

## **PART 2 – DRAFT CONCESSION AGREEMENT**

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**CONSTRUCTION AND MAINTENANCE OF A MULTI LEVEL CAR PARKING SYSTEM ON DBOT  
BASIS AT WALLACE GARDEN AT CHENNAI**

This Concession Agreement is mutually agreed and entered into on this day of \_\_, Two Thousand and Eight at Chennai.

BETWEEN

Corporation of Chennai, a statutory body established under the Chennai City Municipal Corporation Act, 1919 having its principal office at Rippon Building, Chennai and represented by the Commissioner, hereinafter referred to as "CoC" which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and assigns; of ONE PART.

AND

\_\_\_\_\_, a company incorporated under the provisions of the Indian Companies Act, 1956, having its registered office at \_\_\_\_\_, hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context include its successors and permitted assigns, of the OTHER PART.

WHEREAS,

- A. The Corporation of Chennai (CoC) plans to develop a Multi Level Car Parking Facility (Parking Facility) in Zone VII of Chennai City at Wallace Garden on a Design, Build, Operate and Transfer (DBOT) basis to cater to the parking demand in the area.
- B. CoC proposes to develop this facility on Private Sector Participation (PSP) basis and hence had invited competitive proposals from eligible Bidders for implementing the Project and in response thereto received proposals from several Bidders including the Concessionaire for implementing the Project.
- C. CoC, after evaluating the aforesaid Proposals, accepted the Proposal submitted by the Consortium comprising \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (collectively the "Consortium") with \_\_\_\_\_ as the Consortium's Lead Consortium Member for developing the Project.
- D. Thereafter CoC issued a Letter of Allotment (LOA) bearing No. \_\_\_\_\_ dated \_\_\_\_\_, to the Concessionaire and which has been acknowledged by Concessionaire's letter bearing No. dated \_\_\_\_\_.
- E. The proposed development has to be implemented in accordance with the Development Control Regulations (DCR) on a Project Site admeasuring 2497 square meters bearing survey No.63 at Nungambakkam Village more particularly described in schedule I. The Concessionaire is granted Concession rights for a period of 11 years on the Project Site from the date of execution of this Agreement. The Concession Period shall comprise of a construction period of 2 years and an operations period of maximum 9 years as per the terms and conditions of the agreement.
- F. The Concessionaire shall have to develop a Parking Facility with a capacity of 240 Equivalent Car Spaces (ECS) on the Project Site. This Project Site is centrally bisected by a storm water drain which shall not be disturbed throughout the Concession Period. In addition to the Parking Facility the Concessionaire is provided development rights for commercial development on the Project Site in accordance with the terms and conditions of this Agreement. The applicable Floor Space Index (FSI) shall be 1.5. However, no residential and industrial development will be permitted on the Project Site. The Concessionaire shall also have to provide parking space for the proposed commercial/retail development as per the DCR.

- G. CoC has executed this Agreement to assign to the Concessionaire its rights and obligations with regard to designing, engineering, financing, construction, operation and maintenance of the Parking Facility and the Commercial Facility as per the provisions mentioned in this Agreement.
- H. The maximum period available to the Concessionaire for completion of construction of the Parking Facility as well as Commercial Facility is 2 years from the signing of this Agreement. The Concessionaire shall have right to undertake commercial activities in the Commercial Facility during the Operations Period. The right of permissible use to undertake commercial activity at the Commercial Facility shall be valid for the entire Operations period till the expiry of the concession period or the termination of this Agreement whichever is earlier. The Concessionaire shall at the expiry of the concession period hand back vacant and peaceful possession of the Project Site with all the Project Facilities to CoC free of cost and in good operable condition.
- I. CoC confirms the receipt of the following from the Concessionaire:
- a. An amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as the first instalment payment towards the Concession Fee Payments for the Project vide demand draft no. \_\_\_\_\_.
  - b. Bank Guarantee dated \_\_\_\_\_ for an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as Payment Security, for the payment of second instalment of the Concession Fee Payments.
  - c. Bank Guarantee dated \_\_\_\_\_ for an amount of Rs. 300,00,000 (Rupees Three Crores only) as Performance Security, for the performance of the obligations of the Concessionaire under this Agreement.

In terms of the Letter of Allotment, the Parties hereto are required to enter into the Concession Agreement being these presents to record the terms, conditions and covenants.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

## **1 DEFINITIONS AND INTERPRETATIONS**

### **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 ascribed to them hereunder:

**“Additional Cost”** shall mean the additional capital expenditure and / or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law.

**“Affected Party”** shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 10.

**“Agreement”** shall mean this Concession Agreement with its recitals and schedules, and includes any amendments hereto made in accordance with the provisions hereof.

**“Applicable Law”** means and includes any statute, law, bye-law, rule, regulation, ordinance, judgment, order, decree, injunction, writs or orders of any court of record, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter.

**“Applicable Permits”** shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the construction and maintenance of the Project during the subsistence of this Agreement.

**“Appointed Date”** shall mean the date of this Agreement.

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

**“Basic documents”** means this Concession Agreement to be executed between the Concessionaire and CoC.

**“Book Value”** shall mean the cost of the fixed assets incurred by the Concessionaire for the Project, net of accumulated depreciation computed on straight line basis in accordance with the rates specified in Companies Act, 1956 and as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties.

**“Change in law”** shall have the meaning as ascribed under Article 11.

**“Chennai Metropolitan Development Authority (CMDA)”** is an authority constituted by the Government of Tamil Nadu in 1974 statutorily under the Tamil Nadu Town and Country Planning Act, 1971.

**“Commercial Activity/ Activities”** shall include but shall not be limited to commercial/ retail activities like office, shopping mall, multiplex, gaming zones, etc., however not including warehousing, industrial and residential in the Commercial Facility. A single unit of area wherein such commercial activity shall be undertaken should be of a minimum built up area of 1000 sq. ft.

**“Commercial Facility”** shall mean the construction of an integrated complex on the Project Site which shall include but is not limited to facilities, services and assets comprised therein which the Concessionaire may build, provide, refurbish, modify, demolish, alter or procure for better commercial utilisation of the Project Site, consistent with Good Industry Practice and as per the terms of this Agreement. The construction shall not be for warehousing, industrial and residential usage.

**“Commercial Operations Date (COD)”** shall mean the date on which the Project Officer issues the Readiness Certificate to the Concessionaire.

**“Concessionaire”** shall mean M/s \_\_\_\_\_ [(the Special Purpose Company represented by the Lead Consortium Member of the Consortium in case the Successful Bidder is a Consortium) or Single Business Entity of the Successful Bidder].

**“Concession Fee”** shall mean the amounts payable by the Concessionaire to CoC as set out in Schedule III.

**“Concession Period”** shall mean a period of 11 years starting from the Appointed Date and as ascribed under Article 2.2..

**“Conditions Precedent”** shall have meaning as ascribed under Article 4.

**“Contractor”** shall mean any Person with whom the Concessionaire has entered into / may enter into any material contract in relation with the Construction, Operation and Maintenance of the Project.

**“Consortium”** means the consortium to which the Project has been awarded, consisting of M/s\_\_\_\_\_, M/s\_\_\_\_\_ and M/s\_\_\_\_\_, formed and acting pursuant to the Joint Deed Agreement.

**“Construction Commencement Certificate”** shall mean the certificate issued by CoC to the Concessionaire after approving the drawings submitted by the Concessionaire.

**“Construction Period”** shall mean a period of 2 years from the Appointed Date till the Scheduled Project Completion Date during which the Concessionaire undertakes Construction Works.

**“Construction Works”** shall mean all works and things required to be constructed by the Concessionaire, pursuant to the Parking Facility Requirements, Development Control Regulations of CMDA and the National Building Code formulated by Bureau of Indian Standards.

**“Development Control Regulations (DCR)”** shall mean the Development Control Rules for Chennai Metropolitan Area as framed by the Chennai Metropolitan Development Authority.

**“Emergency”** shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facilities or which poses an immediate threat of material damage to any of the Project Facilities.

**“Encumbrance”** shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facilities.

**“End user(s)/ Occupants”** shall be the person/s with whom the Concessionaire enters or has entered into an agreement allowing them permissible use to a portion of the Commercial Facilities for undertaking Commercial activities.

**“Financial Closure”** means the legally binding loan documentation entered into between the Concessionaire and Lenders to mobilise the financial requirements of the project, as set out in the approved Detailed Project Report;

**“Financing Documents”** shall mean collectively the documents evidencing Lenders’ commitment to finance the Project.

**“Financial Year”** shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

**“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 10 of this Agreement.

**“GoTN”** shall mean the Government of Tamil Nadu.

**“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence, prudence, integrity and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project similar to that of the Project.

**“Government Agency”** shall mean Government of India (GoI), GoTN, CoC or any state government or governmental department, commission, board, body, bureau, agency, authority,



instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Parties, the Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

**“Integrated Complex”** shall mean the integrated complex comprising facilities including but not limited to commercial, retail and office space, as per the drawings submitted by the Concessionaire to CoC.

**“Joint Deed Agreement (JDA)”** shall mean an agreement jointly executed between the members of the Consortium as per the format mentioned in the Request for Proposal (RFP) and annexed as Schedule VI.

**“Lead Consortium Member”** shall mean the consortium member vested with the prime responsibility of developing the Project. The Lead Consortium Member shall necessarily have 51% stake in the paid up equity capital of the Special Purpose Company (SPC). The Lead Consortium Member shall be the consortium member signing the Concession Agreement on behalf of the SPC.

**“Lenders”** means financial institutions, banks, funds or trusts, who provide or refinance the debt component of the cost of the Project (including guarantees, letters of credit, risk participation facility, take-out facility and other forms of credit enhancement) and includes subscribers to / trustee for the holders of debentures / bonds or other securities issued by the Concessionaire to meet the cost of the Project.

**“Letter of Allotment (LOA)”** shall mean the letter issued by the CoC to the successful bidder.

**“Material Adverse Effect”** shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights to perform / discharge any of its duties / obligations under and in accordance with the provisions of this Agreement and / or (b) the legality, validity, binding nature or enforceability of this Agreement.

**“Material Breach”** shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

**“Multilevel Car Parking Facility”** shall mean a building (or part thereof) which is designed specifically to be for automobile four wheeler parking and where there are a number of floors or levels on which parking takes place. This multilevel car parking facility may also incorporate steps to initiate, perform and control the process of vehicle storage or retrieval, utilizing different machines with vertical and horizontal transport capability operated via software commands to the different machines. This facility shall provide space for accommodating 200 four wheelers and 290 two wheelers in addition to the parking space that shall be needed to be provided for the Commercial Facility as per the DCR.

**“National Building Code (NBC)”** shall mean the code formulated by the Bureau of Indian Standards (BIS) to serve as a model for adoption by Public Works Department / Government construction departments, local bodies and other construction agencies.

**“Operations Period”** shall mean a maximum period of 9 years starting from the Scheduled Project Completion Date or the Commercial Operations Date, whichever is later till the expiry of the Concession Period or the termination of the Concession agreement, whichever is earlier.

**“Parking Facility”** shall mean the Multilevel Car Parking Facility constructed, operated and maintained by the Concessionaire accommodating an Equivalent Car Space of 240 (i.e. for 200 four wheelers and 290 two wheelers) in addition to the parking space to be provided for the Commercial Facility as per the DCR, which is either enclosed or unenclosed, covered or open, at

the Project Site, sufficient in size to park vehicles, together with driveway connecting parking space with a street or alley and permitting ingress or egress of vehicles as per the Parking Facility Requirements mentioned under Schedule II. This Parking Facility shall be for the Public usage only.

**“Parking Facility Requirements”** shall mean the requirements to be abided by the Concessionaire during the construction, operation and maintenance while developing the Parking Facility, which is more particularly elaborated under Schedule II.

**“Parking Fee”** shall mean the charges collected by the Concessionaire from the public using the Parking Facility and from persons utilising the car space provided for Commercial Facility as per the Parking Fee Structure mentioned under Schedule IV.

**“Parties”** shall mean the parties to this Agreement and “Party” shall mean either of them, as the context may admit or require.

**“Payment Security”** shall mean security in the form of a bank guarantee as per the format mentioned under Schedule VI, which the Concessionaire shall provide to CoC for the payment of Concession Fee in accordance with Article 6.1.1.

**“Performance Security”** shall mean the bank guarantee provided by the Concessionaire as a guarantee for the performance of its obligations and is in accordance with Article 6.1.2.

**“Person”** shall mean (unless otherwise specified or required by the context), any individual, company, CoC, partnership, joint venture, trust, unincorporated organisation, government or government body or any other legal entity.

**“Preliminary Notice”** shall mean the notice of intended termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

**“Project”** shall mean designing, engineering, procuring, financing, construction, operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

**“Project Facility/ Facilities”** shall mean the Project Site and collectively the Parking Facility and the Commercial Facility, developed by the Concessionaire at the Project Site in accordance with provisions of this Agreement.

**“Project Agreements”** means collectively this Agreement, construction contracts, operations and maintenance contracts and any other material contract (other than Financing Documents) entered into or may enter into by the Concessionaire in connection with the Project.

**“Project Officer”** shall mean a CoC official appointed in accordance with Article 5 for supervision and monitoring the compliance by the Concessionaire with the Parking Facility Requirement, the DCR of CMDA and the National Building Code, and more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth under the scope of work of the Project Officer in this Agreement.

**“Project Site”** shall mean all that plot of land admeasuring 2497 square meters bearing survey No. 63 at Nungambakkam Village, more particularly described in Schedule I.

**“Readiness Certificate”** shall mean the certificate issued by the Project Officer certifying inter alia that:

- i. the Concessionaire has constructed the Parking Facility in accordance with the Parking Facility Requirement, the DCR of CMDA and the National Building Code.
- ii. The Concessionaire has constructed the Commercial Facility in accordance with the DCR of CMDA and the National Building Code.

**“Proposal/ Request for Proposal (RFP)”** shall mean the ‘Request for Proposal Document’, dated\_\_ issued by CoC to the interested bidders in the proposal stage, as may be amended and modified from time to time together with all Annexures, Schedules, Maps along with such corrigendum, addendum, amendments which may be made from time to time.

**“Rupees” or “Rs.”** refers to the lawful currency of the Republic of India.

**“Scheduled Project Completion Date (SPCD)”** shall be 2 (two) years from the Appointed Date.

**“Special Purpose Company (SPC)”** shall mean the company incorporated by the Consortium, under the Companies Act 1956, to implement the Project.

**“Standards of Reasonable and Prudent Concessionaire”** means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions including the conditions as contemplated by the Basic Documents.

**“Tax”** shall mean and includes all taxes, fees, cesses, levies that may be payable by the Concessionaire under Applicable Law.

**“Techno business proposal”** shall mean the business plan and the approach and methodology for implementing the Project submitted at the proposal stage by the Concessionaire.

**“Termination”** shall mean early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement, but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

**“Termination Date”** shall mean the date specified in the Termination Notice as the date on which Termination occurs.

**“Termination Notice”** shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

## **1.2 Interpretation**

In this Agreement, unless the context otherwise requires,

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

- d. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words "include" and "including" are to be construed without limitation;
- f. any reference to day, month or year shall mean a reference to a Gregorian calendar day, month or year respectively;
- g. the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- h. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- i. references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- j. 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;
- k. 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;
- l. in case of any conflict or discrepancy in the articles/ clauses in the body of the Agreement and those in the schedules, the articles/ clauses in the body of the Agreement shall prevail.
- m. any agreement entered by the Concessionaire for the purpose of this Project shall be to the extent of the rights provided under the provisions of this Agreement. Further, the timelines mentioned in this Agreement shall be strictly adhered while entering into any agreement for the purpose of this Project. It is hereby clarified that in the event of any conflict / dispute between the terms and conditions of the agreement entered by the Concessionaire for the purpose of this Project with that of the Concession Agreement, then the provisions of the Concession Agreement would prevail.

## **2 CONCESSION**

### **2.1 Grant of Concession**

Subject to and in accordance with the terms and conditions set forth in this Agreement, CoC hereby grants and authorises the Concessionaire to investigate, study, design, engineer, procure, finance, construct, operate and maintain the Project Facilities, and to exercise and enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement ("the Concession").

## **2.2 Period of Concession**

The Concession hereby granted for the Project is for a period of 11 (eleven) years commencing from the Appointed Date. The Concession Period shall comprise of a construction period of 2 years and an operations period of maximum 9 years as per the terms and conditions of the agreement. The Concessionaire is authorised to design, finance, construct, operate and maintain the Project Facilities in accordance with the provisions hereof.

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

## **2.3 Acceptance of Concession**

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

## **3 PROJECT SITE**

### **3.1 Handover of Project Site**

- (a) CoC shall, within 90 days of the Appointed Date, handover to the Concessionaire on an as-is-where-is basis, vacant and peaceful physical possession of the Project Site free from encumbrance, for the purpose of implementing the Project.
- (b) Upon the Project Site being handed over pursuant to the preceding sub-article (a), the Concessionaire shall, subject to the provisions of Article 6 have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

### **3.2 Rights, Title and Use of the Project Site**

- (a) The Concessionaire shall have the right to use the Project Site for the purpose of implementing the Project in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties.
- (b) The Concessionaire shall throughout the concession period carry activities in the Project Facilities as specifically mentioned under this Concession Agreement and as permitted and governed by the laws of India or the state of Tamil Nadu.
- (c) The ownership of the Project Site shall be and continue to be of CoC.
- (d) The Concessionaire shall have the right to permit/ allow and charge for advertisement on the Project site/ Project Facilities as per the prevailing laws. The Concessionaire shall

acquire applicable permits from respective authorities. Provided, no such activity shall affect the safe and smooth flow of vehicular and or pedestrian movement or cause any physical damage to the Project Facilities.

CoC shall not be held liable for any default made by the Concessionaire in this regard under any law in force for the assigned advertisement rights.

- (e) During the Operations Period, the Concessionaire shall have the right to undertake commercial activities in the Commercial Facility and to collect revenues or maintenance charges for undertaking commercial activities in the Commercial Facility. The Concessionaire shall also have the right to enter into agreements with third parties for allowing permissible usage of the commercial facility for commercial activities.
- (f) The Concessionaire, during the Operations Period shall have the right to collect Parking Fee from the general public for parking space provided in the Parking Facility as per the rates mentioned under Schedule IV.
- (g) The Concessionaire shall provide parking space for the Commercial Facility as per the provisions provided in the DCR of CMDA. This space provided to cater to the Commercial Facility shall be over and above 240 ECS of the Parking Facility, which has been solely allotted for the purpose of the general public. The Concessionaire, during the Operations Period shall have the right to collect Parking Fee from the parking space developed for the Commercial Facility (in accordance with the DCR) and as per the rates mentioned under Schedule IV.
- (h) The Concessionaire shall not have the right to sub-lease or sub-let the Commercial Facilities to the end users / occupants during the concession period.
- (i) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Facilities including the Project Site save and except as set forth and permitted under this Agreement.
- (j) The Concessionaire shall not, without the prior written approval of CoC, use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (k) The Concessionaire shall allow access to and use of the Project Site for laying / installing / maintaining telegraph lines, electric lines or for such other public purposes as CoC may specify.

Provided that such access or use shall not result in a Material Adverse Effect and that CoC shall, in the event of any physical damage to the Project Facilities on account thereof, ensure that the Project Facilities are promptly restored at its cost and expenses.

Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur / suffer any liability on account thereof.

- (l) The Concessionaire on achieving the Commercial Operation Date prior to the Scheduled Project Completion Date shall have the right to accrue all the rights applicable during the Operations Period, provided the Concessionaire makes an additional payment to the Corporation of Chennai. The accrual of such rights during such period shall be accompanied along with the responsibilities and obligations of the Concessionaire as applicable during the Operations period. Such additional payment shall have to be made on a pro-rata basis of the total Concession Fee quoted by the Concessionaire in the Request for Proposal. The additional payment shall have to be paid by way of demand draft drawn in favour of "Corporation of Chennai" payable at Chennai.

### **3.3 Peaceful Possession**

CoC hereby warrants that:

- (a) The Project Site together with the necessary right of way
- i. has been acquired through the due process of law
  - ii. is vested with CoC
- (b) and that CoC has full powers to hold, dispose off and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of land acquisition or rehabilitation / resettlement of any Persons affected thereby.
- (c) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession of the Project Site.

In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, CoC shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

### **3.4 Applicable Permits**

The Concessionaire shall obtain and maintain the Applicable Permits and adhere to Applicable Law in such sequence as is consistent with the requirements of the Project. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which Applicable Permits have been issued. The applicable permits shall include but not limited to the permits as mentioned under Schedule II.

## **4 CONDITIONS PRECEDENT**

### **4.1 Responsibilities of the Concessionaire**

The Concessionaire shall fulfil the following conditions precedent within 95 days from the Appointed Date:

- (a) The Concessionaire (if it is a Consortium) shall set up a registered Special Purpose Company in accordance with the Indian Companies Act, 1956, adhering strictly with the equity contribution mentioned in the Concession Agreement.
- (b) The Concessionaire shall have executed a Performance Security in favour of CoC for a sum of Rs. 300,00,000 (Rupees Three Crores only) in the form of Bank Guarantee from a nationalised bank for the Project at the time of signing of the Agreement as per format mentioned under Schedule V.
- (c) The Concessionaire shall have executed a Payment Security in favour of CoC for a sum of Rs. \_\_\_\_\_/- in the form of Bank Guarantee from a nationalised bank for the Project at the time of signing of the Agreement as per the format mentioned under Schedule VI.
- (d) The Concessionaire shall have achieved the financial closure for the project and established the necessary financial evidence.
- (e) The Concessionaire shall also have received the applicable permits (which are further detailed in Schedule II) and clearances from concerned authorities under relevant laws applicable.
- (f) The Concessionaire shall have prepared and submitted the Drawings to CoC and the Project Officer.
- (g) The Concessionaire shall have paid the first instalment of the Concession Fee amounting to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) at the time of the signing of the Agreement.

#### **4.2 Responsibilities of Corporation of Chennai**

CoC shall fulfil the following conditions precedent within 95 days from the Appointed Date:

- (a) CoC shall on its best effort basis provide support to the Concessionaire in obtaining timely approvals, permissions and authorisations for performance of obligations for the project.
- (b) CoC shall handover the Project Site to the Concessionaire within 90 days from the Appointed Date on an "as-is-where-is basis" condition for use during the Concession period for the purpose of the Project free of any charges.

#### **4.3 Cost of satisfying the conditions precedent**

The cost of satisfying the above conditions precedent shall be borne by the respective Parties responsible for satisfaction of the Conditions Precedent.

#### **4.4 Non- fulfilment of the Conditions Precedent**

- (a) In case of non-fulfilment of the Conditions Precedent attributable to reasons beyond the control of the Concessionaire or CoC, the period for satisfaction of Conditions Precedent may be extended by mutual consent of the Concessionaire and CoC.
- (b) If any of the conditions precedent contemplated in Articles 4.1 and 4.2 has not been satisfied in full or has not been waived, within the time stipulated or from such extended time that the Parties may agree upon, then and in such event the party other than the



defaulting party shall have the right to terminate this Agreement by giving 30 days notice in writing to the other party, given at any time thereafter, but prior to such conditions precedent being satisfied or waived, and if the conditions precedent are not satisfied or waived within such notice period, upon expiry of such notice, this Agreement shall terminate.

- (c) If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth in Article 4.1 except set forth in Article 4.1(e), the Concessionaire shall not be compensated in any manner whatsoever and the Performance Security and Payment Security shall be forfeited and encashed by CoC.
- (d) If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth in Article 4.2 and Article 4.1(e), then CoC shall release the Performance Security and Payment Security.

## **5 PROJECT OFFICER**

### **5.1 Project Officer**

CoC shall form a dedicated team of CoC officials comprising of Executive Engineers headed by a Superintending Engineer who shall act as Project Officer.

The Project Officer shall supervise and monitor the construction, operation and maintenance of the Parking Facilities. The major scope of work of the Project Officer shall include but shall not be limited as mentioned under Article 5.2.

### **5.2 Scope of work of the Project Officer**

#### **a. Role of the Project Officer**

The Project Officer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Parking facilities. Broadly the role of the Project Officer is to:

- i.* Independently review, monitor and where required by the Agreement, approve activities associated with the construction, operation and maintenance of the Parking Facilities to ensure compliance by the Concessionaire with the drawings and Parking Facility Requirement;
- ii.* Report to the parties on various physical, technical and financial aspects of the project based on inspections;
- iii.* Review matters relating to safety and environment management measures adopted by the Concessionaire for the Project.

#### **b. Scope of services**

The services to be provided by the Project Officer are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

##### ***i. Construction period:***

The Project Officer shall undertake, interalia, the following activities till the Scheduled Project Completion Date:

- i. Ensure that the construction of the Project is in accordance with the approved drawings, the DCR of CMDA, the National Building Code (NBC) and the provisions of this Agreement
- ii. Designate tests on equipment and machinery;

**ii. Operation and Maintenance:**

During this period the Project Officer would monitor, in accordance with Good Industry Practice, the operations and maintenance activities undertaken by the Concessionaire so as to ensure compliance with the drawings, the DCR of CMDA, the NBC and other provisions of this Agreement. The specific activities to be undertaken include the following:

- a. Provide administration of the contract in full and in complete accordance with applicable laws;
- b. Conduct a general inspection of the Parking Facilities at least once a month and as and when exigencies require, to ascertain conformity to the drawings, the DCR, the NBC and the Parking Facility Requirements;
- c. The Project Officer shall, in the ordinary course, maintain a record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
  - i. Manpower deployed and other organisational arrangements of the Concessionaire;
  - ii. Reviews of documents submitted to it by the Concessionaire to meet the drawings and DCR such as plans, order copies, schedules, and reports;
  - iii. Inspections undertaken and notices/instructions issued to the Concessionaire;
  - iv. Review of compliance with the commissioning requirements;
  - v. Concession Fee Payments
  - vi. Force majeure events;
  - vii. Breaches and defaults by the parties.
  - viii. The Project Officer would be required to submit reports to the Concessionaire and CoC from the Commercial Operations Date till the end of the Concession Period as may be reasonably required and requested by CoC or as may be necessary to give effect to the provisions of this Agreement.

## **6 CONCESSIONAIRE'S OBLIGATIONS**

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

### **6.1 Financial Obligations**

#### **6.1.1 Payment Security**

The Concessionaire shall simultaneously at the time of signing of the Agreement provide a Payment Security in the form of a bank guarantee for an amount of Rs. \_\_\_\_\_/-, which is the amount of Concession Fee payable by the Concessionaire on the 365<sup>th</sup> day from the signing of the Concession Agreement. CoC shall invoke this Payment Security on the

365<sup>th</sup> day against the second instalment of Concession Fee payable as per the Schedule III. The Concessionaire shall on such date, i.e. on the 365<sup>th</sup> day submit a renewed bank guarantee for the next subsequent Concession Fee amount due. The Concessionaire shall follow this procedure till the expiry of the Concession Period for each instalment of Concession Fee due as per Schedule III.

### **6.1.2 Performance Security**

- (a) The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to CoC, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to CoC, in favour of CoC, in the form as set out in Schedule V , (“Performance Security”) for a sum of Rs. 300,00,000/- (Rupees Three Crores Only). All charges, fees, costs and expenses for providing the Performance Security in the form of a bank guarantee shall be borne and paid by the Concessionaire.
- (b) The Concessionaire agrees that the Performance Security shall be kept valid for a period of 11 (eleven) years and six months from the Appointed Date.

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to CoC’s right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

### **6.1.3 Financing Arrangement**

The Concessionaire shall at its cost; expenses and risk make such financing arrangements as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

## **6.2 Operational Obligations**

### **6.2.1 Drawings**

- a. The Concessionaire shall, subject to the Parking Facility Requirements and the Development Control Regulations (DCR) of CMDA, along with NBC prepare the drawings of the Project Facilities and submit the same to the Project Officer for approval within 45 days from the Appointed date and in such sequence as is consistent with and essential for the approval process, at the Concessionaire’s cost. The Concessionaire shall consider the scalability of the Parking Facility to be constructed while producing the drawings for the Project. The drawings will have to be designed such that the Parking Facility to be developed shall be scaleable up to 50% of the current capacity to be provided.
- b. CoC shall, within a period of 15 days from such submitted drawings, review and approve it, or shall communicate the changes, revisions and modifications in the drawings. The Concessionaire shall make the changes, revisions and modifications within 15 days from such receipt of the comments and shall resubmit the drawings to CoC for its approval. If

- however, CoC delays in responding towards the drawings submitted for more than 15 days from the receipt of the drawings then the Concessionaire is entitled to get an extension on the Scheduled Project Completion Date equivalent to the number of days of delay after 15 days period, subject to the discretion of CoC.
- c. CoC shall, within a period of 7 days from such resubmission, ascertain whether the Concessionaire has carried out the changes, revisions and modifications and accordingly accord its approval to the drawings by issuing a Construction Commencement Certificate to the Concessionaire. The Concessionaire can commence the construction works only after the receipt of the Construction Commencement Certificate.  
If however, CoC delays in responding towards the resubmitted drawings for more than 7 days from the receipt from the Concessionaire, the Concessionaire is entitled to get an extension on the Scheduled Project Completion Date equivalent to the number of days of delay after 7 days period, subject to the discretion of CoC.
- d. The Concessionaire shall adhere to the approved drawings with the Parking Facility Requirements at all times. However if the Concessionaire desires to deviate from the certified drawings for the Project Facilities, then it shall seek a prior written permission from CoC.

The drawings should comply with the following rules:

- i. The permissible Floor Space Index for the Project, which is 1.5 for the Project Site.
- ii. The maximum height upto which the Project Facilities can be constructed shall be in accordance with the DCR and NBC.
- iii. In case of any amendments or additions to the DCR/ CMDA as applicable, CoC shall have the final authority to apply the same to this Project.

#### **6.2.2 Project Implementation – Construction works during Construction Period**

- a. Unless otherwise permitted by CoC, no Construction Works shall begin until the Project Officer is in place and has assumed charge.
- b. The Concessionaire shall adhere to the Parking Facility Requirement, the DCR and the NBC to achieve the Commercial Operations Date on or before the Scheduled Project Completion Date.
- c. The Concessionaire shall, before commencement of Construction Works;
  - i. have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Project Officer / CoC and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - ii. construct, provide and maintain a reasonably furnished site office accommodation for the Project Officer, at the Sites.
- d. For the purposes of determining that Construction Works are being undertaken in accordance with the Parking Facility Requirement, the DCR and the NBC, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in

accordance with the instructions and under the supervision of the Project Officer. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

- e. The Concessionaire shall construct the Parking Facility in a manner such that during the concession period and after the expiration of the concession period, the parking facility shall be scalable up to 50% of the current capacity of the the Parking Facility.
- f. All Tests shall be conducted in accordance with Parking Facility Requirements, the NBC and the DCR. If the Tests are successful and the Project Facilities can be safely and reliably opened for operation, the Project Officer shall issue the Readiness Certificate.
- g. The Project Officer, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Parking Facility Requirements, the NBC and the DCR.
- h. The Project shall be deemed to be complete and ready for commercial operation only when the Readiness Certificate is issued by the Project Officer in accordance with the provisions hereof.

Provided further and subject to Article 6.2.2(e), if the (Commercial Operations Date) COD is delayed beyond 90 days of the Scheduled Project Completion Date CoC shall, subject to the provisions of Article 12, be entitled to terminate this Agreement and to appropriate the Performance Security. However, the Concessionaire shall pay to CoC Rs. 1,00,000/- (Rupees One Lakh Only) per day as Liquidated Damages by way of demand draft towards "Corporation of Chennai" payable at Chennai for the delay in the period from the Scheduled Project Completion Date till the end of 90 days.

- i. The Concessionaire shall at its cost, expenses and risk make such financing arrangements as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

### **6.2.3 Project Implementation–Operation and Maintenance during Operations period**

- a. The Concessionaire shall operate and maintain the Parking Facility in accordance with the standards of reasonable and prudent Concessionaire during the Operations Period in accordance with the operation and maintenance requirements under the Parking Facility Requirement, the NBC and the DCR. The Concessionaire may undertake operations and maintenance of the Parking Facility by itself or through a Contractor possessing requisite technical, financial and managerial expertise / capability.
- b. The Concessionaire for facilitating operation and maintenance of the Commercial Facility, form a society or appoint a facility management provider to carry out the requirements on behalf of the Concessionaire till the Concession Period.

For the avoidance of doubt, it is hereby clarified that the Concessionaire shall be responsible for the operation and maintenance of the Project Facilities, and shall ensure that no damage or loss is caused to the Project Facilities;

- c. The Concessionaire shall, during the Operations Period;
  - i. have requisite organisation and designate and appoint suitable officers / representatives as it may deem appropriate to supervise the Project, to deal with the Project Officer and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - ii. construct, provide and maintain a reasonably furnished site office accommodation for the Project Officer, at the Sites;
  - iii. for the purposes of determining that the Parking Facility are being maintained in accordance with the Parking Facility Requirements, the NBC and the DCR, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Project Officer. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- d. In the event the Concessionaire has failed to operate and maintain the Parking Facility in accordance with the Parking Facility Requirement, the NBC and DCR, and such failure has not been remedied within 15 days from the issue of the notice issued by the Project Officer / CoC ("Notice to Remedy"), CoC may, without prejudice to any of its other rights / remedies under this Agreement, be entitled to operate and maintain the Project or cause to repair and maintain the Project Facility at the risk and cost of the Concessionaire. The Concessionaire shall reimburse one and half times the costs incurred by CoC on account of such operation and maintenance or repair and maintenance within 7 days of receipt of CoC claim thereof.
- e. The Concessionaire shall be deemed to be in material breach of Parking Facility Requirement if the Project Officer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire :
  - i. there has been failure / undue delay in carrying out scheduled / planned maintenance or the scheduled / planned maintenance has not been carried out in accordance with the Parking Facility Requirement, the NBC and the DCR;
  - ii. the maintenance of the Parking Facility or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the Parking Facility Requirement;
  - iii. there has been persistent breach of Parking Facility Requirement and thereby the Project Facilities or any part thereof is not safe for operations. For avoidance of doubt, persistent breach shall mean:

- a. any breach of Parking Facility Requirement by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Project Officer / CoC;
- b. recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Project Officer / CoC requiring the Concessionaire to remedy a breach, and
- c. repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

Upon occurrence of a material breach of Parking Facility Requirement, CoC shall, without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, be entitled to terminate this Agreement.

- f. The Concessionaire during the Operations Period is permitted to use the Commercial Facility for undertaking commercial activities as per the terms mentioned in this Agreement. The Concessionaire shall also have the right to enter into agreements with third parties for the purpose of undertaking commercial activity. Any agreement entered with an end user/ occupant for allowing permissible use of the site or part of the site for commercial activity shall compulsorily include the provision as mentioned under Article 13.3. Further, the Concessionaire shall be able to enter into such agreements for a unit comprising of a minimum built up area of 1000 sq. ft.. The agreement with the third party should clearly state that the end user/ occupants of the Commercial Facility shall not have the right to sub-lease or sub-let the entire or part of the Project Site or Project Facilities.
- g. If CoC undertakes any activity as mentioned under Article 13 after the expiry or termination of the concession period, then the Concessionaire shall not have any right to oppose the same. The Concessionaire shall one year before the expiry of the concession period intimate the end users/ occupants of the Commercial Facilities about the prompt vacancy before or at the time of the expiry of the Concession Period and the take over rights that shall procure to CoC on the expiry or early termination of the contract.
- h. For the purpose of clarity, concession period shall expire at 12.00 am on the expiry date of the concession.
- i. If the Concessionaire or any end user or any occupant occupies the Project Facility after the termination or expiry of the concession period then the same shall be considered as illegal occupancy of the Project Facility/ Project Site and the Concessionaire shall be liable to pay liquidated damages for an amount of Rs. 1,00,000/- (Rupees One Lakh Only) per day from the expiry date or termination date of the concession period till the date the Project Site and Project Facilities are vacated by CoC.
- j. Further to the Liquidated damages, the Performance Security if subsisting shall be encashed and the Concessionaire shall have to pay double the amount of the last Concession fee instalment paid by him till the date of the expiry or termination of the concession period. The Concessionaire shall also be liable to pay any costs or expenses incurred by CoC for taking over the Project site and Project Facilities in case the Project

Site/Facilities are not handed in a vacant position by the Concessionaire on expiry of the Concession period.

#### **6.2.4 Appointment of Contractors**

- (a) The Concessionaire may appoint Contractors for:
- i. Construction and development of the Project;
  - ii. Operation and maintenance of the Project Facilities; and

for the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a Contractor by the Concessionaire for any of the aforesaid purposes, the Concessionaire shall be liable for the performance of its duties and for the discharge of all its obligations and responsibilities which it shall have towards CoC under this Concession Agreement and the appointment of Contractor(s) for any of the aforesaid purposes shall neither release nor exonerate the Concessionaire from its obligations hereunder, including full and timely compliance with the terms of this Agreement. The Concessionaire does hereby also agree and acknowledge that it shall remain responsible for obligations performed or to be performed by the Contractor to the same extent as if such obligations were to be always performed by the Concessionaire.

- (b) The Concessionaire acknowledges and undertakes to ensure that the terms of any contract between the Concessionaire and the Contractors shall be in conformity with the provisions of this Concession Agreement and in the event of any conflict between such contract and this Concession Agreement; the provisions of this Concession Agreement shall prevail. The Concessionaire undertakes that in every contract which it shall enter into with the Contractor(s), the following provision shall be included:

“It is hereby agreed and acknowledged by and between the Parties hereto that the Concessionaire has executed this agreement in favour of the Contractor in exercise of its rights under the Concession Agreement dated [.....] executed between the..... Concessionaire on the one hand and CoC on the other and as such, this agreement shall at all times be subject to the provisions of the Concession Agreement. For the avoidance of doubt, it is hereby clarified that in the event of any inconsistency or conflict between the terms of this agreement and the Concession Agreement, the terms of the Concession Agreement shall prevail. The Contractor hereby acknowledges that it is aware of and understands all the material terms and conditions of the Concession Agreement as are applicable to the provision of services under this agreement and undertakes that it shall in the provision of the services under this agreement, be subject to the same restrictions and liabilities as the Concessionaire under the Concession Agreement as applicable.”

#### **6.2.5 Insurance**

The Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, all insurances in respect of the Project Facilities in accordance with the Good Industry Practice. The Concessionaire shall maintain a register of entry in order of premiums paid towards the Project Facilities and proof of payments made shall be submitted to the CoC whenever requested for.



#### **6.2.6 Application of Insurance Proceeds**

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, except in case of normal wear and tear.

#### **6.2.7 Un-insurable Risks**

If any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained / re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

#### **6.2.8 Environmental Compliance**

The Concessionaire shall, at all times, ensure that all aspects of the Project Facilities and processes employed in the construction and maintenance thereof shall conform with the laws pertaining to environment, health and safety aspects, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances from empowered Government Agencies and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Project Facilities.

#### **6.2.9 Land Use**

The Concessionaire shall ensure optimum utilisation of the Project Site and shall not use the same for any purpose other than the development of the Parking Facility and the Commercial Facility as per the provisions mentioned in this Agreement. The Concessionaire shall not use the land for any unconnected purpose with which is not incidental to the Project or related activities.

#### **6.2.10 Shareholding**

The shareholding pattern of Lead Consortium Member shall be 51% and that of Technical Consortium Member shall be of 26% in the total paid up equity capital of the SPC. The shareholding pattern of the Lead Consortium Member and the Technical Consortium Member cannot be diluted till the expiry of the Concession Period.

#### **6.2.11 Applicable Permits**

The Concessionaire shall, in respect of the Project, procure the Applicable Permits and be in compliance thereof at all times.

### **6.3 General Obligations**

The Concessionaire shall at its own cost and expense:

- a. shall provide for 240 Equivalent Car Spaces in the Parking Facility exclusive of the parking space allotted and developed for the Commercial Facility (or any other type of development) as per the requirements mentioned under the DCR of CMDA.
- b. shall charge the Parking Fee from the Parking Facility as per the charges mentioned under Schedule IV mentioned under this Agreement with an annual parking fee increase of 5% per annum.
- c. shall not do or permit any activity on the Project Site which may be nuisance, annoyance or disturbance to the owners, occupiers or residents of other premises in the vicinity.
- d. shall not interfere or cause damage to the properties of CoC whether located outside or inside the Project Site, such as storm water drainage, water supply lines, water meters, street-lights and such other properties without the permission of CoC.
- e. shall not encroach upon any adjoining land, road, pathway or footpath of CoC/ GoTN in any manner whatsoever;
- f. shall not make any excavation upon any part of the Project Site and shall not to remove any stone, sand, gravel, clay or earth there from after the COD.
- g. shall construct the Parking Facility in a manner such that it is scalable upto 50% of the current capacity to be provided in the Parking Facility.
- h. shall at the expiry of the concession period hand back vacant and peaceful possession of the Project Site with all the Project Facilities to CoC free of cost and in good operable condition in accordance with provision mentioned under Article 13
- i. the stamp duty payable in respect of this Agreement shall be borne by the Concessionaire. Also the registration charges payable in respect of this Agreement and the duplicate thereof shall be borne by the Concessionaire. The Concessionaire shall retain the duplicate of this Agreement and the original shall remain with CoC. The Concession Agreement shall be registered at a place within the state of Tamil Nadu, where such registration is under the provision of the Indian Registration Act.
- j. shall in a timely manner obtain all statutory approvals, permission and authorisation which the Concessionaire requires or is obliged to seek from the respective agencies;
- k. investigate, study, design, procure, finance, construct, operate and maintain the Project Facilities in accordance with the provisions hereof;

- l. obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times;
- m. ensure and procure that any contract relating to the Project, entered into by the Concessionaire for implementing the Project in accordance with this Agreement contains provisions that would entitle a nominee of the CoC to step into such contract/s at the CoC's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement;
- n. The Concessionaire shall not appoint any person as its agent, by a Power of Attorney or otherwise, for the purposes of this Agreement except its Officer or Servant.
- o. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- p. make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies the CoC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall the CoC be treated as employer in this regard;
- q. make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Law and Applicable Permits;
- r. be responsible for all the health, security, environment and safety aspects of the Project at all times;
- s. ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- t. upon receipt of a request thereof, afford access to the Project Facilities to the authorised representatives of the CoC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- u. the Concessionaire shall annually pay all existing and future taxes, cesses, rates, assessments and outgoings of every description for the time being payable either by the end users or by the occupant in respect of the Project Facilities and anything for the time being thereon or as may be fixed from time to time. Also the Concessionaire shall pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities. As regards supply of water, the Concessionaire shall abide by the conditions laid down in that behalf by CoC from time to time. Provided that in the case of a tax, cess rate or assessment as is required to be paid by CoC in respect of the Project Site, the Concessionaire shall pay to CoC an amount equal to such tax, cess, rate or assessment as the case may be.

#### 6.4 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a. Force Majeure Event, subject to Article 10;
- b. CoC Event of Default;
- c. Compliance with the instructions of the Project Officer / CoC or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder.

### 7 CORPORATION OF CHENNAI'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the CoC shall have the following obligations:

CoC within its purview shall:

- a. where appropriate provide on best effort basis necessary liaison to the Concessionaire in securing Applicable Permits;
- b. Observe and comply with all its obligations set forth in this Agreement

### 8 CONCESSION FEE PAYMENT

#### 8.1 Payment Structure

Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession Rights and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, the Concessionaire has paid to CoC the first instalment of the Concession Fee at the time of signing of this Agreement along with a Payment Security for the subsequent Concession Fee amount as mentioned under Schedule III.

#### 8.2 Mechanism of Payment

- a. All payments by the Concessionaire to CoC shall be made by way of demand draft from a scheduled bank in favour of, "**Corporation of Chennai**" payable at Chennai.
- b. Any delay in making any payment in accordance with the payment schedule shall, in addition and without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at prevailing medium term prime lending rate of State Bank of India plus 2% per month calculated for the duration of delay.

### 9 INDEMNITY

- a. The Concessionaire agrees to indemnify and hold harmless CoC and its officers and employees (each a "CoC Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively, "Losses") to which CoC Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
- i. any mis-statement or any breach of any representation or warranty made by Concessionaire or
  - ii. the failure by Concessionaire to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessionaire or
  - iii. any claim or proceeding by any third party against CoC arising out of any act, deed or omission by the Concessionaire.

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

- b. Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

## **10 FORCE MAJEURE**

### **10.1 Force Majeure Event**

Force Majeure shall mean any event or circumstance or combination of events or circumstances set out below that materially and adversely affects any Party in the performance of its obligations in accordance with the terms of this Agreement, but only if and to the extent that such events and circumstances pertains to the Project or has a direct effect on the operations on the Project Site, which are not within the affected Party's reasonable control, and/or the effects of which the affected Party could not have prevented through prudent business practices or, through reasonable skill and care, including through the expenditure of reasonable sums of money;

- a. earthquake, flood, inundation and landslide
- b. storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- c. fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- d. acts of terrorism;
- e. strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor, War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or

- military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions
- f. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project / Project Facilities or any part thereof or of the Concessionaire's or the Contractor's rights in relation to the Project,
  - g. any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
  - h. any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgement or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
  - i. early determination of this Agreement by CoC for reasons of national emergency or national security.

## **10.2 Exclusions from Force Majeure Event**

Force Majeure shall expressly not include the following conditions, except to the extent resulting from a Force Majeure:

- a. Unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts or consumables for the Project;
- b. A delay in the performance of any contractor or supplier
- c. An indirect effect on the operations of the Project
- d. Non- performance resulting from normal wear and tear typically experienced in a Project of this kind; and non- performance caused by, or connected with, the non-confirming party's (a) negligent or intentional acts, errors or omission (b) failure to comply with any of the Laws of India, or (c) breach of, or default under this Agreement.

## **10.3 Notice of Force Majeure Event**

- a. As soon as practicable and in any case within 7 (seven) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify CoC/ Project Officer if applicable and the other party of the same setting out, inter alia, the following in reasonable detail:
  - i. the nature and extent of the Force Majeure Event;
  - ii. the estimated Force Majeure Period;
  - iii. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - iv. the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
  - v. any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

- b. As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding clause (a), the Parties shall along with CoC/ Project Officer if applicable meet and hold discussions in good faith and where necessary conduct physical inspection / survey of the Project Facilities in order to:
  - i. assess the impact of the underlying Force Majeure Event,
  - ii. to determine the likely duration of Force Majeure Period and,
  - iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- c. The Affected Party shall during the Force Majeure Period provide to the other Party regular (not less than weekly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the other Party may reasonably require.

#### **10.4 Performance of Obligations**

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

- a. due notice of the Force Majeure Event has been given as required by the preceding Article 10.3;
- b. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities / as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- d. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Officer written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- e. the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- f. any insurance proceeds received shall be, subject to the provisions of Financing Documents, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

### **10.5 Liability for other losses, damages etc.**

Save and except as expressly provided in this Article 10, neither Party hereto 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.

### **11 CHANGE IN LAW**

- a. Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
- i. the enactment of any new Indian law;
  - ii. the repeal, modification or re-enactment of any existing Indian law including Rules and Regulations thereunder;
  - iii. a change in the interpretation or application of any Indian law by a court of record.
  - iv. The commencement of any Indian Law which has not entered into effect until the date of this Agreement.

Provided that Change in Law shall not include:

- i. coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
  - ii. any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
  - iii. any change in the rates of the Taxes.
- b. Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Concessionaire is obliged to incur Additional Costs, the Parties may by mutual consent modify the terms of the Agreement, including but not limited to by way of extension in the Concession Period, so as to mitigate the impact of Change in Law.
- c. An Independent Consultant shall be appointed by CoC for calculating the gain or loss due to the Change in Law. The figures mentioned by the Independent Consultant shall be considered final and the Parties shall agree to the same. The cost of such Independent Consultant shall be borne equally by the Concessionaire and CoC.
- d. Upon occurrence of a Change in Law, the Concessionaire may, notify CoC of the following:
- i. the nature and the impact of Change in Law on the Project
  - ii. in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
  - iii. the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost
  - iv. the relief sought by the Concessionaire
- e. Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding sub-article (c), CoC and the Concessionaire shall hold discussions and take all



such steps as may be necessary as to determine the quantum of relief to be provided by CoC to the Concessionaire.

- f. CoC shall within 30 days from the date of determination of quantum of Additional Cost, provide relief to the Concessionaire in the manner as mutually agreed upon by the Parties.

## **12 EVENTS OF DEFAULT AND TERMINATION**

### **12.1 Events of Default**

Event of Default shall mean either Concessionaire Event of Default or the CoC Event of Default or both as the context may admit or require.

#### **a. Concessionaire Event of Default**

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out under No Breach of Obligations mentioned under Article 6.4

- a. The Concessionaire fails to pay CoC the Concession Fee in accordance with the payment schedule mentioned under Schedule III.
- b. The Concessionaire collects Parking Fee over and above the rates specified under Schedule IV of this Agreement.
- c. The Concessionaire escalates the Parking Fee by more than the annually allowable 5% rate.
- d. The Concessionaire subject to Article 6.2.2 (h) has failed to achieve COD within 90 days of the Scheduled Project Completion Date for any reason whatsoever;
- e. The Concessionaire is in breach of any provision mentioned under the Tamil Nadu Acquisition of Hoardings Act 1985 or any other prevailing law governing the advertisement rights.
- f. The Concessionaire is found interfering or causing damage to the properties of the CoC or others during the concession period.
- g. The Concessionaire has entered into an agreement with the end user for an area less than 1,000 sq. ft. in the Commercial Facility.
- h. The Concessionaire has failed to provide Payment Security as per the Article 6.1.1.
- i. The Concessionaire has misused the Parking Facility or utilised the space provided for parking for any other purpose.
- j. The Concessionaire has deviated from the certified drawings without the prior written permission from CoC;
- k. The Concessionaire has encroached upon any adjoining land, road, pathway or footpath of CoC/ GoTN in any manner whatsoever;
- l. The equity shareholding of the Lead Member falls below 51% and/ or of the Technical Consortium Member falls below 26% during the Concession Period;
- m. At any time from the Appointed Date, the Concessionaire fails to adhere to the requirements for Parking Facility and has failed to remedy the same within 60 days from the date of Preliminary Notice, subject to ARTICLE 12.2;

- n. The Concessionaire has failed to make any payments due to CoC and more than 30 days have elapsed since such payment default;
- o. The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days from the date of Preliminary Notice, subject to ARTICLE 12.2;
- p. Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- q. A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- r. Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of CoC, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- s. A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance from the Concessionaire and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
  - i. The Concessionaire has abandoned the Project Facilities;
  - ii. The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
  - iii. The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days.

**b. CoC Event of Default**

Any of the following events shall constitute an event of default by CoC ("CoC Event of Default"), when not caused by a Concessionaire Event of Default or Force Majeure Event:

- a. The Project Site has not been handed over to the Concessionaire within 90 days from the Appointed Date;
- b. The CoC is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire;
- c. The CoC has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- d. Any representation made or warranties given by the CoC under this Agreement has been proved to be false or misleading.

**12.2 Termination due to Event of Default**

**a. Termination for Concessionaire Event of Default**

- i. Without prejudice to any other right or remedy which CoC may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, CoC shall be entitled to terminate this Agreement in the manner as set out under Article 12.2 (a)(ii)
- ii. If CoC decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 60 (sixty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to CoC in sufficient detail, the manner in which it proposes to cure the underlying Event of Default if any (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 60 days, the CoC shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.

If the Concessionaire's Proposal to Rectify is submitted within the period stipulated thereof, the Concessionaire shall have further period of 30 days to remedy / cure the underlying Event of Default ("Cure Period"). If, however the Concessionaire fails to remedy / cure the underlying Event of Default within such further period allowed, CoC shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the, Performance Security, if subsisting.

**b. Termination for CoC Event of Default**

- i. Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of CoC Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Concessionaire decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to CoC. Within 60 days of receipt of Preliminary Notice, CoC shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default ("CoC Proposal to Rectify"). In case of non submission of CoC Proposal to Rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If CoC Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, CoC shall have further period of 30 days to remedy / cure the underlying Event of Default. If, however CoC fails to remedy / cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

**c. Termination Notice**

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub article (a) or (b), it shall issue Termination Notice setting out:

- i. in sufficient detail the underlying Event of Default;
- ii. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- iii. the estimated termination payment including the details of computation thereof; and,
- iv. any other relevant information.

**d. Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- a. until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities;
- b. the termination payment, if any, payable by CoC in accordance with the following sub - article (f) is paid to the Concessionaire on the Termination Date; and
- c. the Project Facilities are handed back to CoC as instructed by CoC, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to the CoC.

**e. Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs / consequences occasioned by the Event of Default, which caused the issue of Termination Notice.

**f. Termination Payments**

- a. Prior to COD
  - i. If the Agreement is terminated due to Concessionaire Event of Default, the Concessionaire shall not be entitled to receive any termination payment from CoC and the Performance and Payment Security shall be invoked by the CoC.
  - ii. If the Agreement is terminated due to CoC Event of Default, the Concessionaire shall receive from CoC, termination payment equal to the

Book Value of the Project Facilities with the Performance Security if subsisting and the Payment Security.

- b. After COD
  - i. If the Agreement is terminated due to Concessionaire Event of Default, CoC shall pay Termination Payment equal to the Book Value of the Project Facilities, as on the Termination date. The Performance Security as well as the Payment Security shall be invoked by CoC.
  - ii. If the Agreement is terminated due to CoC Event of Default, the Concessionaire shall receive from CoC, Termination Payment equal to the Book Value of the Project Facilities with the Performance Security if subsisting and the Payment Security.  
Provided that CoC shall be entitled to deduct from the Termination Payment any amount due and recoverable under this Agreement by CoC, from the Concessionaire as on the Termination Date.

### **12.3 Rights of Corporation of Chennai on Termination**

- a. Upon Termination of this Agreement for any reason whatsoever, CoC shall upon making the Termination Payment, if any, to the Concessionaire, have the power and authority to:
  - i. enter upon and take possession and control of the Project Facilities forthwith;
  - ii. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon / dealing with the Project Facilities;
- b. Notwithstanding anything contained in this Agreement, CoC shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire/ contractor in connection with the Project, and the hand back of the Project Facilities and Project Site by the Concessionaire to CoC shall be free from any such obligation.

### **12.4 Accrued Rights of Parties**

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

## **13 HANDBACK OF PROJECT SITE**

### **13.1 Ownership**

Subject to the terms of the Agreement, the ownership of the Project Site and the Project Facilities, including all improvements made therein by the Concessionaire, shall at all times vest in CoC.

### **13.2 Concessionaire's Obligations**

- i. The Concessionaire shall on the date of expiry or termination of the Concession Period, hand back vacant and peaceful possession of the Project Site with all the Project Facilities to CoC free of cost and in good operable condition as per terms of this Agreement and Concessionaire agrees that CoC shall not be required to issue any notice to Concessionaire for handover upon such termination or expiry of the concession period.
- ii. At least one year before the expiry of the Concession Period, the Concessionaire should notify all the occupants and users on the Project Site about the date of the expiry of the Concession Agreement and the hand back of the Project Facilities and the Project Site to CoC and shall notify CoC's rights and powers as mentioned under Article 13.3 after the expiry of the Concession Period.
- iii. At least 6 months before the expected expiry of the Concession Period, a joint inspection of the Parking Facility shall be undertaken by CoC, Concessionaire and Project Officer. CoC and Project Officer shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs ("Parking Facility Handback Requirements"), if any, to be carried out so as to conform to the Parking Facility Requirement, the NBC and the DCR. The Concessionaire shall promptly undertake and complete such works/jobs at least three months prior to the expected expiry of the Concession Period and ensure that the Parking Facility continues to meet such requirements until the same are handed back to CoC.
- iv. CoC / Project Officer shall, within 45 days of the joint inspection undertaken under preceding sub-article prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to CoC along with the Parking Facility.
- v. The Concessionaire hereby acknowledges CoC's rights specified in Article 12.3 enforceable against it upon the expiry and Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.
- vi. The Concessionaire undertakes to incorporate the rights and powers of the CoC as per terms of this Agreement and also specifically those in Article 12.3 into all agreements which Concessionaire shall enter into with third parties for grant of right to use of the commercial space developed on the project site and Concessionaire shall be responsible and liable for ensuring compliance of such terms by all such occupants and users.

### **13.3 Corporation's Rights**

- i. CoC shall have exclusive possession and control of the Project Facilities and the Project site after the expiry or termination of the concession period.

For the purpose of clarity, concession period shall expire on 12.00 am on the expiry date or termination date of the concession agreement.

- ii. It is expressly agreed that upon the expiry or termination of the concession period the Concessionaire and any person claiming through or under the Concessionaire are prohibited from having access to or entering upon the Project Site and Project Facilities and dealing with or any part thereof and CoC shall be entitled to prevent any such access or entry;
- iii. CoC shall immediately after the expiry date or Termination of the concession period shall have the right to evict the Concessionaire/ occupants/ end users from the Project Facilities without any further notice to any such persons and CoC shall be entitled to forcefully remove any such persons and their materials from the project site and such persons shall not be entitled make any to claim any damages as a result of any action by the CoC.
- iv. After the end of the expiry or Termination of the concession period the continued occupation or use of Project site and Project Facilities by the Concessionaire/ any occupant/ end user shall be considered as illegal and unauthorised occupation upon the property of CoC and Concessionaire shall liable to pay Liquidated Damages to CoC for an amount of Rs. 1,00,000 (Rs. One lakh only) per day till the date of eviction of the Concessionaire/ any occupant/ end user and resumption of exclusive and vacant possession by CoC.

Further, to the Liquidated damages, the Performance Security if subsisting shall be encashed and the Concessionaire shall have to pay double the amount of the last Concession Fee instalment paid by him till the date of the expiry or termination of the concession period. The Concessionaire shall also be liable to pay any costs or expenses incurred by CoC for taking over the Project Site and Project Facilities in case the Project Site/Facilities are not handed in a vacant position by the Concessionaire on expiry of the Concession period.

- v. CoC shall immediately after the expiry date of the concession have the power to remove or cause to be removed or dispose of any property remaining in the Project Facilities after the concession period in a public auction and retain the revenue from such action.
- vi. CoC shall not notify and is not obliged to notify the Concessionaire / end user / occupants about the action to takeover the Project Facilities or the Project Site on the date of the expiry of the concession period and CoC shall not in any manner whatsoever be liable for any liabilities, claims, damages, losses, etc arising from such action for takeover of Project site and Project Facilities.
- vii. CoC shall be entitled to recover from the Concessionaire all costs and expenses incurred for taking over the Project site and Project Facilities in the event the Concessionaire does not peacefully handover the same to CoC immediately upon expiry or Termination of the concession period.

## **14 DISPUTE RESOLUTION**

### **14.1 Amicable Resolution**

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the Project Officer (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in clause (b) below.
- b. The Parties may refer such Dispute to the Commissioner of CoC or a similar level officer appointed by GoTN, for amicable settlement. Upon such reference, the Parties shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 14.2 below.

### **14.2 Arbitration**

- a. Procedure

Subject to the provisions of Article 14.1, any Dispute which is not resolved amicably shall be finally settled by arbitration under the Arbitration Act. The Concessionaire and CoC shall appoint one arbitrator each and the two arbitrators so appointed shall appoint a third arbitrator who shall serve as the presiding arbitrator. The arbitrator presiding over the arbitration should be in the rank of Chief Engineer in the Govt Services (Serving / Retired)

- b. Place of Arbitration

The place of arbitration shall be at Chennai.

- c. English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

- d. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

### **14.3 Performance during Dispute**



Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

## **15 REPRESENTATIONS AND WARRANTIES**

### **15.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to CoC that:

- a. it is duly organised, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. 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 the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g. there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h. 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 Agency which may result in Material Adverse Effect;
- i. it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j. subject to receipt by the Concessionaire from CoC of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Facilities shall pass to and vest in CoC on the Termination Date free

and clear of all Encumbrances without any further act or deed on the part of the Concessionaire;

- k. no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to CoC or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- l. no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Development Rights.
- m. Without prejudice to any express provision contained in this Agreement, 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 Project Site and the information provided by the CoC, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder, such examination/ review having included but not limited to the following:
  - i. the form and nature of the Project Site, including the sub-surface conditions,
  - ii. the hydrological and climatic conditions,
  - iii. the extent and nature of the work and materials necessary for the execution and completion of the works, and the remedying of any defects, and
  - iv. the means of access to the Project Site
- n. The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that CoC shall not be liable for the same in any manner whatsoever to the Concessionaire.

## **15.2 Representations and Warranties of Corporation of Chennai**

CoC represents and warrants to the Concessionaire that:

- a. CoC has the full power and authority to grant the Development Rights;
- b. CoC has taken all the necessary action to authorise the execution, delivery and performance of this Agreement;
- c. This Agreement constitutes CoC's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d. There are no suits or other legal proceedings pending or threatened against CoC in respect of the Project Site / Project Facilities.

## **15.3 Obligation to Notify Change**

In the event that any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

## **16 MISCELLANEOUS**

### **16.1 Assignment and Charges**

- a. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the CoC.
- b. The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Facilities except with prior consent in writing of the CoC, which consent the CoC shall be entitled to decline without assigning any reason whatsoever.
- c. Restraint set forth in clauses (a) and (b) above shall not apply to:
  - i. Liens / encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire:
  - ii. Pledges / hypothecation of goods / moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
  - iii. assignment of Concessionaire's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

### **16.2 Interest and Right of Set Off**

- a. Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing medium term prime lending rate of State Bank of India per annum plus 2% from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.
- b. Provided the stipulation regarding interest for delayed payments contained in this Article 16.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

### **16.3 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India. The Courts at Chennai shall have jurisdiction over all matters arising out of or relating to this Agreement.

#### **16.4 Waiver**

- a. 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:
  - i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - ii. shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
  - iii. shall not affect the validity or enforceability of this Agreement in any manner.
- b. 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 hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver / breach of any terms, conditions or provisions of this Agreement.

#### **16.5 Survival**

Termination of this Agreement

- a. shall not relieve the Concessionaire, the CoC of any obligations already incurred hereunder which expressly or by implication survives 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.

#### **16.6 Amendments**

This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by all the Parties hereto and evidenced in writing.

#### **16.7 Notices**

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

If to the CoC:  
Authorised Representative  
The CoC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Concessionaire:  
Authorised Representative,

\_\_\_\_\_

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- i. in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- ii. in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

#### **16.8 Severability**

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

#### **16.9 Language**

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

#### **16.10 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 and any representation by any Party not contained in a binding legal agreement executed by the Parties.

#### **16.11 Counterparts**

This Agreement may be executed in six counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the 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 CoC by:

(Signature)  
(Name)  
(Designation)

For and on behalf of CONCESSIONAIRE by:

(Signature)  
(Name)  
(Designation)

In the presence of:

- 1)
- 2)

**Schedule I. Details of Project Site**

**(CoC to insert site map with demarcated area for the Project Site)**

Area: 2497 square meters

Boundaries:

North: Private Property

South: Private Property

East: Private Property

West: Wallace Garden 1<sup>st</sup> street

Drawing 1: Location of the Project Site

Drawing 2: Existing water lines

Drawing 3: Existing Sewer Lines

Drawing 4: Existing Storm water drain

Drawing 5: Survey Plan

## **Schedule II. Parking Facility Requirement**

### **CONSTRUCTION REQUIREMENTS**

#### **1. CONSTRUCTION REQUIREMENTS FOR PARKING FACILITY**

##### **1.1. General**

- (i) The facilities to be provided in the Parking Facility which is to be implemented by the Concessionaire as part of the Project shall be as set out below.

**Project Area:** Area at the Wallace Garden near Apollo Hospital.

**Parking Facilities:** The facilities identified to be developed shall include:

- Multi-level parking structure
- Public Convenience Facilities, as per Chennai Master Plan
- Driver waiting lounge – for semi automatic and fully automatic parking system
- Drinking water fountains
- (ii) The choice of technology for the Parking Facility is left to the Concessionaire and the Concessionaire is free to choose from any of the following technologies:

##### **a. Manual**

A manual parking system is a conventional ramp based parking system where, the vehicle is expected to be driven and parked in/retrieved and a designated operator. No mechanization what so ever is expected for the process of conveying to and parking/retrieving of the vehicle.

##### **b. Semi-automatic**

A semi automatic system is a parking system where one or more processes of conveying to/from and parking/retrieving of the vehicle within the parking structure is mechanized. It is presumed that there is a human involvement with the vehicle (either by the owner or a Designated operator) during the physical process of conveying or of parking or retrieving the vehicle.

##### **c. Fully automatic**

A fully automatic system is a parking system where all the processes of conveying to/from and parking/retrieving of the vehicle within the parking structure beyond a designated entry area is fully mechanized. It is presumed that there is no human involvement with the vehicle (either by the owner or of parking or retrieving the vehicle from the storage area)

Provided that the Concessionaire shall ensure the technology chosen is

- (a) Appropriate to the site and ground situation.
- (b) Accommodates the number of Equivalent Car Space (ECS) proposed



- (c) Has a precedent for use in a project of similar nature and size
- (d) Is supported by the technology/service provider for design, supply, implementation and on going maintenance
- (e) Addresses all issues of safety, including fire safety, operational safety, and environmental safety
- (f) Does not add to circulation problems for pedestrians and traffic in the contiguous area
- (g) In case of Semi automatic and Fully Automatic, shall have full support from the system provider during the system installation and Operation and Maintenance stage

At the time of Hand-back of Project Facilities, CoC desires to take over an asset that would

- have the most appropriate technology under the circumstances
- be operationally the most safe and convenient design
- environmentally the most friendly and aesthetic structure.

Towards satisfying this objective, the Table 2.1 below lists the technical parameters that the Concessionaire shall comply with while selecting the appropriate technology and while designing the facilities there under.

Table 2.1 is not exhaustive and it shall be the obligation of the Concessionaire to adhere to all applicable norms and good industry practices in the design of the Project Facilities. The Concessionaire would be expected to adhere to all the relevant set of covenant(s) that would relate to the technology option(s) that is offered for the Project.

The parameters listed in the table would co-exist with the approved detailed project report as per the terms and conditions in this Agreement. They shall be read with and applied in conjunction with the development control norms, as appropriate. Any deviations, from these parameters, however, being within the compliance of the approved development control norms, shall be accepted by CoC only at its sole discretion.

**Table 2.1 – Covenants**

S. No:	Item	Type of Parking	Requirement
1	Height of Building	Manual	3 floors
		Semi automatic	5 levels
		Fully automatic	As per Master Plan of Chennai
2	Depth of the Building below Ground Level	Manual	3 floors
		Semi automatic	5 levels

**CONSTRUCTION AND MAINTENANCE OF A MULTI LEVEL CAR PARKING SYSTEM ON DBOT BASIS AT WALLACE GARDEN AT CHENNAI**

		Fully automatic	No restriction, as per the site condition
3	Height of each floor	Manual	3m
		Semi automatic / Fully Automatic	As per the system, to accommodate the car dimensions given
4	Space per car	Manual	Not less than 30 sq. m on the ground floor and 35 sq. m on other floors
		Semi automatic / Fully Automatic	As per the system, to accommodate the car dimensions given
5	Parking bay dimension	Manual	3.25 X 5.25m
		Semi automatic / Fully Automatic	As per the system, to accommodate the car dimensions given
6	Retrieval time	Semi automatic / Fully Automatic	Not more than 3 min
6	Evacuation Time	Manual / Semi automatic / Fully Automatic	Not more than 2 hours
7	Air Changes	Manual / Semi automatic	15 during normal conditions and 30 in emergency conditions
		Fully automatic	3 during normal conditions and 15 in emergency conditions
8	Air conditioning	Manual / Semi automatic	Preferable but not mandatory
9	Grades	Manual / Semi automatic	As per Master Plan of Chennai, and 1 in 10 where not available
10	Drive ways and ramps	Manual / Semi automatic	As per Master Plan of Chennai with a, minimum 5.5m for one way and 7m for two way and shall conform to fire safety

**CONSTRUCTION AND MAINTENANCE OF A MULTI LEVEL CAR PARKING SYSTEM ON DBOT BASIS AT WALLACE GARDEN AT CHENNAI**

			norms
11	Set backs	Manual / Semi automatic / Fully Automatic	As per Master Plan of Chennai
12	Turning radius	Manual / Semi automatic / Fully Automatic	7.5m for internal circulation and 15m where a fire tender has to move (for circulation outside the building)
13	Sound emissions	Semi automatic / Fully Automatic	40dba
14	Power backup	Semi automatic / Fully Automatic	Not less than 100% with automatic switchover mechanism
15	Queuing at entry, exit and within the system	Manual / Semi automatic / Fully Automatic	Not more than 6 vehicles and 3 minutes
16	Gas and Smoke detection systems	Manual / Semi automatic / Fully Automatic	To be provided
17	Security Systems	Manual / Semi automatic / Fully Automatic	To be provided, shall include CC TVs

The fully automatic system shall have sufficient redundancy to ensure functionality even in case of failure of one component. In case of failure the system shall have a mechanism to retrieve the cars parked in the system.

The system shall accommodate 10% of SUVs. 2% ECS shall be reserved / developed for physically handicapped (PH) if the semi automatic / fully automatic is not PH friendly.

The above are only minimum guidelines one shall follow while selecting a system. The system to be designed by the bidder shall conform to the relevant provisions in the Chennai Master Plan and approved Development Control Norms.

The parking structure shall have PCF and drivers waiting area.

The minimum car dimensions to be followed are:

Car Height : 1.9m  
Car Width : 2.15m

Car Length : 5.0m  
 Car Weight : 1800kg

The minimum SUV dimensions to be followed are:

Car Height : 2.2m  
 Car Width : 2.25m  
 Car Length : 5.20m  
 Car Weight : 2500kg

The Concessionaire may adopt appropriate designs conforming to Approved Development Control norms and the detailed project report and the above covenants for the Parking Facility and approved in accordance with this point (i) of 1.1.

**1.2. Parking Facilities**

The Parking facilities shall consist of components as described in point (i) of 1.1.

**1.2.1. Other Facilities**

**1.2.1.1. Lighting**

The Concessionaire shall provide adequate lighting system along with the Parking facility area. To achieve a minimum Lux level accordance with Table 2.2 Below.

**Table 2.2**

<b>Area</b>	<b>Minimum Lux Level</b>
Parking areas & Ramps	70
Roofs	20
Entrance & exit Areas for Parking	150
For external lighting	20
Pedestrian Movement Area	70
Stairways and subways	100
Toilets	100

The subway and stairways, Toilets and Entry and Exit Areas Parking shall be provided with auxiliary emergency lighting system such that in case of a failure the system is activated immediately.

**1.2.1.2. Signage**

The Concessionaire shall provide illuminated signs in accordance with National Building Codes (NBC)/ Indian Roads Congress (IRC) Codes and Standards at suitable locations within the Parking Facilities. The scheme for signals shall be finalized in consultation with the Project Officer.

**1.2.1.3. Generator Back-up**

The Concessionaire shall provide power back-up adequate for 100% of the designed power load of the Parking Facility (except Walkways), and Toilet Area. The generator shall be equipped to have a switch-over mechanism so as to be activated automatically in the event of power failure. The generator shall be installed in a separate sound proof enclosure.

**1.2.1.4. Drainage**

The Concessionaire shall design and implement drainage facilities in such a manner that there is no stagnation of water at the Project Site. The internal drainage system shall be connected to the main common drain at an appropriate location in accordance with the approved drawings.

**1.2.1.5. Worker Amenities**

The Concessionaire shall provide worker/employee amenities in accordance with Good Industry Practice.

**1.2.1.6. Safety Barriers**

The Concessionaire shall provide safety barriers at appropriate locations, to effectively manage pedestrian and vehicular traffic.

**1.3. Codes and Standards**

a) The codes and standards applicable for the design of the Project and Project Facilities are given below:

<b>Building Works and Electrical Systems</b>	<b>Road/Pedestrian Path Works</b>
1. Central Public Works Department Specifications (CPWD); 2. Bureau of Indian Standards 3. National Building Codes (NBC) 4. CPWD Specifications on fire fighting and fire alarm systems 5. Fire fighting requirements at Chennai	1. Indian Roads Congress (IRC) Codes and Standards 2. Building Byelaws and Latest Master Plan of Chennai

b) Electrical system shall be provided as per the following applicable codes:

<b>S. No:</b>	<b>Code No:</b>	<b>Applicable Details</b>

**CONSTRUCTION AND MAINTENANCE OF A MULTI LEVEL CAR PARKING SYSTEM ON DBOT BASIS AT WALLACE GARDEN AT CHENNAI**

1	IS-10118 (Part-I), 1982	Code of practice for selection, installation and maintenance of switch gear & control gear
2	IS-3636 (Part-I), 1992 (Rev-I) & Part-II	Guide for interior illumination
3	IS-732, 1989 Rev. 3	Electrical wiring design
4	IS-3043, 1987	Code of practice for earthing
5	IS-13032, 1992 (Rev. 2)	MCB distribution boards for voltage up to and including 1000V AC
6	IS-12640, 1988	Residual current operated circuit breakers
7	IS-649, 1990 (Rev. 3)	PVC insulated cables for working voltage up to and including 1100 V AC.
8	IS-9537 (Part-I), 1980	Conduits for electrical installations-general requirements
9	IS-10322 (Part-I), 1982	General requirements of luminaries
10	IS-13118, 1991	Circuit breakers-general requirements
11	IS-13947 (Part-III), 1993	Air break switches for voltage not exceeding 1000V AC or 1200 V DC
12	IS-1248 (All parts), 1983, 1984, 1993	Electrical direct acting instruments
13	IS-2147, 1962	Degree of protection provided by enclosures for LV switch gear and control gear
14	National Electrical Code Part 4, Appendix	Recommended values of illumination and limiting values of Glare Index – Industrial Building (Parking Space Indoor and Outdoor)

c) Where the aforesaid are silent on any aspect, the following standards in order of preference shall be adopted in consultation with the Project Officer, unless otherwise specified in this Schedule:

- (i) Euro norm standards EN: 14010: 2003 for parking structure safety
- (ii) American National Standard Institute (ANSI)
- (iii) Building Officials and Code Administrators of America (BOCA)
- (iv) International Standards Organization(ISO)

- (v) British Standards (BS)
- (vi) National Fire Protection Association of America (NFPAA)
- (vii) National Electric Code of America (NEC)
- (viii) Safety Code for Mechanized Parking Garage Equipment of America(ASA.A113.1)
- (ix) American Society of testing Materials (ASTM)
- (x) International society for Measurement and control(ISA)
- (xi) ISO 9000
- (xii) Occupation Safety and Health Administration of U.S. Department of Labor (OSHA)
- (xiii) Americans with Disability Act Accessibility Guidelines (ADA)
- (xiv) American Association of State Highway and Transport Officials (AASHTO)
- (xv) American Society of Mechanical Engineers code on Storage Retrieval (SR) Machines and Associated Equipment (ASME B30.13)
- (xvi) Suitable specification/Standard devised by the Project Officer
- (xvii) Any other Standard proposed by the Concessionaire and approved by the Project Officer.

#### **1.4. Overall Design Parameters**

**Fixed Parameters:** The Concessionaire cannot alter the fixed parameters. The fixed parameters for the project are given in point (i) of 1.1.

#### **1.4.1. General Guidelines for Manual/ Semi-Automated/ Automated Parking Facilities**

**1.4.1.1.** The Concessionaire shall incorporate the following guidelines while submitting drawings as mentioned under this Agreement:

#### **1.4.1.2. Entry and Exit Areas of the Parking Facility: Location, size and components**

##### **1.4.1.2.1. Location**

All entries shall be located away from the traffic junctions and exit locations. The preferred location of the Entry and Exit Areas and of the driveways serving it is near the center of the Parking structure on the perimeters. The preferred elevation of the entry and exit areas is that of the connecting road systems.

The entry and exit of vehicles shall be provided so that it does not hinder pedestrian movements.

##### **1.4.1.2.2. Size**

The Entry and Exit Areas be sized to allow drivers to safely and comfortably drive in and out the vehicle. Turning radii and width of drive aisles and minimum clear width of Entry and Exit Area shall be designed according to the respective needs and leaving adequate space to the left and right of the car for passengers to leave / enter the car and in accordance with Applicable Codes Listed in Article 1.3 of this Schedule.

The length of the Entry and Exit Area and unobstructed height inside the Entry and Exit Areas shall be in accordance with Applicable codes listed in Article 1.3 and Article 1.4.1 of this Schedule.

**1.4.1.2.3. Components**

The Entry and Exit Areas shall be equipped with sensors to ensure the right positioning of the vehicle to be transported as well as determine the presence of the system. For Automated parking, Motion detectors and CCTV cameras or similar devices shall be installed inside the Entry and Exit Areas or the vehicle when the machine starts moving.

For Automated parking, the Entry and Exit Areas entrance doors shall be mounted, secured and operated safely, isolating the passengers from the Entry and Exit Areas during movement of the machinery and vehicles. Safety locks / emergency switches shall be installed to stop any machinery if a person or animal is detected in this area.

Cameras shall be installed to record digital photos of the physical condition of the car entering and exiting the premises. The images are also helpful to locate cars for drivers with a lost ticket and to validate damage claims.

Recesses in the floor area shall be minimized to the need of guiding the drivers in the "drive-in" process. All other areas shall be flat for pedestrian traffic. Flaps between moving parts and platforms need to be limited as per Applicable Codes in Article 1.3 of this Schedule.

All Entry and Exit Areas must comply with disability requirements.

**1.4.1.3. Function of Entry and Exit Areas**

The Entry and Exit Areas are the exchange point between drivers and machine or authorized operators as the case may be, as applicable, based on the technology provided and therefore special attention shall be paid to the smooth functioning of this exchange centre.

Each of the entry locations of the Parking Facility shall be provided with electronically controlled real time bay availability positions.

The driveways for inbound and outbound traffic shall be designed to provide sufficient queuing spaces; simple visual signage and guidance shall clearly direct approaching traffic off the street and into Entry and Exit Areas. Respective commands via a visual message center shall be applied inside the Terminals for the drivers in such manner that an easy use of the system is possible.

Inbound / outbound traffic crossing shall be prevented.

Inside and outside Entry and Exit doors shall be provided to prevent drivers and animals from coming into contact with any moving elements of the system,

As Entry and Exit Area are the exchange station of the Parking Structure, special attention shall be directed to ease "drive-in" and positioning of the car by the drivers (preferably by means of physical aids);

Means for catching of debris and dripping from the incoming cars shall be applied to avoid such dripping to cars and machinery inside the terminals, during transportation and storage inside the system.

A modern state of the art collection system such as Automated Parking Ticket Issuing Machine shall be designed for computation and collection of toll. The toll shall be collected from the vehicles at the exit point. A mechanized barrier gate shall be designed and synchronized with the toll collection system for regulating entry/exit of vehicles into and out of the Parking Facility. Uninterrupted Power Supply (UPS) of adequate capacity shall be provided in the toll collection booths for uninterrupted



power supply to the computer and smart card readers and ticket dispensers. The Ticketing Station or access system shall be located outside the Entry and Exit Areas on the right side of the inbound traffic.

If the system has installed a radio frequency access system, the readers shall have enough range to detect approaching vehicles from at least 9 Meter outside of the Entry and Exit Areas.

The Automated or semi automated Facility or manual facility where authorized parking operators/assistants are utilized to park and retrieve the vehicles from the parking bays, shall be equipped with sufficient lobby space to hold the expected peak accumulation of drivers waiting for retrieval of their cars. The pay stations or other access readers shall also be located inside the Lobby. Also sufficient electronic message centers shall be provided to guide the drivers to the respective location to collect their car.

In case toilets are not available in the near vicinity of the lobby, the same shall be provided in sufficient quantity to accommodate the driver's needs close to the lobby.

The operator room shall be located near the lobby to enable the operator to assist drivers and to oversee the operation of the Parking Structure.

All areas accessible for the public shall be well illuminated.

**1.4.1.4. Throughput Capability**

The Throughput of a system is the minimum number of cars a system can store or retrieve (measured in any random one way traffic), in the timeframe of one hour.

Automated or semi automated Facility or manual facility where authorized parking operators/assistants are utilized to park and retrieve the vehicles from the parking bays shall be designed for minimum throughput corresponding to the peak traffic requirement. However it must be taken into consideration that the drivers drive their car into or from the parking bays and / or the Entry and Exit Areas based on the technology proposed. A reasonable average dwell time of 30 seconds per car driving into the Entry and Exit Areas/parking bay can be assumed if physical drive-in guidance is provided. In the absence of such physical guidance system, an average dwell time of 60 seconds shall be considered.

**1.4.1.5. Traffic Effects and Queuing**

The queuing issue shall be addressed taking peak traffic volume. Based on peak volume data, adequate number of Entry and Exit Areas shall be provided.

**1.4.1.6. Fire Safety**

Fire safety measures as recommended in applicable codes (Indian as well as International) listed in Article 1.3 shall be implemented.

The fire fighting system shall be adequate to control petroleum fires.

Provisions shall be made in an Automated Parking Facility that leakage of gasoline tans or other flammable fluids are collected during transportation and storage of the vehicle.

Construct the Automated Parking Facilities' structure and the equipment with non-combustible construction without a specified fire resistance. In addition, those portions of the facility used for the transport and / or storage shall have a finish of non-absorbent, non combustible material. Where the Automated Parking Facility is located below a building, a 2-hour fire resistance rated separation shall be provided between the Automated Parking Facility and the adjacent space use.

As the nature of an Automated Parking Facility provides the means to transport a vehicle without human interference, provisions shall be made to detect a vehicle on fire and to transport it to a fire extinguishing cell at a space on ground-floor, easily accessible for firefighters.

**1.4.1.7. Sound Emissions / Vibrations**

The surrounding walls of the Automated Parking Facility shall cover any sound emission of more than 40 decibels emanating outside the structure, measured at the boundaries of the Project Site.

Not only sound but also vibrations resulting from the machinery need to be considered for potential negative impact to the rest of the building and their influence shall be kept to a very minimum.

**1.4.1.8. Ventilation / Air Conditioning**

Areas accessible to the public / drivers shall be equipped with sufficient air conditioning and ventilation. For manual/semi automate systems, where human presence in the storage areas is envisaged, adequate ventilation of vehicle emissions shall be provided. Basement shall have mechanical ventilation. The system shall be designed to provide positive and uniform supply of fresh air in the parking and its exhaust through ducts / fans. The ventilation system shall be designed to achieve minimum 15 air changes / hour in the parking / hours of exhaust in case of fire. The GI sheets for the sheet metal ductwork shall conform to IS- 227 and the ductwork shall be fabricated and executed strictly as per the requirements of IS-655.

The Storage area of the System in which no drivers enter but only maintenance crews, may be unconditioned space, although ventilation of outside air shall be provided. No Ventilation of vehicle emissions is required inside the storage area.

Depending on the design of the Entry and Exit Areas, ventilation of emissions shall be required in that area.

**1.4.1.9. Accessibility for Maintenance**

The Parking Structure shall be designed such that maintenance personnel have access to all storage spaces, machinery and electrical and electronic components in a safe manner.

**1.4.1.10. Water supply and Storage**

Adequate underground water storage shall be provided to cater for one day requirement of domestic flushing requirements. An additional separate underground storage shall be provided exclusively for fire fighting purposes. Underground tanks shall be located at the lower basement of underground facilities and at the ground floor at other locations. The design and detailing for the provision of plumbing and sanitary facilities for the parking complex shall be done in accordance with National Building Code & Hand Book of Water Supply & Drainage Sp: (S7T)-1987.

Water supply for drinking purposes shall be filtered, Chlorinated/UV treated to remove harmful solids and pathogenic organism.

**1.4.1.11. Graphical User Interface / Online Support**

Automated parking facilities shall be furnished with a graphical user interface (hereafter referred to as "GUI"), or human-machine interface (hereinafter referred to as "HMI"). This interface shall be positioned in the control room. The GUI shall show the geometry of the system with occupancy and all installed machines moving in real time. The GUI shall be capable of running fully automated system without human

assistance. It shall have manual and maintenance mode and the capability of system diagnostic of all critical mechanical, electrical and electronic equipment.

The parking facility shall have an installed and all time workable dial in capability to the manufacturer / technical operator with a short response time to handle any alarms generated by the system.

**1.4.1.12. Diagnostics**

The automated systems shall include a Graphical User Interface (GUI), or Human Machine Interface (HMI). These devices are computer models of the layout of the parking facility illustrating the movement of the various transport/lift devices within the Parking Structure and Entry / Exit Areas, and are designed into the software and displayed on the computer screen. This interface shall be positioned in the control room. The GUI shall show the geometry of the entire parking facility with actual occupancy with all installed machines reflecting real time movements / positions of the machinery and parked vehicles.

The GUI, shall be capable of running fully automated without human assistance. It shall have manual mode and maintenance mode operations and the capability of the system diagnostic of all critical, mechanical, electrical and electronic equipment components.

The Parking Facility may have an installed and real time, online connection to the manufacturer / technical operator which allows for resolution of most errors remotely with a short response time in reaction to any trouble alarms generated by the system.

The Parking Facility shall be capable of reporting in different classes according to their severity for the system functionality. It shall report the need of component checks for proper performance of the different components. Preferably, a hotline support line shall be implemented to enable a remote system support.

**1.4.1.13. Maintenance/Operator**

In order to ensure operational safety, the Concessionaire shall enter into Contract(s) with Equipment Supplier(s) for maintenance of the Equipment(s) during the entire Concession Period in order to avoid system interruptions as much as possible and to remedy such interruptions in a reasonable time.

Under all circumstances without any exception, trained personnel must be available round the clock at short notice. The Concessionaire shall enter into Contract with manufacturer to provide a trained technician for the prevention and remedy of interruptions during all hours of operation of the Parking Facility. The Concessionaire shall enter into agreement with the Manufacturer for training Concessionaire's on-site personnel to the degree, that they are capable of retrieving a car in semi-automatic mode of operation. Explicit provisions relating to training and know-how transfer, including sharing of manuals and procedures would have to be reflected in the Agreement that the Concessionaire may enter into with the Manufacturer.

The entire Parking Facility shall be adequately illuminated primarily for maintenance access. Portable task lighting outlets shall be provided for enhanced lighting Facility, machinery and electrical and electronic components in a safe manner.

**1.4.1.14. Spare Parts Package**

For semi automatic and fully automatic systems, enough spare parts shall be stored at the Parking Facility to ensure an immediate availability of exchange components in any case of component failure.

In order to ensure needed repairs to be performed in a timely manner, the manufacturer and the Concessionaire shall agree for a respective maintenance

contract, covering the operating times of the Facility including a sufficient on-site spare parts package.

**1.5. Other Guidelines**

Construction sequence of Parking Facility shall be planned to minimize the interruptions to traffic flow in the surrounding area.

**2. PROCEDURE**

**2.1. Before Commencement of Construction**

2.1.1 Prior to the commencement of any construction activity, the Concessionaire shall finalise and furnish an implementation plan for the Project (Construction Plan) in consultation with the Project Officer. The Construction Plan shall, inter alia, include:

- (i) A detailed schedule of implementation for putting up and operationalising the Parking Facilities, and which shall specify at least 4 major milestones;
- (ii) Advise to CoC on alternate regulation of parking, if applicable, until such time that the parking facility is operational and operate the approved Scheme by CoC during the construction period;
- (iii) Advise CoC on the details of the utilities that are necessary to be shifted, including suggestions on the alternate routing, and the estimates of the costs associated with such shifting;
- (iv) The Critical Path Method (CPM) / Program Evaluation and Review Technique (PERT) charts or similar activity planning techniques / methods for monitoring. This shall cover all stages and aspects of the Project Implementation including design and engineering, procurement of materials and equipment, installation, construction, testing, etc.
- (v) Manpower deployment plan, including the designation of Key Personnel for the management and supervision of all Project Activities. This would include the designation of suitably qualified and experienced personnel for areas such as Contract Administration and Supervision, Construction Management, Traffic & Safety, Environmental Management, Plant & Equipment Maintenance, Procurement, Materials Management, Quality Control & Assurance, etc. The manpower to be provided by the Concessionaire, shall match that of IE, in qualification and experience.
- (vi) A broad method statement for key items setting out methodology of construction, materials and construction equipment mobilization, utilization plans, broad output calculations and details of the quality assurance and quality control procedures.
- (vii) Format of the monthly report giving details of the physical progress in implementation of the Project and Operations & Maintenance Activities undertaken (Monthly Progress Report).

2.2 The Concessionaire shall, in consultation with the Project Officer workout an appropriate schedule for submission of documents set out in 2.1 above to the Project Officer for review.

2.3 Prior to commencement of construction of any of the Project Facilities, the Concessionaire shall:

- (i) Obtain all such applicable permits as mentioned in Schedule II as are necessary to commence construction of Project Facilities;

- (ii) Obtain the approval of CMDA Technical Committee with regard to:
  - Detailed schemes as per stipulated norms along with layout plan of the area under reference and integrating surrounding road network and land uses
  - A traffic management scheme in the influence of the project so that there is no hindrance to smooth flow of traffic
- (iii) Mobilise the requisite resources, personnel and organization necessary for the same and designate and appoint suitable offices / representatives as it may deem appropriate with responsibility to supervise implementation of the Project and for exchange of information with the Project Officer and CoC;
- (iv) Finalise in consultation with Project Officer a method statement setting out details of the actual methods that would be adopted by the Concessionaire for the construction of such Project Facilities, including details of equipment and machinery that would be used, their locations, and arrangements for conveying and handling materials;
- (v) Finalise in consultation with the Project Officer, quality assurance and quality control procedures to cover all aspects of the work so as to ensure the desired quality. This would include establishment of a well equipped functional laboratory.

## **2.4 During Construction**

### **2.4.1 The Concessionaire shall:**

- (i) Strictly follow the guidelines on quality set out in BIS/NBC/IRC codes/guidelines and any standards and specifications for Parking Facilities set out by Government of Tamilnadu/ CMDA/ CoC or any other relevant organization. Where silent, for any specification, international best practices shall be adhered to
- (ii) Ensure that the construction of the Project Facilities, is undertaken with minimal inconveniences to the traffic using the roads surrounding the Project Site.
- (iii) On a best effort basis, maintain the existing infrastructure and facilities to the extent possible subject to it not causing a hindrance in the implementation of the Project.
- (iv) Take the necessary precautions to minimize accidents and respond to emergency as quickly as possible.
- (v) Take precautions to avoid inconveniences to, damage to, destruction of or disturbance to any third party rights and properties.
- (vi) Provide a safe, clear informative system of road signs in connection with the Project, whenever and wherever required.
- (vii) Ensure adequate safety of the personnel deployed at the Project Site which would include measures for the safety such as the provision and maintenance of barricades, traffic signs and illumination during night in consultation with the Project Officer.
- (viii) Be in compliance with the applicable laws and applicable permits obtained for the Project including the clearances obtained by the Government Agencies.

- (ix) Deploy adequate number of qualified and competent personnel having relevant experiences and skills for implementation of the Project and interaction with the Project Officer / the Government Agency.

**2.4.2 Positions and Levels**

- (i) The Concessionaire shall be responsible for:
  - a) The accurate setting of the Project Site
  - b) The correctness of the positions, levels, dimensions and alignment of all parts of the work
  - c) The provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities

**2.4.3 Tests**

- (i) Various quality control tests would be undertaken for the project as per the standards prescribed by the Bureau of Indian Standards. Where no testing methods are specified by the said standards, details of the test to be carried out and specifications to be achieved for the respective Project Facilities / Construction Works or part thereof shall be agreed upon with the Project Officer prior to the Construction.
- (ii) The tests would be carried out at a location (place of manufacture, fabrication or preparation, at site or any specialized testing laboratory) that the Project Officer may responsibly require, at the cost and expense of the Concessionaire.

2.4.4 No part of the Construction Works shall be covered up or put out of view before the same has been examined by the Project Officer or CoC.

2.4.5 The Project Officer may from time to time require:

- (i) Removal from the Project Site, within such time as may be specified in its instructions, any material, equipment, machinery or plans which, in its opinion, do not meet the standards specified in the Construction Requirements.
- (ii) Substitution / Replacement of such improper material, equipment, machinery or plan.
- (iii) Re-execution, of any or part of the construction works which in the opinion of the Project Officer do not meet the standards set out in the Construction Requirements.
- (iv) The Concessionaire to make boreholes or to carry out exploratory excavation for the project.

2.4.6 The Concessionaire shall arrange for all the material requirements for the project and disposal of all material wastes. The applicable permits in this regard would have to be obtained by the Concessionaire. All excess and unsuitable excavated materials shall be piled at appropriate dumping places or otherwise disposed of by the Concessionaire in consultation with the Project Officer.

2.4.7 Prior to making the request for the issue of the Completion Certificate for the Parking Facility, the Concessionaire shall submit to the Project Officer / CoC the following, duly finalized in consultation with the Project Officer.

- (i) The Operation and Maintenance Manual for the Project (O&M Manual), setting out in details the standards, schedules, procedures, type, periodicity and other details of the Operation and Maintenance activities to be carried out for the Project during the operations period so as to meet the O&M

Requirements as well as the details of the Management Information System to be incorporated, reports to be submitted and procedure for reviews.

- (ii) As built drawings.
- (iii) O&M contract with the System Provider for Fully and Semi-automatic parking systems.

## **2.5 After Completion of Construction**

Upon completion of construction, but prior to issue of Completion Certificate, the Project Site shall be cleared of all construction equipments, surplus materials, debris, and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the Project Officer.

## **2.6 Reporting Requirements and Documents to be Provided**

2.6.1 During the Construction Period, the Concessionaire shall submit to the Project Officer / CoC, Monthly Progress Report (for each calendar month or part thereof) within five working days of the last day of the Month. The report shall review the progress made, identified slippages, if any, and project the future activities to be undertaken (including rectifications), operations and maintenance activities under taken and would, inter alia, include the following:

- (i) Listing of working drawings/sketches submitted, as approved by relevant authorities
- (ii) Progress of pre-construction activities – mobilization of plant and equipment, personnel, site office, utility relocation, etc.
- (iii) Concessionaire's compliance inspection report, if any required
- (iv) Constraints in construction
- (v) Progress data with "S-curves", if applicable
- (vi) Project data with contract detail and sectional completion details
- (vii) Tests carried out, if any, and results thereof
- (viii) Remedial measures taken by the Concessionaire following such tests, where required
- (ix) Traffic management steps taken by the Concessionaire
- (x) Review of milestones, and reasons for delay, if any
- (xi) Suspensions of construction, if any, its reasons, duration, and steps undertaken to resume construction
- (xii) Change of Scope notice issued by CoC, if any, and status thereof
- (xiii) All actual or potential deviations from the Construction Plan
- (xiv) Disagreements/Disputes, if any and proposed measures to be taken
- (xv) Maintenance activities carried out by the Concessionaire on the existing carriageway
- (xvi) Injury to any construction personnel during construction, its severity, cause, and remedial measure(s) taken to avoid recurrence
- (xvii) Brief report of any accident/incident within the project site, injury/fatality, property damage, cause of accident, and actions taken to avoid recurrence
- (xviii) Traffic detour/diversion for construction, if any, time and duration

- (xix) Notes of meetings between the Concessionaire, the Project Officer and the Government Agencies highlighting critical decisions taken or agreements reached. Minutes of the meeting issued by the CoC shall also be included in the Monthly Progress Reports.

2.6.2 Prior to making the request for the issue of the Completion Certificate, the Concessionaire shall submit to CoC the following documents, free of costs:

- Three hard copies and two copies in electronic form (two Compact Disks) of the Operations & Maintenance Manual
- Three hard copies and two copies in electronic form (two Compact Disks) of the As-built Drawings

**Applicable Permits (Indicative but not Exhaustive)**

- CMDA
- CoC
- Fire Department
- Environmental Clearances
- State Pollution Board
- Services Agencies / Road Owning Agencies
- Traffic Police (for traffic management schemes during and after the Construction)
- Land/drain owning agencies
- Any other applicable permits



**Schedule III. Payment Schedule for Concession Fee payments**

Instalment No.	Milestone	11 Equal Instalments
1.	On the Appointed Date	
2.	On the 365 <sup>th</sup> day from the date of the Appointed Date	
3.	On the 730 <sup>th</sup> day from the date of the Appointed Date	
4.	On the 1095 <sup>th</sup> day from the date of the Appointed Date	
5.	On the 1460 <sup>th</sup> day from the date of the Appointed Date	
6.	On the 1825 <sup>th</sup> day from the date of the Appointed Date	
7.	On the 2190 <sup>th</sup> day from the date of the Appointed Date	
8.	On the 2555 <sup>th</sup> day from the date of the Appointed Date	
9.	On the 2920 <sup>th</sup> day from the date of the Appointed Date	
10.	On the 3285 <sup>th</sup> day from the date of the Appointed Date	
11.	On the 3650 <sup>th</sup> day from the date of the Appointed Date	

The Concessionaire shall pay the Concession Fee as per the financial quote mentioned at the RFP stage. This Concession Fee shall be paid in 11 equal instalments of the financial quote mentioned in the RFP stage.

**Schedule IV. Parking Fee Structure**

Vehicle Type	Parking Fee (Rs.)						
	Upto 1 hr	2 hrs	3 hrs	4 hrs	5 hrs	6 hrs	7 hrs
Car	20	30	40	50	50	50	33
Two wheeler	5	10	15	20	25	25	17

1. The Concessionaire shall charge a parking fee for the first hour for cars for Rs. 20 and shall increase the same at a rate of Rs. 10 for every extra hour parked. The Concessionaire can increase the first hour parking rate till a maximum limit of Rs. 50. However, for 7 hours and more, the occupant shall be given the option by the Concessionaire to purchase a monthly pass of Rs. 1000. Similarly, the parking fee for the first hour for two-wheelers shall be Rs. 5 and it shall be increased at a rate of Rs. 5 per hour till reaching a maximum limit of Rs. 25. Option should also be given by the Concessionaire to the occupants parking two-wheelers for more than 7 hours to purchase a monthly pass of Rs. 500.
2. The Concessionaire has been given the right to increase the parking rates annually by 5%. The escalation shall have an annual cumulative effect. While calculating the Parking Fee escalation, the decimals should be rounded off. The decimals shall be rounded off to the lowest or the highest nearest integer with a range of multiples of 5. (E.g. If escalation calculation amounts to Rs. 22.5 or lesser, then, the parking fee shall be rounded off to Rs. 20 (nearest lowest integer) and if the escalation leads to Rs. 22.6 or more then it shall be rounded off to Rs. 25 (nearest highest integer).
3. The Concessionaire shall apply this parking fee structure for the Parking Facility and the parking space provided by the Concessionaire for the Commercial Facility development.

**Schedule V. Proforma of Performance Security**

**(Proforma of Bank Guarantee)<sup>1</sup>**

**THIS DEED OF GUARANTEE** executed on this the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_ (*Name of the Bank*) having its Registered office at \_\_\_\_\_ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

**In Favour of**

Corporation of Chennai (hereinafter called "CoC"), a statutory authority created under the provisions of the Chennai City Municipal Corporation Act, 1919 having its principal office at Rippon Building, Chennai – 600 003, Tamil Nadu which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

**Whereas**

By the Concession Agreement ("the Concession Agreement") being entered into between CoC and \_\_\_\_\_, a company incorporated under the Companies Act, 1956, having its registered office at \_\_\_\_\_, ("the Concessionaire"), the Concessionaire has been granted the Concession Rights to develop the Wallace Garden Land bearing survey no. \_\_\_\_\_ at Chennai, India (hereinafter referred to as "the Project").

- A. In terms of Article 6.1.2 of the Concession Agreement, the Concessionaire is required to furnish to CoC, an unconditional and irrevocable bank guarantee for an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only) as security for due and punctual performance / discharge of its obligations under the Concession Agreement.
- B. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance / discharge by the Concessionaire of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s \_\_\_\_\_ (hereinafter called "the Concessionaire") of all its obligations relating to the Project and in connection with achievement of obligations of the Concessionaire in accordance with the Concessionaire Agreement.
2. The Guarantor shall, without demur, pay to CoC sums not exceeding in aggregate Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only), within five (5) calendar days of receipt of a written demand thereof from CoC stating that the Concessionaire has failed to meet its obligations

<sup>1</sup> To be issued by a Scheduled Bank in India

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under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by CoC and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

3. In order to give effect to this Guarantee, CoC shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/ non exercise / delayed exercise of any of its rights by CoC or any indulgence shown by CoC to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by CoC or any indulgence shown by CoC, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

4. This Guarantee shall be irrevocable and shall remain in full force and effect until \_\_\_\_\_<sup>2</sup>unless discharged / released earlier by CoC in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only).

5. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire / the Guarantor or any absorption, merger or amalgamation of the Concessionaire / the Guarantor with any other Person.
6. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under\_\_\_\_\_.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.  
SIGNED AND DELIVERED

by\_\_\_\_\_Bank

by the hand of Shri \_\_\_\_\_

its\_\_\_\_\_and authorised official.

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<sup>2</sup> eleven years and six months from the date of signing the Concession Agreement

**Schedule VI. Proforma of Payment Security**

THIS DEED OF GUARANTEE executed on this the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_ (Name of the Bank) having its Registered office at \_\_\_\_\_ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In Favour of

Corporation of Chennai (hereinafter called "CoC"), a statutory authority created under the provisions of the Chennai City Municipal Corporation Act, 1919 having its principal office at Rippon Building, Chennai – 600 003, Tamil Nadu which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

Whereas

By the Concession Agreement ("the Concession Agreement") being entered into between CoC and \_\_\_\_\_, a company incorporated under the Companies Act, 1956, having its registered office at \_\_\_\_\_, ("the Concessionaire"), the Concessionaire has been granted the Concession Rights to develop the Wallace Garden Land bearing survey no. \_\_\_\_\_ at Chennai, India (hereinafter referred to as "the Project").

A. In terms of Article 6.1.1 of the Concession Agreement, the Concessionaire is required to furnish to CoC, an unconditional and irrevocable bank guarantee for an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only) as security for due and punctual performance / discharge of its obligations under the Concession Agreement.

B. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance / discharge by the Concessionaire of its obligations relating to payment of the Concession Fee Payments to the Concessionaire.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s \_\_\_\_\_ (hereinafter called "the Concessionaire") of all its obligations relating to the Project and in connection with achievement of obligations of the Concessionaire in accordance with the Concessionaire Agreement.
2. The Guarantor shall, without demur, pay to CoC sums not exceeding in aggregate Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only), within five (5) calendar days of receipt of a written demand thereof from CoC stating that the Concessionaire has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach

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or failure on the part of the Concessionaire or validity of demand so made by CoC and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

3. In order to give effect to this Guarantee, CoC shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/ non exercise / delayed exercise of any of its rights by CoC or any indulgence shown by CoC to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by CoC or any indulgence shown by CoC, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
4. This Guarantee shall be irrevocable and shall remain in full force and effect until \_\_\_\_\_<sup>3</sup>unless discharged / released earlier by CoC in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only).
5. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire / the Guarantor or any absorption, merger or amalgamation of the Concessionaire / the Guarantor with any other Person.
6. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under\_\_\_\_\_.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY,  
MONTH AND YEAR FIRST HEREINABOVE WRITTEN.  
SIGNED AND DELIVERED

by\_\_\_\_\_Bank

by the hand of Shri \_\_\_\_\_

its\_\_\_\_\_and authorised official.

\_\_\_\_\_  
<sup>3</sup> The date on which the payment of the Concession Fee is due shall be mentioned (as mentioned under Schedule III.

**Schedule VII. Joint Deed Agreement**

**(Annex the registered Joint Deed Agreement signed and stamped by the members of the Consortium which was submitted along with the acknowledgement of the Letter of Award)**

**Schedule VIII. Approved Techno - Business Proposal**

**(CoC TO ANNEX THE DESIGN OF THE CONCESSIONAIRE APPROVED BY THE GOVT. of  
TAMIL NADU)**