agreement to either party shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, email, fax, post to the party to which it is permitted to be given or made at such party's head office or registered office or corporate office or branch office address.

11. Arbitration

In the event of any dispute or difference at any time arising between the parties relating to the construction, meaning or effect of his Agreement or any other clause or any content of the rights and liability of the parties or other matters specified herein or with reference to anything arising out of or incidental to this Agreement or otherwise in relation to the Terms of Reference whether during the continuance of this Agreement or thereafter, such disputes or differences shall be endeavored to be solved amicably by mutual negotiations. If however, such negotiations are infructuous, they shall be decided by arbitration wherein either party will appoint their nominee arbitrator and the appointed nominee would further appoint a third arbitrator who would be the presiding arbitrator. Such a reference shall be deemed to be a submission to arbitration under the provision of the Arbitration and Conciliation Act, 1986 and any modification or re-enactment thereof.

The venue of the arbitration shall be Gangtok, Sikkim only, subject to the above, the Civil Courts in Gangtok only shall have exclusive jurisdiction in this matter. The expense of the arbitrator shall be paid as may be determined by the arbitrator.

12. Force Majeure

- A. Force majeure such of the following factors which substantially affect the performance of the Agreement, such as:
 - (1) Natural phenomena, including but not limited to floods, draughts, earthquakes and epidemics.
 - (2) Acts of any govt., domestic or foreign, including but not limited to war, declared or undeclared quarantines, embargoes;
 - (3) Illegal strikes and legal lockouts in respect of Authority's / Independent Engineer's scope of work provided;Either party shall within fifteen days from the occurrence of such a cause notify the other in writing of such cases.
- B. The Independent Engineer or the Authority shall not be liable for delays in performing their obligations resulting from any force majeure cause as referred above.

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- C. However, if such an event lasts for a period of 90 (ninety) days or more, then either party shall have option to terminate this Agreement forthwith without any liability after intimating the other party of the same. The Independent Engineer shall however be entitled to receive payments for all the services rendered by it under this Agreement prior to termination of the Agreement.

13. Custody of Drawings/Reports/Data

The Independent Engineer shall handover all the working papers, financial models with all linkages, drawings, maps, data and all related workings and outputs generated/received from Concessionaire to the Authority as and when requested by the Authority and on successful completion of the project.

All such working papers, financial models, drawings, maps, data all related working and outputs of the assignment are the sole property of the Authority.

14. Indemnity

Independent Engineer shall indemnify the Authority and every member, officers and employees of the Authority against all actions, proceedings, claims, demands, costs and expenses whatsoever arising out of any negligent act of omission or failure by Independent Engineer in the performance of Independent Engineer's obligations under this Agreement.

15. Discipline, Security and Safety

Personnel deployed by the Independent Engineer or their sub-contractor at the project site either directly or indirectly shall adhere to the overall security and safety procedure that may be prescribed from time to time by the Authority at site. The Authority shall be at liberty to object the presence of any representative or employee of the Independent Engineer or its sub-contractors at site. If in the opinion of the Authority's management, such representative/ employee has misconducted himself or is incompetent or negligent and, in such case, Independent Engineer shall, without any exception, withdraw him from the site subject to and provide competent replacement.

16. General Clauses

16.1 Non Solicit

The parties agree not to solicit the employment of any of the employees of the order for the term of this Agreement and for a period of twelve months thereafter.

16.2 Entire Agreements and Amendments

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior written, oral or implied understandings between them on that subject matter. This Agreement may be amended, modified or supplemented only by the Authorized representative of the parties in writing executed on both the parties hereto.

16.3 Non Exclusive Agreement

The Independent Engineer shall be free to do similar business either for itself or for any other party or offer similar services to any third party but without any way affecting the services agreed to be offered by it under this Agreement and subject to clause 3.6.

16.4 Relation

This Agreement is not intended to create a relationship such as partnership, joint venture, agency, or employment relationship. Neither party may act in a manner, which express or implies a relationship other than that of Independent party nor bind the other party.

16.5 Waiver

No forbearance, indulgence or relaxations by any party at any time to require performance of any provision of this agreement shall in any way affect, diminish or prejudice the right of such party to require performance of that provision and any waiver by any party or any breach of any of this agreement shall not be construed as a waiver or an amendment of the provision itself, or a waiver of any right under or arising out of this agreement.

16.6 Severability

In the event that any provision or any portion of any provision of this agreement shall be held invalid, illegal or unenforceable under applicable law, the remainder of this agreement shall remain valid and enforceable in accordance with its terms.

16.7 Survival

The clauses of this agreement, which by their very nature ought to survive termination of this agreement, shall so survive.

SCHEDULE 2 : TERMS OF REFERENCE

1. Scope

- 1.1 These Terms of Reference for the Independent Engineer (the "TOR") are, being specified pursuant to the Concession Agreement, which will be executed between Concessionaire and the Authority(i.e GSDCL) for Implementation of Multi-Level Car Parking cum Commercial Development at Old Point School Area, Gangtok on Design, Build, Finance, Operate and Transfer (DBFOT), and a copy of which is annexed hereto and marked as Annexure to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project. Whereas the TOR details out the scope of the Independent Engineer, it is hereby clarified that the Concession Agreement shall govern the scope of the Independent Engineer. In the event of any deviation in the scope of the Independent Engineer in the TOR and the Concession Agreement, the scope of the Independent Engineer as per the Concession Agreement shall be considered.
- 1.3 The GSDCL shall appoint a consulting engineering firm/company of engineers having the requisite experience in similar projects through a selection process to be the independent consultant under this Agreement (the "Independent Engineer"). Such appointment shall be made no later than 90 (ninety) days from the date hereof and shall initially be for the preparatory Period, Development Period and first four years of Operation Period; thereafter the Independent Engineer shall be appointed twelve months before the expiry of the Concession period/extended concession period.
- 1.4 The Independent Engineer shall monitor the implementation of Multi-level Car Parking cum Commercial Development at Old West Point School Area during the Construction Period and discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule J and elsewhere in this Agreement and submit periodic reports (at least once every month) in respect thereof to the Parties in the form and manner as mutually agreed and provide the Parties such additional information as they may reasonably require from time to time to fulfill their obligations hereunder.
- 1.5 The Independent Engineer shall have no authority to relieve the Concessionaire of any of its obligations or responsibilities under this Agreement. Any proposal, inspection, examination, testing, consent, approval or similar act of or by the Independent Engineer (including absence of disapproval) shall not relieve the Concessionaire from its obligations and responsibilities hereunder.
- 1.6 The remuneration, cost and expenses of the Independent Engineer shall be borne by the Concessionaire and Authority equally as per the concession agreement.

2. Detailed Scope of Work

The Independent Engineer is expected to play a positive and independent role in discharging his functions, thereby facilitating the smooth implementation and operation of the Project. No limited to following, the principal responsibilities of the Independent Engineer shall be;

- a. Independently review, monitor works carried out under the Project, associated with the design, construction, operation and maintenance, to ensure quality and performance by the Concessionaire;
- b. Report to the Authority on the various quality related aspects of the Project based on inspections, site visits and tests; and
- c. Review matter related to safety and environment management measures adopted by the Concessionaire.

The Independent Engineer would provide his services in accordance with this Concession

agreement and Good Industry Practice. The Independent Engineer shall undertake, interalia, the following activities and where appropriate make suitable suggestions:

Role and function of Independent Engineer

The role and function of the Independent Engineer shall include the following:

- (1) Review of the Drawings, Documentations, Concessionaire's DPR, etc;
- (2) Review, inspection and monitoring of Construction Works;
- (3) Conducting Tests on completion of Construction Works and issuing Provisional Readiness Certificate and/or Readiness Certificate, as the case may be;
- (4) Review, inspection and monitoring of O&M of the Project;
- (5) Review, inspection and monitoring of Divestment Requirements;
- (6) Determining, as required under the Concession Agreement, the costs of any works or services and/or their reasonableness;
- (7) Determining, as required under the Concession Agreement, the period or any extension thereof, for performing any duty or obligation;
- (8) Assisting the Parties, and Steering Committee in resolution of Disputes; and undertaking all other duties and functions as specified in or required by and, in each case, in accordance with the Concession Agreement.

The Independent Engineer shall discharge his duties in a fair, impartial and efficient manner, consistent with the highest standards of professional and Good Industry Practice.

2.1 Transition and Restoration of existing GSCDL Facility

2.1.1 The Transition Plan submitted by the Concessionaire will be scrutinized by Independent Engineer & give opinion to GSCDL.

2.2 Duties of Independent Engineer during Development stage

- (1) The Independent Engineer shall review Concessionaire's DPR, Project Completion Schedule, Commercial Development, any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Documentation.
- (2) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and procurement, engineering and construction time schedule sent to it by the Concessionaire, determine their compliance with the approved Concessionaire's DPR.
- (3) The Independent Engineer shall review the progress reports furnished by the Concessionaire and send its comments thereon to the Concessionaire and the Authority within 7 (seven) days of receipt of such reports
- (4) The Independent Engineer shall inspect the Construction Works and Project Facilities once every month, preferably after receipt of the monthly progress reports from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out the Inspection Report setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with approved Concessionaire's DPR, and approved Drawings, described in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- (5) The Independent Engineer may inspect the Project Facilities more than once in a month if any lapses, defects or deficiencies require such inspections.
- (6) For determining that the Construction Works conform to the Technical

Specifications and Standards, Concessionaire's DPR, and approved Drawings, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, Tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the Tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

- (7) The sample size of the Tests, to be specified by the Independent Engineer shall comprise 10% (ten percent) of the data points for each category or type of Tests in the quality control manuals; provided that the Independent Engineer may, for 10% (ten percent), making it to the 20% (twenty percent) of the data points, for certain categories or types of Tests.
- (8) The timing of Tests and the criteria for acceptance or rejection of their results shall be determined by the Independent Engineer. The Tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the Tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- (9) In the event that the results of any Tests establish any deficiencies or defects in the Construction Works, the Independent Engineer shall require the Concessionaire to remedy the defects to the satisfaction of the Independent Engineer. In the event Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies as mentioned above, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, Tests to determine that such remedial works have brought the Construction Works into conformity with approved DPR and approved Drawings, and the provision of this paragraph shall apply to such Tests.
- (10) In the event that the Concessionaire does not achieve the Project milestones as per approved DPR, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer determines that completion of construction and development of all the Project Facilities is not feasible within the Scheduled Project Completion Date specified within 15 (fifteen) days of a communication from the Independent Engineer, the steps proposed to be taken by the Concessionaire to expedite progress, and the period within which it shall achieve the COD for Project. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and Concessionaire forthwith.
- (11) Issue of certificate as specified under the Concession Agreement certifying the fulfilment of the Project milestones by the Concessionaire under the Concession Agreement.
- (12) If at any time during the Development Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangement for the safety of workers and Concessionaire Consumers or that any work is being carried out in a manner that threatens the safety of the works and the Concessionaire Consumers, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- (13) In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Consumers, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such Suspension may be revoked.
- (14) The Independent Engineer shall carry out, or cause to be carried out, all the Tests to determine compliance of the Project Facilities with the approved

Concessionaire's DPR and approved Drawing for the purpose of issuance of Provisional Readiness Certificate or Readiness Certificate, as the case may be. Upon the Independent Engineer determining the Tests to be successful and the Construction Works to be substantially complete, it shall issue Provisional Readiness Certificate. In addition, the Independent Engineer shall prepare a Punch List comprising of the outstanding items in respect for all the Project Facilities to be completed by the Concessionaire within time period agreed between the Independent Engineer and the Concessionaire. Upon completion of Construction Works in all the respect for all the Project Facilities and/or completion of all items in the Punch List, if any, the Independent Engineer shall issue a Readiness Certificate to the Concessionaire.

2.3 Duties of Independent Engineer during Operation Period

- (1) In respect of the Drawings and Documents received by the Independent Engineer for its review and comments during the Operations Period, the provisions of above section shall apply, mutatis mutandis.
- (2) The Independent Engineer shall approve the Maintenance Manual prepared by the Concessionaire. The Maintenance Manual shall provide for the requirements, timing, periodicity, conditions, manner, method, procedure and other relevant aspects for and in connection with the regular and periodic repair and maintenance of the Project Facilities and shall include the requirements mentioned in the Concession Agreement and approved Concessionaire's DPR
- (3) The Independent Engineer shall review the O&M report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire with 7 (seven) days of receipt of such O&M report.
- (4) The Independent Engineer shall inspect the Project Facilities once in every 3 (three) months, preferably after receipt of the O&M report from the Concessionaire and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M of the Project Facilities, including its conformity with the O&M requirements specified in the Concession Agreement. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Facilities. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and Concessionaire within 7 (seven) days of the inspection.
- (5) The Independent Engineer may inspect the Project Facilities more than once in 3 (three) months, if any emergency or lapses, defects or deficiencies require such inspections.
- (6) The Independent Engineer shall in its O&M Inspection Report specify the Tests, if any, that the Concessionaire shall carry out, or cause to be carried out for the purpose of determining that the Project Facilities are in conformity with the Maintenance Manual. It shall monitor and review the results of such Tests and the remedial measures, if any, taken by the Concessionaire in this behalf. The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Concession Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- (7) The Independent Engineer shall examine the request of the Concessionaire for any Project Facilities for undertaking maintenance/repair thereof, keeping in view the need of Consumers. It shall grant permission with such modifications, as it may deem necessary, within 5 (five) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the reopening of such Project Facilities.
- (8) The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in the Concession Agreement.

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- (9) In the event that the Concessionaire notifies the Independent Engineer of any modification that it proposes to make to the Project Facilities, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

2.4 Duties of Independent Engineer in case of Expiry Date

- (1) At any time, not earlier than 90 (ninety) days prior to Expiry Date but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project Facilities for determining compliance by the Concessionaire with the Divestment Requirements set forth in the Concession Agreement and, if required, cause Tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project Facilities is such that its repair and rectification would require a larger amount than the sum for which the Performance Security is available with the Authority, it shall seek Concessionaire to furnish the bank guarantee for such additional amount.
- (2) The Independent Engineer shall inspect the Project Facilities once in every 15 (fifteen) days during a period of 90 (ninety) days after Expiry Date for determining the liability of the Concessionaire under the Concession Agreement, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a reasonable detail and send it forthwith to the Authority and the Concessionaire.

2.5 Determination of costs and time

1. The Independent Engineer shall determine the costs, and/or their reasonableness that are required to be determined by it under the Agreement.
2. The Independent Engineer shall determine the period, or any extension thereof that is required to be determined by it under the Concession Agreement.

2.6 Assistance in Dispute resolution

1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
2. In the event of any disagreement between the Parties, Steering Committee regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Concession Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

2.7 Other duties and functions

1. The Independent Engineer shall perform all other duties and functions specified in the Concession Agreement and such other duties as the Authority may require the Independent Engineer to perform in relation to this Concession Agreement.

2.8 Miscellaneous

1. The Independent Engineer shall notify its schedule of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection
2. A copy of all communications, comments, instructions, to Drawings or documents sent by the Independent Engineer to the Concessionaire pursuant to this scope, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.

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3. The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
 4. The Independent Engineer shall retain at least 1 (one) copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in digital form or in such other medium as may be acceptable to the Authority.

2.9 Performance clause

1. Independent Engineers shall be expected to fully comply with all the provisions of the "Terms of Reference, and shall be fully responsible for supervising the Designs, Construction and maintenance and operation of the facility up to the issuance of final completion certificate takes place in accordance with the provisions of the Concession Agreement and other schedules. Any failure of the Independent Engineer in notifying to the Authority and the Concessionaire on non-compliance of the provisions of the Concession Agreement and other schedules by the Concessionaire, non-adherence to the provision of ToR and non-adherence to the time schedule prescribed under ToR shall amount to non-performance.
2. The Independent Engineer shall appoint its authorized representative, who shall issue on behalf of the Independent Engineer, the Provisional Completion Certification and Completion Certificate along with the Team Leader and shall carry out any such task as may be decided by the Authority. The IE shall take prior approval of the Authority before issuing Provisional Completion Certification and final Completion Certificate. The proposal submitted shall also include the name of the authorized representative along with the authorization letter and power of attorney.

2.10 Period of Services

1. The appointment of the Independent Engineer shall be initially be for the Preparatory Period, Development Period, and first four years of Operation Period; thereafter the Independent Engineer shall be appointed twelve months before the expiry of the Concession period/extended concession period.
2. In case the construction of the Multi-Level Car Parking cum commercial development is not completed within the scheduled period from the Compliance Date for reasons not attributable to the Independent Engineer, the Independent Engineer would continue to provide services till the issue of the construction completion Certificate for the whole project.
3. If such additional period is less than 3 (three) months, then the Independent Engineer would not be paid any extra amount for this period. If such additional period exceeds 3 (three) months, the Independent Engineer would be eligible for additional monthly fees according to his quoted rate on pro rata basis.

2.11 Duties

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

Annexure 2: Proposed Team and Manning Schedule for the Project

(Also provide details of team composition and task assigned in appropriate format)