



**TSRTC**

**Development of Way side Amenities in vacant  
land of TSRTC at Bus Depot Pragnapur, Siddipet  
District under B.O.T. Scheme**

**REQUEST FOR PROPOSAL**

**VOLUME IV – DRAFT AUTHORISATION  
AGREEMENT**

## **CONTENTS**

- ARTICLE 1 : DEFINITIONS & INTERPRETATIONS**
- ARTICLE 2 : AUTHORISATION**
- ARTICLE 3 : CONDITIONS PRECEDENT**
- ARTICLE 4 : PROJECT SITE**
- ARTICLE 5 : OBLIGATIONS OF PARTIES**
- ARTICLE 6 : PROJECT IMPLEMENTATION**
- ARTICLE 7 : PROJECT MONITORING**
- ARTICLE 8 : FINANCIAL COVENANTS**
- ARTICLE 9 : PERFORMANCE SECURITY**
- ARTICLE 10 : ASSET OWNERSHIP AND CERTAIN RIGHTS**
- ARTICLE 11 : INSURANCE**
- ARTICLE 12 : REPRESENTATIONS AND WARRANTIES**
- ARTICLE 13 : LIABILITY AND INDEMNIFICATION**
- ARTICLE 14 : FORCE MAJEURE**
- ARTICLE 15 : EVENTS OF DEFAULT**
- ARTICLE 16 : TERMINATIONS AND EXPIRY OF  
AUTHORISATION**
- ARTICLE 17 : DISPUTE RESOLUTIONS**
- ARTICLE 18 : MISCELLANEOUS PROVISIONS**

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

#### LIST OF APPENDICIES

Appendix - 1	Letter of Intent.
Appendix - 2	Project Facilities.
Appendix - 3	Development Controls and Specifications.
Appendix - 4	Off-site Infrastructure.
Appendix - 5	Site Plan.
Appendix - 6	Scope of Work.
Appendix - 7	Land Lease Deed (a) Schedule - 1 Site Plan (b) Schedule - 2 Payment Schedule.
Appendix - 8	List of Applicable Permits.
Appendix - 9	TOR for Independent Engineer/ Consultant.
Appendix -10	Vesting Certificate.
Appendix -11	Guide Lines for the computation of Depreciated Historical Cost.
Appendix -12	Land Document Copy.
Appendix -13	Performance Guarantee.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

**DRAFT AUTHORIZATION AGREEMENT**

**Development of Commercial Facilities at < insert name of bidding project>, Hyderabad, under B.O.T. Scheme"**

**THIS AUTHORISATION AGREEMENT** (herein after also referred to as agreement) is made on this the \_\_\_\_\_ day of \_\_\_\_\_2017 at Hyderabad, Telangana.

**By and Among**

**Telangana State Road Transport Corporation (TSRTC)**, represented herein by **Chief Civil Engineer**, having its office at , 3<sup>rd</sup> Floor, 'B' Block, Bus Bhavan, Musheerabad Hyderabad – 500 624 hereinafter referred to as "**TSRTC or Grantor**" which expression shall unless repugnant to the context include its administrators, successors and assigns, on the **ONE PART**

**and**

M/s..... a company incorporated under the Companies Act, 2013, having its registered office at ..... India, represented by..... hereinafter referred to as the "**Authorisee / Special Purpose Company**" (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **SECOND PART**.

**and**

M/s ....., a company incorporated under the Companies Act, 1956, having its registered office at..... India, (details of the private promoters / members of the Preferred Bidder, to be suitably modified as per the requirement) represented by hereinafter referred to as the "Preferred bidder / Confirming Party" (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **THIRD PART**.

Each singly a "**Party**" and all collectively the "**Parties**".

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

**WHEREAS,**

- (A) Telangana State Road Transport Corporation which has a fleet of more than 10,350 buses is committed to provide consistently high quality services for the utmost satisfaction of its passengers.
- (B) TSRTC intends to utilise some of the prime land parcels belonging to it for commercial development to generate resources on a continuous and sustainable basis and for provision of enhanced amenities and facilities to its commuters/ passengers.
- (C) In furtherance of the above objective, TSRTC intends to undertake development of its properties (Lands) with private sector participation on a **33 (thirty three) years** Build (Design and Finance), Operate and Transfer (the "**BOT**") framework ie., < *insert name of bidding project*>, **Hyderabad**, ("**Project**").
- (D) TSRTC invited competitive Proposals from interested parties for the Project and pursuant to evaluation of the Proposals that were received, TSRTC accepted the Proposal submitted by \_\_\_\_\_<sup>1</sup> for the Project Site and a **Letter of Intent (LoI)** bearing No. \_\_\_\_\_ dated \_\_\_\_\_ was issued to the Successful Bidder.
- (E) The Grantor has decided to implement the Project through private sector participation on the commercial format - build, operate and transfer basis. The Project comprises, subject to the terms and conditions of this Agreement, the development, design, financing, construction, operation and maintenance of the Project Facilities by the private sector participant during the **Authorisation Period (33 years)**, including the right to develop, design, finance, construct and maintain the Commercial Facility and to undertake the marketing, booking and allotment of built up area therein to demand, charge, collect, retain and appropriate the User Charges subject to the conditions of this Agreement.
- (F) The Preferred Bidder has incorporated a Special Purpose Company under the name and style of M/s \_\_\_\_\_, to implement the Project, in accordance with the provisions of the RFP and this Agreement and Grantor has, pursuant to the provisions of the RFP, agreed to grant the Authorization for the implementation of the said Project to the Special Purpose Company.

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<sup>1</sup> Name of the Successful Bidder (single entity/consortium, as the case may be)

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (G) The Authorisee acknowledges and confirms that it has undertaken a due diligence exercise of all aspects of the Project including its technical and financial viability, legal due diligence, and on the basis of its independent satisfaction hereby accepts the Authorization and agrees to implement the Project at its own cost, risk and expense in accordance with the terms and conditions of this Agreement.
- (H) Following the issuance of LoI, the Preferred Bidder in accordance with the terms and conditions as specified in the RFP , as being the precondition to the execution of this Agreement, has made the following payments:
- (i) A non refundable and irrevocable payment of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) by way of demand draft No. \_\_\_\_\_ dated \_\_\_\_\_, issued by \_\_\_\_\_ Bank (Branch), drawn in favour of **"FA, TSRTC, Hyderabad"** payable at Hyderabad towards **first instalment of Upfront Amount.**
  - (ii) A non refundable payment of an amount of **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only)** towards **(PDF) & Landuse Conversion Charges "** by way of Demand Draft No. \_\_\_\_\_ dated \_\_\_\_\_ issued by \_\_\_\_\_ Bank (Branch) drawn in favour of **"FA, TSRTC, Hyderabad"** payable at Hyderabad.
  - (iii) Payment of **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only)** towards **"First year 6 months nominal Lease Rentals during holiday period"** by way of Demand Draft No. \_\_\_\_\_ dated \_\_\_\_\_ issued by \_\_\_\_\_ Bank (Branch) drawn in favour of **"FA, TSRTC, Hyderabad"** payable at Hyderabad and give commitment to pay Rs1000.0 to words half yearly lease rentals during the holiday period of balance 1.5(one and half)year.
  - (iv) Payment of **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only)** towards Security Deposit i.e, **"Advance 6 months Base year Annual Lease rentals"** by way of Demand Draft No. \_\_\_\_\_ dated \_\_\_\_\_ issued by \_\_\_\_\_ Bank (Branch) drawn in favour of **"FA, TSRTC, Hyderabad"** payable at Hyderabad or in the form of BG.
  - (v) And furnished Irrevocable and unconditional **Bank Guarantee** from Nationalised Bank B. G. No. \_\_\_\_\_

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**Bidder**

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

dated in favour of "**Managing Director, TSRTC, Hyderabad**" payable at Hyderabad for **Rs. \_\_\_\_/- (Rupees Twenty \_\_\_\_\_ only)** towards the **Performance Security**. (This Bank Guarantee with a validity of four years from the date of signing of Authorisation Agreement).

- I. In light of the compliance by the Authorisee of the pre-conditions to the execution of the Authorization Agreement, Grantor has agreed to enter into this Authorization Agreement vesting the rights for the implementation of the Project with the Authorisee on the terms, conditions and covenants hereinafter set forth in this Agreement.

The Authorisee has undertaken to ensure that the Authorisee shall duly discharge its obligations under this Agreement and implement the Project and is joined in and executing this Agreement as a Confirming Party to the arrangement envisaged and detailed herein under and agrees to undertake and comply with the terms and conditions hereof as binding terms.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

## 1 ARTICLE 1: DEFINITIONS & INTERPRETATIONS

### Section 1.1 Definitions

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

- (a) **“Accounting Year”** means the financial year commencing on **1<sup>st</sup> April** in each year and ending on **31<sup>st</sup> March** in the next year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31<sup>st</sup> March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1<sup>st</sup> April to the Transfer Date; or the date on which the agreement ceases to be in force, whichever is earlier.
- (b) **“Affiliate”** or **Associate** means a Company that directly or indirectly controls, through one or more intermediaries, or is directly controlled by, or is under the common control of the Bidding Company, ‘Control’ as used here, means ownership by one company of more than **50%** of the voting rights of the other company.
- (c) **“Agreement”** means this agreement as of date hereof, including recitals, Appendices and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof;
- (d) **“Annual Lease Rentals/ Annual Premium”** means the annual premium/Rentals payable by the Authorisee to the Grantor pursuant to the Authorisation Agreement/Land Lease Deed. This Annual Lease Rentals shall be payable on yearly basis every year as per the terms and conditions stipulated in the Agreement.
- (e) **“Appendix”** means any of the schedules, supplements or documents, appended to this Agreement;



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (f) **“Applicable Laws”** means any statute, law, regulation, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of Government of India, , Government of Telangana or by any Government Authority or instrumentality thereof, as may be in effect on the date of this Agreement and during the subsistence thereof;
- (g) **“Applicable Permits”** means any or all permissions, clearances, Authorizations, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes contemplated by this Agreement (attached hereto as **Appendix- 8**);
- (h) **“TSRTC”** or **“Grantor”** means Telangana State Road Transport Corporation and its successors and assigns;
- (i) **“Authorization”** shall have the meaning set forth in **Section 2.1**;
- (j) **“Authorization Period”** shall have the meaning specified in **Section 2.2**;
- (k) **“Authorisee”** shall mean the selected Preferred Bidder or Special Purpose Company (SPC) incorporated exclusively by the Bidder / Bidding Consortium under Companies Act, 1956 who has been selected and nominated by the TSRTC to implement the Project on the terms and conditions stipulated in the Authorisation Agreement.
- (l) **“Bank”** means any Nationalized/ Scheduled (Excluding Cooperative) Banks having operations in Telangana.
- (m) **“Bid Security / EMD ”** means the Demand Draft / Pay order for **Rs. \_\_\_\_\_ Lakhs (Rupees \_\_\_\_\_ Only)** drawn on FA, TGSRTC, Hyderabad from any Nationalized Bank/ Scheduled (excluding cooperative) Bank and payable at Hyderabad, provided by the Preferred Bidder to the Grantor along with the Bid.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (n) **“Built up area”** or **“Floor Area,”** means the covered area of a building at all floors levels added together including the common areas, and excluding the parking.
- (o) **“Business Day”** means a day on which banks are generally open in Telangana for transaction of normal banking business;
- (p) **“Change in Law”** means occurrence of any of the following events after the execution of this Agreement:
- (i) enactment of any new Applicable Law;
  - (ii) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
  - (iii) the change in interpretation or application of any Applicable Law;
  - (iv) the imposition of a requirement for an Applicable Permit (s) (other than for cause) not required on the date of this Agreement;
  - (vi) after the date of grant of any Applicable Permit (s), a change in the terms and conditions attaching to such Applicable Permit (s) (other than for cause) or the attachment of any new terms and conditions to an Applicable Permit (s)(other than for cause); or
  - (vii) any Applicable Permit (s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application therefore having been duly made in good time.
  - (viii) For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk;

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (q) **“Commercial Operations”** means the use of the Project Facilities for commercial purposes by the levy, charging, demanding, collecting, realizing, retaining and appropriating of Tariff;
- (r) **“Commercial Operation Date”** or **“COD”** means the date on which the Grantor issues the Completion Certificate, based on the project implementation either full or part of the facility, upon which the Authorisee commences Commercial Operations;
- (s) **“Completion Certificate”** means the certificate issued by the Grantor / Independent Engineer / Consultant in the manner set out in **Section 5.1.14**;
- (t) **“Compliance Date”** means the date upon which this Agreement becomes unconditional and effective;
- (u) **“Condition Precedent”** means the conditions set out in **Article 3** hereof;
- (v) **“Consortium”** or **“Developer”** means the consortium formed by the Preferred Bidder, consisting of (i) XXXXX (ii) YYYY (iii) ZZZZZZ , formed pursuant to the Consortium Agreement dated ----- 2016/17 entered into by them, for the purpose of Bidding for the Project and in the event of being successful, to implement the Project through a Special Purpose Company to be formed and incorporated by them in India;
- (w) **“Construction Period”** means the period from the Compliance Date to the date of issue of the Completion Certificate by the Grantor for the entire facility;
- (x) **“Contractor”** means a reputed Person with whom the Authorisee has entered into/ may enter into a contract relating to the Works and subcontractors, including contractors for equipment, procurement and engineering (“EPC Contractors”) and contractors for operations and maintenance (“O&M Contractors”), service providers, suppliers and/or any other contractors and sub-contractors, manufacturers or suppliers of Works or part thereof, as the context may admit or require;

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (y) **“Contractual Arrangements”** and “Contractual Counter-parties” shall have the meaning specified in **Section 6.5.2 (b)**;
- (z) **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding and payable by the Authorisee to the Lenders under the Financing Documents:
- (i) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the principal) which is outstanding as on the Termination Date, excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the Grantor; and
- (ii) all accrued interest, financing fees and other charges outstanding and payable on or in respect of the debt referred to in sub-Article (i) above up to the date preceding the Termination Date but excluding any (a) interest or charges that had fallen due one year prior to the Termination Date, and (b) penal interest or charges payable under the Financing Documents to the Lenders.
- (aa) **“Debt Service”** means all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Documents;
- (bb) **“Demand Draft or DD”** means the instrument issued by any **Nationalized/Scheduled** (Excluding Cooperative) Banks having operations in Telangana.
- (cc) **“Detailed Project Report”** or **“DPR”** means the detailed design and engineering report for the Project, as indicated in the **Article-6**.
- (dd) **“Designs and Drawings”** means the conceptual and detailed designs, drawings and engineering, project master plans, backup technical information required for the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Authorisee from time to time for approval in accordance with the provisions of this Agreement;

- (ee) **“Development Controls”** means the guidelines and controls for development and implementation of the Project Facilities set forth in **Appendix-3** ;
- (ff) **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified/directive issued by the TSRTC to the Authorisee, and any modification, extension or replacement thereof from time to time in force.
- (gg) **“Dispute Resolution Procedure”** means the procedure for resolution of disputes set forth in **Article 17**;
- (hh) **“Easement”** means all easements, reservations, rights-of-way, utilities and other similar rights as to the use of real property, which are necessary or appropriate for the conduct of activities of the Authorisee related to the Project;
- (ii) **“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other obligation or restriction and shall include physical or legal obstructions or encroachments on the Site or Third Party claims or rights of any kind attaching to the Site;
- (jj) **“Environment Management Plan”** or **“EMP”** means the environment management plan to be prepared by the Preferred Bidder as part of DPR and Environmental Impact Assessment (EIA) report, as required;
- (kk) **“Event of Default”** means an Authorisee Event of Default or a Grantor Event of Default or both, as the context may require or admit;
- (ll) **“Expert”** means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Parties by mutual consent, also referred to as third party expert;

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (mm) **“Execution Date” or “Date of Execution”** means the date on which this Authorisation Agreement signed by the Parties.
- (nn) **"Facility Management Contract"** means one or more contracts that may be entered into by the Authorisee with a Contractor for undertaking the management and maintenance of one or more or all of the Project Facilities during the Authorization Period.
- (oo) **“Financial Assistance”** means the aggregate amounts provided by way of loan, lease finance, advances, guarantees or otherwise by the Lenders to the Authorisee for the implementation of the Project and shall include all related financial charges, fees and expenses of all kinds relating to the Project;
- (pp) **“Financial Closure”** means the date on which the Financing Documents providing for Financial Assistance by the Lenders have become effective and the Authorisee has access to such Financial Assistance;
- (qq) **“Financing Documents”** means, collectively, the documents executed in favour of or entered into with the Lenders, by the Authorisee in respect of the Financial Assistance, including loan agreements, lease agreements, hire purchase agreements, notes, indentures, security agreements or arrangements, guarantees and acceptable letters of credit and other agreements evidencing any obligation of the Authorisee and other necessary undertakings required pursuant to the respective terms thereof, relating to the Financial Assistance or any part thereof (including refinancing) provided by the Lenders to the Authorisee for the Project;
- (rr) **“Force Majeure Event”** shall have the meaning ascribed to it in **Section 14.1** of this Agreement;
- (ss) **"Gross Annual Turnover" or "Revenue"** means the pre-taxation gross revenues of the Authorisee for any period including all amounts received (or which would have been received) from the User Charges and all other net amounts which fall (or would fall) to be credited to the profit and loss account of the Authorisee for the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Accounting Year in which the relevant period falls excluding (i) insurance proceeds except insurance indemnification for loss of revenue; and (ii) payments and/or monies collected by the Authorisee for and on behalf of any Government Authorities under Applicable Laws. It is clarified that the amounts payable to the Grantor under this Agreement shall not be deducted from Revenue/Gross Annual Turn Over ;

- (tt) **“GoTS”** means Government of Telangana State.
- (uu) **“GoI”** means the Government of India;
- (vv) **“Government Authority”** means GoI, GoTS or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, or administrative body, central, state, or local, having jurisdiction over the Authorisee, the Project, the Project Assets and the Works or any part thereof or the performance of all or any of the services, obligations or covenants of Authorisee under or pursuant to this Agreement or any portion thereof;
- (ww) **“Good Industry Practice”** means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of engineering, procurement, construction, equipment, safety, operation and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced construction contractor and/or operator, in a project of the type and size similar to the Project;

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (xx) **“Independent Engineer/Consultant”** means the Independent Engineer/Consultant appointed as referred to in **Section 7.1**;
- (yy) **“Land Lease Deed”** means the lease deed to be executed between the Grantor and the Authorisee, substantially in the form set out in **Appendix 7**, pursuant to which the Grantor shall lease to the Authorisee the land comprising the Project Site vesting the Authorisee with Vacant Possession and all rights relating thereto for a period co-terminus with the Authorisation Period;
- (zz) **“Lenders”** means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes non-banking financial companies, funds, trusts and/or trustees for the holders of debentures/ or other debt instruments/securities issued by the Authorisee who provide Financial Assistance to the Authorisee under the Financing Documents;
- (aaa) **“Material Adverse Effect”** means circumstances which may or do (i) render any right vested in a Party by the terms of this Agreement ineffective or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Agreement or the legality, validity, binding nature or enforceability of this Agreement;
- (bbb) **“Material Breach”** means a breach of any the obligations, terms, conditions and covenants of this Agreement or covenants by a Party, which materially and substantially affects the performance of the transactions contemplated by this Agreement/and has a Material Adverse Effect;
- (ccc) **“Minimum Development Obligations”/ “MDO”** shall mean the list of Project Components / Project facilities and Other Obligations’ as mentioned in Appendix -3.
- (ddd) **“Other obligation”** shall have the meaning as described in **Section 6.3**.
- (eee) **“Operation”** shall have the meaning as described in **Section 6.5**.



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (fff) **“Operations Period”** means the period commencing from COD and ending on the expiry or prior termination of this Agreement/Authorisation/ Authorisation Period;
- (ggg) **“Person”**; means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity
- (hhh) **“Performance Security”** shall mean the irrevocable and unconditional bank guarantee provided by the Preferred Bidder/Authorisee from a Nationalized /Scheduled (Excluding Cooperative) Bank having a branch at Hyderabad/Secunderabad, substantially in the format set forth in the RFP Document as guarantee for the performance of its obligations in respect of the Project.
- (iii) **“Performance Standards” or “Maintenance and Performance Standards”** means the performance parameters for the operation and maintenance of the Project Facility set out in **Appendix 3**;
- (jjj) **“Preferred Bidder”** means any Firm or Consortium that has been successful in the Bidding process for the Project and incorporated a Special Purpose Company as the Authorisee; for the implementation of the Project and is also referred to herein as the “Developer”.
- (kkk) **“Prohibited Activities”** means the activities not permitted under the Development Control Regulations of Municipal Authorities or any other regulating agency/ body for the project site.
- (lll) **“Project” or “Commercial Project “Development of Commercial Facilities at < insert name of bidding project> under B.O.T. Scheme”** means, subject to the provisions of this Agreement, the (i) designing, financing, construction, implementation, completion, commissioning, marketing, operation, management of the Project Facilities and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Authorisee during the Authorisation Period; (ii) demanding, charging, collecting, retaining and appropriating and revision of Tariff by the Authorisee and (iii) transfer of the Project Facilities by the Authorisee to Grantor or its nominated agency at the end of the Authorisation Period by efflux of time or prior termination.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (mmm) **“Project Assets”** shall mean and comprise of all tangible and intangible assets relating to the Project Facility , as the case may be excluding land but including and not limited to, (a) rights over the Site in the form of license, right-of-way or otherwise; (b) tangible assets such as foundation, buildings, substructures and superstructures, pavements, over-bridges, works, subways, drainage facilities, sign boards, equipment, electrical works for lighting of and telephone and communication equipment; (c) financial assets, such as receivables, cash and investments; (d) rights under the Project Agreements and other agreements and (c) insurance proceeds.
- (nnn) **“Project Completion”** shall have the meaning specified in **Section 6.3 (a)**;
- (ooo) **“Project Contracts”** means collectively this Agreement, the Land Lease Deed, the EPC Contract(s), the O&M Contract(s) and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Authorisee in connection with the Project;
- (ppp) **“Project Implementation Schedule”** means implementation schedule for the Project;
- (qqq) **“Project Site”** or **“Site”** means entire \_\_\_\_ **Sq. Yards** of land situated at < *insert name of bidding project*>, Telangana along with the rights (excluding land title) in relation thereto, the easement rights, right of way, appurtenances, the approaches within the site and other areas on, into, at, under, over or through which the Project Facility or any other construction relating thereto is situated, located, passes through, sits upon or overlies, more particularly delineated in **Appendix-5**.
- (rrr) **“Proposal”** or **“Bid”** means the documents in their entirety comprised in the proposal or bid submitted by Preferred Bidder (including the technical and financial proposal/ bid) in response to the Request for Proposal, and accepted by the Grantor, signed for verification by the authorized representatives of the Parties;

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (sss) **“Request for Proposal” or “RFP”** means the Request for Proposal issued by the Grantor inviting proposals for the Project, and includes any addendum / clarifications issued in respect thereof by the Grantor;
- (ttt) **“Scheduled Project Completion Date”** shall have the meaning specified in **Section 6.3**;
- (uuu) **“Security Interest”** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;
- (vvv) **“Specifications and Standards”** means collectively or singularly, as the context may admit or require, the Development Controls, the Technical Specifications and the Performance Standards;
- (www) **“Special Purpose Company” or “SPC”** shall be the Authorisee under this agreement.
- (xxx) **“Tax”** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions including property tax, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levies of any nature whatsoever, whether by GoI/GoTS the Grantor or Government Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it;
- (yyy) **“Tariff”** means the charges, tariffs, prices, fees, rentals, rates, premia, deposits etc. and all sources of revenue or amounts of money by whatever name called that are (i) determined, charged, demanded, collected, retained and appropriated by the Authorisee

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

under this Agreement, including pursuant to sub-leasing, licensing, franchising, subcontracting or any other arrangement in respect of the Project Facilities, and from the hire, sale, provision etc. of goods and services; and/or (ii) payable at any time and from time to time by any Person to the Authorisee in respect of the Project Facility.

(zzz) **“Technical Specifications”** or **“Specifications & Standards”** mean the technical specifications for the construction and implementation of the Project Facility as set forth in *Appendix 4*

(aaaa) **“Termination”** means prior termination of this Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;

(bbbb) **“Termination Period”** shall have the meaning specified in **Section 16.1**;

(cccc) **“Tests”** means the tests to be carried out pursuant to this Agreement and include the test to determine the completion of the Construction Works and certification thereof by the Grantor/Independent Engineer/Consultant prior to Commercial Operations;

(dddd) **“Third Party”** means any Person, real or legal, or entity other than the Parties to this Agreement;

(eeee) **“Transfer Date”** means the date of expiry of Authorisation Period/this Agreement/the Authorisation, including extension thereto or earlier termination thereof in accordance with the provisions of this Agreement;

(ffff) **“Transaction Documents”** means collectively the Project Contracts and the Financing Documents;

(gggg) **“Vacant Possession”** means delivery of possession of the land comprising the Site, free from all Encumbrances, restrictions or impediments and the grant of all Easements and all other rights appurtenant or in relation thereto;

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

(hhhh) **“Vesting Certificate”** shall have the meaning specified in **Section 16.5**;

(iii) **“Year”** means a period of 12 consecutive months of English Calendar Year.

(jjj) **“Works”** mean the works under and in accordance with the provisions of this Agreement relating to design, development of Site, construction, completion, testing and commissioning of the Project/Project Facilities (the **“Construction Works”**), and the operation and maintenance, rectifying and remedying of defects therein (the **“O&M Works”**), collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project/Project Facilities and any other permanent, temporary or urgent works required hereunder.

## **Section 1.2 Interpretations**

In this Agreement, unless the context otherwise requires:

- a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b) references to Applicable Law shall include the laws, Acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;
- c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- d) terms and words beginning with capital letter and defined in this Agreement shall have the meaning ascribed thereto herein, and terms and words defined in the Schedule and used therein shall have the meaning ascribed thereto in the Schedule;
- e) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- f) the words "include" and "including" are to be construed without limitation;
- g) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a English calendar day;
- j) any reference to month shall mean a reference to a calendar month as per the English calendar;
- k) reference to an individual shall include his legal representatives, successors, legal heirs, executor and administrator;
- l) the Schedules (appendices) to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- m) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;

- n) references to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-Clauses and Schedules of or to this Agreement;
- o) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- p) unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- q) References to any date, period or Milestone Dates shall mean and include such date, period or Milestone Date as may be extended pursuant to this Agreement or by mutual consent of the parties here to;
- r) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

### **Section 1.3 Measurements and Arithmetic Conventions**

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down except in money calculations, which shall be rounded off to nearest Rupee.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

#### **Section 1.4 Ambiguities and Discrepancies**

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- c) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- d) between any value written in numerals and that in words, the latter shall prevail.



**Section 1.5 Priority of Documents**

The documents forming part of the bidding process leading to this Agreement shall be interpreted in the following descending order of priority:

- a) This Agreement
- b) Schedules to this Agreement
- c) Any Supplementary Agreement
- d) Letter of Intent issued to the Successful Bidder
- e) Written addendum / clarifications to the RFP
- f) The RFP
- g) Proposal (Bid) of the Successful Bidder

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

## **ARTICLE 2: AUTHORISATION**

### **Section 2.1 Grant of Authorisation**

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Grantor hereby grants and authorises the Authorisee to design, develop, construct, operate and maintain the Project Facilities, to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement including the right to collect, retain and appropriate all tariffs, rentals, other fees and charges for the facilities and services provided, and to hand back the Project Facilities on the Expiry Date or the Termination Date as the case may be ("the **Authorisation**").

- a. Subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Authorisee shall have the right to enter into agreements with such Persons as it may deem necessary and appropriate, for performing its obligations under this Agreement.
- b. The Authorisee shall neither assign, transfer or create any lien or Encumbrance on this Agreement, or the Authorisation hereby granted or on the whole or any part of the Project Facilities nor transfer thereof, save and except as expressly permitted by this Agreement including the right to further sub-lease/ let/ sub-let/ license or whatever name called, the Project Facilities in accordance with the provisions of **Section 3.2(b)**.
- c. The Authorisee shall perform and fulfill its obligations under and in accordance with this Agreement.

### **Section 2.2 Authorisation Period**

The Authorisation hereby granted is for a period of **33 (thirty three) years** commencing from the Agreement Date and ending on the Expiry Date ("the **Authorisation Period**").

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Further, this Agreement shall automatically terminate upon expiry of the Authorisation Period by efflux of time, or in the event of Termination.

Provided that in the event of Termination, the Authorisation Period shall mean and be limited to the period commencing from the Agreement Date and ending with the Termination Date.

Provided, further that, on the Expiry of this Agreement, if the Grantor intends to extend the Authorisation Period further by **25 (twenty five) years**, then the procedure provided hereunder shall be followed:

- a. The Grantor shall invite proposals from eligible entities through a competitive bid process. The Authorisee shall have the option to submit its proposal.
- b. In case the Authorisee after participating in the bidding procedure fails to give the preferred offer, the Authorisee shall be given the first right of refusal to match the preferred offer. If the Authorisee matches the preferred offer the parties shall enter into suitable agreement accordingly to implement the Project. In such an event, the Authorisee shall pay to the preferred bidder/TSRTC the cost towards preparation of the Bid as provided in the bid document.
- c. In case the Authorisee (a) chooses not to submit its proposal or (b) is not the preferred bidder and also fails or declines to match the preferred offer this Agreement shall get terminated on Expiry Date.
- d. In case the Authorisee is a preferred bidder or matches the preferred offer, a new agreement with modified terms and conditions based on the bid document issued by the Grantor shall be executed by the Authorisee with the Grantor.

### **Section 2.3 Acceptance of Authorisation**

In consideration of the rights, privileges and benefits conferred upon by the Grantor and other good and valuable consideration expressed herein, the Authorisee hereby accepts the Authorisation and agrees and undertakes to perform/ discharge all of its obligations in accordance with the provisions hereof.

### **ARTICLE 3 CONDITIONS PRECEDENT**

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 3.1 Conditions Precedent**

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement shall be subject to the satisfaction in full of the Conditions precedent relating to the other Party (the "**Conditions Precedent**").

### **Section 3.2 Conditions Precedent for Grantor**

The obligations of the Authorisee hereunder are subject to the satisfaction in full of the following Conditions Precedent for the Grantor: The Grantor shall have:

- (a) handed over to the Authorisee the vacant possession of the Site **on "as is where is basis"** and executed **Land Lease Deed** substantially in the form attached hereto in **Appendix - 7** in accordance with the terms of this Agreement ;
- (b) to assist the Authorisee for necessary changes in land use to convert the land use of entire Project Site in to the commercial land use, as may be required, to implement the Project.

### **Section 3.3 Conditions Precedent for Authorisee**

The obligations of the Grantor are subject to the satisfaction in full of the following Conditions Precedent for the Authorisee. The Authorisee shall have:

- (a) made all the applications at its cost and procured the Applicable Permits set out in **Appendix-8** required for commencing construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect and the Authorisee is in compliance with the conditions of grant thereof and they are valid and effective;
- (b) achieved Financial Closure and provided notarised true copies of the Financing Documents to the Grantor along with soft copies;

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (c) prepared, finalised and procured approval of the Grantor for the Detailed Project Report in accordance with the provisions of **Section 6.1** hereof;
- (d) procured environmental clearance from the State Agency or Ministry of Environmental and Forests, as the case may be, after having completed preparation of the Detailed Project Report;
- (e) confirmed in writing that all the representations and warranties of the Preferred Bidder/Authorisee set forth in the Proposal and forming part of this Agreement are true and correct as on the date of execution of this Agreement and the Compliance Date; and
- (f) Provided that upon request in writing by the Authorisee, the Grantor may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this **Section 3.3**.

#### **Section 3.4 Obligation to Satisfy Conditions Precedent**

- (a) Each Party shall make all reasonable endeavours at its respective cost and expense to comply in full with the Conditions Precedent relating to it within a period of 6 (six) months from the date of execution of this Agreement or any extension agreed to between the Parties.
- (b) The later of the date within such 6 (six) months when the Grantor or the Authorisee fulfils its Conditions Precedent (unless Grantor waives the same for the Authorisee) shall be the "Compliance Date".

#### **Section 3.5 Non-fulfilment of Conditions Precedent**

- (a) In the event the Conditions Precedent for a Party have not been fulfilled within the stipulated time and the Grantor has not waived, fully or partially, such conditions relating to the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Authorisee, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and TSRTC shall not be liable in any manner whatsoever to the Authorisee or Persons claiming through or under it.

- (b) In the event that possession of the Site has been delivered to the Authorisee prior to the fulfilment in full of the Conditions Precedent, upon the termination of this Agreement, the Site shall immediately revert to the Grantor, free and clear from any encumbrances and along with all Easement Rights, irrespective of any outstanding mutual claims between the Parties.
- (c) In the event this Agreement is terminated due to non-fulfilment of the Authorisee's Conditions Precedent and the same is not due to Grantor's default, Grantor shall retain the Upfront Amount, Advance Annual Lease Rentals, and forfeit all the Bank Guarantees (Performance Security, etc) as damages.
- (d) In the event this Agreement is terminated due to non fulfillment of the Grantor's Conditions Precedent, the Grantor shall upon such termination return/refund the Bank Guarantee provided by the Preferred Bidder towards performance guarantee, to the Authorisee without any interest, provided there are no outstanding claims of the Grantor on the Authorisee unless the Grantor's failure to fulfill its Conditions Precedent is a result of the Authorisee's default. In any case, the non refundable and irrevocable Project Development Fee (PDF)' will not be paid back to the Authorisee which is the expense incurred towards this project development till this agreement signing. That the Bid submission and entering into this agreement by the Authorisee is deemed to have agreed to forego the PDF in any of the circumstances mentioned in this section.
- (e) Instead of this Agreement terminating as provided in this **Section 4.5**, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent.

#### **ARTICLE 4 PROJECT SITE**

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

#### **Section 4.1 Lease of Site**

- (a) The Grantor shall on the date of execution of this Agreement sign Land Lease Deed, thereby granting the Authorisee access to the Project Site.
- (b) The Parties shall, within **15 (fifteen) days** of the Grantor's notice in this behalf to the Authorisee prior to the Compliance Date, carry out through their duly authorised representative, a joint inspection and verification of all the real estate, structures, land, buildings and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Authorisee in such joint inspection shall be mandatory. The Authorisee shall carry out at its cost a due diligence of all encumbrances at, on or under the Site and notify the same to the Grantor, which shall take prompt action for removing the same.
- (c) The Grantor shall bear all the costs of making available the Project Site to the Authorisee and be liable to remove/relocate at its cost all Persons that may have to be displaced from the Project Site, including the payment of compensation, if any, to such Persons or litigation pursuant thereto and the Authorisee shall not be liable in this behalf.
- (d) In consideration of implementation of the Project by the Authorisee and the payment herein reserved and of other covenants on the part of the Authorisee, the Grantor shall, upon signing of the Lease Deed, be deemed to have handed lease and delivered to the Authorisee on an "as is where is basis" subject to curing of the defects and /or clearing of encumbrances by the Grantor the possession of land with the Easement Rights and with the full and free right and liberty of way and passage and other rights in relation thereto and the right, authority and license to implement the Project thereat in accordance with the provisions of this Agreement, under a valid and binding Land Lease Deed, in the form attached hereto in **Appendix-7**, for a period that shall be co-terminus with the Authorisation Period.
- (e) In consideration for the Lease of the Site, the Authorisee shall pay the Grantor, the Annual Lease Rentals & other Premiums as specified in **Section 8.3** hereof.
- (f) The Project Land Lease Deed shall be duly registered with the relevant Government Authority at the Authorisee's cost (stamp

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

duties, registration charges etc.) as soon as practicable, but in any case within four months of the date of execution thereof.

## **Section 4.2 Sub- Lease**

### **(a) No Sub- Lease of Land**

The Authorisee shall not sub-lease the whole or any part of the land comprising the Project Site, leased to it by Grantor under the Land Lease Deed, to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute an Authorisee Event of Default that shall entitle the Grantor to terminate this Agreement in accordance with the provisions of Article 16 hereof.

### **(b) Sub- Lease of built-up area/space on the Project Site**

The Authorisee shall however be allowed the sub- lease of any built-up area or space in the Project Site provided the terms and conditions of such sub leases shall not be inconsistent or contrary and shall be coterminous with the Authorisation Agreement and Land Lease Deed.

## **Section 4.3 Possession and Use of Project Site**

- (a) Upon the Authorisee observing and performing its obligations, the several covenants, conditions and Agreements herein contained and on the part of the Authorisee to be observed and performed, the Authorisee shall remain in peaceful possession and enjoyment of the Project Site during the Authorisation Period.
- (b) The Authorisee shall not without prior written consent or approval of the Grantor use the Site for any purpose other than for the purposes of implementing the Project in accordance with the provisions of this Agreement and purposes incidental thereto or as may otherwise be approved in writing by the Grantor. The Authorisee acknowledges, accepts, confirms and agrees that this is an essential condition of this Agreement.
- (c) The Authorisee shall maintain vigil over the Site during the Authorisation Period to prevent encroachments or



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

occupation of the Site and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform the Grantor thereof.

- (d) The Authorisee shall shift the utilities at, on, over or under the ground at the Project Site to an appropriate location or alignment. Such shifting of the utilities shall be carried out only if and to the extent according to the Grantor the non-shifting thereof materially obstructs the implementation of the Project. The cost of such shifting shall be borne by the Authorisee with a right to seek set off from the owner of such utilities as may be available under the Applicable Laws or contract. In the case of any delays in shifting of the utilities due and attributable to the owner of the utility or the Grantor and provided such delay is not due to any default or negligence on the part of the Authorisee or Persons claiming through or under it, there shall be a commensurate extension of the Authorisation Period as certified by the Independent Engineer/Consultant.
- (e) The Authorisee shall promptly use the site for the Project or remove at its cost from the Site in accordance with Good Industry Practice all surplus structures at, on, over or under the ground at the Project Site, construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris (hereinafter collectively referred as "dismantled goods") and keep them in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits. The Authorisee shall also be liable to return the Salvage Value of the dismantled goods to TSRTC.
- (f) The Authorisee shall be solely liable for all hazardous, dangerous and other goods, materials, creatures and substances brought, kept, stored or handled at the Site.
- (g) The Grantor confirms that:
- a. The Site together with the necessary right of way/ way leaves having been acquired through the due process of law belongs to and is vested in the TSRTC, and that the TSRTC has full powers to hold, dispose of and deal with the same consistent, *inter alia*, with the provisions of this Agreement; and
  - b. The Authorisee shall have no obligation/liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of any Person from whom

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

the Site or any part thereof had been acquired and that the same shall be the sole responsibility of the TSRTC.

- (h) In the event the Authorisee is obstructed by any Person claiming any right or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/ charge on the Project Site or any part thereof, Grantor shall, if called upon by the Authorisee, defend such claims and proceedings at its cost and expense and the Authorisee shall not be liable for the same in any manner whatsoever.
- (i) The Authorisee shall not part with or create any Encumbrances on the whole or any part of the Project Site save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Authorisee to appoint Contractors, to enter into Contractual Arrangements and to assign its rights here under and create a security interest in favour of the Lenders in accordance with the provisions of this Agreement.

**Section 4.4 Access to Site**

- (a) Following the delivery of Vacant Possession of the Project Site on “as is where is basis” by the Grantor to the Authorisee, the Authorisee shall, at all reasonable times and on reasonable notice, afford access to the Project Site to,
  - (i) the Grantor, or the Independent Engineer/Consultant, the Experts and their duly authorized personnel and representatives so as to carry out their respective functions and obligations hereunder.
  - (ii) the representatives of or Persons duly authorised by the relevant Government Authority concerned with safety, security or environmental protection to inspect the Site, and the Project Works, carry out their respective duties and functions and to investigate any other matter within their authority.
- (b) The Persons obtaining access to the Site shall conduct their activities and operations at their own risk, cost and expense and in such manner so as to cause minimum disruption to

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

the construction, operation and maintenance of the Project consistent with the purpose of the Person gaining such access.

#### **Section 4.5 Information about Project Site**

- (a) The site map set out in **Appendix-5** is provided by the Grantor to the Authorisee in good faith and with due regard to the matters for which such information is required by the Authorisee. The Grantor agrees to provide to the Authorisee, upon a reasonable request, any further information relating to the Project Site, which the Grantor may now possess or may hereafter come to possess. Subject to this, the Grantor makes no representation and gives no warranty to the Authorisee in respect of the condition of the Project Site and the Authorisee shall accept the Project Site handed over to it by the Grantor on an "as is where is basis".
- (b) The Authorisee acknowledges that before entering into this Agreement, it has had sufficient opportunity to investigate the Site, and
- (i) accepts full responsibility for its condition (including but not limited to its geological condition, any toxic contamination, the adequacy of the road connectivity links to the Site and the availability or unavailability of adequate supplies of water and electricity); and
  - (ii) agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site (or part thereof) or for any other reason pertaining to the Site.

#### **Section 4.6 Grantor's Property at Project Site**

- (a) All debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Project Site or generated during the implementation of the Project shall be promptly disposed off by the Authorisee at its cost. The Authorisee may if it deems appropriate use the same for the execution of the Works.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (b) All articles of value or antiquity found on the Project Site shall be the property of the Grantor. The Authorisee shall take reasonable precautions to prevent its labour and personnel and that of its Contractors from removing or damaging any such article or thing. The Authorisee shall immediately upon discovery of such article or thing, inform the Grantor, which may issue instructions for dealing therewith

#### **Section 4.7 Reservation**

- (a) The Grantor accepts and reserves unto itself all the mines, minerals, coals, gold, quarries etc. in, over, on or under the Site and full right and power at all times to undertake, with reasonable prior notice to the Authorisee, all acts and things which may be necessary for searching, removing, appropriating or enjoying the same without providing or leaving any vertical support for the surface of the land at the Site or for any structure or building thereat; provided always the Grantor shall be obligated to pay reasonable compensation to the Authorisee for all damage directly resulting from the exercise of the rights hereby reserved or any of them.

### **ARTICLE 5: OBLIGATIONS OF PARTIES**

#### **Section 5.1 Obligations of the Authorisee**

- (a) In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Authorisee shall, without qualification, at its own cost and expense observe, undertake, perform and comply during the Authorisation Period with the following obligations:

##### **Section 5.1.1 Project Implementation**

- (a) The Authorisee shall fulfil the Minimum Development Obligations on or before the Scheduled Completion date, in accordance with the Specifications and Standards,

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Authorisee shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.

- (b) Authorisee shall pay the yearly/Half yearly Lease Rentals during holiday period as a Pre-Condition of signing of the Authorisation Agreement. The payment of subsequent initial Base Annual Lease Rentals (on completion of holiday period or Date of commercial operation whichever is earlier) shall be made on Yearly basis by the 10<sup>th</sup> day of first month of that year.
- (c) Advance Lease Rentals/Security Deposit equivalent to 6 months Lease Rentals of every Year, shall be paid to the Grantor as interest free **Security Deposit** as a Pre-Condition of signing of the Authorisation Agreement.
- (d) The Annual Lease Rentals are different in each of the years. To ensure and secure the payment of advance Lease Rentals with the Grantor from Second year onwards, the Authorisee has to pay the difference of amount to make the Advance Lease Rentals equal to 6months Lease Rentals for that year along with the Annual Lease Rentals of that year.
- (e) The Authorisee shall design, plan, develop, finance, construct, market, administer, manage and operate and maintain the Project Facilities, including without limitation the necessary infrastructure, services and facilities, during the Authorisation Period in accordance with the provisions hereof, including the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Authorisee shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- (f) The Authorisee shall be free to design, develop, and construct any facility allowed under the permissible land use for the Project Site.
- (g) In implementing the Project, the Authorisee shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including environmental laws, and the terms of Applicable Permits and the Authorisee shall be entirely liable for any violations or breaches thereof and

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

indemnify and keep indemnified the Grantor from and against all liabilities and costs in this behalf.

- (h) The Authorisee may require the sub-lessee/sub-contractor to perform its obligations under this Agreement without in any way relieving the Authorisee of its liability in this behalf; provided that the Authorisee shall ensure that any of its obligations, which are relevant to the scope of work/terms of engagement/ of a sub-lessee/sub-contractor, are incorporated in the terms and conditions under which such sub-lessee/sub-contractor is appointed/retained. The Authorisee/sub-lessee/sub-contractor shall indemnify and keep indemnified the Grantor from and against all liabilities and costs in this behalf.

### **Section 5.1.2 Applicable Permits**

- (a) The Authorisee shall obtain and maintain at its cost all Applicable Permits, including all environmental permits, in conformity with the Applicable Laws and be in compliance therewith. Subject to the Authorisee complying with the Applicable Laws and Good Industry Practice, the Grantor shall provide necessary assistance in securing such consents, clearances and Applicable Permits.
- (b) The Authorisee shall expeditiously make the necessary applications to the relevant Government Authorities for all Applicable Permits to meet the stipulated time frames in this Agreement, for completion of the Works, to achieve the various performance milestones, if any, and to perform all of its other obligations under this Agreement. The Authorisee shall supply the appropriate particulars and details to such Government Authorities as may be necessary to confirm that the Authorisee fulfills the eligibility criteria to enable such authority reasonably to consider the request for the grant of the relevant Applicable Permits and, following the grant of any such Applicable Permits, the Authorisee shall maintain such Applicable Permits in full force and effect so long as it is necessary in order for the Authorisee to perform its obligations hereunder.

### **Section 5.1.3 Personnel and Labour**

- (a) The Authorisee shall

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (i) be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. and all taxes, charges, levies, duties payable under Applicable Laws arising from the respective terms and conditions of employment of all labour and personnel employed by the Authorisee, its Contractors, agents and representatives on or in connection with the Works or the Project Site under or through whatever legal relationship;
- (ii) make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Authorisee's obligations under this Agreement and be the principal employer in respect of such labour and personnel. The Authorisee shall be solely responsible and liable for compliance with all Applicable Laws, including labour and local laws, pertaining to the employment of labour, staff and personnel by it and its Contractors for implementing the Project

The employees of the Authorisee and its Contractors shall at all times be the responsibility of the Authorisee and the Grantor shall not be liable in any manner whatsoever in respect of such employees and their employment.

#### **Section 5.1.4 Subcontracting**

- (a) The Authorisee may sub-contract at its cost and risk to Contractors possessing the requisite skill, expertise, capacity and technical and financial qualifications, the designing, engineering, procurement and construction of civil / mechanical / electrical engineering structures / equipment, and / or operation and maintenance of the Project or any part thereof provided the Authorisee shall at all times be solely responsible and liable for any defect, deficiency or delay in the construction and erection of the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

structures/equipment or any part thereof and for the operation and maintenance of the Project in accordance with the provisions of this Agreement and provided further that this does not result in the carrying out of the whole or substantially the whole, as determined by the Grantor, of the Works by the Contractors. The Authorisee shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement, are incorporated in the terms and conditions under which such Contractor is retained.

- (b) The Authorisee shall supervise, monitor and control the activities of Contractors under their respective Project Contracts as may be necessary.
- (c) For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a Subcontractor by the Authorisee for any of the aforesaid purposes, the Authorisee shall be liable for the performance of its duties and for the discharge of all its obligations and responsibilities which it shall have towards the Grantor under this Agreement and the appointment of Subcontractor(s) for any of the aforesaid purposes shall neither release nor exonerate the Authorisee from its obligations hereunder, including full and timely compliance with the terms of this Agreement. The Authorisee does hereby also agree and acknowledge that it shall remain responsible for obligations performed or to be performed by the Subcontractors to the same extent as if such obligations were to be always performed by the Authorisee and shall at all times be solely responsible for any defect, deficiency or delay by the Subcontractor in the implementation of the Project/execution of Works.
- (d) The Authorisee further undertakes and covenants that it shall be solely responsible for all payments to be made to the Subcontractors and shall indemnify the Grantor and keep it indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses that the TSRTC may incur, insofar as such losses directly arise out of, in any way relate to, or result from the non-performance by the Authorisee of its obligations to the Subcontractors including non-payment of any monies to such Subcontractors.



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (e) The Authorisee shall ensure that the Subcontractors are capable of discharging the obligations under this Agreement for and on behalf of and in the name of the Authorisee and that any of its obligations, which are relevant to the scope of work of a Subcontractor, pursuant to this Agreement, are incorporated in the terms and conditions under which such Subcontractor is retained.

### **Section 5.1.5 Transaction Documents**

- (a) The Authorisee accepts and undertakes to ensure that the terms of all Transaction Documents (including the agreements between the Authorisee and Sub-Contractors and any other Person(s), including vendors of goods and services, or between any of these entities) shall be in conformity with the provisions of this Agreement and not in derogation of or conflict with the provisions hereof. In the event of any conflict or inconsistency between such documents and this Agreement, the provisions of this Agreement shall prevail. The Authorisee further undertakes that any agreement between itself and the Contractors and any other Person(s), or between any of these entities, shall contain such terms and conditions as may be necessary to ensure that the counter-party thereto is required to perform its part of the agreement(s) in conformity with the Authorisee's obligations under this Agreement.
- (b) The Authorisee shall
- i. Provide to the Grantor true copies of every transaction documents duly executed, which are likely affect the interests of Grantor either financially, or subleasing of major areas or conceptually against interests of TSRTC/ State between Grantor and Sub-Contractors and any other person(s), including vendors of goods and services, or between any of these entities to which Authorisee is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto within 15 (fifteen) days of such execution or amendment etc.
  - (ii) Not make any replacement, modification or amendment to any of the Transaction Documents at

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

any time without the prior written consent of the Grantor if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on the Grantor and in the event any replacement, modification or amendment is made without such consent, the Authorisee shall not enforce such replacement, modification or amendment nor permit enforcement thereof against the Grantor.

- (iii) Comply with its obligations set out in the Transaction Documents.
- (iv) Ensure and procure that each Project Contract contains provisions that would entitle Grantor or a nominee of the Grantor to step into such agreement at the Grantor's discretion, in place and substitution of the Authorisee in the event of termination pursuant to the provisions of this Agreement.
- (v) Not enter into any material contract, including without limitation, any EPC contract or agreement with any affiliated party related to or in connection with the Project unless the principal terms including consideration is reviewed, assessed and approved by the Grantor or Independent Engineer/Consultant appointed by the Grantor prior to the execution of any such contract.

#### **Section 5.1.6 Reporting Requirements**

The Authorisee shall provide to the Grantor and the Independent Engineer/Consultant reports on a regular basis during the Authorization Period in accordance with the provisions of **Article 7** and as set forth elsewhere in the Agreement and at all times provide the Grantor such information, data and documents as the Grantor may reasonably require.

#### **Section 5.1.7 Accidents and Safety**

- (a) The Authorisee shall

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (i) Develop, implement and administer a surveillance and safety program for the Project and the users thereof and its and the Contractors' labour and personnel engaged in the provision of any services under any of the Project Contracts, including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice.
- (ii) Take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims.
- (iii) Maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.

### **Section 5.1.8 Taxes and and Charges**

The Authorisee shall

- (i) pay in a timely manner all taxes (including property tax), duties, levies, cess and charges including but not limited to income tax, sales tax, GST, excise duty, customs duty and Octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project.
- (ii) pay all charges, taxes, Stamp Duties, Registration, fines, late fees and other outgoings in relation to the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

use of utilities and services by the Authorisee or its Contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility. The Property Tax shall be paid by the Authorisee in the name of Grantor (TSRTC) and the receipts in original shall be furnished to TSRTC immediately.

**Section 5.1.9 Foreign Exchange Risk**

The Authorisee shall bear any risk on account of fluctuation in foreign exchange rates during the Authorization Period.

**Section 5.1.10 Contractual Arrangements**

The Authorisee shall undertake development of the Site and enter into Contractual Arrangements in this behalf in accordance with the provision of this Agreement,

**Section 5.1.11 Environment Management Plan**

The Authorisee shall comply with its obligations under the Environment Management Plan.

**Section 5.1.12 Marketing**

The Authorisee shall undertake marketing, public relations and brand building of the Project Facility at its cost and expense.

**Section 5.1.13 Others**

- (a) The Authorisee shall
  - (i) Maintain requisite insurance in accordance with the provisions hereof.
  - (ii) provide all assistance to the Grantor and the Independent Engineer/Consultant /Experts as they

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

may reasonably require for the performance of their duties and services under this Agreement;

- (iii) be responsible for safety, soundness and durability of the Project including all structures forming part thereof and their compliance with the Specifications and Standards.
- (b) provide representatives of the Grantor, including those concerned with safety, security or environmental protection, at reasonable time and upon reasonable notice, access to the Project Site to review progress of construction and the operations of the Project and to ascertain compliance with any of the requirements of the Agreement. Provided that any failure on the part of the Grantor to inspect any works shall not, in relation to such works, (i) amount to any consent or approval of the Grantor or shall the same be deemed to be a waiver of any of the rights of the Grantor under this Agreement; and (ii) release or discharge the Authorisee from its obligations or liabilities under this Agreement in respect of such work.
- (c) provide or arrange at its cost during the Authorisation Period all on-site infrastructure including power, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal and other utilities and facilities required from time to time in respect of the construction, operation and maintenance of the Project/Project Facilities and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.
- (d) The Authorisee shall, if required, at its cost install meters to measure the consumption of power and water. The Authorisee shall, at its cost, make alternate and back up arrangement for power, including but not limited to installation of generators and for water, subject to the Authorisee obtaining Applicable Permits if any.
- (e) hand over the Project /Project Assets free from encumbrances and encroachments to the Grantor or its nominated agency upon the expiry/termination of the Authorisation Period/this Agreement. In the event of non-

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

performance of this clause by the Authorisee, the Grantor shall have deemed right to take the position of the said property and perform the require to be in position with all other facilities without any liabilities from that date onwards.

### **Section 5.1.14 Additional Obligations during the Construction Period**

The Authorisee shall

- (i) promptly commence construction and complete the project s in accordance with the provisions of this Agreement, including the Project Implementation Schedule and the Specifications and Standards, the terms of Applicable Permits, the Applicable Laws and Good Industry Practice and achieve the Project Completion.
- (ii) entrust responsibility for project management and construction to professionally competent Persons;
- (iii) give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- (iv) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer/Consultant and ensure completion of the construction of the Project in all respects in accordance with the provisions of this Agreement;
- (v) confine its activities to the Project Site and to any additional areas arranged by the Authorisee at its cost and not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for its failure to do so;
- (vi) Commence commercial operations of the Project facilities only upon issuance of the Completion Certificate. Project Completion Certificate shall be issued by Grantor upon

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

submission and satisfactory completion of the following by the Authorisee in respect to the Project Facilities;

- (a) Construction of compound wall in accordance with Construction Requirements and Approved Project Development Plan;
- (b) Upon completion of construction of the buildings, including toilets, external walls, utilities such as water supply, power, drainage, sewerage etc., and
- (c) Completion of driveways, walkways, landscaping activities in accordance with the Approved **DPR (Detailed Project Report)**.

#### **Section 5.1.15 Obligations related to Operations and Maintenance**

The Authorisee shall

- (i) Operate, maintain, manage, repair the Project Facility at its cost and risk during the Operations Period in accordance with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice.
- (ii) Upon achieving Project Completion, promptly commence Commercial Operations.
- (iii) Employ qualified Persons to efficiently operate and manage the Project Facility.
- (iv) Make available all necessary financial, managerial, technical, technological and other resources for the operations and, maintenance of the Project to conform to the requirements of this Agreement.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (v) Replace, repair, replenish or renew, as the case may be, the materials, goods, machinery, equipment, capital components and spares etc. and undertake preventive maintenance at its cost as necessary to carry out efficient operations and maintenance of the Project Facility and to provide adequate service standards and to ensure that the Project/Project Facilities are transferred to the Grantor in a good condition except for the normal wear and tear having regard to their life, construction, use and the period of use, in accordance with the terms of this Agreement.
- (vi) Ensure maintenance of proper and accurate records, data and accounts relating to the operations of the Project Facilities and the revenues earned there from.
- (vii) Comply with all Applicable Law, including those relating to safety, health, sanitation, environment, labour and hazardous and dangerous materials.
- (viii) promptly and diligently repair, replace or restore the Project Facility or part thereof which may be destroyed, lost or damaged.
- (ix) Except as provided or authorized under this Agreement, not, without the prior written consent of the Grantor, remove or replace any asset comprised in the Project Facility.
- (x) Ensure timely payments to the Grantor in accordance with the provisions of this Agreement.
- (xi) Carry out the commercial operations and provide the services and facilities as per the requirements of this Agreement and make changes therein only with the prior written approval of the Grantor.
- (xii) Not undertake, cause or suffer the undertaking of Prohibited Activities by any person at the Site or the Project Facilities or part thereof.



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

## **Section 5.2 Obligations of Preferred Bidder**

### **Section 5.2.1 Minimum Equity Commitment and lock in period**

If the preferred bidder is a consortium, it shall be required to incorporate a **Special Project Company (SPC)** under the Companies Act of India, 2013 prior to signing of Authorization Agreement. The Preferred Bidder/Consortium as a whole shall hold minimum **51%** of the paid-up equity share capital of the Authorisee (in SPC) at all times during a period that shall not be less than 5 years from the date of signing of the Authorisation Agreement. In case of Preferred Bidder being a Consortium, the Lead Member shall hold at least **26%** of the paid-up equity share capital of the Authorisee for a period that shall not be less than 5 years from the date of signing of the Authorisation Agreement and each other constituent member of the Consortium, shall also hold at least **10%** of the paid-up equity share capital of the Authorisee(in SPC) for a period that shall not be less than 5 years from the date of signing of the Authorisation Agreement. No change in composition of the Preferred Bidder/Consortium shall be made for a period of **5 years** (the "**Lock-in Period**") from the date here of. Any transfer of such share capital after such 5 years shall require the prior written approval of the Grantor, which shall not be unreasonably denied. After the expiry of the lock-in period, another Lead Member may replace the Lead Member, provided that such lead member holds at least **26%** of the paid-up equity share capital of the Authorisee(in SPC). For the avoidance of doubt, the Lead Member shall during the Authorisation Period, hold at least **26%** of the paid up equity share capital of the Authorisee( in SPC).

### **Section 5.2.2 Funding Obligation**

The Preferred Bidder shall ensure that the Authorisee has, at all times, sufficient funds to ensure the due discharge of its payment obligations to the Grantor under this Agreement. In the event the Authorisee is not able to discharge its payment obligations to the Grantor under this Agreement on account of lack of funds, the Grantor shall have the right to claim and recover from the Preferred Bidders (jointly and severally) and the Preferred Bidders shall have the obligation to pay, all such amounts that are due and payable by the Authorisee to the Grantor under this Agreement.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 5.2.3 Obligations of Authorisee**

The Authorisee shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of the Authorisee's activities:

- (a) Preparation of the DPR and the Designs and Drawings;
- (b) Arranging the financing for the Project, including mobilization of debt and equity;
- (c) Procurement of Applicable Permits for commencing and implementing the Project;
- (d) Execution of Project Contracts in respect of engineering, procurement, construction, Operation and Maintenance of Project Facility.
- (e) Timely implementation of the Project in accordance with the provisions of this Agreement, including the Specifications and Standards, the Applicable Laws, the terms of the Applicable Permits and Good Industry Practice.
- (f) Compliance with and implementation of the Environment Management Plan;
- (g) Marketing of the Project Facility;
- (h) Compliance with the provisions of this Agreement relating to liability and indemnification;
- (i) Implementation of measures for safety, security and protection of the works, property, life and materials at the Site and the environment.
- (j) Making payments towards Project Development Fee, First Instalment of Upfront Amount, First year Annual Lease Rent, First year 6 months Advance Lease Rentals before signing the Authorisation Agreement.
- (k) Bank Guarantee for Performance Security

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (l) Making regular payments towards the Annual Lease Rentals every year every year (from 3<sup>rd</sup> /4<sup>th</sup> year) to Grantor over the Authorisation Period of 33years as per this Agreement Conditions

### **Section 5.3 Obligations of Grantor**

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Grantor agrees and undertake as under:

#### **Section 5.3.1 Applicable Permits**

- i. The Grantor shall, at the request of the Authorisee, grant Applicable Permits with reasonable promptness that are in its authority and capacity to grant and, as the case may be, assist but without guarantees and/or without assuming any responsibility in that behalf and issue recommendatory letters and make best efforts to assist the Authorisee in obtaining all the Applicable Permits from Government Authorities, Authorizations to import equipment and materials required for the Project and immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Authorisee in connection with the implementation of the Project, including renewals thereof; provided that nothing contained in this provision shall relieve the Authorisee of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Authorisee (i) provides to the Grantor all necessary relevant details and other information as may reasonably be required by the Grantor and (ii) keeps the Applicable Permits in force and effect throughout the Authorization Period.
- ii. Upon written request from the Authorisee, assist the Authorisee in obtaining access to all necessary infrastructure facilities and utilities, including water, sewerage, electricity and telecommunication facilities at rates and on terms no less favorable to the Authorisee than those generally available to commercial customers receiving substantially equivalent facilities/utilities.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 5.3.2 Tax Benefits**

In cases found appropriate the Grantor may, at the request of the Authorisee, issue recommendatory or supporting letters to any Government Authority recommending tax or duty concessions/ benefits to the Authorisee/ the Project.

### **Section 5.3.3 Off-site Infrastructure**

The Off Site requirements (Road, Power and Water) are being provided by different Government Agencies. The Authorisee is required to apply to the concerning Authorities and obtain the necessary approvals on his own. The Grantor will extend all necessary support to the Authorisee based on written request of the Authorisee.

### **Section 5.4 Change of Land Use**

**(A)**The existing land use for the Project Site is Commercial/Multiple use Zone. In order to fulfill the obligation of Authorize as defined in Authorization Agreement, if any change of land use is warranted, then the Authorize is responsible to procure the same at its cost, in conformity with the requirement of the Project. The Grantor shall provide all reasonable assistance in this regard to the Authorize provided that the Authorize has made all the required applications and complied with all the stipulated eligibility criteria for the same. The cost incurred in converting to Commercial/ Multiple Use Zone has to be paid by the Preferred bidder

**(B)**The Grantor shall grant such permission or exemptions as may be requested under the Application Law provided the same are within its authority and jurisdiction, relating to and regulating land and its use as applicable in the State of Telangana so as to ensure that the Authorisee can enjoy vacant possession of and hold and use the Site. As regards permissions or exemptions that are to be granted by other departments/ agencies of GoTelangana/or GoI, the Authorisee shall make necessary application to the concerned department / agencies for such permissions / exemptions, as the case may be and the Grantor shall on best effort basis provide required assistance to the Authrisee in this regard provided that the Authorisee otherwise meets all the eligibility requirements.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

## **Section 5.5 Obligations of the Grantor and the Authorisee**

### **Section 5.5.1 Compliance with Laws and Regulations**

The Parties shall perform their respective obligations under this Agreement in accordance with the Applicable Laws.

### **Section 5.5.2 Rights to Documents**

#### **(a) Grantor Documents**

Documents and computer programs or copies thereof, if any, provided by the Grantor to the Authorisee, shall always remain the property of the Grantor. Such documents, computer programs and/or copies shall not be used by the Authorisee for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Grantor, be returned by the Authorisee to the Grantor on the Transfer Date.

#### **(b) Authorisee Documents**

Documents and computer programs provided by the Authorisee, or which are developed (and owned by the Authorisee) for operation and/or maintenance of the Project /the Project Assets shall be handed over by the Authorisee to the Grantor free of cost on the Transfer Date.

#### **(c) Obligation to Cooperate**

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

## **Section 5.6 Others**

- (a) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Authority, trade union, environmental group or any other Person or organization, which might reasonably be expected to materially and adversely affect the Project Assets, the implementation of the Project or the enjoyment by the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Authorisee of its rights and benefits under the Authorisation granted herein, the Grantor shall, if requested by the Authorisee in writing, on a best effort basis, take such reasonable action as is available to it to challenge and to mitigate such effects.

The Grantor shall provide reasonable assistance to the Authorisee in procuring the necessary licenses, no-objection certificates and/or Applicable Permits for exercising necessary authority to regulate the law and order situation within the Project Facility / Site subject to and in accordance with the Applicable Laws. However, notwithstanding anything contained herein, the Authorisee shall be liable to undertake its own assessment of the Applicable Permits required in connection with the Project.

## **ARTICLE 6 PROJECT IMPLEMENTATION**

### **Section 6.1 DPR and Designs**

- (a) The Authorisee, within **4 (four) months** after grant of the Authorisation, shall at its cost prepare and submit to the Grantor draft **DPR** and Designs of the Project.
- (b) The DPR shall, *inter alia*, set out the full details of the developmental activities proposed to be carried out by the Authorisee for implementation of the Project, proposed order, sequence and method of working, the steps, procedures and processes undertaken and to be undertaken by the Authorisee, the Project Implementation Schedule with the Project Milestones, detailed schedule bar charts / PERT networks with milestone dates, master plan and building plan of the Project Facility, including the site development, proposed construction activities, names of likely Subcontractors/ vendors etc., plans for mobilization of finances, plans for marketing the Project Facility, proposed arrangements for operating and managing the Project Facility, the organisation chart of the Authorisee, proposed Sub-authorisations and such other similar details which define and clarify the method and direction of the Authorisee's plans for the implementation of the Project.
- (c) The Grantor shall review the DPR and Designs submitted by the Authorisee for conformity with the Specifications and

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Standards and, subject to the provisions of sub-section (d) herein below, communicate its approval immediately. The Grantor may in consultation with the Authorisee prescribe a schedule for submission, clarifications and approval of such plan.

- (d) In the event that Grantor has any objection to the DPR and Designs or any part thereof, it shall promptly notify the Authorisee of its objections, seek clarifications or suggest changes or modifications or corrections thereto in writing. Thereupon, the Authorisee shall provide necessary clarification to the Grantor or re-submit revised DPR and Designs or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the Grantor.
- (e) If the Grantor does not object to the DPR submitted to it by the Authorisee within two months of submission, the Grantor shall be deemed to have approved such DPR and the Authorisee shall be entitled to proceed with the Project accordingly. However the Authorisee expressly, agrees and confirms that non-communication of any comments by the Grantor in terms of above clause shall not mean or be construed to mean that the Grantor's right to notify the objections / comments / or to suggest modifications in DPR is forfeited. The Grantor shall be at liberty to notify its objections / observations and comments even after the expiry of the 60 days period and the Authorisee shall be liable and responsible to address / incorporate to notified objections / observations to the extent feasible in the project implementation.
- (f) Notwithstanding any express or deemed approval or failure to review by or the comments or observation of the Grantor in relation to the DPR and Designs, the Authorisee shall be solely responsible for any defect and/or deficiency therein or any part thereof and accordingly the Authorisee shall at all times remain solely responsible for the technical feasibility, operational capability and reliability of the Project and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (g) The Authorisee may, with the prior written approval of the Grantor, make or permit alterations in or addition to any DPR and Designs, specifications and calculations approved or deemed to be approved by the Grantor given in writing under this Agreement.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (h) Any design, drawing or specification provided by the Grantor to the Authorisee shall only be indicative and the Authorisee shall accept the same at its sole risk, cost and consequence.
- (i) The Grantor shall not be responsible or liable in any manner for the accuracy, completeness or otherwise of the DPR and Designs or the construction and implementation of the Project/Works by the Authorisee on the basis thereof, irrespective of any perusal or review thereof or comment thereon by the Grantor, any Government Authority. In any case the Built-up area provided in DPR shall not exceed the applicable permissible area as per the Municipal By-laws
- (j) The Authorisee needs to submit DPR and obtain approval from the Grantor within the Compliance Period.

### **Section 6.2 Development of Site and Implementation of Works**

- (a) The Authorisee shall commence the Works immediately after taking necessary sanction of the competent authority for the master plan and building plans.
- (b) The Authorisee shall, by itself or through its Subcontractors, at its cost and risk undertake the development of the Site, including land filling, levelling, clearing, shifting of utilities, landscaping and demarcation and division of the Site etc. for establishment of the Project Site, in accordance with the provisions of this Agreement, including the Specifications and Standards and Good Industry Practice.
- (c) The Authorisee shall arrange at its cost the infrastructure facilities, including but without limitation, the power and water supply, necessary for carrying out the Construction, Operation and Maintenance of Project Facility
- (d) The Authorisee shall, by itself or through Subcontractors and Sub-authorisees, at its cost and risk establish, install, equip, provide, construct, as the context admits or requires, and commission the Facilities and Services in accordance with the requirements of the provisions hereof, including the Specifications and Standards and provide the same to the users/others in an equitable, fair and non-discriminatory manner.



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (e) The Authorisee or the Persons claiming through or under it, as the case may be, shall be responsible for doing all such acts, deeds and things as may be necessary and expedient for establishing the Project Facility , including, without limitation, procuring at its/their own risk and cost all goods, materials, things and services necessary for the development and construction thereof and arranging at its/their cost the construction power, water, materials and labour required for establishing the Project Facility, without in any way relieving the Authorisee of its obligations as set out in this Agreement. Subject to the provisions of **Section 6.3 (c)** hereof the Authorisee shall not be entitled to nor shall it seek or raise any demand for any extension of time for completion of construction on account of any shortage of any material or resources or delay in procurement of the same for any reason whatsoever.
- (f) The Authorisee shall on and from the Compliance Date, in accordance with the Specifications and Standards, develop the Site and requisite infrastructure facilities so as to:
- (i) efficiently manage, make available, maintain and operate the Project Facility consistent with prudent standards of safety and technical sufficiency;
  - (ii) provide the necessary resources for the operations and maintenance of the Project Facility ;
  - (iii) provide non-discriminatory access of the Facilities and Services within the Project Facility to the users and other persons.
- (g) The Authorisee shall complete the construction of 50% of total possible built up area of the Project Facilities (as per approved DPR) within 2 years from the Agreement date, which may be extended under the provisions of this agreement or by mutual agreement of the Parties.

### **Section 6.3 Project Completion/ Minimum Obligations/Other Obligations**

- (a) The Project shall be deemed to be complete only when the **Completion Certificate** is issued by the Grantor, to confirm the completion of the Project in accordance with the provisions of **Section 6.3 (b)** (the **“Project Completion”**). The completion certificate shall be issued, only after

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

obtaining of inter-alia the Occupancy Certificate by the Authorisee. The Completion Certificate shall specify the date on which, in the opinion of the Grantor/ Independent Engineer/, the Project was completed and the Project facilities were open Commercial Operation.

- (b) For the avoidance of doubt, Project Completion herein refers to the completion of **50%** of the total possible built up area of the Project Facilities as per the approved DPR;
- (c) Notwithstanding the foregoing, in the event of any unforeseen delay in the issuance of the environmental clearance from the Ministry of Environment and Forests, GoI, the Grantor shall, exercising reasonable and commercial discretion, extend the Construction Period by the period of such delay.
- (d) The Authorisee shall commence Commercial Operations only after issuance of Project completion certificate by the Grantor.
- (e) In addition to the Minimum Development obligation to Construct the Project Facilities having minimum of **6,50,000 Sft.** of built up area, The Authorisee Shall provide the Grantor with **37057 SFT of Bus Station in Ac.0.50, inclusive of parking space free of cost.** Also Compound wall of required height has to be constructed along the BOT site boundary by the bidder at its cost (Free of cost to Corporation).The Built-up area should include internal electrical wiring, painting, flooring, power & water supply connection with sub metres etc. The interiors and furnishing of the space shall be the responsibility of TSRTC. TSRTC shall bear the power, water and other maintenance charges for the said area. Also the Authorisee shall construct compound wall of required height along TSRTC boundary at his own cost.

#### **Section 6.4 Marketing of Project Facility**

- (a) The Authorisee shall be solely responsible for the marketing of the Project Facility. The Authorisee shall be entitled to commence such marketing at its cost and risk from the Compliance Date and to accept advances, premium, booking amounts and other considerations from such users from such date; provided that Grantor shall not be liable in any manner whatsoever to any Person in this behalf and the Authorisee shall disclose the same to such Users.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (b) The Authorisee shall ensure that the advertisement and marketing of the Project Facility is carried out in a manner that is consistent with and not in derogation of or conflict with any terms or provisions of this Agreement and the Applicable Laws.

## **Section 6.5 Operation and Maintenance of Project Facility**

### **Section 6.5.1 O&M Works**

- (a) Effective from date of Project Completion and until the end of the Authorisation Period the Authorisee shall undertake or cause at its cost and risk the operation and maintenance of the Project Facility including the buildings, the common areas, the landscape and other spaces, the parking lots/spaces, the infrastructure, works, fire-fighting and other systems and the common services and facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards, Good Industry Practice, Applicable Laws and conditions of Applicable Permits, by itself or, subject to the provisions of Section 6.5.1 through O&M Contractor(s) or through suitable management/service contractors, without in any way relieving the Authorisee of its responsibilities, obligations and liabilities as set out in this Agreement; provided that the O&M Contractors shall be appointed not less than 2 (two) months before the Scheduled Project Completion or Project Completion, whichever is earlier. Within 2 (two) weeks of the appointment of such contractors the Authorisee shall inform the Grantor of their appointment.
- (b) The Authorisee shall exercise appropriate control over the O&M Contractors and shall manage, direct, administer and supervise their working so as to ensure compliance with the provisions of this Agreement.
- (c) The Authorisee shall at all times carry out or procure at its cost and expense the O&M Works and maintain (including routine, regular, periodic and preventive maintenance), provide, procure, manage, keep in good operating repair and condition, renew, replace, restore, rectify and upgrade to the extent reasonably necessary the Project Facility, normal wear and tear excepted, with the skill, diligence and expertise of operators of similar facilities and in conformity with the provisions hereof, including the Specifications and

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Standards and Good Industry Practice. All such maintenance, repair and O&M Works shall be carried out in such a way as to cause least inconvenience to users of the Project Facility.

- (d) The Authorisee shall carry out the operation and maintenance of the Project Facility with the objective of providing quality service standards and ensuring that the buildings, infrastructure, equipment, systems etc. are maintained in an excellent state perfect operating condition, repair and sanitation and that the Project Facility is transferred to the Grantor upon expiry/Termination of this Agreement is in a perfect working condition, normal wear and tear expected, having regard to its construction, life and use. The operation and maintenance of the Project/Project Facilities so as to keep them in excellent operating condition is an essential condition of this Agreement.
- (e) The Authorisee shall provide, manage, operate and maintain the On-Site Infrastructure in accordance with the Specifications and Standards and Good Industry Practice such that the Project Facility is operated and run efficiently, smoothly, continuously and without any hindrance or inconvenience to the users thereof.
- (f) The Authorisee shall employ qualified and skilled personnel and manpower to efficiently Operate and Manage the Project Facility at its cost and consequence.
- (g) The Authorisee shall make appropriate arrangements for security at the Site and abide by the security regulations/procedures prescribed by the Grantor or any Government Authority from time to time. The Authorisee may secure assistance of the police force for maintaining security upon payment of routine charges for such services.
- (h) The Authorisee may charge a lump sum and/or periodic maintenance or service fees for the operation and maintenance services provided by it to the persons/users/entities availing the same.
- (i) The Authorisee or the Persons claiming through or under it shall be free to determine the Tariff at market driven rates in respect of the use of the Project Facility or the goods, services, facilities or amenities provided thereat and shall

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

have the right to demand, collect, retain and appropriate and revise the Tariff; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.

**Section 6.5.2 Subcontracting, Sub-Leasing, Licensing & Franchising**

- (a) Subject to compliance with the provisions of this Agreement and the Applicable Laws, the Authorisee shall be entitled to undertake the commercial development and use of the Project Facility. For the avoidance of doubt the Authorisee shall have no right and authority to sub-lease the Project Site to any person, in full or part in any manner, form, arrangement, device whatsoever, provided, however, the Authorisee may, subject to the provisions hereof, sub-lease or sub-let the built-up areas constructed by it at or on the Project Site.
- (b) Subject to sub-section (a) above, the Authorisee may, effective from the Operations Date, grant subleases (of built-up spaces) or enter into letting, sub-letting, Authorisations, franchising, management, service, subcontracting or other suitable arrangements such as contracts with Advertising Agencies, Cellular Operators etc on mutually agreed market driven terms and conditions (hereinafter the **“Contractual Arrangements”**) with any Person of its choice (hereinafter the **“Contractual Counter Parties”**) for carrying on its business of managing, marketing and operating and maintaining the Project Facility; provided that the use of Project Facility shall not comprise the Prohibited Activities as for the applicable laws for the site jurisdiction and also not in competition with the operations and activities of TSRTC.
- (c) The Authorisee may determine, demand, collect, revise, retain and appropriate the Tariff for such Contractual Arrangements at rates determined by the Authorisee;
- (d) All Contractual Arrangements shall be subject to the following terms and conditions:

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- i. such Contractual Arrangements shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions of this Agreement;
- ii. the terms and conditions of this Agreement are complied with and as applicable form a part of such Contractual Arrangements and the Contractual Counter Parties , if any, shall be bound by such terms and conditions and be liable and accountable in respect thereof;
- iii. the duration of such Contractual Arrangements shall be limited to and be co-terminus with/not exceed the Authorisation Period herein;
- iv. all such Contractual Arrangements shall be determined and terminated automatically and simultaneously on the expiry, determination or termination of this Agreement/the Authorisation/the Authorisation Period, as the case may be;
- v. such Contractual Arrangements shall come into effect and operation only upon the Authorisee achieving Project Completion in accordance with the provisions of this Agreement unless otherwise authorised by the Grantor in writing;
- vi. the Authorisee shall at its cost carry out or cause the operation and the execution and existence of Contractual Arrangements which shall not relieve the Authorisee of its liability or obligations as set out in this Agreement;
- vii. the maintenance of the Project Facilities, including the common areas and common facilities and amenities; provided that the Authorisee shall be entitled to charge, collect and retain lump sum/monthly/periodic maintenance fees and charges at market driven rates in respect thereof from the Transferees, users and other Persons availing the services and facilities;

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- viii. the execution of Contractual Arrangements shall not relieve the Authorisee of its liability or obligations as set out in this Agreement;
- ix. Each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement or the Land Lease Deed on the one hand and the Contractual Arrangement on the other hand, the provisions of Agreement or the Land Lease Deed, as the case may be, shall prevail and such Contractual Arrangement shall stand modified to that extent;
- x. The Authorisee shall submit to the Grantor for its information and record either a notarised true copy of the agreements/documents or a copy duly certified by Statutory Auditor/ Authorised Representative relating to the Contractual Arrangements within 60 (sixty) days of the date of execution, modification or amendment thereof.
- xi. The Authorisee's failure to comply with this Section 6.5.2 shall be at its cost, risk and consequence and constitute an Authorisee Event of Default that shall entitle the Grantor to Terminate this Agreement in accordance with the provisions of Article 16 hereof.

**Section 6.5.3 No Liability of Grantor for Contractual Arrangements**

The Grantor shall not be liable in any manner whatsoever to any Entity /Person in respect of or in connection with execution of documents/ agreements, matters, understandings and/or disputes relating to the Contractual Arrangements between the Authorisee and such entity or person or otherwise or for the Authorisee's contracts with Third Parties. The Authorisee shall indemnify and keep indemnified the Grantor, its employees, agents, representatives and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.

**Section 6.6 No Breach**

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (a) The Authorisee shall not be considered to be in breach of its obligations relating to the Project nor shall it incur or suffer any liability if and to the extent performance of any such obligations is affected by or on account of any of the following:
- (i) Force Majeure Events, subject to provisions of **Section 14;**
  - (ii) a material delay, impediment, default or prevention due to or caused by the Grantor or any Government Authority;
  - (iii) Compliance with the instructions or directions of the Grantor/Independent Engineer/Consultant/Expert/ any Government Authority other than instructions issued as a consequence of a breach or default by the Authorisee of any of its obligations hereunder;
  - (iv) Extensions granted under the provisions of this Agreement, or specific extensions granted by the Grantor or extensions made by the mutual agreement of the Parties;
  - (v) Measures taken to ensure the safe use of the Project Facilities except when the unsafe conditions have been occasioned by the Authorisee's failure to perform its obligations under this Agreement.
- (b) In the event of delay due to circumstances set forth in sub-section (a) above, the Authorisee shall be relieved of its obligations to the extent of such delay and, upon written request, be granted an extension of the time equal to the period of delay, as certified by the Independent Engineer/ Expert, for fulfilling its obligations relating to the Project Facility.



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (c) Notwithstanding the above, the Authorisee and the Grantor may, mutually agree to extend the time period mentioned hereinabove for reasons that they may deem expedient in the interest of the Project.

## **ARTICLE 7 PROJECT MONITORING**

### **Section 7.1 Nodal Officer or Independent Engineer**

- (a) The Grantor shall nominate a Nodal Officer from their Engineering Department for monitoring the Progress of the Project, or alternatively, hire the services of an Independent Engineer. The Nodal Officer/Independent Engineer shall monitor the implementation of the Project, review and approve the DPR and the Designs and Drawings, conduct on behalf of the Grantor the periodic verification of the progress in the construction, issue the Provisional and/or the Completion Certificate. In case, TSRTC hires the Services of the Independent Engineers, they discharge their duties and functions substantially in accordance with the terms of set forth in **Appendix 9** and elsewhere in this Agreement. The Nodal Officer shall pursue the Authorisee for submission of periodic reports (at least once every quarter) in respect of its functions.
- (b) In case, TSRTC hires the services of Independent Engineer, The Cost and Expenses of the same shall be borne entirely by the Authorisee.

### **Section 7.2 Reporting and Inspection**

The Authorisee shall, in addition to the reporting requirements set forth elsewhere in this Agreement, comply with the reporting requirements hereunder:

#### **(a) Construction Period Reports**

- (i) The Authorisee shall within **30 (thirty) days** after the execution of the EPC Contract provide to the Grantor /Nodal Officer, a copy of the construction schedule created using network techniques. A detailed

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

explanation of the construction methodology, outlining the quality assurance, safety and surveillance plan shall also be included.

- (ii) The Authorisee shall provide to the Grantor/Nodal Officer a monthly progress report during the Construction Period, which shall contain the following information

Summary of Progress: summary of the progress of the Project for that month which shall detail:

- (1) any areas of significant concern and the action being taken to resolve any significant difficulties;
- (2) the actual progress made during that month against the construction schedule including a description in reasonable detail of the work carried out;
- (3) any matters which have come to light which are likely materially and adversely to affect the construction of the Project;
- (4) any potential or actual deviations from the construction schedule, the Specifications and Standards and Good Industry Practice or otherwise confirmation that construction is proceeding in accordance therewith;
- (5) a commentary on the progress of construction as against the business plan;
- (6) areas of concern or problem or bottlenecks, impact and corrective action plans, revised resource planning, details. The critical path schedules shall be updated and included as part of this report in order of priority.

Completion: details of any changes to the proposed date of completion of construction and the reasons for such changes; and

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Government Approvals: written confirmation that all Applicable Permits then required are in full force and effect including a list of such permits.

- (iii). The Authorisee shall promptly carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Grantor/Nodal Officer and ensure construction of the Project/Project Facilities is in all respects in accordance with the provisions of this Agreement.

**(b) Operation Period Reports**

The Authorisee shall provide to the Grantor, if any, a quarterly operation and maintenance progress report during the Operation Period, which shall contain the following information:

- (i) Summary of Progress: summary of operating and financial results for that quarter and explanations of any major variation between actual and projected results;
- (ii) Revenue: details of the Revenue for the relevant quarter from each source
- (iii) Maintenance Plan: a maintenance plan for the Project for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan).

**(c) Other Project and Financial Information**

The Authorisee will provide the following information to the Grantor promptly after becoming aware of it:

- (i) Force Majeure: details of any Force Majeure Event which has occurred or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent;
- (ii) Litigation: details of any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to the Project; and

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (iii) Legislation: details of contravention of any Applicable Law or with the terms of any Applicable Permit and any fines or penalties that have or may thereby be incurred.
- (iv) Financial Condition: notification of any adverse material change in the financial condition of the Authorisee or the Project promptly following such occurrence

**(d) Additional Information**

The Authorisee agrees to provide the Grantor/Nodal Officer such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

**(e) Inspection**

The Grantor/Nodal Officer, the relevant Government Authorities, and their representatives shall at all reasonable times have access to the Project Site, the Project and the Works and all related designs, documents, reports, records technology and workmanship, to review progress of the construction, operation and maintenance of Project Facility and to ascertain compliance with any of the requirements of this Agreement, including the Specifications and Standards and to check the progress of the works or for performing statutory duties and the Authorisee shall provide the necessary cooperation and assistance to them in this behalf.

Provided that any failure on the part of the Grantor, the concerned Government Authorities to inspect any work, material, equipment and workmanship etc. shall not, in relation to such work etc. (i) amount to any consent or approval of the Grantor nor shall the same be deemed to be a waiver of any of the rights of the Grantor under this Agreement; and (ii) release or discharge the Authorisee from

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

its obligations or liabilities under this Agreement in respect of such work etc.

## **ARTICLE 8 FINANCIAL COVENANTS**

### **Section 8.1 Financing for Project**

- (a) The Authorisee agrees and undertakes to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project.
- (b) The Authorisee may assign its rights, or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including right, and interest under this Agreement, in and to the Project Assets (excluding the land), and its right to receive Tariff in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the lenders are made aware of the same.
  - (i) Provided that the Grantor shall be informed by the Authorisee as to the creation of any Security Interest in favour of the Lenders, together with the Lenders particulars within a period of 14 days from the date such Security Interest comes into existence and provide to the Grantor within such time notarized true copies of documents/agreements relating thereto. Failure to do so shall amount to an event of default on the part of the Authorisee and any consequential failure or inability on the part of the Grantor to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Agreement, if any required, shall be at the risk and responsibility of the Authorisee only.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (ii) Provided further in the event of Termination of this Agreement by efflux of time or otherwise, such assignment/Security Interest shall stand extinguished upon payment of compensation by the Authorisee to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement. The Authorisee shall primarily be responsible to ensure that the prospective lenders are made aware of this provision and a suitable provision to this effect is incorporated in the financing & security documents to execute between the Authorisee and the lenders.
- (iii) Provided further, nothing contained in sub-section (b) of this Section 8.1 shall (i) absolve the Authorisee from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorize or be deemed to authorize the Lenders to implement and execute Project themselves and (iii) under any circumstances amount to any guarantee from or recourse to the Grantor.
- (c) Except as stated in sub-section (b) above or elsewhere in this Agreement, the Authorisee shall not assign its rights, interest or obligation or create a Security Interest with respect to its rights under the Agreement or any part thereof in favour of any Person without the prior written consent of the Grantor.
- (d) The Grantor shall assist the Authorisee as necessary and mutually agreeable, to enable the Authorisee to achieve Financial Closure, which do not materially and adversely affect the rights and interests of the Grantor hereunder or impose additional material liabilities on the Grantor.
- (e) The Agreement entered by the Authorisee with the lenders will be sub-ordinate to the Authorization Agreement entered by the Authorisee with the Grantor.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

## Section 8.2 Payments to Grantor

In consideration for the grant of the Authorization, the Preferred Bidder/ Authorisee shall make the following payments/provide following facilities to the Grantor in the manner and at the times mentioned hereunder:

### Section 8.3.1 Project Development Fee

The Preferred Bidder shall pay to the Grantor a one-time irrevocable and non-refundable Project Development Fee **Landuse Conversion Charges** of **Rs. \_\_\_\_\_/-(Rupees \_\_\_\_\_ only)** in the form of a demand draft drawn in favour of "**FA , TSRTC, Hyderabad**" on any Nationalized Bank, payable at Hyderabad, **within 45 days** of the date of issue of LoI, a pre-condition to the execution of this Agreement, and the amount has already been paid.

### Section 8.3.2 Upfront Amount

- (i) Upfront Amount ( 1<sup>st</sup> Installement) : The Authorisee has paid to the Grantor the 1<sup>st</sup> instalment of Upfront Amount of **Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)** in the form of a Demand Draft vide No. \_\_\_\_\_ Dated \_\_\_\_\_ drawn in favour of "**FA , TSRTC, Hyderabad**" payable at Hyderabad, as a pre-condition to the execution of this Agreement
- (ii) Upfront Amount (2<sup>nd</sup> Installement): The Authorisee has to pay the Grantor the 2<sup>nd</sup> installment of Upfront Amount of **Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)** in the form of a Demand Draft drawn in favour of "**Accounts Officer, TSRTC, \_\_\_\_\_ Region, Hyderabad**" payable at Hyderabad on or before **365 days** from the Agreement date.

### Section 8.3.3 Annual Lease Rentals (ALRs)

- a) At the time of execution of the Authorisation Agreement, the Authorisee has paid the **1<sup>st</sup> year Lease Rentals** for the First 6 months, amounting to **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_**

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

**only)**, in the form of a Demand Draft vide No. \_\_\_\_\_ Dated \_\_\_\_\_ issued by \_\_\_\_\_ Bank (Branch) drawn in favour of “ **FA , TSRTC, Hyderabad**” payable at Hyderabad, as a pre-condition to the execution of this Agreement

- b) At the time of execution of the Authorisation Agreement, the Authorisee has paid the **Advance Annual Lease rentals for the base year** for the First year, amounting to **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only)**, in the form of a Demand Draft vide No. \_\_\_\_\_ Dated \_\_\_\_\_ issued by \_\_\_\_\_ Bank (Branch) drawn in favour of “ **FA , TSRTC, Hyderabad**” payable at Hyderabad, as a pre-condition to the execution of this Agreement.
- c) The Authorisee shall make payments with respect to the initial year Annual Lease Rentals on Yearly basis with 5% enhancement (which commences after holiday period/ on commercial operation date i.e., whichever is earlier) over the previous year Annual Lease Rentals throughout the Authorization Period.
- d) The Annual Lease rentals are different in each of the year. To ensure and secure the payment of advance Lease Rentals with the Grantor from Second year after Base year of ALR onwards, the Authorisee, along with the Annual Lease rentals, has to pay the difference of amount to make the Advance Lease Rentals equal to 6month Lease Rentals for that year. This Advance Lease rentals shall be paid at the beginning of each year, as interest free security deposit.
- e) The Authorisee should not construct more than the approved built up area as provided in DPR or Municipal approved plans. The Authorisee responsible for all consequences if constructs without the approval of Municipal Corporation/ Local bodies and without consent of Grantor and liable for termination of agreement.
- f) The Advance Lease Rentals shall be returned to the Authorisee within six months from the Transfer Date after the completion of the Authorisation Period, after adjusting dues of the Authorisee if any to the Grantor or towards any Project Payment Obligations like power, water, maintenance etc.
- g) In the event, the payments are delayed beyond a period of 15 days from the scheduled date; it shall be construed as an



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Authorisee default in payment of Annual Lease Rentals. When such a default occurs, the Grantor shall issue a default notice to the Authorisee requesting to remedy the situation within 15 days. If the situation is not remedied, at the end of 15<sup>th</sup> day a second notice shall be issued allowing further period of 15 days. In the event that the Authorisee fails to remedy the situation, the Grantor may at the end of 45<sup>th</sup> day (15+15+15 days) appropriate the amount due from the security (Advance Lease Rentals) and issue a termination notice. The Authorisee shall reinstate the security within 7 days, failing which the Grantor reserves the right to terminate the Authorization Agreement as per Article-16 of this Authorization Agreement.

#### **Section 8.3.4 Payment of Salvage value:**

TSRTC has estimated the salvage value of the existing old buildings and structures as Rs. 36,000/- (Rupees Thirty Six thousand only). The Successful Developer has to pay Rs.36,000/- towards salvage Value to TSRTC in the form of Demand Draft drawn on any Nationalised/ Scheduled bank (excluding Co-operative bank) in favour of "Telangana State Road Transport Corporation" payable at Hyderabad within 90 days from the date of Signing of Authorization Agreement.

#### **Section 8.3.5 Penalty for Delayed Payments:**

If the Authorisee fails to make the Annual Lease rentals payments to TSRTC, the Annual Lease Rentals (ALRs) (the yearly payments on advance basis), Security Deposits and yearly enhancement of advance Lease Rentals within the stipulated period, a penalty @ **18% per annum** on the outstanding amounts would be effective from and including the due date to excluding the date of payment.

### **ARTICLE 9 PERFORMANCE SECURITY**

#### **Section 9.1 Performance Security**

- (a) For securing the performance of the obligations of the Authorisee/ Preferred Bidder under the RFP, the LoI, under **Section 3.4** of this Agreement and during the Construction Period, the Preferred Bidder has along with the execution of this Agreement, delivered to the Grantor a an un-conditional and irrevocable bank guarantee for a sum of **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only)**, valid for 4 years from the date of execution of the Agreement unless extended under the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

provisions of this Contract. The same is furnished as an irrevocable and unconditional Bank Guarantee from Bank--- dated ----- & valid up to ----- drawn in favour of Managing Director, TSRTC".

- (b) The Preferred Bidder / Authorisee shall keep the Performance Security valid at all times during the stipulated period/extended period as the case may be.

**Section 9.2 Appropriation of Performance Security**

- (a) In the event of the Authorisee being in default of the due, faithful and punctual performance of its obligations under the RFP, the LoI, under Section 3.4 of this Agreement and during the Construction Period and until the date of issue of the Completion Certificate, as the case may be, or owing any sums whatsoever to Grantor under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Grantor for or against the Authorisee under this Agreement or against the Grantor in respect of this Agreement, the Grantor shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Security as damages for such default, dues, demands or claims.
- (b) The decision of the Grantor as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Authorisee. The Authorisee specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Grantor under this Agreement is required to be provided in connection with any demand made by the Grantor to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Grantor’s written demand as aforesaid.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (c) In the event of encashment of the Performance Security by the Grantor, in full or part, the Authorisee shall within 30 (thirty) days of receipt of the encashment notice from the Grantor provide a fresh Performance Security or replenish the existing Performance Security, as the case may be. The provisions of this Article 9 shall apply Mutatis Mutandi to such fresh Performance Security. The Authorisee's failure to comply with this provision shall constitute an Authorisee Event of Default, which shall entitle the Grantor to terminate this Agreement in accordance with the provisions of Article 16 hereof.

### **Section 9.3 Release of Performance Security**

Subject to the provisions hereof, the Grantor shall promptly return the Performance Security on achieving COD and Project Completion Certificate issued by the Grantor.

## **ARTICLE 10 ASSET OWNERSHIP AND CERTAIN RIGHTS**

### **Section 10.1 Ownership of Assets**

#### **(a) Land Area**

The ownership of the Project Site shall always remain vested with the Grantor. The rights of the Authorisee in the Project Site shall only be that of a lessee as provided in this Agreement. It is clarified for the avoidance of doubt that title to the land shall vest exclusively with the Grantor and the Authorisee shall only have the right to develop and use the same in accordance with the provisions of this Agreement.

#### **(b) Assets created or provided by the Authorisee**

The ownership of all infrastructure assets, buildings, structures, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Authorisee in, on, over or under the Project Site pursuant to this Agreement shall, until transfer to the Grantor in accordance with this Agreement, be with the Authorisee.

**ARTICLE 11 INSURANCE****Section 11.1 Insurance Cover**

The Authorisee shall maintain or cause to be maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders.

**(a) Construction Period**

The Authorisee shall, at its cost and expense, purchase and maintain during the Construction Period such insurances as are necessary, including but not limited to the following:-

- (i) Construction/builders'/contractors' all risk insurance;
- (ii) Erection all risk policy
- (iii) comprehensive third party liability insurance including injury or death to personnel of the Grantor and others who may enter the Project Site;
- (iv) workmen's compensation insurance; **any other statutory claim or claims either under the Motor Vehicle Act 1988 or any other statute.**
- (v) any other insurance that may be necessary to protect the Authorisee, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

**(b) Operations Period**

The Authorisee shall, at its cost and expense, purchase and maintain during the Operations Period insurance to cover the Project Facility for:

- (i) loss, damage or destruction of the Project Facility at replacement value or full market value (including fire, burglary, standard and special peril);

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (ii) the Authorisee's general liability arising out of the Authorisation;
- (iii) liability to third parties; and
- (i) any other insurance that may be necessary to protect the Authorisee and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iii).

### **Section 11.2 Evidence of Insurance**

The Authorisee shall, from time to time, furnish to the Grantor copies of all insurance policies in respect of the Insurance Cover (or appropriate endorsements, certification of other satisfactory evidence of insurance) as soon as reasonably practical after they are received by the Authorisee and furnish evidence to the Grantor that all premiums have been paid and that the relevant policies remain in force, valid and existence. In the event the Authorisee does not maintain any Insurance Cover pursuant hereto, the Grantor may, at its option, effect such insurance and the Authorisee shall reimburse all the costs and expenses incurred in this behalf by the Grantors within 15 (fifteen) days of receipt of the Grantor's claim in respect thereof. In case the Authorisee fails to reimburse such expense, this shall become the Authorisee's Event of Default and shall be treated as per the provisions laid down under **Article 15**.

### **Section 11.3 Application of Insurance Proceeds**

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall be promptly credited the amount, in accordance with the terms hereof and thereof, the Authorisee shall apply such proceeds for the repair, renovation, restoration or re-instatement of the Project or any part thereof, which may have been damaged or destroyed. The Authorisee may designate the Lenders/ Lenders' Representative the loss payees under the insurance policies or assign the insurance policies in their favour as security for the Financial Assistance provided by the Lenders.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

#### **Section 11.4 Distribution of Insurance Proceeds Upon Termination**

Whenever this Agreement is terminated following a Force Majeure Event and insurance proceeds are available in connection with the insurance policies to which the Authorisee is entitled or should be entitled pursuant to this Agreement with respect to the Project, such proceeds shall, if not used to effect a restoration or to make repairs to the Project, be distributed first, (a) payment of dues, if any, to the Grantor; and (b) for the payment towards indebtedness (actual or contingent) owing to the Lenders; (c) the residual amount, if any, to the Authorisee.

#### **Section 11.5 Insurance Companies and Waiver of Subrogation**

- (a) The Authorisee shall insure all insurable assets comprised in the Project Assets and/or the Project through Indian insurance companies of repute and if so permitted by GoI, through foreign insurance companies, to the extent that insurances can be affected with them.
- (b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Authorisee.
- (b) All insurance policies supplied by the Authorisee shall include a waiver of any right of subrogation of the insurers there under against, *inter alia*, the Grantor and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- (d) The Authorisee hereby further releases, assigns and waives any and all rights of recovery against, *inter alia*, the Grantor and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Authorisee may otherwise

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Authorisee pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**Section 11.6 Validity of the Insurance Cover**

The Authorisee shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Authorisation Period and furnish certified true copies of the same to the Grantor. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 days' clear notice of cancellation is provided to Grantor in writing. If at any time the Authorisee fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Grantor may at its option purchase and maintain such insurance and all sums incurred by the Grantor therefore shall be reimbursed by the Authorisee forthwith on demand, failing which the same shall be recovered by the Grantor by exercising right of set off or otherwise.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

## **ARTICLE 12 REPRESENTATIONS AND WARRANTIES**

### **Section 12.1 Mutual Representations and Warranties**

Each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement and to carry out the transactions contemplated hereby;
- (d) this Agreement constitutes its legal, valid and binding obligation, fully enforceable against it in accordance with the terms hereof;
- (e) it has the financial standing and capacity to undertake the Project;
- (f) it shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

### **Section 12.2 Further Representations and Warranties of Preferred Bidder/ Authorisee**

In addition, the Authorisee represents and warrants to the Grantor that:

- (a) The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with, contravene, violate, result in the breach of, constitute a default under or accelerate performance of any agreement or instrument to which the Authorisee is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order, injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (b) There are no actions, suits, proceedings, or investigations pending or, to the Authorisee's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Authorisee under this Agreement or which individually or in the aggregate may result in any Essential Material Adverse Effect;
- (c) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Authorisee's ability to perform its obligations and duties under this Agreement;
- (d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which individually or in the aggregate have or may have Material Adverse Effect;
- (e) No representation or warranty by the Preferred Bidder /Authorisee contained herein or in any other document furnished by it to the Grantor or to any Government Authority in relation to Applicable Permits or otherwise contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (f) Each Consortium Member/the Preferred Bidder was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Authorisee entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

Provided that whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Preferred Bidder /Authorisee, during the Authorisation Period, the outcome of which may result in the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

breach of or constitute a default of the Authorisee under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Authorisee's ability to perform its obligations and duties under this Agreement, the Authorisee shall immediately intimate the same to the Grantor;

- (g) In submitting its Proposal the Preferred Bidder/Authorisee has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which individually or in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project.
- (h) All rights and interests of the Authorisee in the Project, the Project Facilities and Project Assets shall pass to and vest in the Grantor or its nominated agency on the Transfer Date free and clear of all liens, claims, and encumbrances, without any further act or deed on the part of the Preferred Bidder/Authorisee or the Grantor and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Authorisee subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement; and
- (i) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Preferred Bidder /Authorisee, to any person by way of commission or otherwise for securing the Authorisation execution of this Agreement or for influencing or attempting to influence any officer or employee of the Grantor.

### **Section 12.3 Waiver of Sovereign Immunity**

Each Party hereto unconditionally and irrevocably:

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (a) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts and that it is subject to the civil and commercial laws of India with respect to this Agreement;
- (b) agrees that any proceedings be brought against it or its assets, other than the assets protected by the diplomatic and consular privileges under the Foreign Sovereign Immunities Act or / any analogous legislation ("Exempted Assets") in any jurisdiction, in relation to this Agreement or any transaction contemplated by this Agreement, no immunity, sovereign or otherwise from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Exempted Assets);
- (c) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings including without limitation the making, enforcement or execution against or in respect of any property irrespective of its use subject to (b) above.

#### **Section 12.4 Disclaimer**

- i. Without prejudice to any express provision contained in this Agreement, the Preferred Bidder/Authorisee acknowledges that prior to the execution of this Agreement, the Preferred Bidder/Authorisee has after a complete and careful examination made an independent evaluation of the Project, the legal and contractual framework, the Applicable Laws and Applicable Permits and the technical and financial aspects of the Project, the Specifications and Standards, the Project Site and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Grantor, its

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

consultants or any Government Authority, the market and demand conditions, information relating to users and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Preferred Bidder's/Authorisee's complete satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Authorisee in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, land acquisition etc. in respect of the Project Site.

- ii. The Preferred Bidder /Authorisee further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that the Grantor, its consultants or any Government Authority shall not be liable for the same in any manner whatsoever to the Preferred Bidder/ Authorisee or Persons claiming through or under the Preferred Bidder/Authorisee.
- iii. The Preferred Bidder /Authorisee accepts that it is solely responsible for the verification of any design, data, design, documents or information provided to the Authorisee by the Grantor, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.
- iv. The Preferred Bidder /Authorisee shall be solely responsible for the contents of its Proposal, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Authorisee for implementing the Project.
- v. The Preferred Bidder /Authorisee is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

## **ARTICLE 13 LIABILITY AND INDEMNIFICATION**

### **Section 13.1 Liability of Authorisee**

Notwithstanding anything to the contrary contained in this Agreement,

- (a) in addition to the Authorisee's liability and obligations and the Grantor's remedies provided elsewhere in this Agreement, the Authorisee shall be solely responsible for any loss of or damage to the Project and the Project Assets, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Grantor:
- (i) during the Authorisation Period resulting from any negligent act or omission of the Authorisee, the Contractors, the Contractual Counter Parties or any other Person and their respective employees, agents, contractors and representatives.
  - (ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Authorisee, Contractor or Contractual Counter Parties, or non-performance of any term, condition, covenant or obligation to be performed by the Authorisee, Contractor or Contractual Counter Parties under this Agreement and the Transaction Documents.
- (b) The Authorisee shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with development control regulations of the relevant local authorise time to time, building bye laws as may be applicable, other Applicable Laws, regulatory requirements of Government Authorities, Specifications and Standards or any other matter) for which the Authorisee is liable or which is attributable to

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

the Authorisee and, in turn, the Persons claiming through or under the Authorisee.

### **Section 13.2 Indemnification**

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Authorisee agrees to indemnify and hold harmless the Grantor and its officers, employees, agents, trustees and consultants (each a **“Grantor Indemnified Party”**) promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, **“Losses”**) to which the Grantor Indemnified Party may become subject, insofar as such Losses arise out of, in any way relate to, or result from (i) any misstatement or any breach of any representation or warranty made by Authorisee or (ii) the failure by Authorisee to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Authorisee Person claiming through or under the Authorisee or (iii) any claim or proceeding by any Third Party against the Grantor arising out of any act, deed or thing done or omitted to be done by Authorisee or (iv) as a result of failure on the part of the Authorisee to perform any of its obligations under this Agreement or on the Authorisee committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Authorisee to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project Facility or the Authorisee's Contactors or employees or any Third Party or Government Authority or (vi) as a result of any failure or negligence or default of the Authorisee or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

out of this Agreement and/or arising out of or, in connection with the Authorisee's use and occupation of Project Site and/or construction, operation and maintenance of the Project.

For the avoidance of doubt, indemnification of Losses pursuant to this Article 13 shall be made in an amount or amounts sufficient to restore each Grantor Indemnified Party to the financial position it would have been in had the Losses not occurred.

- (b) Without limiting the generality of sub-section (a) of this **Section 13.2**,
- (i) the Authorisee shall fully indemnify and defend the Grantor Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Authorisee and the Persons claiming through or under the Authorisee to comply with Applicable Laws and Applicable Permits, (2) payments of Taxes relating to the Authorisee and the Persons claiming through or under the Authorisee, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Authorisee/such Persons without reimbursement hereunder, or (3) non-payment of amounts due as a result of materials or services rendered/ provided to the Authorisee or any Person claiming through or under the Authorisee, which are payable by the Authorisee or such Person.
  - (ii) the Authorisee shall fully indemnify, and defend the Grantor Indemnified Party harmless from and against any and all Losses which the Grantor Indemnified Party may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Authorisee or by the Persons claiming through or

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

under the Authorisee in performing the Authorisee's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Authorisee shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Authorisee shall promptly make every reasonable effort to secure for Grantor Indemnified Party, a Authorisation, at no cost to Grantor Indemnified Party, authorising continued use of the infringing work. If the Authorisee is unable to secure such Authorisation within a reasonable time, the Authorisee shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

- (iii) the Authorisee shall further indemnify, defend and hold harmless the Grantor Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Authorisee's performance of this Agreement or arising out of any act or omission of the Authorisee, and in turn of the Persons claiming through or under the Authorisee.
- (c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

### **Section 13.3 Indirect or Consequential Losses**



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to the other Party for any matter arising out of or in connection with this Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

### **Section 13.4 Business Risks**

Except as expressly provided in this Agreement, the Authorisee shall carry out and perform its rights and obligations under this Agreement and the other Transaction Documents at its own cost and risk. The Authorisee shall be fully responsible for and shall bear the financial, commercial and business risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the other Transaction Documents.

## **ARTICLE 14 FORCE MAJEURE**

### **Section 14.1 Force Majeure Event**

#### **Section 14.1.1 Force Majeure Event Defined**

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances (occurring in India) set out hereunder or the consequence(s) thereof which affect or prevent the Party (Grantor or Authorisee) claiming Force Majeure ("Affected Party") from performing its obligations in whole or in part under this Agreement and which event or circumstance which is (a) is beyond the reasonable control of the Affected Party, (b) such party could not have prevented or reasonably overcome with the exercise of due diligence, reasonable efforts, skill and care, (c) does not result from the negligence of such party or the failure of such party to perform its obligations hereunder, (d) is of an incapacitating nature and prevents or

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

causes a delay or impediment in performance that has Material Adverse Effect and (e) is all or any of the following circumstances:

- (a) Acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire or exceptionally adverse weather conditions affecting the implementation of the Project.
- (b) Radioactive contamination, ionizing radiation.
- (c) Epidemic, famine.
- (d) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, nuclear blast / explosion, sabotage or civil commotion.
- (e) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Authorisee in any proceedings (which are non collusive and duly prosecuted by the Authorisee) for reasons other than failure of the Authorisee or of any Person claiming through or under it to comply with any Applicable Law or terms of Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by Grantor.
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

#### **Section 14.1.2 Exceptions to Force Majeure**

##### **For the Grantor**

The Grantor will not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement, the expropriation, confiscation or nationalization of the

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Project/Project Facilities/Project Assets by the Grantor or any other Government Authorities;

**For the Authorisee**

The Authorisee and/or persons claiming through or under it will not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the nonperformance of its obligations under this Agreement:

- (i) late delivery of any equipment or materials where such delivery is not attributable to Force Majeure events mentioned in **section 14.1.1;**
- (ii) breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project Facilities;
- (iii) delays in performance by the contractors or sub-contractors or employees, agents and representatives of the Authorisee
- (iv) economic hardship including insufficiency of funds; or
- (v) general economic slowdown.

**Section 14.2 Notice of Force Majeure Event**

(c) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event ("the Notice") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (d) The Notice shall inter-alia include full particulars of:
- (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
  - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
  - (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damages; and
  - (iv) any other relevant information.
- (e) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for under **Section 14.2 (b)** and such other information as the other Party may reasonably request.

### **Section 14.3 Period of Force Majeure**

Period of Force Majeure shall mean the period from the time of occurrence specified in the notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- (a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with **Article 14.4** ; or
- (b) termination of this Agreement pursuant to **Article 14.7** hereof.

### **.Section 14. 4 Performance Excused**

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 14.5 Resumption of Performance**

During the Period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall extend all reasonable assistance to the Affected Party in this regard.

### **Section 14.6 Costs, Revised Timetable**

#### **(a) Costs**

The Authorisee shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.

#### **(b) Extension of Time/ Period**

The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event.

### **Section 14.7 Termination Due to Force Majeure Event**

If the Period of Force Majeure continues or is in the reasonable judgment of the Parties is likely to continue beyond a period of 180 days, the Parties may mutually decide to continue this Agreement or terminate this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, any of the party shall after the expiry of the said period of 180 days, be entitled to terminate the Agreement under the provisions of Article 16 shall, to the extent expressly made applicable, apply.

## **ARTICLE 15 EVENTS OF DEFAULT**

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

## **Section 15.1 Events of Default**

Event of Default means the Authorisee Event of Default or the Grantor Event of Default or both as the context may admit or require.

### **(a) Authorisee Event of Default**

The Authorisee Event of Default means any of the following events unless such an event has occurred as a consequence of the Grantor's Event of Default or a Force Majeure Event:

- (i) the Authorisee's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement.
- (ii) the Authorisee's failure to perform or discharge any of its obligations under any other Transaction Documents, which has or is likely to have a Material Adverse Effect.
- (iii) any representation made or warranties given by the Authorisee/ Developer under this Agreement are found to be false or misleading.
- (iv) the Authorisee passing a resolution for voluntary winding up.
- (v) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Authorisee by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- (vi) levy of an execution or distraint on the Authorisee's Assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 30 days or any authority, regulatory body, court, tribunal or judicial authority passing or issuing any order or direction against the Authorisee which would have an or

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

likely to have an Material Adverse Effect on the project or the ability of the Authorisee to comply with or discharge the obligations and responsibilities under this Agreement.

- (vii) amalgamation of the Authorisee with any other company or reconstruction or transfer of the whole or part of the Authorisee's undertaking (other than transfer of assets in the ordinary course of business) without the Grantor's prior written approval, provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the financial and technical ability demonstrated to the satisfaction of the Grantor, to undertake, perform/discharge the obligations of the Authorisee under this Agreement, necessary approval shall be granted by the Grantor.
- (viii) the Authorisee engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- (ix) the Authorisee repudiates this Agreement or otherwise takes any action or evinces or conveys an intention not to be bound by this Agreement.
- (x) the Authorisee has not rectified the default in payment as per the clause 8.3.3 of this Agreement.
- (xi) the Authorisee is adjudged bankrupt or insolvent.
- (xii) the whole of the Project Facility or any part of Project Facility remains closed / un-operational for an aggregate period exceeding "one hundred and twenty " days in a year (except for reasons on account of force majeure or Grantors event of default).
- (xiii) the Authorisee is in the breach or non compliance of any terms and conditions of the Land Lease Deed to be executed / executed between the Grantor and Authorisee in pursuance of the provisions of this agreement

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (xiv) the Authorisee committing any breach or non compliance of any of the terms and conditions of the financing document executed between the Authorisee and if all or any of the Lender(s) have recalled their outstanding dues and in pursuance thereto have initiated the exercise of their right to enforce the security interest created in their favour under the financing documents, as permitted by this agreement, on the Project Assets and / or the rights and interest under this agreement.
- (xv) such events as have been specified as Authorisee Events of Default under the provisions of this Agreement.
- (xvi) In the event of refusal of Statuary approvals such as Land conversion, Municipal approval, fire safety etc., and the Authorisee is unable to proceed with the Implementation/ Development of the project and Authorisee makes a request to Grantor for termination, the Authorization agreement will automatically gets terminated within seven days of such request of Authorisee and the performance security shall be released to the Authorisee duly adjusting premiums & ALRs due till the date of termination.

**(b) Grantor Event of Default**

- (i) The Grantor's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement that has a Material Adverse Effect unless such failure has occurred as a consequence of an Authorisee Event of Default or a Force Majeure Event;
- (ii) any representation made or warranties given by the Grantor under this Agreement is found to be false or misleading; any defect in the Grantor's title, ownership and possession of the site.
- (iii) expropriation or compulsory acquisition by any Government Authority of the Project/Project Assets or part thereof or any material assets or rights of the Authorisee; provided the same has not resulted from an act or default of the Authorisee; Road



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

widening programmes and other related acquisitions by the statutory bodies shall be excluded from this clause.

- (iv) In the event of any legal dispute arises out of the title deeds with the Private parties or with the Government or Government intends take over and notices are issued or approvals rejected on such grounds etc., and the Authorisee is unable to proceed with the Implementation/ Development of the project it should not be treated Granter event of default. In such situation the Authorization agreement will automatically gets terminated and the Amounts paid by the Authorisee shall be refunded without interest and the performance security shall be released to the Authorisee.

### **Section 15.2 Parties Rights**

- (a) Upon the occurrence of the Authorisee Event of Default, the Grantor shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to Terminate this Agreement.
- (b) Upon the occurrence of the Grantor Event of Default, the Authorisee shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to Terminate this Agreement:

Provided that before proceeding to Terminate this Agreement, the Party entitled to do so shall (i) in terms of Clause 18.3 provide an opportunity to the other party to state its position and give explanation in the matter, (ii) give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

### **Section 15.3 Consultation Notice**

Either Party exercising its right under Section 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

otherwise dealing with the underlying Event of Default (the **"Consultation Notice"**).

#### **Section 15.4 Remedial Process**

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 days or such extended period as they may agree (the **"Remedial Period"**) the Parties shall, endeavor to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is an Authorisee Event of Default, with the prior approval of the Grantor and in consultation with the Lenders, the Authorisee shall Endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances;

- (a) the change of management or control/ownership of the Authorisee;
- (b) the replacement of the Authorisee by a new Authorisee ("Substitute Entity") on terms no less favourable than those contained in this Agreement, proposed by either of them or the Lenders and the specific terms and conditions of such replacement which shall include:
  - (i) the criteria for selection of the Substitute Entity,
  - (ii) the transfer of rights and obligations of the Authorisee surviving under this Agreement to the Substitute Entity,
  - (iii) handing over/ transfer of the Project Assets and the Project to the Substitute Entity,
  - (iv) assumption by the Substitute Entity of the outstanding obligations of the Authorisee under the Financing Documents and preserving Lenders' charge on the Authorisee's assets ,
  - (v) assumption by Substitute Entity of any amounts due to the Grantor from the Authorisee under this Agreement.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 15.5 Obligations during Remedial Period**

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage caused or suffered on account of the underlying failure/breach.

### **Section 15.6 Revocation of Consultation Notice**

If during the Remedial Period the underlying Event of Default is cured/ waived to the extent expressly applicable in the Agreement, totally or partially by the Grantor under Clause 15.4 or any clause of the agreement, the Consultation Notice issued by Authorisee is deemed to be withdrawn by the Authorisee and the Authorisee has to take further remedial measures at his own cost. If no action is taken by the Grantor nor replied to Consultation notice then only the notice issued by the Authorisee is valid and Agreement can be terminated under the provisions of **Article - 16**.

If the Consultation notice is issued by the Grantor for events of defaults of Authorisee and the Authorisee fails to take remedy measures or fails to comply the Agreement conditions, Grantor shall have right to terminate the Agreement under provisions of **Article-16**

### **Section 15.7 Step-in-rights**

The Authorisee agrees that the Grantor shall be entitled to operate the Project Facility on the occurrence of an Authorisee Event of Default. In the event of an Authorisee Event of Default, the Grantor may (but shall not be obliged to) operate, or procure and cause operation of the Project Facility upon the issue of the Termination Notice.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

## **ARTICLE 16 TERMINATIONS AND EXPIRY OF AUTHORISATION**

### **Section 16.1 Termination Procedure**

The Party entitled to Terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice period shall not be more than 60 (sixty) days, ("**Termination Period**") and at the expiry of the Termination Period, this Agreement shall stand terminated.

### **Section 16.2 Obligations During Termination Period**

During Termination Period, the Parties shall subject to the provisions of Article 15 wherever applicable, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

### **Section 16.3 Condition Survey**

- (a) The Authorisee agrees that six months prior to the expiry of the Authorisation Period by efflux of time or on the service of a Termination Notice, as the case may be, it shall conduct or cause to be conducted by the mutually accepted Third Party Expert under the Grantor's supervision, a condition survey of the Project and the Project Assets to ascertain the condition thereof, verifying compliance with the Authorisee's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project.
- (b) If, as a result of the condition survey, the Grantor shall observe/notice that the Project Assets and/or the Project or any part thereof have/has not been operated and maintained in accordance with the requirements therefore under this Agreement (normal wear and tear excepted) the Authorisee shall, at its cost

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

- (c) In the event the Authorisee fails to comply with the provisions of this Agreement, the Grantor may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. The Grantor shall be compensated by the Authorisee for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project and the Project Assets in good working condition.

#### **Section 16.4 Consequences of Termination/ Expiry of Authorisation Period**

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Authorisation Period by efflux of time or due to a Force Majeure Event or an Event of Default.

##### **(a) Transfer of Assets**

- (i) On the Transfer Date, the Authorisee shall subject to the provisions of this Agreement:
- a. transfer, assign and deliver to the Grantor or its nominated agency, free and clear of any Encumbrances, the vacant and peaceful possession of the Project, Project Assets and the Site along with the buildings, facilities and structures constructed on, over, at or under it and its right, and interest in and to the Project the Project Assets.
  - b. transfer all its rights and interest in or over the tangible assets comprised in the Project (including movable assets which the Grantor agrees to take over) to the Grantor or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
  - c. hand over to the Grantor or its nominated agency all documents including as building drawings, manuals, designs, documents,

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

information and records relating to the Project and the Project Assets.

- d. to the extent possible assign to the Grantor or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.
- e. at its cost remove from the Site all such moveable assets which are not taken over by or transferred/assigned to the Grantor or its nominated agency. In the event the Authorisee fails to remove such objects within the stipulated time, the Grantor or its nominated agency may remove and transport or cause removal, transportation and storage of such objects, after giving the Authorisee notice of its intention to do so to a suitable location for safe storage. The Authorisee shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
- f. All proceeds of insurance claims shall be handed over to the Grantor or its nominated agency and the Authorisee or Persons claiming through or under it shall have no claim thereon or rights thereto.
  - (i) The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all leasehold arrangements or licenses in relation to the Site and all such immovable property shall automatically revert to the Grantor or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.
  - (ii) The TSRTC and the Authorisee shall at least 6 (six) months prior to the expiry of the Authorisation Period or upon commencement of Termination Period, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets on the Transfer Date. During this period, the designated key personnel of the TSRTC shall be associated with the operations of the Project in order to facilitate smooth takeover of the same by the TSRTC on the Transfer Date.
  - (iii) It is clarified that only the assets of the Authorisee shall be taken over and not the liabilities, including without limitation liabilities

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

relating to labour and personnel related obligations of the Authorisee and the Persons claiming through or under the Authorisee shall be taken over by the TSRTC. All such labour and employees shall be the responsibility of the Authorisee/such Persons even after the expiry of the Authorisation Period and they shall have no claim to any type of employment or compensation from TSRTC.

- (iv) On the Transfer Date the Project and the Project Assets shall be in fair condition, subject to normal wear and tear, having regard for the nature of the asset, the construction and life of the facilities, constructions, structures etc.
- (v) All contracts, agreements, arrangement's etc entered into by the Authorisee with its suppliers, service providers, O&M contract's including sub-lease of any built-up area or space in the Project Site, shall also be liable to be terminated forthwith along with the termination of this agreement at the sole option and discretion of the Grantor and if so required by the Grantor all monies due and receivable under such agreement shall be recovered and deposited in the relevant Bank Account pending final settlement with the Authorisee .
- (vi) If on the Transfer Date, any Person is found to be occupying the Site or any part thereof, other than in respect of the Site/Plot/built up area/unit that has been sub-leased under the Sub-Lease Deeds and the sub-leases/licenses pursuant thereto, the duration of which have been extended by the TSRTC upon such expiration/prior termination of this Agreement, as provided herein, it shall be lawful for the TSRTC to secure summary eviction of such Person in accordance with the Applicable Laws.

**(b) Project Contracts**

The Authorisee shall at the cost of the Grantor transfer/assign such of the Project Contracts, which the Grantor may require to be transferred in its favour subject to the counter parties to such contracts consenting to such transfer/ assignment. The Authorisee

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned to the Grantor provided, if the termination is on account of the Grantor Event of Default the Grantor shall compensate the Authorisee to the extent of the termination payments, if any, made or to be made by the Authorisee to the counter parties to such contracts.

**(c) Applicable Permits**

The Authorisee shall, at its cost, transfer to the Grantor all such Applicable Permits which the Grantor may require and which can be legally transferred. Provided if the termination is on account of Grantor Event of Default the cost of such transfer shall be borne/ reimbursed by the Grantor.

**(d) Guarantees**

The Grantor shall be entitled to encash any subsisting bank guarantee(s) provided by the Authorisee, if the termination is on account of an Authorisee Event of Default.

**(e) Transfer of Risk**

Until the Transfer Date, all risks shall lie with the Authorisee for loss of or damage to the whole or any part of the Project and the Project Assets unless the loss or damage is due to an act or omission of the Grantor in contravention of its obligations under this Agreement. On and from the Transfer Date all risks in relation to the Project and the Project Assets shall be deemed to lie with the Grantor

**Section 16.5 Vesting Certificate**

- (a) On the Transfer Date the Grantor/Expert shall verify, in the presence of the Authorisee or of a representative of the Authorisee, compliance by the Authorisee with the requirements of Section 16.4 above. In the event the Grantor/Expert notifies the Authorisee of shortcomings, if any, in the Authorisee's compliance with such requirements, the Authorisee shall forthwith cure the same.



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (b) The Divestment of all rights and interest in the Project and Project Assets shall be deemed to be complete on the Transfer Date but no later than 30 (thirty) days thereafter, by when all the requirements of Section 16.5 above shall be fulfilled. The Expert shall on such date issue a certificate substantially in the form set forth in **Appendix-10** (the "**Vesting Certificate**"), with a copy thereof endorsed to the Grantor, which shall have the effect of constituting evidence of divestment by the Authorisee of all of its rights and interest in the Project and the vesting thereof in the Grantor or its nominee, as the case may be, pursuant hereto.

## **Section 16.6 Compensation on Termination**

### **Section 16.6.1 Termination Due to Force Majeure Event or an Event of Default**

- (a) In the event of Termination of this Agreement/Authorisation due to Force Majeure Event or an Event of Default, the Grantor shall, upon transfer of the Project, Project Assets and the Site by the Authorisee to the Grantor or its nominated agency in accordance with the provisions hereof, pay to the Authorisee the following termination payments:
- I. No Termination payments shall be payable to the Authorisee in the event of Termination of this Agreement due to an Authorisee Event of Default (by the Grantor) or a Non Political Force Majeure Event (by the Grantor and/or the Authorisee).
  - II. Upon Termination of this Agreement due to (i) an Authorisee Event of Default, Grantor shall retain the payments made till the date of termination including Project Development Fee, Landuse Conversion Charges, Upfront Amount, Annual Lease Rentals, Advance Lease rentals and, Performance Security as damages; (ii) a Non-Political Force Majeure Event, the Grantor shall retain the payments made till the date of termination including Project Development Fee, total Upfront Amount, Annual Lease Rentals and shall return/refund the Bank

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Guarantee towards the Performance Security and Advance Lease Rentals to the Preferred Bidder; provided there are no outstanding claims of the Grantor on the Preferred Bidder/Authorisee.

- III. Upon Termination by the Authorisee due to a Grantor Event of Default (EOD) (by the Authorisee) or upon termination due to a Political Force Majeure Event (by the Grantor and/or the Authorisee), compensation payable by the Grantor to the Authorisee shall be the amount determined as follows:

The aggregate Depreciated Historic Cost (DHC), as determined by an Third Party Expert; appointed by mutual consent (a) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Authorisee and comprised in the Project Facility, which in the reasonable judgment of the said Expert are capable of being put to use/utilized by the Grantor and (b) the moveable assets which the Grantor agrees to take over LESS any amount due to the Grantor from the Authorisee under this Agreement and the insurance claims claimed or received.

- IV. Provided that the compensation shall in no event include the value of the portion of any asset affected by Political Force Majeure Event or Grantor EOD, to the extent of the insurance claim received or admitted in relation to such Event.

- V. Upon termination of this Agreement due to (i) Grantor Event of Default or Political Force Majeure Event, the GRANTOR shall only return/refund the Performance Security to the Preferred Bidder; provided there are no outstanding claims of the Grantor on the Preferred Bidder/Authorisee.

- (b) Nothing herein shall prejudice the right of the Grantor to recover from the Authorisee any amounts due and payable to it by the Authorisee hereunder.
- (c) Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Agreement shall be without prejudice to accrued rights of a Party, including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of a Party under this Agreement, including without limitation termination payment, shall survive the termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

## **ARTILCE 17 DISPUTE RESOLUTIONS**

### **Section 17.1 Resolution Process**

If any dispute or difference or claims of any kind arises between the Grantor and the Authorisee in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the Termination of this Agreement, then the

- (a) Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them, failing which,
- (b) Per-se the courts of Hyderabad & Secunderabad only shall have the jurisdiction to decide “ **Shall have both pecuniary and territorial jurisdiction to decide the disputes and claims arising out of this Contract.**

## **ARTICLE 18 MISCELLANEOUS PROVISIONS**

### **Section 18.1 Governing Law and Jurisdiction**

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

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 18.2 Waiver & Remedies**

- (a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
  - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.
- (c) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### **Section 18.3 Survival**

The Termination/expiry of this Agreement:

- (a) shall not relieve either Party of any obligations hereunder which expressly or by implication survive Termination/expiry hereof, and

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination/Expiry or arising out of such Termination/Expiry.

#### **Section 18.4 Entire Agreements and Amendments**

- (a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.
- (b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorised representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

#### **Section 18.5 Mode of Delivery of Notices**

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

**If to Grantor:**

**Chief Civil Engineer,**  
TSRTC :: 3<sup>rd</sup> Floor,  
'B' Block, Bus Bhavan,

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

Musheerabad, HYDERABAD – 500624.

**If to Authorisee:**

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Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

**Section 18.6 Severability**

- (a) 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, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions, which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement or otherwise.

### **Section 18.7 No Partnership**

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the Provisions of this Agreement.

### **Section 18.8 Language**

The language of this Agreement is English. All notices, correspondence, Project Contracts, documentation, Designs and Drawings, DPR, design data, test reports, certificates, specifications and standards and information in respect of this Agreement, under or in connection with this Agreement shall be in the English language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

### **Section 18.9 Exclusion of Implied Warranties etc.**

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

### **Section 18.10 Counterparts**

This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 18.11 Further Assurances**

At all times after the date hereof the Parties shall execute all such documents and do such acts, deeds and things as may reasonably be required for the purpose of giving full effect to this Agreement.

### **Section 18.12 Regulatory Framework for Infrastructure Projects**

Without prejudice to the rights and obligations of the Parties under this Agreement, if a regulatory framework for the grant, implementation and supervision of authorisation related to infrastructure projects is introduced by GoI or GoTS, the Parties shall consult in good faith and to agree to such amendments to this Agreement, as may be reasonably necessary to take account of such regulatory framework but so that the rights of the Authorisee hereunder are not adversely affected or additional material liabilities imposed.

### **Section 18.13 Rights of Parties during road widening**

The Grantor shall be entitled to receive the monetary compensation, if any paid by the authorities during Road Widening programmes. The Authorisee shall enjoy the benefit accrued if any in the form of additional built up space subject to the Clause No. 5.2.3 of this agreement. The cost of restoration of the structures shall be borne by the Authorisee. The Authorisee shall not be entitled for any claim /compensation with regard to area (if any) affected under road widening.

### **Section 18.14 Remedies Cumulative**

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

### **Section 18.15 Intellectual Property Rights and Confidentiality**

#### **(a) Intellectual Property Rights**

- (i) The Authorisee accepts and agrees that the Grantor shall be the absolute and exclusive owner and proprietor of the all details, plans, specifications, schedules, programs, budget, reports, calculations and other work relating to the Project hereafter referred to as "**Proprietary Material**", which have



Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

been or are hereafter written, originated or made by any of the Authorisee or the Persons claiming through or under it or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print. The Authorisee shall not either directly or in-directly uses the trademarks of TSRTC.

- (ii) The Grantor shall own all the intellectual property rights in or relating to the Proprietary Material and all rights, privileges, entitlements, interests, property and benefits and associated rights whatsoever therein for the full period in accordance with the Applicable Laws and with all the reservations and extensions thereof and together with the exclusive right of the Grantor to use such information and intellectual property/authorize the use thereof by Third Parties in India and abroad in any form, including without limitation the right to reproduce, translate, edit, modify, distribute, sell or assign such rights, with or without consideration.
- (iii) The Grantor shall have the exclusive right to apply for/procure registration of the intellectual property rights at its cost with relevant competent authorities in India and abroad.
- (iv) The Authorisee and the Grantor hereby grant to each other an irrevocable, royalty-free, non-exclusive Authorisation to use all proprietary material owned by any of them or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. Such Authorisation shall carry the right to use such material for all purposes connected with the Project; however, it shall not be transferable to any Person other than to the permitted assignee under this Agreement. Such Authorisation shall discontinue on the termination or expiry of this Agreement or the discharge by any Party of its duties hereunder.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

**(b) Confidentiality**

No Party shall, without the prior written consent of the other Party, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is by its nature or is marked as Proprietary Material or "confidential", concerning the other (including any information concerning the contents of this Agreement) except to its officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process; provided, however, that a Party, with the written consent of the other Party, may issue press releases containing non-sensitive information in relation to the progress of the Project. This provision shall not apply to information:

- c. already in the public domain, otherwise than by breach of this Agreement;
- d. already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;
- e. obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- f. disclosed to the Lenders under terms of confidentiality; or
- g. which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Government Authority.

**Section 18.16 Joint Responsibility**

In the event that any damage is caused in part only due to the negligence or default or omission on the part of the Grantor and in part only due to the negligence or default or omission on the part of the Authorisee, each Party shall be liable to the other Party only in proportion to its respective degree of negligence or default or omission as the case may be.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 18.17 No Liability for Review**

Except to the extent expressly provided in this Agreement,

- (a) no review, comment or approval by the Grantor/Government Authorities/ of the DPR, the Designs and Drawing, the Transaction Documents or the documents submitted by the Authorisee nor any observation or inspection of the construction, operation or maintenance of the Project Facility nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Authorisee from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Grantor or any Government Authority or GoTS shall not be liable to the Authorisee by reason of any review, comment, approval observation or inspection referred in sub-section (a) above.
- (c) In no event TSRTC, or its successor would be vicariously liable during authorization period.

### **Section 18.18 Change in Law**

In the event of a Change in Law results in a Material Adverse Effect, the Grantor or the Authorisee may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Authorisee and the Grantor shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure described under Article 18 of this Agreement.

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

### **Section 18.19 Depreciation**

For the purpose of depreciation under the Applicable Laws, the property representing the capital investments made by the Authorisee in the Project shall be deemed to be acquired and owned by the Authorisee

### **Section 18.20 Assignability**

Except as otherwise provided in this Agreement, the Authorisee shall not assign its rights, or interest in this Agreement in favour of any Persons without prior written consent of the Grantor. Provided the Authorisee may assign its rights, interests and benefits under this Agreement to the Lenders as security for the Financial Assistance.

Notwithstanding anything to the contrary contained in this Agreement, the Grantor may, after giving 60 (sixty) days' notice to the Authorisee, assign any of its rights and benefits and/or obligations hereunder pursuant to any direction of GoI, GoTS, by the operation of law on such terms and conditions as the Grantor may deem appropriate or as may be required by law.

### **Section 18.21 Interest and Right to Set Off**

- (a) Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.
- (b) The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein the Agreement and if no such period is specified, within 10 (ten ) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to the prime lending rate of the 18% (Eighteen percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under the Law and this Agreement, including termination thereof.

Development of Commercial Facilities in Vacant lands of TSRTC, under B.O.T. Scheme"	Volume IV Draft Authorisation Agreement
Telangana State Road Transport Corporation	

- (c) All Supplemental Agreements executed subsequently to fulfil the objectives of the project, shall essentially become part of this agreement and shall be read in conjunction with the provisions of this agreement.
- (d) The Authorisee shall be at sole responsibility in respect of issues arising out of consumer laws and their conformance.

**IN WITNESS WHEREOF** the Grantor, Authorisee and Preferred Bidder, through their respective authorized officials subscribe their respective signatures and seals hereto on this -----

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Signed, sealed and delivered  
by:

The Authorised Signatory  
For and on behalf of

**Telangana State Road  
Transport Corporation  
(Grantor)**

**Chief Civil Engineer**

Signed, sealed and  
delivered by:

The Authorised Signatory  
For and on behalf of the

-----  
**(Preferred Bidder/Authorisee)**

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