



**AURANGABAD SMART CITY DEVELOPMENT CORPORATION LIMITED
(ASCDCL)**

REQUEST FOR PROPOSAL

**CONSTRUCTION, OPERATION AND MAINTENANCE OF BUS SHELTERS
WITHIN AURANGABAD MUNICIPAL CORPORATION AREA ON DESIGN
BUILD OPERATE & TRANSFER (DBFOT) BASIS FOR AURANGABAD SMART
CITY**

VOLUME II: DRAFT CONCESSION AGREEMENT

JANUARY 2019

Aurangabad Smart City Development Corporation Limited (ASCDCL)

Aurangabad Municipal Corporation, Town Hall, Aurangabad-431001, Maharashtra, India

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PART I -PRELIMINARY

CONCESSION AGREEMENT

This AGREEMENT is made on this *●+ day of *●+, at Aurangabad Maharashtra, India.

BETWEEN

Aurangabad Smart City Development Corporation Limited(ASCDCL), represented by the Chief Executive Officer, (hereinafter referred to as the “**Authority**”, which expression shall, unless the context otherwise requires, include its successors and permitted assigns);

AND

....., represented by, a [limited liability company/ limited liability partnership company] incorporated under the [Companies Act, 1956 or Companies Act, 2013/ Limited Liability Partnership Act, 2008] with [company/ firm] registration number *●+ and having its registered office at *●+ (hereinafter referred to as the “**Concessionaire**”), which expression shall, unless the context otherwise requires, include its successors and permitted assigns.

The Authority and Concessionaire are collectively referred to as the ‘**Parties**’ and individually as a ‘**Party**’.

WHEREAS:

- A. The Authority has decided to undertake Designing, Setting – Up, Operating and Maintaining of Smart Bus Stops for Aurangabad Smart City (the “Project”) through Public-Private Partnership (the “PPP”) on Design, Build, Finance, Operate and Transfer (the “DBFOT”).
- B. The Authority is accordingly inviting bids by its Request for Proposal No. ----- -- (the “Request for Proposal” or “RFP”) for selection of bidders for construction, operation and maintenance of the above referred Project on DBFOT basis and had selected a bidder inter alia, {Selected bidder} for Package 1 and/or Package 2.
- C. The Authority had prescribed the technical and commercial terms and conditions, in the invited bids for undertaking the Project.
- D. After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder} and issued its Letter of Award No. dated (hereinafter called the “**LOA**”) to the {selected bidder} requiring, inter alia, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.
- E. {The selected bidder shall undertake and perform the obligations and exercise the rights of the selected bidder under the LOA,} including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- F. {By its letter dated, the Concessionaire has also joined in the said request of the selected bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder including the obligation to enter

into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder for the purposes hereof}.

- G. The Authority {has agreed to the said request of the selected bidder and the Concessionaire, and} has accordingly agreed to enter into this Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

Article 1: Definitions and Interpretation

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 42) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of Maharashtra, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up gradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30

- (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
 - (k) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Maharashtra are generally open for business;
 - (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
 - (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
 - (o) the words importing singular shall include plural and vice versa;
 - (p) references to any gender shall include the other and the neutral gender;
 - (q) “**Lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
 - (r) “**Indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
 - (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Expert shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Expert, as the case may be, in this behalf and not otherwise;
 - (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (w) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, references to an

Annex shall, subject to any contrary indication, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

- (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
- (y) 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; and
- (z) capitalised terms used in the Agreement, but not defined herein, shall be construed in accordance with Good Industry Practice.

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Expert, shall be provided free of cost and in three copies, and if the Authority and/ or the Independent Expert is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3. Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4. Priority of agreements, clauses and schedules

1.4.1. This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein, i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2. Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

PART II – THE CONCESSION

Article 2: Scope of the Project

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:

2.1.1.

- a) carrying-out detailed investigation of the Project Sites and designing, constructing/procuring the Project Facilities at Sites set forth in Schedule A {Package 1 and/or Package 2} in conformity with the provisions specified in Schedule B, Schedule C and the Specifications and Standards set forth in Schedule D;
- b) operation and maintenance of the Project Facility in accordance with the provisions of this Agreement;
- c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.2 Detailed Scope of the Project

2.2.1 Pre Construction Phase

The Concessionaire shall carryout all activities and investigations required for the successful and timely completion of the Project.

ASCDCL intends to develop the Bus Que Shelters on “**Design, Build, Finance, Operate and Transfer**” (DBFOT) basis to construct, operate and maintain during the Concession period as per the design/drawings and specifications approved by ASCDCL. (based on the indicative design proposed by ASCDCL)

Dismantling of existing Bus Shelters at some existing locations and necessary site preparation for all locations. The dismatled material can be retained by the Concessionaire. The Concessionaire shall bear the cost of dismatling and transportation of the material.

Water supply: The Concessionaire shall ensure availability of adequate water at all times for general cleanliness of the Project Facilities. The supply may be provided by ASCDCL at one point not more than 20 meters from the premises, where available. In case of non-feasibility of water supply, the Concessionaire has to arrange water at his own cost.

Power supply: The Concessionaire shall ensure adequate power supply for proper lightings inside and outside the Project Facilities. The electric supply shall have to be arranged by the concessionaire and further laying of electric cables, payment of connection and usage charges shall be the responsibility of the concessionaire.

Waste Disposal: The Concessionaire shall provide litterbins inside and outside of the Project Facilities as per approved design, and disposal of the collected waste up to nearest municipal bin shall be the responsibility of the Concessionaire.

Cleaning: The Concessionaire shall ensure cleaning of the Project Facilities as per the cleaning schedule provided herewith. Dedicated cleaning staff shall be provided by the Concessionaire for the Project Facilities .

Operations & Maintenance: This includes operation & maintenance of the Project Facilities including but not limited to regular cleaning of bus stops, waste bins and vicinity, functioning of all the fixtures, deployment of dedicated personnel, supervision and providing of consumables. This includes maintenance and operation of all the necessary infrastructure provided in facility such as electricity, drainage, sewerage, waste removal, water etc.

The Concessionaire shall hand over the bus stops to ASCDCL in good working condition at the end of concession period without any hindrance

Article 3: Grant of Concession

3.1 The Concession

3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to

- (a) investigate, study, design, finance, construct, operate and maintain the Project Facilities;
- (b) collect revenue from commercial utilization of space in the Project Facilities, including collection of advertisement revenues;
- (c) provide Services

(the “Concession”) for a period of 15 (Fifteen) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.2. Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) Right of Way, access and licence to the Licensed Premises for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (c) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (d) neither assign, transfer or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Facility nor sell, transfer, exchange or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.2 Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring undertaken in pursuance of the Applicable Laws, substitute itself by any other entity having the capacity to undertake and discharge the duties and obligations of the Authority with a similar or greater creditworthiness, and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to the Applicable Laws; provided, however, that prior to any such substitution, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder.

3.3 Grant of License over the Site

- a) The Authority shall grant the Concessionaire a license over the Project Facilities along with all necessary rights of way, to enter upon, access the Project Facilities free of all

Encumbrances in accordance with this Clause 3.3, Applicable Laws, and Applicable Permits. The license granted to the Concessionaire shall include the exclusive right to:

- (i) design, construct and commission the Project Facilities ;
 - (ii) operate and maintain the Project Facilities during the Concession Period;
 - (iii) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Project Facilities , as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
 - (iv) use access roads, pathways and utilities at or about the Project Facilities ;
 - (v) discharge, store, treat and manage the waste generated by the Project Facilities ; and
 - (vi) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project Facilities ;
 - (vii) Demand, collect and appropriate advertisement revenue
 - (viii) Provide Services in accordance to the Service Level Requirements as defined in Schedule C of this Agreement
- b) On the Date of this Agreement, the Authority and the Concessionaire shall execute a memorandum setting out the right of way.
- c) The Concessionaire shall not without the prior written consent or approval of the Authority use the Project Facilities for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by the Authority.
- d) The full ownership and title over the Sites shall vest with the Authority for the entire Concession Period.
- e) Subject to any substitution rights exercised by the Lenders, the license granted by the Authority shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.

Article 4: Conditions Precedent

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 22,28, 35, 38 and 41, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “Conditions Precedent”).
- 4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 60 (sixty) days of the notice, or such longer period not exceeding 90 (ninety) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- (a) procured for the Concessionaire the Right of Way to the Licensed Premises in accordance with the provisions of Clause 10.3.1;
 - (b) procured Applicable Permits, if any, relating to environmental protection and conservation and forest clearance; and
 - (c) arranged for the Concessionaire the Right of Way for construction of Project Facility ; in accordance with the provisions of Clause 10.3.4
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to the Authority;
 - (b) executed and procured execution of the Escrow Agreement;
 - (c) executed and procured execution of the Substitution Agreement;
 - (d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, as on the date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement, are fulfilled;
 - (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - (f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
 - (g) delivered to the Authority from {the existing promoters/selected bidder/ their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement;
- and

- (h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.
- (i) Submit to the authority certified true copies of constitutional documents of the concessionaire and certificate, duly attested by director of the concessionaire, certifying the share holding pattern of the concessionaire.
- (j) Obtained approval from the Authority on work plan
- (k) Submit to the Authority the detailed designs of the Project Facilities .

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder, with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (ten per cent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 90 (ninety) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 180 (one hundred eighty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

Article 5: Obligations of the Concessionaire

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, installation, operation and maintenance of the Project Facility and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2 the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall construct, operate and maintain the Project Facility in accordance with the Specifications and Standards as specified in Schedule D.
- 5.1.5 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Facility ;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (f) not do or omit to do any act, deed or thing which may in any manner be violate of any of the provisions of this Agreement or Applicable Laws;
 - (g) procure that all equipment and facilities comprising the Project Facility are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;
 - (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (i) transfer the Project Facility to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt of the Concessionaire.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (Ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and

undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
 - (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial

Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it or by its Contractors in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.6 Obligations relating to medical aid

For providing aid and assistance in medical emergencies relating to the Project Facilities , the Concessionaire shall set up and operate a medical aid post (the “**Medical Aid Post**”) equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

5.7 Obligations relating to taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Project Facility .

5.8 Obligations relating to operations

The Concessionaire shall at all times operate the Project Facility in accordance with Applicable Laws, Good Industry Practice and the provisions of this Agreement.

5.9 Branding of Project Facility

The Project Facility or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Project Facility to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed. It is further agreed that the Project Facility shall be known, promoted, displayed and advertised by the name of Project Facility and/or ASCDCL and/or AMC and/or Government of Maharashtra.

Article 6: Obligations of the Authority

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- a. upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring the Applicable Permits required from any Government Instrumentality for implementation and operation of the Project Facility ;
- b. upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- c. procure that no barriers are erected or placed on or about the Project Facility by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
- d. make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Project Facility ;
- e. assist the Concessionaire in procuring police assistance for removal of trespassers and for security on or at the Project Facility ;
- f. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- g. support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws; and
- h. upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their obligations under this Agreement and the Project Agreements.

Article 7: Representations and Warranties

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {existing promoters /selected bidder },

- together with {its/their} Associates, hold not less than 51% (fifty one per cent) of {its/their} issued and paid up Equity as on the date of this Agreement;
- (l) {the selected bidder and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
 - (m)(m) {the selected bidder} is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - (n) (n) all its rights and interests in the Project Facility shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, 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;
 - (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
 - (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
 - (q) all information provided by the {selected bidder} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government

Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;

- (f) it has complied with Applicable Laws in all material respects; and
- (g) it has good and valid right to the Licensed Premises, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

Article 8: Disclaimer

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III - DEVELOPMENT AND OPERATIONS

Article 9: Performance Security

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 30 (Thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a nationalized Bank for a sum equivalent to Rs 12,00,000 (rupees twelve lakhs only) per Package in the form set forth in Schedule-F (the “Performance Security”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 30 (Thirty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 31 Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 60 (Sixty) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

9.3 Validity of Performance Security

The Performance Security shall remain in force and effect for a period of three months from the expiry of concession period.

9.4 Release of Performance Security

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 9.3. For the avoidance of doubt, the Parties agree that no payments due to the Concessionaire under this Agreement shall be withheld by the Authority on account of the Performance Security created hereunder, save and except the Damages or other amounts which are to be appropriated in accordance with the provisions of this Agreement.

9.5 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

Article 10: Right of Way

10.1 The Site

The site of the Project Facility shall comprise the land as described in Schedule-A, and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee (the “Site”).

10.2 Licence, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Licensed Premises for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Premises pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Project, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any structures, constructions or immovable assets, if any, thereon) hereto (the “**Licensed Premises**”), on an “**as is where is**” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the existing roads within the Site or an alternative thereof are open to traffic at all times during the Concession Period.
- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Licensed Premises by the Concessionaire, the licence in respect of the Licensed Premises shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that trees on the Licensed Premises are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Licensed Premises

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Licensed Premises and prepare a memorandum containing an inventory of the Licensed Premises including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Licensed Premises. Such memorandum shall have appended thereto an appendix (the “Appendix”) specifying in reasonable detail those parts of the Licensed Premises to which access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the unencumbered Licensed Premises during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Licensed Premises as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon access thereto being provided by the Authority to the Concessionaire.

10.3.2 In the event Financial Close is delayed solely on account of delay in grant of such access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Licensed Premises and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 The Authority shall make best efforts to procure and grant, no later than 30 (thirty) days in accordance to the requirement as per the approved work plan, the Right of Way to the Concessionaire in respect of all land included in the Annexure I of Schedule A.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within the Project Completion Schedule and in accordance with Good Industry Practice;

10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for ancillary buildings and Associated Services or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Licensed Premises and vest in the Authority; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake

proceedings for acquisition of such land under the provisions of the Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with the Applicable Laws; provided also that the land to be acquired by the Authority hereunder as a part of the Licensed Premises shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly.

10.4 Premises to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Licensed Premises shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Licensed Premises for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Licensed Premises.

10.5 Protection of Licensed Premises from encroachments

During the Concession Period, the Concessionaire shall protect the Licensed Premises and the Project Facility from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Project Facilities . The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project Facility and the performance of its obligations under this Agreement.

10.7 Access to the Authority and Independent Expert

The licence and right of way granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Expert and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Licensed Premises shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period.

Article 11: Utilities, Roads and Trees

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project Facility. The cost of such shifting shall be borne by the Concessionaire, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 Felling of trees

The Authority shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project Facility. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the ownership rights to the felled trees shall vest in the legal owner thereof and the felled trees shall be disposed in such manner and subject to such conditions as the owner may reasonably determine.

Article 12: Construction of Project Facility

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule G;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project Facility as set forth in Schedule H, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3(three) copies each of all Drawings.
- (b) By submitting the Drawings for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards.
- (d) If the aforesaid observations of the Authority indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Authority for review. The Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and/or observation of the Independent Expert and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Expert or the Authority be liable for the same in any manner.
- (f) Without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the location and layout of the Project Facility and general arrangement drawings thereof and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30

(thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply mutatis mutandis to the review and comments hereunder.

- (g) Within 90 (Ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and soft copy in CD form or in such other medium as may be acceptable to the Authority, reflecting the Project Facility as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project Facility and any structures forming part of the Project.

12.3 Construction of Project Facility

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project Facility as specified in Schedule B, and in conformity with the Specifications and Standards set forth in Schedule D. The 180th (one hundred and eightieth) day from the Appointed Date shall be the scheduled date for completion of the Project (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that construction of the Project Facility shall be completed on or before the Scheduled Completion Date.
- 12.3.2 The Concessionaire shall construct the Project Facility in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 12.3.3 In the event that the Project Facility is not completed within 60 (sixty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

Article 13: Monitoring of Construction

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Expert a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Expert.

13.2 Inspection

During the Construction Period, the Independent Expert shall inspect the Project Facility at least once a month and make a report of such inspection (the “Inspection Report”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Expert shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Expert from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Expert in this behalf. The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set

forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Expert forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Expert shall have reasonably determined that the rate of progress of Construction Works is such that the Project Facility is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Expert in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Expert to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of any person or property.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and affected persons or properties. The Concessionaire may by notice require the Independent Expert to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Expert, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 28.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the

recommendations of the Independent Expert. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

Article 14: Completion Certificate

14.1 Tests

- 14.1.1 No later than 30 (thirty) days prior to the likely completion of the Project Facility, the Concessionaire shall notify the Independent Expert of its intent to subject the Project Facility to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Expert may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Expert.
- 14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Concessionaire. The Independent Expert shall observe, monitor and review the results of the Tests to determine compliance of the Project Facility with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Expert during the course of any Test that the performance of the Project Facility or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Expert shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Expert may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Facility with Specifications and Standards.

14.2 Completion Certificate

- 14.2.1 Upon completion of Construction Works, and the Independent Expert determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule J (the "**Completion Certificate**").

14.3 Provisional Certificate

- 14.3.1 The Independent Expert may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule J (the "**Provisional Certificate**") if the Tests are successful and the Project Facility can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Expert and the Concessionaire (the "**Punch List**"); provided that the Independent Expert shall not withhold the Provisional Certificate for reason of

any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued if the Tests undertaken in terms hereof establish that part of the Project Facility can be safely and reliably placed in commercial operation in accordance with the provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to the completed part of the Project Facility .

14.4 Completion of Punch List items

14.4.1 All items in the Punch List, including any shortfall in Project Facility , shall be completed or rectified, as the case may be, by the Concessionaire within 60 (sixty) days from the Scheduled Completion Date and any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.2% (zero point two per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Expert. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 60 (sixty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Expert in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Expert shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.4.3 Notwithstanding anything to contrary contained in Clause 14.4.2, the Parties here to expressly agree that the Completion Certificate shall, subject to the provisions of this Agreement be issued if the Project Facilities are 90% complete and fully operational commercially.

14.5 Withholding of Provisional or Completion Certificate

14.5.1 If the Independent Expert determines that the Project Facility or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Expert and after conducting its own inspection, if the Authority is of the opinion that the Project Facility is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Facility and direct the Independent Expert to withhold issuance of the Provisional Certificate or the Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon

Tests shall be undertaken in accordance with this Article 14: Completion Certificate. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Expert under that Clause, direct the Independent Expert to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable. Provided, however, that the Concessionaire shall be excused for the delay in Tests arising hereunder if such delay is not solely attributable to the Concessionaire.

14.7 Phased Completion of Project Facility

The Project Facility, for the purposes of completion, shall be in phases as specified in the approved work plan and Provisional Certificate may, at the request of the Concessionaire be issued separately for each phase. Upon issue of provisional certificate the respective phase shall enter into commercial service in accordance with the provisions of Article 15. For the avoidance of doubt the Parties agree that notwithstanding any thing to the contrary contained in this Clause 14.7 the obligations contained in Clauses 12.3 and 15.2 shall continue to be binding on the concessionaire. The parties further agree that upon completion of any phase, the provisions of this Agreement shall apply as if the Project Facilities of that phase and the rights and obligations of the Concessionaire for and in respect of that phase shall be construed accordingly

14.8 Safety certification prior to COD

The Concessionaire shall, not later than 1 (one) month prior to the likely COD, notify the Authority and the Independent Expert of the compliance of Safety Requirements and invite them to observe any or all the tests that may be specified by the Independent Expert in accordance with Applicable Laws and Good Industry Practice to determine and certify that the Project Facility is safe for entering into commercial service, and the costs of such tests shall be shared equally between the Concessionaire and the Authority; provided that in case of failure in any test requiring repetition thereof, the cost of such second or subsequent test shall be borne entirely by the Concessionaire.

Article 15: Entry into Commercial Service

15.1 Commercial Operation Date (COD)

15.1.1 The Project Facilities shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 14 and the commercial operation date of the Project Facilities shall be the date on which such Completion Certificate is issued (the “COD”). For the avoidance of doubt a particular Project Facility shall enter into commercial service upon issuance of Provisional Certificate for that Project Facility , whereupon the Concessionaire shall be entitled to demand and collect fee in accordance with the provisions of Article 14, provided, however, that the entry of Project Facility into commercial service shall always be subject to compliance with the provisions of Clause 14.8.

15.2 Damages for delay

Subject to the provisions of Clause 12.3, if the Completion Certificate is not issued prior to the 60th (Sixtieth) day after the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until the Completion Certificate is issued.

Article 16: Change of Scope

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project Facility and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Expert as reasonable.
- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Expert, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance

thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Expert. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Expert as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.4 Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project Facility by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Project Facility and issuing the Provisional Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 2.5% (two and half per cent) of the Total Project Cost before the Scheduled Completion Date.

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to

payment of 1% (one per cent) of the bid amount to the Authority¹, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project Facility. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project, and for this purpose, the Parties shall conform to the provisions of Clause 35.3. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

¹ The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.

Article 17: Operation and Maintenance

17.10 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project Facility in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project Facility to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) Ensuring safe, smooth and uninterrupted services from the Project Facility , including prevention of loss or damage thereto, during normal operating conditions;
- (b) undertaking operation and maintenance of the Project Facility in an efficient, coordinated and economical manner, in compliance with the Standards and Specifications, in accordance with the provisions of this Agreement and Applicable Laws;
- (c) minimising disruption in the event of accidents or other incidents affecting the safety and use of the Project Facility by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Project Facility ;
- (e) undertaking routine maintenance including prompt repairs of all elements and components of the Project Facility so as to ensure compliance with the Maintenance Requirements and the Specifications and Standards;
- (f) undertaking major maintenance including Major Overhaul, replacement of components and parts, repairs to structures, and repairs and refurbishment of associated facilities including equipment;
- (g) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Project Facility ;
- (h) protection of the environment and provision of equipment and materials therefor;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Facility and for providing services;
- (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
- (k) complying with Safety Requirements in accordance with Clause 17.16;
- (l) operation and maintenance of all Project Facilities diligently and efficiently and in accordance with Good Industry Practice; and
- (m) maintaining reliability in operating the Project Facility .

17.1.2 The Concessionaire shall remove promptly from the Project Facility all surplus construction machinery and materials, waste materials (including hazardous materials, waste water and sludge), rubbish and other debris (including, without limitation, accident debris) and keep the Project Facility in a clean, tidy and orderly condition, and

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

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads or other structures situated on the Licensed Premises.

17.1.4 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project Facility conforms to the maintenance requirements set forth in Schedule-K (the “**Maintenance Requirements**”).

17.3 Maintenance Manual

17.3.1 No later than 90 (Ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Expert, evolve a repair, operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project Facility in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Expert. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Facilities and shall provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Facilities, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;

- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Project Facility ;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) intervals for carrying out intermediate and periodic overhaul of the equipment.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Expert shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply mutatis mutandis to such modifications.

17.4.4 Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Clause 17.4 shall be deemed to be scheduled maintenance (the “**Scheduled Maintenance**”).

17.5 Major Overhaul

17.5.1 The Concessionaire may, as and when necessary, undertake Major Overhaul of a Project Facility, but in no case more than once in every 5 (five) years, in accordance with a schedule to be notified by the Concessionaire to the Authority, at least 1 (one) year in advance.

17.6 Safety, breakdowns and accidents

17.6.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.7 De-commissioning due to Emergency

17.7.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project Facility , the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project Facility for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.7.2 The Concessionaire shall re-commission the Project Facility or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and

closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project Facility and shall notify the Authority of the same without any delay.

17.7.3 Any de-commissioning or closure of any part of the Project Facility and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.8 Section closure

17.8.1 Upon notice given by the Authority to this effect prior to commencement of an Accounting Year, the Concessionaire shall, save and except as provided in Clause 17.7, not schedule a closure of any part of the Project Facility at any time during a continuous period of 30 (thirty) days as may be specified by the Authority for and in respect of such Accounting Year.

17.8.2 Save and except as provided in Clause 17.7, the Concessionaire shall not shut down or close any part of the Project Facility for undertaking maintenance or repair works not forming part of the Maintenance Programme, except with the prior written approval of the Authority. Such approval shall be sought by the Concessionaire through a written request to be made to the Authority at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Authority shall grant permission with such modifications as it may deem necessary.

17.8.3 Upon receiving the permission pursuant to Clause 17.8.2, the Concessionaire shall be entitled to shut down the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day of delay until the section has been re-opened for operations.

17.9 Unscheduled Maintenance

Any maintenance, repair or rectification of the Project Facility not forming part of Scheduled Maintenance shall be deemed to be unscheduled maintenance (the “**Unscheduled Maintenance**”). For the avoidance of doubt, it is agreed that any maintenance arising out of de-commissioning and forced closure of the whole or any part of the Project Facility under the provisions of Clause 17.7 shall be deemed to be Unscheduled Maintenance.

17.10 Damages for breach of maintenance obligations

17.10.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.2% (zero point two per cent) of the Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as

estimated by the Independent Expert. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 17.10.2 The Damages set forth in Clause 17.10.1 may be assessed and specified forthwith by the Independent Expert; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.11 Authority's right to take remedial measures

- 17.11.1 In the event the Concessionaire does not maintain and/or repair the Project Facility or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Expert, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.11.1 shall be without prejudice to its rights and remedies provided under Clause 17.10.
- 17.11.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.11.1 from any payments due to the Concessionaire from time to time.

17.12 Overriding powers of the Authority

- 17.12.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to any person or property, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 17.12.2 In the event that the Concessionaire, upon notice under Clause 17.12.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.12.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M

Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.11 along with the Damages specified therein.

17.12.3 In the event of a national emergency, civil commotion or any other act specified in Clause 28.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project Facility or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 28. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.12.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.13 Restoration of loss or damage to the Project Facility

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

17.14 Modifications to the Project Facility

The Concessionaire shall not carry out any material modifications to the Project Facility save and except where such modifications are necessary for the Project Facility to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Expert of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Expert may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, if any modification to the Project Facility has a material effect on the safety thereof or the safety of users and other persons, the same shall be subjected to the tests and certification specified in Clause 14.8 For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

17.15 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Facility is on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project Facility except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project Facility :

Provided further that the Concessionaire shall ensure all unaffected parts of the Project Facility can be operated safely.

17.16 Safety Requirements

- 17.16.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Project Facility , Users and other persons present in the premises. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Facility, and shall comply with the safety requirements set forth in Schedule-L (the “**Safety Requirements**”).
- 17.16.2 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

17.17 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the approach to or exit from the Project Facility except for reasons of Emergency, national security, or law and order. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions, or closing down of approach roads to the Project Facility that may cause a material adverse effect on the movement to and from the Project Facility .

17.18 Advertising on the Project Facility

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding violates Applicable Laws. All advertising on the Project Facility shall also conform to Good Industry Practice.

Article 18: Monitoring of Operation and Maintenance

18.1 Monthly status reports

18.1.1 The Concessionaire shall, no later than 7 (seven) days after the close of each month during the Operation Period, furnish a monthly report to the Authority and the Independent Expert stating in reasonable detail the condition of the Project Facility including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Expert or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

18.2 Reports of unusual occurrence

18.2.1 Prior to the close of each day, the Concessionaire shall furnish to the Authority and the Independent Expert, by facsimile or e-mail, a report stating accidents and unusual occurrences, if any, on the Project Facility relating to the safety and security of the Project Facility or the persons affected by it. A weekly and monthly summary of such reports shall also be sent within 7 (seven) days of the closing of each week and month, as the case may be. For the purposes of this Clause 18.2.1, accidents and unusual occurrences at the Project Facility shall include:

- a. death or injury to any person;
- b. any damage or obstruction on the Project Facility;
- c. disablement of any element or system of the Project Facility during operation thereof;
- d. communication failure affecting the operation of the Project Facility;
- e. flood, smoke, fire, theft, trespass or other breach of security; or
- f. such other relevant information as may be reasonably required by the Authority or the Independent Expert.

Provided, however, that in the event no report is sent prior to the close of any day as required hereunder, it shall be presumed that no accident or unusual occurrence, as specified in this Clause 18.2.1, has occurred on that day.

18.2.2 In the event of an Emergency, the Concessionaire shall furnish a report, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such Emergency, setting out the details of the same and the measures taken to mitigate the impact thereof.

18.3 Inspection

The Independent Expert shall inspect the Project Facility at least once a quarter. It shall make a report of such inspection (the “O&M Inspection Report”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance

Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

18.4 Tests

For determining that the Project Facility conforms to the Maintenance Requirements, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Expert and furnish the results of such tests forthwith to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire.

18.5 Remedial measures

- 18.5.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 18.4 and furnish a report in respect thereof to the Independent Expert and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 18.5.2 The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Facility into compliance with the Maintenance Requirements and the procedure set forth in this Clause 18.5 shall be repeated until the Project Facility conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.10.

Article 19: Security of the Project Facility

19.1 Security

- 19.1.1 Without prejudice to the obligations of the Concessionaire to obtain insurance for the Project Facility in accordance with the provisions of this Agreement, the Authority acknowledges and agrees that unless otherwise specified in this Agreement, it shall, at its own cost and expense, procure or cause to be procured security of the Project Facility for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services for the Project Facility and such agreement may *inter alia* provide for sharing of costs as may be agreed upon.
- 19.1.2 The Concessionaire shall be responsible for the security arrangements for the Project Facility in order to maintain orderly conduct of its business and the security thereof.
- 19.1.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the Project Facility. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of the Government or of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them for the security of the Project Facility, without unduly or unreasonably disrupting the operations of the Project Facility or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Government in the discharge of their obligations for and in respect of the security of the Project Facility.
- 19.1.4 The Authority agrees that it shall, at the request of the Concessionaire, cause the Government to procure and provide the services of security forces of the Government on a best effort basis.
- 19.1.5 The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents are allowed free access to the Project Facility without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Government.

19.2 Insurance Premium

The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Project Facility is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the

lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising primarily out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on 50% (fifty per cent) of such increase to the Authority as and when required subject to submission of necessary proof of payment in this regard.

Article 20: Change in Specifications

20.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree and acknowledge that the Authority may, from time to time, introduce technical improvements or new specifications for the Project Facility (the “Modified Specifications”)

20.2 In the event that the Authority introduces any Modified Specifications which require material alterations in the Project Facility , the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16.

Article 21: Independent Expert

21.1 Appointment of Independent Expert

The Authority shall at its discretion may appoint an agency to be the independent consultant under this Agreement (the “Independent Expert”). The Independent Expert shall may be appointed for a term of 3 (three) years, and such procedure shall may be repeated after expiry of each appointment. The Authority may in its discretion renew the appointment, or appoint another firm pursuant to Schedule-M to be the Independent Expert. Further, Authority reserve the right the to carry out the scope of the Independent Expert through its own representatives or those nominated by the Authority.

21.2 Duties and functions

21.2.1 The Independent Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule N.

21.2.2 The Independent Expert shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule N.

21.3 Remuneration

The remuneration, cost and expenses of the Independent Expert shall be paid by the Authority.

21.4 Termination of appointment

21.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Expert at any time, but only after appointment of another Independent Expert in accordance with Clause 21.1.

21.4.2 If the Concessionaire has reason to believe that the Independent Expert is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Expert for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Expert is terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 21.1.

21.5 Authorised signatories

The Authority shall require the Independent Expert to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Expert, and any communication or document required to be signed by the Independent Expert shall be valid and effective only if signed by any of the designated persons; provided that the Independent Expert may, by notice in writing, substitute any of the designated persons by any of its employees.

21.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Expert, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure

PART IV –FINANCIAL COVENANTS

Article 22: Financial Close

22.1 Financial Close

- 22.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close **within 90 (ninety) days from the date** of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 60 (sixty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.
- 22.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

22.2 Termination due to failure to achieve Financial Close

- 22.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to **Clause 28.6.1**, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 22.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 22.2.1 shall not apply.
- 22.2.2 Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

Article 23: Premium

23.1 Premium

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority for each year of the Concession Period, a premium (the “Premium”) in the form of an additional Concession Fee, as set forth in Clause 24.2.1, and in the manner set forth in Clause 24.3.

Article 24: Concession Fee

24.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority every year by way of a concession fee (the “Concession Fee”) a sum of Rs.1 (rupees one) per annum and the Premium specified in Clause 24.2.

24.2 Additional Concession Fee

24.2.1 Without prejudice to the provisions of Clause 24.1, the Concessionaire agrees to pay to the Authority, 3 (three) months from the COD, a Premium in the form of an additional Concession Fee equal to Rs. ----- (rupees ----- only) {in case the selected bidder is the same for more than one Package, the Premium quoted by the Bidder for such Packages shall be added up} as due to the Authority during that year, due and payable for the period remaining in that year; and for each subsequent year of the Concession Period, the Premium shall be increased by 1% (one per cent) as compared to the immediately preceding year. For the avoidance of doubt, the Premium for all subsequent years shall be determined by increasing the amount of Premium by 1% as compared to the immediately preceding year. In case, any of the real estate forming part of the Site is not handed for development of one or more bus shelters, the Concessionaire will be allowed to pay the Premium prorata to the number of bus shelters constructed on the real estate handed over by the Authority.

For avoidance of doubt it is clarified that the term ‘Premium’ as referred in para above shall be as applicable for one financial year. The Premium amount shall be payable on monthly basis. In accordance with and in compliance with the terms of this Agreement, if payment of such ‘Premium’ is due and payable only for part of such financial year, then pro-rata payments at 1/12th of such Premium shall be payable for each month of such part financial year for which such Premium payments is due as payable. For the purpose of assessing the amount due for payment on such payment of Premium, part of a month shall be deemed to be a full month. In such circumstances, the subsequent year as referred to in para above for the purpose of 1% annual escalation, shall fall to commence on 1st of April of the immediately succeeding financial year.

24.2.2 The Premium payable under Clause 24.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

24.2.3 The Parties hereto acknowledge and agree that the Premium payable under the Clause 24.2.1 shall be over and above any extant advertisement Tax, as applicable, including its revision, if any, from time to time. For the avoidance of doubt, the Concessionaire is not required to pay any ground rent Tax / permission fee.

24.3 Payment of Concession Fee

The Concession Fee payable under the provision of this Article 24 shall be due and payable in monthly instalments, within 7 (seven) days of the close of each month.

In case, any of the real estate forming part of the Site is not handed for development of one or more bus shelters, the Authority shall pay the Premium prorata to the number of bus shelters constructed on the real estate handed over by the Authority.

Article 25: Escrow Account

25.1 Escrow Account

- 25.1.1 The Concessionaire shall prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “Escrow Bank”) in accordance with this Agreement read with the Escrow Agreement.
- 25.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “Escrow Agreement”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule R.

25.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the inflows and receipts into the Escrow Account as specified in Schedule R (The Escrow Agreement) of this Agreement.

25.3 Withdrawals during Concession Period

- 25.3.1 The Concessionaire shall, at the time of opening of Escrow Account, give irrevocable instructions by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the order specified in Schedule R (The Escrow Agreement) of this Agreement, every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due.

25.4 Withdrawals upon Termination

- 25.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the order specified in Schedule R (The Escrow Agreement) of this Agreement.
- 25.4.2 The provisions of this Article 25 and instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

Article 26: Insurance

26.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

26.2 Insurance Cover

Without prejudice to the provisions contained in Clause 26.1 the Concessionaire shall, at all time during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (i) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (ii) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project Facility;
- (iii) the Concessionaire's general liability arising out of the Concession;
- (iv) liability to third parties for goods or property damage;
- (v) workmen's compensation insurance; and
- (vi) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.

26.3 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

26.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to

the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority

26.5 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

26.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

26.7 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire 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.

26.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by the credit to Escrow Account and it shall, notwithstanding anything to the contrary contained in this Agreement, apply such proceeds towards payment of Damages and the balance remaining, if any, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facility, in accordance with the provisions contained in this behalf in the Financing Agreements.

Article 27: Accounts and Audit

27.1 Audited accounts

- 27.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all incomes and User Charges from users of the Project Facility and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (Ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 27.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 27.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on receipts on account of User Charge and such other information as the Authority may reasonably require.

27.2 Appointment of auditors

- 27.2.1 Deleted.
- 27.2.2 Deleted
- 27.2.3 Deleted
- 27.2.4 Deleted

27.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

27.4 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided

by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

PART V – FORCE MAJEURE AND TERMINATION

Article 28: Force Majeure

28.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 28.2, 28.3 and 28.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

28.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- a. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Facility);
- b. strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Facility for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 28.3;
- c. any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- d. any delay or failure of an overseas contractor to deliver any critical equipment required for the Project Facility and not available in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- e. any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- f. the discovery of geological conditions, toxic contamination or archaeological remains on the Licensed Premises that could not reasonably have been expected to be discovered through an inspection of the Licensed Premises; or

- g. any event or circumstances of a nature analogous to any of the foregoing.

28.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- a. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b. industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- c. any civil commotion, boycott or political agitation which prevents operation of the Project Facility by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- d. any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- e. any Indirect Political Event that causes a Non-Political Event; or
- f. any event or circumstances of a nature analogous to any of the foregoing.

28.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- a. Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 35 and its effect, in financial terms, exceeds the sum specified in Clause 35.1;
- b. compulsory acquisition in national interest or expropriation of any Project Facility or rights of the Concessionaire or of the Contractors;
- c. unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- d. any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

- e. any event or circumstance of a nature analogous to any of the foregoing.

28.5 Duty to report Force Majeure Event

28.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- a. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof;
- b. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d. any other information relevant to the Affected Party's claim.

28.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

28.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 28.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

28.6 Effect of Force Majeure Event on the Concession

28.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

28.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- a. before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- b. after COD, whereupon the Concessionaire is unable to provide the services despite making best efforts or it is directed by the Authority or any Governmental Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from providing the aforesaid services on account thereof.

28.7 Allocation of costs arising out of Force Majeure

28.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

28.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project Facility (the “Force Majeure Costs”) shall be allocated and paid as follows:

- a. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- b. upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- c. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of User Charges or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

28.7.3 Save and except as expressly provided in this Article 28, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

28.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 28, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days’ time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

28.9 Termination Payment for Force Majeure Event

28.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (Ninety Per Cent) of the Debt Due less Insurance Cover.

28.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- a. Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- b. 110% (one hundred and ten per cent) of the Adjusted Equity

28.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 31.3.2 as if it were an Authority Default.

28.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

28.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- a. the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b. the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- c. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

Article 29: Compensation for Breach of Agreement

29.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 29.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

29.2 Compensation for default by the Authority

Subject to the provisions of Clause 29.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss on account of User Charges, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

29.3 Compensation to be in addition

Compensation payable under this Article 29 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

29.4 Mitigation of costs and damage

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

Article 30: Suspension of Concessionaire's Rights

30.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive any User Charge, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 90 (ninety) days by a further period not exceeding 60 (sixty) days.

30.2 Authority to act on behalf of Concessionaire

- 30.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all User Charges under and in accordance with this Agreement, and deposit the same in Escrow Account. The Authority shall be entitled to appropriate the same for meeting the O&M Expenses and for remedying and rectifying the cause of Suspension.
- 30.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 30.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project Facility and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

30.3 Revocation of Suspension

- 30.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (Ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

30.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (Ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

30.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 90 (ninety) days from the date of Suspension, and any extension thereof under Clause 30.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

30.5 Termination

30.5.1 At any time during the period of Suspension under this Article 30, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 30.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with

30.5.2 Article 31.

30.5.3 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 30.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

Article 31: Termination

31.1 Termination for Concessionaire Default

31.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “Concessionaire Default”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- a. the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 60 (sixty) days;
- b. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 60 (sixty) days;
- c. the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 60 (sixty) days;
- d. the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project Facility without the prior written consent of the Authority;
- e. Project Completion Date does not occur within the period specified in Clause 12.3.3;
- f. the Punch List items have not been completed within the period set forth in Clause 14.1.1;
- g. the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- h. the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- i. upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- j. a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- k. the Concessionaire creates any Encumbrance in breach of this Agreement;
- l. the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

- m. a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- n. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- o. an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- p. the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- q. the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- r. a resolution for winding up of the Concessionaire is passed;
- s. any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (Ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect.
- t. any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- u. the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- v. the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or

- w. the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Authority;
- x. An Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 5(Five) days.

31.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 31.3.3.

31.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 90 (ninety) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 90 (ninety) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 90 (ninety) days by such further period not exceeding 60 (sixty) days, as the Authority may deem appropriate.

31.2 Termination for Authority Default

31.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 60 (sixty) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- a. The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- b. the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- c. the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

31.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

31.3 Termination Payment

31.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 80% (eighty per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 70% (seventy per cent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD, save and except as provided in Clause 31.3.3.

31.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity

31.3.3 Upon Termination on account of Concessionaire Default at any time prior to COD, no Termination Payment shall be due and payable for expenditure comprising the first 30% (Thirty per cent) of the Total Project Cost and in the event of expenditure exceeding such 30% (thirty per cent), the provisions of Clause 31.1.1 shall, to the extent applicable to Debt Due, apply for and in respect of such excess expenditure. The Parties further agree that for the purposes of this Clause 31.3.3, Total Project Cost shall mean the amount specified in Sub-clause (c) of the definition of Total Project Cost in Clause 42.1.

31.3.4 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the

necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (Ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

31.3.5 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire.

31.3.6 The Concessionaire expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

31.4 Certain limitations on Termination Payment

31.4.1 Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

31.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- a. be deemed to have taken possession and control of the Project Facility forthwith;
- b. take possession and control of all materials, stores, implements, construction plants and equipment on or about the Project Facility ;
- c. be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Facility or any part of the Project;
- d. require the Concessionaire to comply with the Divestment Requirements set forth in Clause 32.1; and
- e. succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project

Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

31.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

Article 32: Divestment of Rights and Interest

32.1 Divestment Requirements

32.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- a. notify to the Authority forthwith the location and particulars of all Project Facility ;
- b. deliver forthwith the actual or constructive possession of the Project Facility free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- c. cure all Project Facility of all defects and deficiencies so that the Project Facility s compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Facility shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- d. deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project Facility and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project Facility and shall be assigned to the Authority free of any Encumbrance;
- e. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Facility , including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- g. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Facility , free from all Encumbrances, absolutely unto the Authority or to its nominee.

32.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

32.2 Inspection and cure

32.2.1 Not earlier than 90 (Ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Expert shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 33 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 32.

32.3 Cooperation and assistance on transfer of Project

32.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Project Facility .

32.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

32.4 Vesting Certificate

The divestment of all rights, title and interest in the Project Facility shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Deleted

Schedule P (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project Facility , and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project Facility on the footing that all Divestment Requirements have been complied with by the Concessionaire.

32.5 Divestment costs etc.

- 32.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Facility in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 32.5.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

Article 33: Defects Liability after Termination

33.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project Facility for a period of 90 (Ninety) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Expert in the Project Facility during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project Facility conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained by the Authority in accordance with the provisions of Clause 33.2 or the Performance Guarantee, as the case may be.

33.2 Retention in Escrow Account

- 33.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 33.2.3, a sum equal to 15% (fifteen) of the total Realisable Fee for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 33.1
- 33.2.2 Without prejudice to the provisions of Clause 33.2.1, the Independent Expert shall carry out an inspection of the Project Facility at any time between 150 (one hundred and fifty) and 120 (one hundred and twenty) days prior to the Termination and if it recommends that the status of the Project Facility is such that a sum larger than the amount stipulated in Clause 33.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Expert shall be retained in the Escrow Account for a period specified by it..
- 33.2.3 The Concessionaire may, for the performance of its obligations under this Article 33, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 33.2.1 or 33.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 33. Upon furnishing of a Performance

Guarantee under this Clause 33.2.3, the retention of funds by the Authority in terms of Clause 33.2.1 or 33.2.2, as the case may be, shall be dispensed with.

PART VI – OTHER PROVISIONS

Article 34: Assignment and Charges

34.1 Restrictions on assignment and charges

34.1.1 Subject to the provisions of Clauses 34.2, 34.3 and 34.4, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.1.2 Subject to the provisions of Clause 34.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.2 Permitted assignment and charges

The restraints set forth in Clause 34.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project Facility ;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project Facility , and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project Facility ;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

34.3 Substitution Agreement

34.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule Q.

34.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this

Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 60 (sixty) days to the Concessionaire for curing such breach.

34.4 Assignment by the Authority

34.4.1 Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

34.4.2 Any assignment under this Article 34 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

Article 35: Change in Law

35.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs.50 lakh (Rupees fifty lakh) and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (Ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs.50 lakh (Rupees fifty lakh) and 0.5% (zero point five per cent) of the Realisable Fee Charges in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (Ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt

of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.3 Protection of NPV

Pursuant to the provisions of Clauses 35.1 and 35.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

35.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 35 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

35.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users for and in respect of the capacity utilised by such Users.

Article 36: Liability and Indemnity

36.1 General indemnity

36.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities/enterprises, (the “Authority Indemnified Persons”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement, or on account of any defect or deficiency in the provision of services by the Concessionaire to any User, or from any negligence of the Concessionaire under contract or tort, or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

36.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

36.2 Indemnity by the Concessionaire

36.2.1 Without limiting the generality of Clause 36.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a. failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- b. payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
- c. non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

36.2.2 Without limiting the generality of the provisions of this Article 36, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons

from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project Facility, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

36.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this

Article 36 (the “**Indemnified Party**”) it shall notify the other Party (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction

36.4 Defence of claims

36.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 36, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

36.4.2 If the Indemnifying Party has exercised its rights under Clause 36.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

36.4.3 If the Indemnifying Party exercises its rights under Clause 36.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- a. the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- b. the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- c. the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- d. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 36.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such

claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

36.5 No consequential claims

Notwithstanding anything to the contrary contained in this

Article 36, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

36.6 Survival on Termination

The provisions of this

Article 36 shall survive Termination.

Article 37: Rights and Title over the Site

37.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Licensed Premises as a licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project Facility by third parties in accordance with and subject to the provisions of this Agreement.

37.2 Access rights of the Authority and others

37.2.1 The Concessionaire shall allow free access to the Project Facility at all times for the authorised representatives of the Authority, Senior Lenders, and the Independent Expert, and for the persons duly authorised by any Government Instrumentality to inspect the Project Facility and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

37.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Project Facility at all times for the authorised persons and vehicles of the controlling body of such utility or road.

37.3Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Licensed Premises; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

Article 38: Dispute Resolution

38.1 Dispute resolution

- 38.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 38.2.
- 38.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

38.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either Party may require such Dispute to be referred to Managing Director of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 38.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3.

38.3 Arbitration

- 38.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 38.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 38.3.2. Such arbitration shall be held in accordance with the Arbitration Rules of the Mumbai Centre for International Arbitration (“MCIA Rules”), which rules are deemed to be incorporated by reference in this clause or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Aurangabad, Maharashtra and the language of arbitration proceedings shall be English.
- 38.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

- 38.3.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 38 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay. In the event of delay in complying with the Award (forty-five) days beyond the date of Award the Party responsible for such delay shall pay compounded interest at rate equal to 5% (five percent) above the Bank Rate, to the other Party.
- 38.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 38.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

38.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 38.3, be adjudicated upon by such tribunal in accordance with the Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

Article 39: Disclosure

39.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Agreement and the Maintenance Manual, the Maintenance Programme, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the “Specified Documents”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and the Project Facility. The Concessionaire shall prominently display at the Project Facility, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

39.2 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 39.1 and 39.2, but subject to the Applicable Laws, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 39.1 and 39.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 40: Redressal of Public Grievances

40.1 Complaints Register

- 40.1.1 The Concessionaire shall maintain a complaints office at the Project Facility where it shall keep a register (the “Complaint Register”) open to the officials of the Authority and Users at all times for recording of complaints by such persons (the “Complainant”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Project Facility so as to bring it to the attention of all Users.
- 40.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 40.1.3 Without prejudice to the provisions of Clauses 40.1.1 and 40.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

40.2 Redressal of complaints

- 40.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 40.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Expert a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal in accordance with Applicable Law, and advise the Complainant to pursue the complaint at his own risk and cost.

Article 41: Miscellaneous

41.1 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 Aurangabad, Maharashtra shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

41.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d. consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

41.3 Depreciation

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Facility shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

41.4 Delayed payments

- 41.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.
- 41.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

41.5 Waiver

- 41.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
- a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - c. shall not affect the validity or enforceability of this Agreement in any manner.
- 41.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

41.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- a. no review, comment or approval by the Authority or the Independent Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire 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 Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- b. the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub- clause (a) above.

41.7 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between

the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

41.8 Survival

41.8.1 Termination shall:

- a. not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

41.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

41.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

41.10 Severability

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

41.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to

enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

41.12 **Third parties**

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

41.13 **Successors and assigns**

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

41.14 **Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Aurangabad may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority.

Attention:

{Designation:

Address:

Fax No:

Email :}

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to The CEO, Aurangabad Smart City Development Corporation Limited, Aurangabad, Maharashtra with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Aurangabad it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

Address: ASCDCL, War Room, Ambedkar Research Center, Near Amkhas Maidan, Aurangabad, 431005, Maharashtra, India

Email: acomm2@aurangabadmahapalika.org

And

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

41.15 **Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

41.16 **Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

Article 42: Definitions

42.1 Definitions

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

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire save and except in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three per cent) based on the written down value method) to reflect the variation occurring in WPI between the date of purchase thereof and the Transfer Date;

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- a. on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- b. from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- c. after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date; and the aforesaid shall apply, mutatis mutandis, to the Equity funded in Indian Rupees. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

“**Affected Party**” shall have the meaning set forth in Clause 28.1;

“**Agreement**” or “**Concession Agreement**” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**AMC**” means Aurangabad Municipal Corporation established under Bombay Provincial Municipal Corporations Act, 1949

“**Appendix**” shall have the meaning set forth in Clause 10.3.1;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Facility during the subsistence of this Agreement;

“**Appointed Date**” means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Associate**” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Authority Default**” shall have the meaning set forth in Clause 31.2.1;

“**Authority Representative**” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any

person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {selected bidder} in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Clause 15.1; “**Change in Law**” means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {existing promoters/selected bidder}, together with {its/their} Associates in the total Equity to decline below (i) 51% (fifty one percent) thereof during the Construction Period and a period of 2 (two) years following COD, and (ii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {existing promoters/selected bidder} to the total Equity, if it occurs prior to the first anniversary of COD, shall constitute Change in Ownership;

“**Change of Scope**” shall have the meaning set forth in Clause 16.1;

“**Company**” means the company acting as the Concessionaire under this Agreement;
“**Completion Certificate**” shall have the meaning set forth in Clause 14.2; “**Concession**” shall have the meaning set forth in Clause 3.1.1;

“**Concessionaire**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Concession Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**Concessionaire Default**” shall have the meaning set forth in Clause 31.1.1;

“**Conditions Precedent**” shall have the meaning set forth in Clause 4.1.1;

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD;

“**Construction Works**” means all works and things necessary to construct and complete the Project Facility in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other material agreement or contract for construction, operation and/or maintenance of the Project Facility or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- a. commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b. not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- c. not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Expert hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Expert to accord their approval;

“**DBFOT**” or “**Design, Build, Finance, Operate and Transfer**” shall have the meaning set forth in Recital (A);

“**Damages**” shall have the meaning set forth in Sub-clause (x) of Clause **Error! Reference source not found.**;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- a. the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- b. all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- c. any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

“Development Period” means the period from the date of this Agreement until the Appointed Date;

“Dispute” shall have the meaning set forth in Clause 38.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 38;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 32.1;

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

“Drawings” means all of the drawings, calculations and documents pertaining to the Project Facility as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project Facility ;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter

alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

“**Emergency**” means a condition or situation that is likely to endanger the security of the individuals on or about the Project Facility , including Users thereof, or which poses an immediate threat of material damage to any of the Project Facility ;

“**Encumbrances**” means, in relation to the Project Facility any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facility , where applicable herein but excluding utilities referred to in Clause 11.1;

“**Equity**” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Support;

“**Escrow Account**” means and Account which the concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning set forth in clause 25.1.2; “Escrow Bank” shall have the meaning set forth in clause 25.1.2; “Escrow Default” shall have the meaning set forth in Schedule-R;

“**Financial Close**” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“**Financial Default**” shall have the meaning set forth in Schedule-Q;

“**Financial Model**” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“**Financial Package**” means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Support, if any;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 28.1;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government” means the Government of the State;

“Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Facility or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to

Article 36;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to

Article 36;

“**Independent Expert**” shall have the meaning set forth in Clause 21.1;

“**Indirect Political Event**” shall have the meaning set forth in Clause 28.3;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 26 , and includes all insurances required to be taken out by the Concessionaire under Clauses 26.1 and 26.3 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“**LOA**” or “**Letter of Award**” means the letter of award referred to in Recital (D);

“**Lead Member**” shall have the meaning set forth in Recital (B);

“**Lenders’ Representative**” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“**Licensed Premises**” shall have the meaning set forth in Clause 10.2.2;

“**Major Overhaul**” means the complete repair, restoration and renovation of a Project Facility ;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 17.3;

“**Maintenance Programme**” shall have the meaning ascribed to it in Clause 17.4.1;

“**Maintenance Requirements**” shall have the meaning set forth in Clause 17.2;

“**Material Adverse Effect**” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“**Nominated Company**” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“**Non-Political Event**” shall have the meaning set forth in Clause 28.2;

“**O&M**” means the operation and maintenance of the Project Facility and includes all matters connected with or incidental to such operation and maintenance, in accordance with the provisions of this Agreement;

“**O&M Contract**” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“**O&M Contractor**” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**O&M Inspection Report**” shall have the meaning set forth in Clause 18.3;

“**Operation Period**” means the period commencing from COD and ending on the Transfer Date;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the parties to this Agreement individually;

“**Performance Security**” shall have the meaning set forth in Clause 9.1; “**Political Event**” shall have the meaning set forth in Clause 28.4;

“**Project**” shall have the meaning as set forth in Recitals, including Project Facilities ;

“**Project Agreements**” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement or any agreement for procurement of goods and services involving a consideration of up to 0.5% (zero point five percent) of the Total Project Cost;

“**Project Assets**” means all physical and other assets relating to and forming part of the Project including:

- a. rights over the Site in the form of licence, Right of Way or otherwise;
- b. tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and loading/ unloading facilities ;
- c. Project Facilities situated on the Site;

- d. buildings and immovable fixtures or structures forming part of the Project Facility ;
- e. all rights of the Concessionaire under the Project Agreements;
- f. financial assets, such as receivables, security deposits etc.;
- g. insurance proceeds; and
- h. Applicable Permits and authorisations relating to or in respect of the Project Facility ;

“Project Completion Date” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-G for completion of the Project on or before the Scheduled Completion Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule-C;

“Project Milestones” means the project milestones set forth in Schedule-G; **“Provisional Certificate”** shall have the meaning set forth in Clause 14.3.1; **“Punch List”** shall have the meaning ascribed to it in Clause 14.3.1;

“Re.”, **“Rs.”** or **“Rupees”** or **“Indian Rupees”** means the lawful currency of the Republic of India;

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“Realisable Fee” means all the user charges due and realisable under this agreement, but does not include user charges that a concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt Realisable fees shall be the amount so declared by the concessionaire on the basis of its provisional accounts and audited accounts as the case may be and in the event of the Dispute Resolution Procedure shall apply;

“Request for Proposals” or **“RFP”** shall have the meaning set forth in Recital (B);

“Revenues” means all of the present and future funds, payment, obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Authority in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Authority for and in relation to any capital expenditure for creation of assets;

“Right of Way” means the constructive possession of the Licensed Premises, together with all way leaves, easements, unrestricted access and other rights of way, howsoever

described, necessary for construction, operation and maintenance of the Project Facility in accordance with this Agreement;

“**Safety Requirements**” shall have the meaning set forth in Clause 17.16.1;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.3.1;

“**Scheduled Maintenance**” shall have the meaning set forth in Clause 17.4.4;

“**Scope of the Project**” shall have the meaning set forth in Clause 2.1;

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari-passu charge on the assets, rights, title and interests of the Concessionaire;

“**Site**” shall have the meaning set forth in Clause 10.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Facility, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project Facility submitted by the Concessionaire to, and expressly approved by, the Authority;

“**State**” means the State of Maharashtra and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;

“**Services**” means the provision of all the services, including Associated Services, by the Concessionaire in accordance with the provisions of this Agreement;

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- a. the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- b. all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two

per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Substitution Agreement" shall have the meaning set forth in Clause 34.3;

"Suspension" shall have the meaning set forth in Clause 30.1;

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, goods and services tax, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project Facility, including Services, charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;

"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination, for the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 31.5;

"Tests" means the tests set forth in Schedule-I to determine the completion of Project Facility in accordance with the provisions of this Agreement;

"Total Project Cost" means the capital cost incurred on construction and financing of the Project Capacity and shall be limited to the lowest of:

- a. the capital cost of the Project, {less Equity Support} as set forth in the Financial Package;
- b. the actual capital cost of the Project upon completion of the Project {less Support}; and
- c. a sum of Rs. ----- (Rupees -----
-----)

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an

average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost.

“**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**User(s)**” shall mean the parties using the Project Facility or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws;

“**Vesting Certificate**” shall have the meaning set forth in Clause 32.4;

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month;

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For and on behalf of Authority

(Name and Designation)

For and on behalf of Concessionaire

(Name and Designation)

Witness1;

Witness2;

SCHEDULES

Schedule A -: Sites of the Project

1. Sites

- 1.1 Sites of the Project means the land, structures and/or other places as described in this Schedule A, on, into or through which the Project Facilities are to be constructed under this agreement.
- 1.2 An inventory of the Licensed Premises including the land, structures, path, road works, trees and any other immovable property on, or attached to, the Licensed Premises shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 The Licensed Premises lie within the boundary of Aurangabad Municipal Corporation.
- 1.4 Additional land required for construction of works specified in Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.
- 1.5 Additional land required for construction of works specified in Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.
- 1.6 The indicative list of Sites is furnished in below as a Table in Annexure-I of this Schedule A. In case of any difficulty at a particular Site, the Authority reserves the right to provide an alternative Site. The Authority reserves the right to delete/add/change the Sites for the Project, without any claim from the Concessionaire. The final decision in this regard will vest with the CEO of ASCDCL.

Annexure I Indicative List of locations (Package 1 & 2)

PACKAGE 1			
SR. NO.	STOP NAME	SHELTERS (to be built)	SHELTERS (to be dismantled)
1	RAILWAY STATION	3	0
2	HOTEL PANCHVATI	1	0
3	BABA PETROL PUMP	2	0
4	KRANTI CHOWK	3	1
5	DOODH DAIRY	3	0
6	AAKASHWANI	2	1
7	ST.FRANCIS SCHOOL	2	2
8	SEVEN HILL	3	1
9	HIGH COURT	2	2
10	AGRASEN CHOWK	2	2
11	VASNTRAO NAIK COLLEGE	1	1
12	CIDCO CHOWK	4	0
13	PVR/ MUKUNDWADI	2	0
14	KAMGAR CHOWK	1	0
15	GAJANAN MANDIR	3	0
16	RELIANCE MALL	2	0
17	SUTGIRNI CHOWK	1	0
18	SHAHNOOR MIYA DARGA	3	0
19	CENTRAL BUS STAND	3	1
20	MILL CORNER	1	0
21	AURANGPURA	6	4
22	SATHE CHOWK/COLLECTOR OFFICE	3	1
23	HARSUL T POINT	2	0
24	SBI CHOWK	2	0
25	TV CENTRE	2	0
26	BIBI KA MAQBARA	2	0
27	DEOLAI	1	0
28	RENUKA MATA MANDIR CHOWK	1	0
29	SADANAND NAGAR	1	0
30	KANCHANWADI	1	0
31	NAKSHATRAWADI	1	0
32	MSEB STORES	1	0
33	NAREGAON	1	0
Total		68	16

PACKAGE 2			
SR. NO.	STOP NAME	SHELTERS (to be built)	SHELTERS (to be dismantled)
1	DEOLAI CHOWK	2	0
2	YOGIRAJ HANSTIRTH CHOWK	1	0
3	MIT CHOWK	1	0
4	KAMALNAYAN BAJAJ HOSPITAL	2	0
5	MAHANUBHAV ASHRAM	2	0
6	BARALE HOSPITAL	1	0
7	PADAMPURA	1	0
8	DISTRICT COURT	2	2
9	KOTLA COLONY	2	2
10	RAMA NAGAR	2	2
11	MONDHA NAKA	2	0
12	API CORNER	2	0
13	ST COLONY	2	0
14	SANJAY NAGAR	1	0
15	RAM NAGAR	2	0
16	DHOOT HOSPITAL	2	1
17	DISTRICT HOSPITAL	2	0
18	AMBEDKAR CHOWK (Chikkalthana)	2	0
19	CAMBRIDGE	2	0
20	JAY BHAVANI NAGAR	2	0
21	HANUMAN NAGAR	2	0
22	PUNDLIK NAGAR	2	0
23	JAWAHARNAGAR POLICE STATION	1	0
24	SHIVAJI NAGAR	1	1
25	CHETAK GHODA	1	0
26	ROPLEKAR HOSPITAL	1	0
27	GOVT POLYTECHNIC	2	0
28	DEOGIRI COLLEGE	2	0
29	JAY TOWER	2	0
30	SSC BOARD	2	0
31	SAVARKAR CHOWK	1	0
32	S T DIVISIONAL OFFICE	1	1
33	JUBILEE PARK/ GHATI	2	0
34	DELHI GATE	1	0
35	HIMAYAT BAUG	2	0
36	MAULANA AZAD COLLEGE	2	0
37	HUDCO CORNER	2	0
38	HARSUL JAIL/JATWADA ROAD	1	0

39	HARSUL GAON	1	0
40	JAISWAL HALL	1	0
41	RENUKA MATA MANDIR	1	0
42	AMBEDKAR NAGAR	2	1
43	WOCKHARDT	1	0
44	AMBEDKAR CHOWK (Jalgaon Road)	1	0
45	M 2	2	0
46	ROSE GARDEN (N-12)	1	1
47	SALIM ALI SAROVAR	1	0
48	GANESH COLONY	1	0
49	GANDHI PUTLA	1	0
50	CITY CHOWK	1	0
51	HEAD POST OFFICE	1	0
52	MILIND HIGH SCHOOL	1	0
53	BHAVSINGPURA	1	0
54	MILIND COLLEGE	1	0
55	UNIVERSITY GATE	1	0
Total		82	11

Note: The co-ordinates of each bus shelter shall be finalized after a joint survey by the Authority and the Concessionaire at locations in the concerned package.

Schedule B -: Development of the Project Facility

1. Description of Project Facility

- 1.1 The Project Facility to be designed and constructed comprises of Bus Que Shelters at locations mentioned in Schedule A after obtaining approval from Aurangabad Smart City Development Corporation Limited (the “ASCDCL”) during the concession period of the Project.

2. Development of Project Facility

- 1.2 Development of the Project Facility shall include construction of the all facility as described in this Schedule B.
- 1.3 Project Facility shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule D.

Schedule C: Service Level Requirements

1. Project Facility

The Concessionaire shall ensure that the service levels for the facilities/components forming a part of the Project Facility, shall be complied with at all times and the period specified for rectification of any shortcoming is met, failing which a penalty of Rs.1,000 per day per shortcoming per Project facility shall be levied on the Concessionaire, by the Authority.

Schedule D: Design and Construction Specifications & Standards

The Minimum Specification and Standards

- a) The Project Facilities are to be constructed in accordance with the drawings, complete with proper flooring, LED fixtures (if any), electrical fittings, sanitary fittings, solar photovoltaic roof top panels and plumbing, etc., as applicable. Project facilities must have proper vandalism proof provisions of stainless steel (SS) pipes structure, Acrylic sheets, FRP sheets, Polycarbonate roofing sheets, etc. with provisions of backlit advertisement panels on 3 sides including necessary concealed electrical wiring etc., for ample illumination in night.
- b) (i) The advertisements panel shall be have back lit advertising panel/digital advertising panel (with prior approval of the Authority) in the frame of aluminium/stainless steel and covered with poly carbonate sheet as per design approved by Authority.

(ii) No display/ exhibit of any picture/poster/statue or other articles in any part of the premises are allowed that are repugnant to the general standards of morality is permitted. The concessionaire expressly agrees that the decision of the Authority in this regard shall be conclusive and binding on the concessionaire.
- c) The provision of the space for various facilities such as Passenger Information System, Solar Photovoltaic Roof Top Panels, Wi-Fi as per the design approved by Authority. The number of facilities/requirements shall be as per the site feasibility and the location specific requirements.
- d) The material and the fixtures to be used in each project facility are given herewith for minimum standard. However, the concessionaire can propose the higher specification than the above for approval by the Authority.
- e) **Electricity supply:** The Concessionaire shall ensure adequate electricity supply for proper LED lightings inside and outside the Project Facilities from the Solar panels and Municipal electric supply. The electric supply shall have to be arranged by the concessionaire through meter from concerned department.
- f) **Cleaning of Project Facility:** The Concessionaire shall ensure cleaning of the Project Facility as per the cleaning schedule provided herewith. Dedicated cleaning staff shall be provided by the Concessionaire for project facility.
- g) **Waste Disposal:** The Concessionaire shall provide stainless steel litterbins inside and outside the project facility as specified and dispose of the collected waste up to nearest municipal bin.
- h) All the necessary electrical fittings/fixtures/ LED etc. shall be of standard specifications energy efficient and quality, but not limited to the specified one herein and the work shall be got done through qualified electrician/wireman. Obtaining electrical safety clearance from regulatory body shall be the responsibility of the concessionaire at his own cost prior

to the COD.

- i) In case sub-standard/defective material is used, the same shall be replaced by the concessionaire at its own cost. In case of any dispute in this regard decision of Authority shall be final.
- j) Operations & Maintenance:

This includes operation of the project facility i.e. regular cleaning of the project facility and its surrounding area, functioning of all the fixtures, deployment of dedicated personnel, supervision and providing of consumables. The maintenance and operation of all necessary infrastructure provided in project facility such as electricity, waste removal, water etc. The Concessionaire shall clean and housekeeping the other areas created in project facility for the other facilities as specified above.
- k) The maximum area of shelter shall be used by the public to provide better level of comfort. This provides easiness between boarding alighting and waiting space.
- l) Absence of backside covering at some part, allow better natural light & Ventilation at the shelter.
- m) The desirable platform level at the bus shelter shall be about 400mm above the road carriageway surface.
- n) The arrangement of the bus shelter is assessed on a shelter-to-shelter basis and is determined by site constraints and passenger access requirements. However, it is planned in such a way that maximum utilization of space can be achieved for public comfort and adequate circulation space.
- o) Sufficient space for queuing and passenger flow to be ensured at the shelter. However, the available space may be constrained by local site conditions. Besides this, the other considerations should be:
 - Adequate capacity for passenger movements.
 - Convenience, including good signage relating to system information, circulation and orientation.
 - Safety and security, including a high level of protection against accidents.
 - Adequate safety measures against fire to be taken.
 - Electrical safety standards like ELCB and earthing etc. to be provided.
- p) Following miscellaneous requirements have to be considered:
 - Minimum operating costs are incurred consistent with maintaining efficiency and the safety of passengers.
 - Flexibility of operation including the ability to adapt to different traffic conditions and provision for the continuity of operation during any

extended maintenance or repair period, etc.

- Provision of good visibility at shelters, Natural light, ventilation and other utilization areas aiding more efficiency and safety.
 - Provision of display of passenger information and advertising.
- q) In order to transfer passengers efficiently from street to footpath and from footpaths to shelter and vice versa, the spatial planning has to be based on established principles of pedestrian flow and shall minimize avoidable walking distances and cross-flows between incoming and outgoing passengers.
- r) Passenger handling facilities comprise of ramps, walkways and boarding - alighting area, required to process the peak traffic from street to platform and vice-versa. These facilities must also enable evacuation of the shelter under emergency conditions.
- s) The substructure and the super structures that afford maximum transmission of natural light and are architecturally/ aesthetically pleasing to look at are envisaged. The structures/sub components, wherever necessary, shall look compatible with both, modern environment as well as the lesser-built developments along various sections of the bus route corridor. This has to be done without compromising with environmental protection from sun and rain.
- t) Shelter roofs are proposed to be of sleek SS frame with polycarbonate sheet or better material to achieve slender appearance. The disposal of rain water and dirt from the roof should be taken care of.
- u) Accessibility: Shelters are design on the concept of free flow of Passenger Traffic. No gates are provided at the shelter. Ramp is provided one side for physically challenged passengers.
- v) Lighting: Since the bus operations are scheduled to be extending over a period of 16 hrs, adequate lighting is necessary along with natural lighting, ensuring minimum illumination levels of 60 lux in the waiting, boarding and alighting areas. The uniformity ratio (Average Intensity/ Minimum Intensity) should be 2 (Two). Solar panels and batteries for lighting in BQS and for the advertisements is a preferred option.
- w) Floor/Landing Surfaces: Providing and fixing heavy duty inter locking concrete rubber mould glossy paving blocks. The non slippery tiles to be laid as per provisions for physically challenged. These should be easily washable and cleanable, acid resistant.
- x) Necessary cut-outs for electric connections, lighting, for advertisement panel's etc should be provided at required places in the sub structure or superstructure in a concealed manner.
- y) Painting Work- To be minimized to the extent possible by use of suitable material, however on plastered surfaces, a primer coat and three coats of Plastic paint (duco paint is preferred) and on mild steel members, a primer coat with 2/3 coats of enamel paint. In case of Aluminum section, anodizing of 20 microns is recommended.

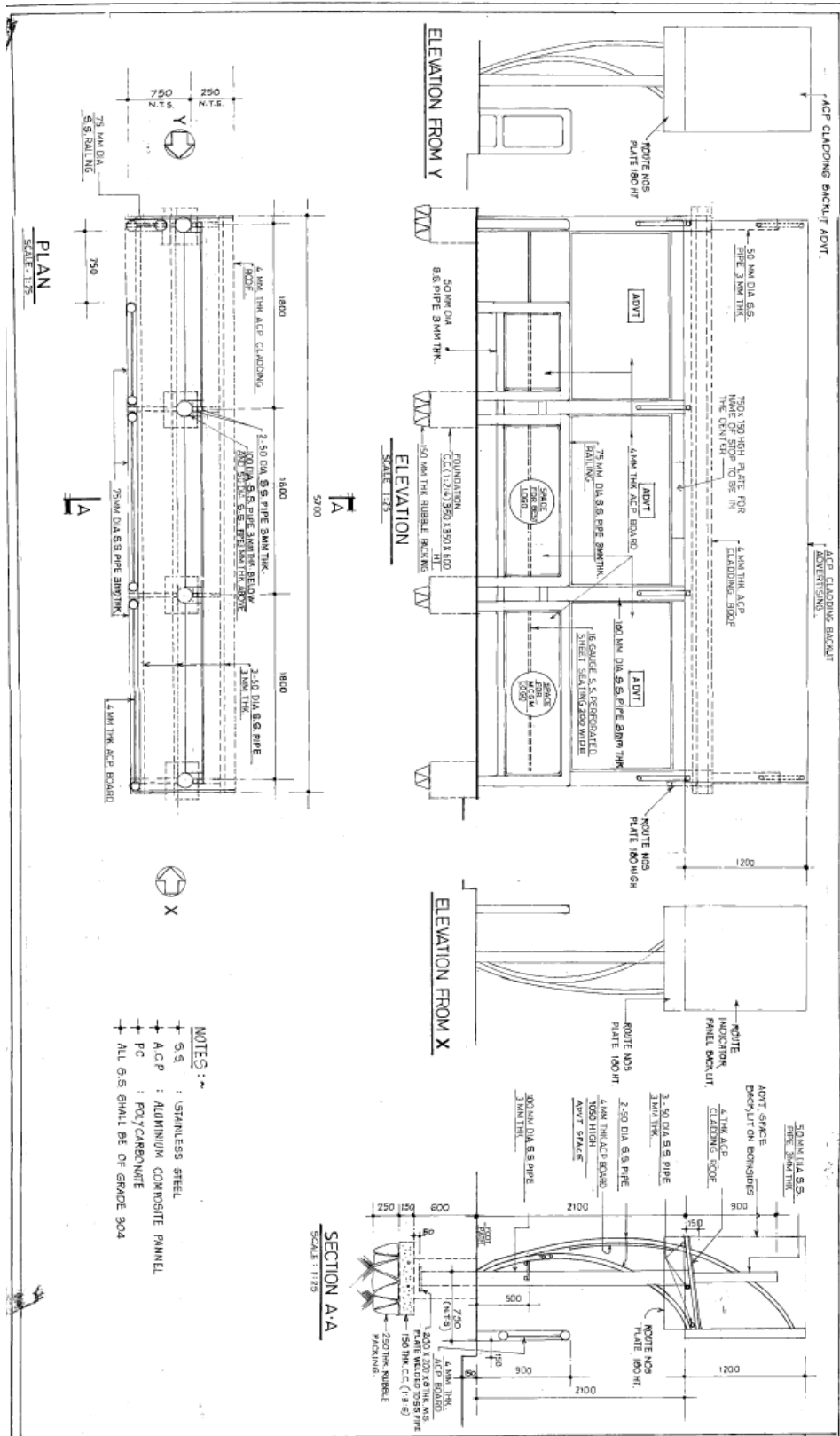
- z) Steel Work/ frames: Vertical/horizontal members for demarcating and segregating different types of areas, to the extent possible, to be of prefab type, able to house the hanging/fastening of display panels, informative maps, etc.
- aa) Roof: Preferably to be Polycarbonate sheets/any other similar material and Steel work in built up tubular trusses, to be Fire retardant. The characteristics may be summed up as: Virtually unbreakable, high resistance to weathering-temperature variation as per Aurangabad conditions, easily fabricated & installed, Low flammability, Light Weight, Easily Cleaned, Excellent Insulation Properties. The material should also be suitable for Cutting, Drilling, Bending and Thermoforming. The roof has to withstand live loads such as that of the cleaning staff and for monkeys, which jump on roofs.
- bb) Steel Work as Sub Structure: Pre-fab to the extent possible, SS Steel in built up tubular trusses including cutting, hoisting, fixing in position, welded and bolted including special shaped washers etc. complete above plinth level.
- cc) Area for advertisements: Of the total area available on internal panels, some area has to be ensured for system information (such area is not included in the area available for advertisement at SSU), the do's and don'ts, guide maps, plans and social messages etc. Further, at least 10% of the total ad area on the front panel is to be reserved for ASCDCL in addition to provision for display of ASCDCL logos.

Note :- Before placing the advertisement, the type, product for which ad is proposed, total area etc details should be given and after approval of CEO, ASCDCL the ad boards should be placed. For above subject to decisions of CEO, ASCDCL shall be final. The above may change as per the site requirement.
- dd) Construction materials used should be such that they age well and do not require extensive maintenance or replacement.
- ee) The construction drawings, including foundation drawings are to be prepared keeping the standards and specifications as set forth in this Schedule D supported by necessary calculations and estimates using most recent version of standard specifications and shall be submitted prior to start of construction works for approval.
- ff) The indicative designs are included below:



Note: This is the photograph of a BEST bus shelter in Mumbai which is to be taken as the benchmark. A detailed drawing is also provided on the next page for guidance.

Detailed Drawing to be Referred to as the Benchmark



Source: BEST

Note: The drawing is to be referred to only as an indicative benchmark. Concessionaire shall prepare its own drawing for the approval of ASCDCL.

Schedule E: Applicable Permits

1. Applicable Permits

1.1 The Concessionaire shall, as required under the Applicable Laws, obtain the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:

- a) Permission of the local authorities (including but not restricted to AMC, PWD, NHAI, RTO, Police, MSRTC, BSNL, MPCB), as per Applicable Laws, for construction of the Project Facility.
- b) Applicable Permits, if any, relating to environmental protection (including forest clearance) shall have been procured by the Authority as a Condition Precedent.

Schedule F: Performance Security

The CEO

ASCDCL, War Room,

Ambedkar Research Center, Near Amkhas Maidan,

Aurangabad-431005

WHEREAS:

- A.(the “Concessionaire”) and the Aurangabad Smart City Development Corporation Limited Aurangabad Maharashtra having its principal offices at War Room, Ambedkar Research Center, Near Amkhas Maidan, Aurangabad-431005, Maharashtra , India (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on have entered into a Concession Agreement dated(the “Agreement”) whereby the Authority has agreed to the Concessionaire undertaking the Design, Construction, Operation, Maintenance And Management of Bus Que Shelter at Aurangabad in the State of Maharashtra on Design, Build, Finance, Operate And Transfer (“DBFOT”) basis, subject to and in accordance with the provisions of the Concession Agreement between the parties.
- B. The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of INR 12,00,000 (rupees twelve lakhs only) per Package as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- C. We, through our Branch at (The “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

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

Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, before the date of its, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall remain in force and effect for a period of 3 (three) month from **the Commercial Operation Date or COD** as defined in the Agreement, for the purposes of this Guarantee, and provided the Concessionaire is not in breach of the Agreement.

9. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security within 60 days of the request.
10. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
11. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
12. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of ten years and three months from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Schedule G: Project Completion Schedule

1. Project Completion Schedule

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

2. Project Milestone-I

Project Milestone-I shall occur on the date falling on the 60th (sixtieth) day from the Appointed Date (the “Project Milestone-I”).

Prior to the occurrence of Project Milestone-I, the Concessionaire shall have completed carrying out all investigations, tests, designs and drawings and construction schedule.

3. Project Milestone-II

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

Prior to the occurrence of Project Milestone-II, the Concessionaire shall have completed construction 40% of the number of the total proposed the Project Facilities.

4. Project Milestone-III

Project Milestone-III shall occur on the date falling on the 180th (one hundred and eighttieth) day from the Appointed Date (the “Project Milestone-III”).

Prior to the occurrence of Project Milestone-III, the Concessionaire shall have completed construction 100% of the number of the total proposed the Project Facilities .

5. Scheduled Completion Date

The Scheduled Completion Date shall occur on the 180th (two hundred and seventieth) day from the Appointed Date.

On or before the Scheduled Completion Date, the Concessionaire shall have completed the Project in accordance with this Agreement.

6. Extension of period

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

Schedule H: Drawings

The Concessionaire shall prepare and obtain approvals at its cost, charge and expense, shop and working Drawings for the Project Facilities in accordance with the Specification and Standards.

Schedule I: Tests

The Concessionaire shall conduct all relevant tests during construction and operation period as required and approved quality assurance plan. for the Project Facilities in accordance with the Specification and Standards.

Schedule J: Completion Certificate

I/We, (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Agreement dated (the “Agreement”) for the Project of Designing, Setting–Up, Operating & Maintaining of Bus Que Stops on Public Private Partnership Basis, in Aurngabad through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Project Facilities with the provisions of the Agreement, and I/We am/are satisfied that the Facilities can be safely and reliably placed in commercial service of the Authority and the users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project Facilities have been completed, and are ready for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT EXPERT by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

I/We, (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Agreement dated (the “Agreement”), for the Project of Designing, Setting–Up, Operating & Maintaining of Bus Que Stops in on Public Private Partnership Basis, through

..... (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the Project Facilities ----- of the Project to determine compliance thereof with the provisions of the Agreement.

Construction Works forming part of the Project Facility/section ----- of the Project that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire)² I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Facilities ----- of Project, pending completion thereof.

In view of the foregoing, I/We am/are satisfied that the Project Facilities ----- of the Project can be safely and reliably placed in commercial service of the Authority and the users thereof, and in terms of the Agreement, the Project Facilities ----- of the Project hereby provisionally ready for entry into commercial operation on this the day of 20....

ACCEPTED, SIGNED, SEALED AND SIGNED, SEALED AND
DELIVERED DELIVERED

For and on behalf of Concessionaire by: For and on behalf of
INDEPENDENT EXPERT by:

(Signature)

(Signature)

(Name and Designation) (Address)

(Name and Designation) (Address)

² May be struck out if not applicable. Also strike out other parts which are not applicable

Schedule K: Maintenance Requirements

1. Minimum Maintenance Requirements

- a) All Project Sites and Project Facilities and the surrounding areas are to be kept cleaned at all times. The litter bins should not be overflowing at any time and disposal of garbage to be arranged to as required.
- b) The advertisement panels to be kept clean from dust, stains etc. at all times. It is to be ensured that posters etc.
- c) No leakage from roof to be permitted.
- d) Proper drainage is maintained and no accumulation of water, liquid etc. is allowed at any time.
- e) The lighting arrangement at the Project Site is functional at all times. Electrical safety is to be ensured for users as well as Concessionaire's staff.
- f) All structural members, seating arrangements and advertisement panels are to be inspected and maintained in good condition as per the maintenance manual.
- g) Broken floors are not permitted. For this purpose it is advised that the Concessionaire maintains a minimum inventory of required material at store.
- h) Security of all assets to be ensured at all Project Sites.
- i) The advertisements on panels to be changed during off peak periods – preferably during night hours.
- j) The concessionaire shall be responsible to rectify minor complaint within 6 hours after receipt/ occurrence of complaint & major break down in any Electrical shall be rectified next day failing which penalty @500/- per day shall be imposed.
- k) Penalty for Rs 1,000/- Per Project Facility / Per Day for improper quality of work i.e. improper cleaning, improper supervision, short deployment of equipment etc. shall be levied on the Concessionaire, if the same is not addressed under Schedule C of this Agreement. The decision of the Authority shall be final in this regard.

1. Minimum Cleaning Requirement of Project Facilities

Sr. No.	Description item/maintenance task	Frequency for sport cleaning
1.	Cleaning of stainless steel railing including balusters and signages	Daily & as and when required
2.	Cleaning/sweeping of pavement	Once in each shift & as and when required
3.	Cleaning of litter bins etc	Once in each shift & as and when required including disposal of litters etc to the nearest AMC dustbins /compactors

Schedule L: Safety Requirements

1. Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the applicable Safety Guidelines specified in Annex -1 of Schedule L

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

- a) Applicable Laws and Applicable Permits;
- b) provisions of this Agreement;
- c) relevant Standards/Guidelines contained in internationally accepted codes; and
- d) Good Industry Practice.

3. Safety measures during Operation Period

- 3.1 The Concessionaire shall develop, implement and administer a safety programme for the Project, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 3.2 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.
- 3.3 The Concessionaire shall submit to the Authority before the first week of every month a report (in three copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 3.1 of this Schedule-L for averting or minimising such accidents in future.

4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be borne by the Concessionaire in accordance with the provisions of Clause 17.16.2.

Annexure II Safety Guidelines

1. System integrity

In the design of the Project Facility, particular care shall be taken to minimise the likely incidence of failure.

2. Safety management

A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Expert within 15 (fifteen) days of the close of every quarter.

3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the “**Disaster Management Manual**”) to be prepared and published by the Concessionaire prior to COD. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to COD.

4. Fire safety

The Concessionaire shall conform to the standards specified by the US National Fire Protection Association (NFPA) in NFPA-61-B.

To prevent fire in the Project Facility, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

To deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the provisions of industry standards

5. Surveillance and Safety Manual

The Concessionaire shall, no later than 60 (sixty) days prior to COD, evolve and adopt a manual for surveillance and safety of the Project (the “**Surveillance and Safety Manual**”), in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection. The Concessionaire shall provide 5 (five) copies each of the Surveillance and Safety Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to COD.

6. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety and security of the Project Facility and all persons affected by it.

Schedule M: Selection of Independent Expert

1. Selection of Independent Expert

- 1.1 The Authority shall appoint an Independent Expert who may be a government-owned entity or a technical consultant. In the event of termination of an Independent Expert appointed shall appoint another firm of Technical Consultant forthwith or government-owned entity in accordance with the provisions of paragraph 5 of this Schedule M
- 1.2 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule M.

2. Terms of Reference

The Terms of Reference for the Independent Expert shall substantially conform to Schedule N.

3. Fee and expenses

In determining the nature and quantum of duties and services to be performed by the Independent Expert during the Construction Period, the Authority shall ensure that payments to the Independent Expert on account of fee and expenses do not exceed 1% (one per cent) of the Total Project Cost. Payments not exceeding such 1% (one per cent) shall be borne by the Authority in accordance with the provisions of this Agreement.

The nature and quantum of duties and services to be performed by the Independent Expert during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Expert on account of fee and expenses during the Operation Period shall be borne by the Authority. The annual payment on account of fees and expenses to the Independent Expert during the Operation Period, shall not exceed 6% (six per cent) of the Total Project Cost.

4. Selection every three years

The Authority, if it chooses to, shall engage another firm no later than 3 (three) years from the date of appointment of Independent Expert and every 3 (three) years thereafter, pursuant to the provisions of Paragraph 1 of this Schedule M, and in accordance with the criteria set forth in this Schedule M;

5. Appointment of government entity as Independent Expert

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

Schedule N: Terms of Reference of Independent Expert

1. Scope

- 1.1 These Terms of Reference for the Independent Expert (the “TOR”) are being specified pursuant to this Agreement dated (the “**Agreement**”), which has been entered into between the Authority for the **Project** of Construction, operation & maintainace of Bus Que Shelter through Public-Private Partnership (PPP) on Design, Build, Finance, Operate & Transfer (DBFOT) under Implementation of the Smart City Mission in the Aurangabad and a copy of which is annexed hereto and marked as Annex-I to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the **Project**.

2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3. Role and functions of the Independent Expert

- 3.1 The role and functions of the Independent Expert shall include the following:
 - a) review of the Drawings and Documents as set forth in Paragraph 4;
 - b) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
 - c) review, inspection and testing of **Project** as set forth in Paragraph 4;
 - d) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 4;
 - e) review, inspection and monitoring of O&M as set forth in Paragraph 5;
 - f) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;
 - g) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - h) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - i) assisting the Parties in resolution of disputes as set forth in Paragraph 8; and
 - j) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Independent Expert shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Construction Period

- 4.1 The Independent Expert shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo- technical and

hydrological investigations, topographical surveys and other surveys conducted as part of the Feasibility Report and any further revision thereof. The Independent Expert shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

- 4.2 The Independent Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Expert shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.4 The Independent Expert shall review the detailed design and the manufacturing, installation, testing and commissioning plans for the Project Facility sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Expert shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project Facility, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.
- 4.6 The Independent Expert shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 4.7 The Independent Expert shall inspect the Construction Works and equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Facility or in the equipment. The Inspection Report shall also contain a review of the maintenance of the existing roads in conformity with the provisions of the Agreement. The Independent Expert shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 4.8 The Independent Expert may inspect the Project Facility more than once in a month if any lapses, defects or deficiencies require such inspections.
- 4.9 For determining that the Construction Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Expert in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests

prescribed in the relevant Manuals specified by the Government in relation to structures, buildings, lines, equipment and electrical systems (the “Quality Control Manuals”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Expert shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the result thereof.

- 4.10 The sample size of the tests, to be specified by the Independent Expert under Paragraph 4.9, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Expert may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Expert in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 4.12 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 4 shall apply to such tests.
- 4.13 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Expert shall determine that completion of the Project Facility is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 4.14 If at any time during the Construction Period, the Independent Expert determines that the Concessionaire has not made adequate arrangements for the safety of workers or any other persons in the zone of construction, or that any work is being carried out in a manner that threatens the safety of the workers or any other persons in the zone of construction, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 4.15 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and other persons in the zone of construction, it may, by notice in writing, require the Independent Expert to inspect such works, and within 3 (three) days of receiving such notice, the Independent Expert shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 4.16 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine the extension of dates set forth in the Project

Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

- 4.17 The Independent Expert shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.17 and all matters incidental thereto, the Independent Expert shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 4.18 Upon reference from the Authority, the Independent Expert shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 4.19 The Independent Expert shall aid and advise the Concessionaire in preparing the Maintenance Manual.

5. Operation Period

- 5.1 In respect of the Drawings and Documents received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2 The Independent Expert shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 5.3 The Independent Expert shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.4 The Independent Expert shall ensure periodic calibration of Weighing and Testing Equipment as well as periodic check of all scientific testing equipment.
- 5.5 The Independent Expert shall assess the amount of Damages, if any, payable or recoverable, and notify the Concessionaire and the Authority of such amounts, in accordance with the terms of the Agreement.
- 5.6 The Independent Expert shall inspect the Project Facility, at least once every quarter, preferably after receipt of the last monthly status report in the relevant quarter from the Concessionaire, but before the 20th (twentieth) day after the close of each quarter in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Programme, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Facility. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.7 The Independent Expert may inspect the Project Facility more than once in a quarter, if any lapses, defects or deficiencies require such inspections.
- 5.8 The Independent Expert shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project Facility is in conformity with the Maintenance Requirements. It shall

monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

- 5.9 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Expert shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 5.10 The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 5.11 The Independent Expert shall examine the request of the Concessionaire for closure of any section of the Project Facility for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in Project Facilities and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Expert shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.8.
- 5.12 The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 18.5.
- 5.13 In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Project Facility, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6. Termination

- 6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Expert shall, in the presence of a representative of the Concessionaire, inspect the Project Facility for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 32.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Expert determines that the status of the Project Facility is such that its repair and rectification would require a larger amount than the sum set forth in Clause 33.2, such additional amounts shall be payable by the Concessionaire.
- 6.2 The Independent Expert shall inspect the Project Facility once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 33, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Expert, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

7. Determination of costs and time

- 7.1 The Independent Expert shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Independent Expert shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8. Assistance in Dispute resolution

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

9. Other duties and functions

- 9.1 The Independent Expert shall perform all other duties and functions specified in the Agreement.

10. Miscellaneous

- 10.1 The Independent Expert shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 10.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Expert to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.
- 10.3 The Independent Expert shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Expert, whereupon the Independent Expert shall send 1 (one) of the copies to the Authority along with its comments thereon.

- 10.4 The Independent Expert shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 10.5 Upon completion of its assignment hereunder, the Independent Expert shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. 2 (two) copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.
- 10.6 Wherever no period has been specified for delivery of services by the Independent Expert, the Independent Expert shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

Schedule O: Panel of Chartered Accountants

Deleted

Schedule P: Vesting Certificate

1. **The CEO, Aurangabad Smart City Development Corporation Limited. Aurangabad Maharashtra** and having its principal offices at **War Room, Ambedkar Research Center, Near Amkhas Maidan, Aurangabad, 431005** (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on the Concession Agreement dated (The “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for the Project of Designing, Setting–Up, Operating & Maintaining of Bus Que Shelter on Public Private Partnership (“**PPP**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 32.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20 at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

Concessionaire by:

Authority by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

Schedule Q: Substitution Agreement

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

AMONGST

1. **The CEO, Aurangabad Smart City Development Corporation Limited. Aurangabad Maharashtra** and having its principal offices at **War Room, Ambedkar Research Center, Near Amkhas Maidan, Aurangabad, 431005** (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on Agreement dated (the “Agreement”) entered into between the Authority and (the “Concessionaire”) for the Project of Designing, Setting-Up, Operating & Maintaining of Bus Que Shelters on Public Private Partnership (“PPP”) basis.
2. Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. (name and particulars of Lenders’ Representative) and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into an Agreement dated with the Concessionaire (the “Agreement”) for the for the Project of Designing, Setting-Up, Operating & Maintaining of Bus Que Shelters on Public Private Partnership basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act 2013/1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ASSIGNMENT

1.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 30 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 90 (Ninety) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 90 (Ninety) days by a period not exceeding 90 (Ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a

period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (Ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:
- i. accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - ii. endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - iii. enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 31 of the Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 90 (Ninety) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim in accordance with the provisions of the Concession Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- i. Termination of the Agreement; or
- ii. no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Aurangabad and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 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 Aurangabad shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- i. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- ii. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- iii. shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right here under.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- i. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- ii. 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 or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF

CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and

....., Company Secretary / Authorised Officer who has countersigned the same in token thereof³

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address) SIGNED, SEALED AND DELIVERED

For and on behalf of THE AUTHORITY by:

(Signature) (Name) (Designation) (Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

(e-mail address)

In the presence of:

- 1.
- 2.

³ To be affixed in accordance with the articles of association of the Concessionaire

Schedule R: Escrow Agreement

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

AMONGST

1. [**** LIMITED], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at **** (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. **** [name and particulars of Lenders’ Representative] and having its registered office at *** acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. **** [name and particulars of the Escrow Bank] and having its registered office at

**** (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. **The CEO, Aurangabad Smart City Development Corporation Limited, Aurangabad Maharashtra** and having its principal offices at **War Room, Ambedkar Research Center, Near Amkhas Maidan, Aurangabad, 431005** India (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated.....with the Concessionaire (“**Concession Agreement**”) for the Project of Designing, Setting – Up, Operating and Maintaining of Bus Que Shelter (the “**Project**”) on Public Private Partnership (the “**PPP**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Government or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed in Clause 6.1;

“**Lenders' Representative**” means the person referred to as the Lenders' Representative in the foregoing Recitals;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually;

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

121 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

122 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the

Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

123 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to /be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the(name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all receivables such as any User Charges, advertisement revenues and lease rentals; deposits or capital receipts, as the case may be, from or in respect of the Project; provided that the Senior Lenders may make direct disbursements to the Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements, and
- (d) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow

Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) all receivables such as User Charges, advertisement revenues and lease rentals collected by it, in exercise of its rights under the Concession Agreement; and
- (d) Termination Payments:

Provided that the Authority shall be entitled to appropriate from the aforesaid amounts, any Revenue Share due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- a) All taxes due and payable by the Concessionaire for and in respect of Project;
- b) all payments relating to construction of the Project subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- d) O&M Expenses and other costs and expenses incurred by the Authority in

accordance with the provisions of the Concession Agreement and certified by the Authority as due and payable to it;

- e) Premium due and payable to the Authority;
- f) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- g) any other amounts due and payable to the Authority;
- h) monthly proportionate provision of Debt Service due in an Accounting Year;
- i) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- j) any reserve requirements set forth in the Financing Agreements; and
- k) balance, if any, in accordance with the instructions of the Concessionaire
- l) Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) PF, ESI and Statutory dues to its employees (including employees of its contractors);
- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including {Premium} and any claims in connection with or arising out of Termination;
- (d) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 33 of the Concession Agreement;
- (e) 90% (Ninety per cent) of Debt Due excluding Subordinated Debt;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) incurred or accrued O&M Expenses;
- (h) outstanding Subordinated Debt;
- (i) any amounts due and payable to the Authority;
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 30 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub- Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

6.1.1.1 the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;

6.1.1.2 the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such

breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

6.1.1.3 the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Authority and the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter-alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1

and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (**the "Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (**the "Indemnifying Party"**) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in

contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Aurangabad and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 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 Aurangabad shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings

(including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3. Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, 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 or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

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

10.1 of this Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall

be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of

Concessionaire by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

Authority by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.