CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY

DRAFT CONCESSION AGREEMENT (DCA)

OPERATION AND MAINTENANCE OF CLIMATE PARK AT KILAMBAKKAM FOR CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY (CMDA) ON PPP MODE FOR A PERIOD OF 5 (FIVE) YEARS

___, 2025

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (the "**Agreement**") is entered into on this the……. day of……., 20..... ("**Effective Date**")

BETWEEN

1. The **CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY** represented by its **Member Secretary** having its registered address at **Thalamuthu-Natarajan Maaligai, No.1, Gandhi Irwin Road, Egmore, Chennai – 600 008, Tamil Nadu, India** (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, legal representatives, successors and assigns) of One Part.

AND

2. [Name of the Selected Bidder], the Selected Bidder for the Project, being a company incorporated under the provisions of the Companies Act, 2013/1956/ Limited Liability Partnership under the Limited Liability Partnership Act, 2008 with Corporate Identity Number (CIN)/ Limited Liability Partnership Identification Number (LLPIN) _____and having its registered office at ……., represented by its ……. authorized vide Board Resolution dated …… (hereinafter the Selected Bidder, shall be referred to as the "**Concessionaire**" under this Agreement which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

*Hereinafter the Authority and the Concessionaire shall be individually referred to as "**Party**" and collectively as "**Parties.**"*

WHEREAS:

(A.) The Authority recognizing the need for improving and maintaining the Climate Park and Archaeological Interpretation Park intends to execute this Agreement for Operation and Maintenance (O&M) of Climate Park at Kilambakkam for Chennai Metropolitan Development Authority on PPP Mode (the "**Project**") for an initial

period of 5 (Five) years with an additional period of 5 (Five) years, if extended by the Authority at its sole discretion subject to satisfactory performance by the Concessionaire and upon fulfilment of all terms and conditions set forth in this Agreement to be entered into by the Parties. The Project shall be financed by the Concessionaire who shall recover its investment and costs through levy and appropriation of User Fee *(defined herein)*.

(B.) The Authority had prescribed the technical and commercial terms and conditions and invited the financial proposals (hereinafter referred to as the "**Bid(s)**") by its Request for Proposal No. [●] dated [●] from the Bidders.

(C.) After evaluation of the Bids received, the Authority had accepted the Bid of the Selected Bidder and issued its Letter of Award No. ……. dated ……. (hereinafter called the **"LOA"**) to the Selected Bidder requiring, inter alia, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.

(D.) By its letter dated [●] the Selected Bidder has acknowledged the LOA and has also undertaken to perform the obligations and exercise the rights as the Concessionaire including the obligation to enter into this Agreement pursuant to the LOA.

(E.) The Selected Bidder represents and warrants that it has duly fulfilled all the terms and conditions necessary for the execution of this Agreement as per the terms and condition in RFP, any addendum and/or corrigenda thereof and is in a position to execute this Agreement and implement the Project as envisaged in the RFP, any addendum and/or corrigenda thereof and this Agreement.

(F.) Pursuant to the compliance by the Selected Bidder of the pre-conditions to the execution of this Agreement, the Authority has accordingly agreed to enter into this Agreement with the Selected Bidder as the Concessionaire for implementation of the Project, subject to and on the terms and conditions set forth hereinafter.

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

PART I: Preliminary

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 34) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and/ or in the State of Tamil Nadu, and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;

(f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(g) any reference today shall mean a reference to a calendar day;

(h) Reference to a "**business day**" shall be construed as reference to a day (other than a Sunday) on which Banks in the State of Tamil Nadu are generally open for business;

(i) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(j) references to any date, period shall mean and include such date or period as may be extended pursuant to this Agreement;

(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; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(l) the words importing singular shall include plural and vice versa.

(m) References to any gender shall include the other and the neutral gender;

(n) "**lakh**" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);

(o) "**Indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(p) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

(q) save and except as otherwise provided in this Agreement, 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; provided that this sub-clause (s) shall not operate so as to increase

liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(r) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;

(s) the Schedules and Recitals to this Agreement and the RFP along with any corrigendum, forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(t) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;

(u) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

(v) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes,

the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

a) this Agreement;
b) Corrigendum;
c) RFP;
d) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b), (c) and (d) above.

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

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
(c) between any two Schedules, the Schedule relevant to the issue shall prevail;
(d) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
(e) between any value written in numerals and that in words, the latter shall prevail.

Part II – The Concession

ARTICLE 2. SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Concession Period *(defined herein)*:

(a) O&M of the Project on the Site set forth in Schedule-A in accordance with the requirements specified in Schedule-B and Schedule C and in accordance with the terms of this Agreement;

(b) Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all the obligations of the Concessionaire under this Agreement.

ARTICLE 3. GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, and agreeing to comply with all other terms and conditions of this Agreement including payment of Performance Security and the representations, warranties and covenants on part of the Concessionaire, the Authority hereby grants to the Concessionaire, the concession set forth herein including the exclusive right, license and authority to operate and maintain the Project (the "**Concession**") for a period of 5 (Five) years commencing from the Appointed Date and an additional period of 5 (five) years, if extended by the Authority at its sole discretion subject to satisfactory performance by the Concessionaire and upon fulfilment of the all the terms and conditions of the Agreement, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.2 The Concessionaire shall be responsible for the O&M of the Project for a period of 5 (five) years commencing from the Appointed Date with an additional period of 5 (five) years if extended by the Authority at its sole discretion upon satisfactory performance of the Concessionaire and upon fulfilment of the all the terms and conditions of the Agreement (hereinafter this period of 5 (five) years and the extension (if any) of 5 (five) years shall be referred to as the "**Concession Period**").

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

(a) right of access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;

(b) market, manage, operate and maintain the Project and regulate the use thereof by third parties;

(c) demand, collect, revise and appropriate User Fee from Users liable for payment of such User Fee for using the Project or any part thereof;

(d) perform and fulfill all the Concessionaire's obligations under and in accordance with this Agreement;

(e) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;

(f) neither assign, transfer or sublicense/sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, license/sub-license, lease, or part possession thereof, save and except as expressly permitted by this Agreement. For the purpose of clarity, the Concessionaire has the right to collect User Fee from sub-licensee subject to the express written consent of the Authority;

(g) to apply for renewal and obtain all requisite approvals, consents and authorizations including those from all relevant Government Instrumentality, for the O&M of the Project and to ensure that the same are effective and valid throughout the Concession Period;

(h) shall not sell or mortgage the title of the Site or any of the whole or part thereof and it shall, on the Date of Handover vacate and hand over the Site along with any Project Assets to the Authority or its nominated agency in accordance with the provisions hereof in this Agreement.

(i) shall be entitled to revenue collection- as per Schedule E of this Agreement;

(j) if any additional Project assets/ facilities are being created in the Climate Park upon the requirement and decision of the Authority, then the Authority shall bear the cost of the same and the Concessionaire shall be responsible for the O&M of the additional Project assets/facilities. In case the Concessionaire proposes to develop any additional Project asset/facilities the same shall be carried out at the cost of the Concessionaire. Upon the termination of the Project, the Concessionaire shall transfer the said facilities to the Authority free of cost. However, the O&M of additional Project asset/facilities as aforementioned shall continue to be carried out by the Concessionaire at its cost;

(k) If any structural modifications are required to be made to the existing Project asset/facilities by the Concessionaire, the same shall be carried out at the cost of the Concessionaire with prior written approval of the Authority in conformity with the Good Industry Practice and Applicable Laws (*defined herein*) as per the procedure outlined in the Agreement; and

(l) If any structural modifications are required to be made to the existing Project asset/facilities by the Authority, the same shall be carried out at the cost of the Authority without affecting the revenue of the Concessionaire and after completion of structural modifications, these Project assets/ facilities shall be handed over to the Concessionaire during the Concession Period (*defined herein*). The Concessionaire shall be responsible for the O&M of such facility without any financial implication or claim from the Authority.

ARTICLE 4. CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Article 4 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**") save and except to the extent of waiver, if any, that a Party may grant in accordance with the provisions of Clause 4.1.3 .

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, require the Authority to satisfy any or all of the Conditions Precedent of the Authority set forth below within a period of 60 (Sixty) days from Effective Date of this Agreement. The Conditions Precedent required to be satisfied by the Authority prior to the commencement of the Trial Run Period shall be deemed to have been fulfilled when the Authority shall have:

a. procured for the Concessionaire, the right of access to the Site; and

b. handed over the functional Site with 100% completion of landscape/ development/ construction work with all other amenities and facilities in working condition to the Concessionaire without any snag / defect in good working condition including warranties, guarantees, and any other required operational licenses post testing and commissioning of the Project.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 60 (Sixty) days from Effective Date of this Agreement shall be deemed to have been fulfilled prior to the commencement of the Trial Run Period when the Concessionaire shall have:

(a) provided Performance Security to the Authority within the timeline stipulated in Clause 9.1 of this Agreement;

(b) provided Concession Fee for the first quarter on the Effective Date;

(c) executed and procured execution of the Escrow Agreement;

(d) Mobilized the resources at the Site;

(e) procured/renewed as applicable, all the Applicable Permits as specified in Schedule-G unconditionally or if subject to conditions, then all such conditions

required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

(f) delivered to the Authority confirmation of the correctness of the representations and warranties set forth in Sub-clause (k) of Clause 7.1 of this Agreement.

(g) delivered proof of its shareholding pattern, evidenced by certificates from the Statutory Auditors.

(h) Delivered certified as true copies by a Director of the Concessionaire of all resolutions adopted by the Board of Directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire under this Agreement and each of the Project Agreements;

(i) executed and delivered to the Authority the letter acknowledging receipt of possession of Site;

(j) delivered true copies of the constitutional documents of the Concessionaire certified by the Director of the Concessionaire;

(k) procured insurances in the name of the Authority for the entire development cost of the Project i.e. Rs. 15.20 Crores (Rupees Fifteen Crores and 20 Lakhs) ;

(l) provided the details of working capital arrangement to the Authority.

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

4.1.4 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once in 15 (Fifteen) days on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been

satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire, Rs. 10, 000 (Rupees Ten Thousand) as Damages for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (Twenty percent) of Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, Rs. 20, 000 (Rupees Twenty Thousand) as Damages for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (Twenty percent) of Performance Security.

4.4 Commencement of Concession Period

Upon fulfillment of all the Conditions Precedent specified in Clause 4.1.2 and 4.1.3, a 15 (fifteen) day trial period shall be initiated ("**Trial Run Period**") from the 61st (Sixty First) day from the Effective Date of this Agreement and the 16th (Sixteenth) day after the commencement of Trail Run Period, shall be considered as the Appointed Date which shall be the date of commencement of the Concession Period and during which the Concessionaire is authorized to carry out the Project in accordance with the provisions hereof. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence O&M of the Project during the Concession Period.

Provided further that:

a. 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 Date of Handover.

b. At the end of the Concession Period or sooner Termination of this Agreement for any reason whatsoever, all rights given under this Agreement shall cease to have effect and the Site and the Project Assets shall be handed over to the Authority in good working condition subject to normal wear and tear including warranties, guarantees, and any required operational licenses as well as carryout snagging, de-snagging and testing of the Project.

4.5 Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3 and subject to the provisions of Clause 9.2, the Parties expressly agree that 60 (Sixty) days from the Effective Date of this Agreement shall be considered for fulfilling Conditions Precedent, failing which a Cure Period of 30 (Thirty) days shall be provided. In case of failure in fulfilment of conditions precedent in the Cure Period, the Agreement shall stand terminated and the provisions of Clauses 23.1.2 and 23.2.2, as the case maybe, shall apply to such Termination. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

Without prejudice to and notwithstanding anything to the contrary set out in the foregoing, the Parties may by mutual agreement in writing, instead decide to extend the time for fulfilling the Conditions Precedent.

ARTICLE 5. OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the O&M and handover of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits / approvals (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

5.1.4 The Concessionaire shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for renewal of Applicable Permits/ approvals for O&M of the Project/ clearances other than those set forth in Clause 4.1.3, and renew and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;

(c) perform and fulfill its obligations under the Financing Agreements;

(d) execute the Financing Agreements/documents evidencing availing working capital for the Project and deliver to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

(e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

(f) ensure and procure that its Contractors/sub-licensees comply with all O&M related Applicable Permits and required approvals as per Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

(g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

(h) support, cooperate with and facilitate the Authority in the O&M of the Project in accordance with the provisions of this Agreement;

(i) carry out its obligations and duties with regards to the O&M of the Project in accordance with Schedule B and Schedule C and other provisions of this Agreement. The obligations shall include all works arising from any obligation of the Concessionaire, and all duties not mentioned in this Agreement, but which may be inferred to be necessary for the safe, reliable and efficient O&M of the Project;

(j) ensure that all equipment and facilities comprising the Project are operated and maintained in accordance with the Safety Requirements and Good Industry Practice. Additionally, the Concessionaire shall also ensure adherence to the maintenance guidelines and operational standards provided by the manufacturers for performance of its obligations under this Agreement;

(k) remove promptly from the Site, all waste materials (including, without limitation, hazardous materials and wastewater), rubbish and other debris (including without limitation accident debris) and shall keep the Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits. For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at the location as specified by the Authority;

(l) provide to Authority reports on regular basis during the Concession Period;

(m) undertake debt service payments in accordance with the Financing Agreements;

(n) ensure and procure that each Project Agreement contains provisions that entitle Authority to terminate this Agreement on account of default or breach by the Concessionaire;

(o) take all reasonable precautions for the prevention of accidents on or about the Project and provide all reasonable assistance and emergency medical aid to accident victims at the Concessionaire's cost.

(p) indemnify the Authority against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Concessionaire in connection with the performance of its obligations under this Agreement; and

(q) comply with the Divestment Requirements and the Site should be handed over to the Authority in good working condition subject to normal wear and tear including warranties, guarantees, and any required operational licenses as well as carry out snagging, de-snagging and testing of the Project upon Termination of the Agreement.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever. It shall be the responsibility of the Concessionaire to ensure the Project Agreements are in compliance with this Agreement.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or

increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4 The Concessionaire is permitted only to sub-license, the Project forming part of the Climate Park along with associated amenities & facilities with prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-license has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws, provided:

(a) the period of the sub-license shall be co-terminus with the period of this Agreement. Upon Termination of this Agreement, the sub-license so granted by the Concessionaire shall also stand terminated.

(b) in case of pre-mature Termination of this Agreement, as per the discretion of the Authority, the sub-license also shall stand terminated provided all proceeds/ sub-license fee arising from such sub-licensing of the Project shall alone accrue to the Authority. However, the Concessionaire shall ensure to include appropriate clause with respect to pre-mature Termination in the proposed execution of the sub-license agreement with the sub-licensee in order to give effect to the aforementioned.

(c) the Concessionaire shall furnish the copy of the signed sub-license agreement to the Authority for its information and record within 5 days of execution of such sub-license agreements. Any amendments to the sub-license agreement shall not be made without prior permission of the Authority.

(d) the sub-license agreements shall not contain any provision which is directly or indirectly violative of the terms and conditions of this Agreement and/ or causes any Material Adverse Effect on the interests of the Authority under this Agreement.

5.2.5 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to terminate this Agreement (the "**Covenant**"). The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the

Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall maintain the same shareholding pattern as existing on the Bid Due Date throughout the Concession Period. The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or

b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him:

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

For the purposes of this Clause 5.3.2:

(i) the expression "**acquirer**", "**control**" and "**person acting in concert**" shall have the meaning ascribed thereto in the Securities and Exchange Board of India

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

(ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

(iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective function. Proof of training, educational certificates, and previous experience shall be provided by the personnel and is subject to verification by the Authority at any time.

5.5 Facilities for differently abled and elderly persons

The Concessionaire shall, comply with existing guidelines, norms, rules, and regulations, guidelines issued from time to time by Directorate for Welfare of the Differently Abled, Government of Tamil Nadu, Social Welfare and Women Empowerment Department, Government of Tamil Nadu or a substitute thereof by State with regard to the O&M of any government facility, or public place in terms of accessibility, inclusivity, allotment of space as well as the provisions set by both the central and state government to ensure the existence, O&M of a barrier free environment for the differently abled and for elderly persons using the Project.

5.6 Branding of Project

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders or its sub-licensees. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders and sub-licensees, save and except as may be necessary in the normal course of business with the prior written consent of the Authority. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of the Authority. External appearance of the Project should not be modified/altered to give an impression to a prudent person that the Project is owned/sponsored by any other person.

5.7 Sole purpose of the Concessionaire

The Concessionaire has been incorporated for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement for the O&M and handing over of the Project. The Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein. The Concessionaire shall not have any shareholding interest or otherwise in any entity, contractors/ suppliers/ consultants or any other form of arrangement with any person, which may allow it to undertake or perform any other business activity.

5.8 Obligations relating to basic amenities and facilities

The Concessionaire shall, during the entire term of the Concession Period, in addition to the infrastructure required to be operated and maintained by it under this Agreement, provide and maintain amenities, in adequate numbers in accordance with Good Industry Practice for non-discriminatory use by the Users of the Project including obligations relating to medical aid.

5.9 Obligations relating to medical aids

The Concessionaire shall set up and maintain a medical aid post equipped to render first aid facilities, assist in medical emergencies etc., at its cost as per Clause 5.1.4 (o) obligation of the Concessionaire.

5.10 Security and Safety at the Site

For security and safety at the Site, the Concessionaire shall:

(i) maintain the boundary wall and other suitable protection around the Site and shall be responsible for the security arrangements for the Site in order to maintain safe and orderly conduct of its business and the security thereof.

(ii) engage and depute trained personnel for maintaining the security and safety of Users inside the Site in accordance with Good Industry Practice.

(iii) abide by and implement any instructions of the Authority for enhancing the security within and around the Site.

ARTICLE 6. OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

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

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

(a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits (if any) required from any Government Instrumentality for O&M of the Project;

(b) The Authority shall ensure availability of all necessary infrastructure facilities and utilities at Site, including water, drainage electricity etc. at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services. However, the Concessionaire shall make payments for the above-mentioned facilities and utilities to the respective departments. In the event of a water shortage, power cuts or other similar events, the Authority shall not be liable to Concessionaire for any Damages, losses direct or indirect, arising from such water shortage/ power cuts and similar other events.

(c) procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order or collection of inter-state taxes;

(d) subject to Clause 3.1.1 and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project;

(e) assist the Concessionaire in procuring police assistance for regulating the Users, removal of trespassers at the Site;

(f) not do or omit to do any act, deed or thing which may, in any manner be violative of any of the provisions of this Agreement;

(g) support, cooperate with and facilitate the Concessionaire in the operation of the Project in accordance with the provisions of this Agreement;

(h) The Authority shall be responsible for replacing the assets belonging to the Authority after its normal lifespan, as specified by the machinery supplier. However, the Authority is not responsible for Damages caused due to poor maintenance, failure to meet standard operating procedures, or negligence by Concessionaire. In such cases, the Concessionaire shall be responsible for replacing the assets. In case of dispute, the decision of the Authority shall be final and binding.

(i) The Authority shall appoint, at its cost, an internal technical audit agency to monitor the O&M of the Project. The role of the internal technical audit agency shall include but not be limited to:

1. check and monitor compliance with the Key Performance Indicators (KPIs);
2. evaluate compliance with various law, rules, policies and procedures;
3. overseeing resources and checking compliance with safety measures as aforesaid in the Agreement.
4. Provide a systematic and independent examination of the Project's compliance with the Agreement and submit the report to the Authority.
5. evaluate damage claims based on disruption, changes in conditions, changes in scope, or consequential damages.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

(a) it is duly organized and validly existing under the laws of jurisdiction of its incorporation, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) it has taken all necessary corporate and other actions under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(c) the Concessionaire has the financial standing, capacity and resources to fund the required Equity and to raise the debt necessary for undertaking O&M of the Project in accordance with this Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(e) it is subject to the laws of India, and hereby, expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;

(f) the information furnished in the Bid and as updated on or before the Effective Date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or constitute a default of the Concessionaire under this

Agreement or which individually or in the aggregate may result in any material impairment on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform any of its obligations under this Agreement;

(i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

(k) it shall ensure that it shall maintain the same shareholding pattern as existing on the Bid Due Date throughout the Concession Period. The Concessionaire further represents that any change in its shareholding structure shall be subject to the prior written approval of the Authority ;

(l) the Concessionaire has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(m) all its rights and interests in the Project shall pass to and vest in the Authority on the Date of Handover / Termination free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets including materials, supplies or equipments forming a part thereof shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement. All assets including materials, supplies or equipments forming a part thereof shall be handed over to the Authority in good working condition subject to normal wear and tear along with warranties/ guarantees and necessary operational licenses after snagging, de-snagging and testing of the Project on the Date of Handover. Any investment or assets, that were created during the Concession Period by the Concessionaire shall be deemed to be the property of the Authority. All plant and machinery, equipment, tools, etc. that have been purchased

or leased for the purpose of O&M by the Concessionaire shall be required to be removed from the Site before vacating the Project and handing over the Project to the Authority. The liability of any asset is not transferable to the Authority. The Concessionaire shall maintain an asset register, which shall be checked and validated on a regular basis by the Authority.

(n) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;

(p) all information provided by the Selected Bidder in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

(q) all undertakings and obligations arising from the Request for Proposals or otherwise shall be binding on the Concessionaire/Selected Bidder as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has complied with Applicable Laws in all material respects;

(f) it has good and valid right to the Site and has power and authority to grant a license in respect thereto to the Concessionaire.

(g) to the best of its knowledge and belief, there are no actions, suits or proceedings pending at law or in equity before any court or before any other judicial, quasi-judicial or other Government Instrumentality, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any Material Adverse Effect upon its ability to perform its obligations under this Agreement;

(h) all information provided by it in response to the Request for Proposals, including amendments thereto or disclosures thereunder, in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;

(i) upon the Concessionaire paying the annual Concession Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, except in accordance with this Agreement;

(j) It has the right, power and authority to manage and operate the Project up to the Appointed Date;

(k) It is duly organized and validly existing under the laws of India;

7.3 Disclosure

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

ARTICLE 8. DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Site, existing structures, local conditions, traffic volumes and all information provided by the Authority or

obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it or any entity claiming under it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire and/or its Associates or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.1.5 Concessionaire acknowledges and hereby accepts the costs, time, resources, risks and hazards associated with the performance of its obligations hereunder and hereby agrees that Authority shall not be liable for the same in any manner whatsoever to Concessionaire, other than as expressly provided in this Agreement.

8.1.6 Deemed Knowledge and Disclaimer

Subject to the provisions of this Agreement, the Concessionaire shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the O&M of the Project and all its other rights and obligations under or pursuant to this Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and

notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Concessionaire shall have no right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the Authority and/or any of their agencies other than in respect of those matters in respect of which express provision is made in this Agreement.

Part III Development and Operations

ARTICLE 9. PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority on the Effective Date of this Agreement, performance security in the form of an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 50 Lakhs Only (Rupees Fifty Lakhs Only) in the form set forth in Schedule-H (the "**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire on the Effective Date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall stand terminated upon issuance of Termination Notice by the Authority.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, or failure to remedy such default in the Cure Period, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with the provisions herein.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect throughout the period of Agreement and shall be released 6 (Six) months after the expiry of Concession Period.

Upon request made by the Concessionaire for the release of the Performance Security along with the particulars which establish satisfaction of the Authority, the Authority shall release the Performance Security forthwith.

ARTICLE 10. RIGHT OF ACCESS

10.1 The Site

The Site of the Project shall comprise of the Climate and Archaeological Interpretation Park at Kilambakkam comprising 16.90 Acres as described in Schedule-A and in respect of which the right of access shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the **"Site"**). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the Climate and Archaeological Interpretation Park at Kilambakkam comprising 16.90 Acres required for the Project as set forth in Schedule-A.

10.2 License and Right of Access

10.2.1 The Authority hereby grants to the Concessionaire license to access the Site for carrying out any surveys, that the Concessionaire may deem necessary, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, and inspections carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Concession Fee, this Agreement and the warranties and representations on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, the rights to operate and maintain the Site from the Appointed Date. The Site will be handed over by the Authority to the Concessionaire in good working condition, free from any snags or defects, and will include warranties, guarantees, and necessary operational authorizations. The Concessionaire shall have the right to operate and maintain the Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant hereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate

the license, upon the Termination of this Agreement for any reason whatsoever.

10.3 Procurement of the Site

10.3.1 Within 60 (Sixty) days from the Effective Date, the Authority representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site to verify all the developments at the Site and prepare a memorandum containing an inventory of the Site including the buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Site to which access has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to provide Concession to the Concessionaire for operating and maintaining the Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

10.3.2 In case of any dispute between the Concessionaire and the Authority in relation to the survey of the Site and the Appendix, the decision of the Authority shall prevail and shall be binding on the Concessionaire.

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

10.3.4 The Authority shall make adequate efforts to the extent possible to hand over, no later than 60 (Sixty) days from the Appointed Date, the right of access to the Concessionaire in respect of Site included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages under and in accordance with the provisions of Clause 4.2 commencing from the Appointed Date until right of access is granted to the

Concessionaire.

10.4 Site to be free from Encumbrances

The Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances to enable the Concessionaire to discharge obligations as per this Agreement.

10.5 Protection of Site from Encumbrances

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

10.6 Access to the Authority

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

10.7 Geological and archaeological finds

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

ARTICLE 11. UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities

11.1.1 The Concessionaire is required to promptly notify the Authority in the event that any notice is issued by any other government agency owning the existing roads, right of access or utilities on or under the Site and shall comply with the instructions provided by the Authority. The Authority shall, upon written request from the Concessionaire, initiate and undertake at its own cost such necessary actions/ proceedings for granting the right of access necessary for such diversion.

11.2 New utilities

11.2.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, the Authority shall pay compensation or Damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.2 shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith

11.3 Reasonable Support of the Authority

The Parties agree that the Authority shall assist the Concessionaire with all reasonable support on best endeavors basis to the Concessionaire required for fulfilment of all obligations specified in Article 11.

ARTICLE 12. OPERATION AND MAINTENANCE

12.1 O&M obligations of the Concessionaire

12.1.1 The Concessionaire shall operate and maintain the Project, in accordance with this Agreement to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to and Good Industry Practice. The obligations of the Concessionaire hereunder shall include the following as well as the obligations which are detailed in Schedule B Annexure 1 and Schedule C of this Agreement:

(a) Conduct regular cleaning of both the internal and external areas as per Annexure 4(B) of Schedule C dealing with daily services in order to adhere to the necessary service standards;

(b) Permitting and ensuring safe, smooth and uninterrupted use of the Project by the Users, including prevention of loss or damage thereto;

(c) Collecting and appropriating the User Fee;

(d) Minimizing disruption in the event of incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;

(e) Carrying out periodic preventive maintenance of the Project;

(f) Preventing, with the assistance of concerned law enforcement agencies, any unauthorized use/entry of the Project, any encroachments to the Project;

(g) Protection of the environment and equipment and materials therein;

(h) Complying with Safety Requirements in accordance with provisions herein;

(i) Exercising appropriate control over Contractors and managing, directing, administering, and supervising their working to ensure compliance with the provisions of this Agreement. The Concessionaire may outsource any of the activities such as security, technical, parking, advertisement with prior approval from the Authority. The Concessionaire shall be solely responsible for the same;

(j) Ensuring coordination with the Authority and other relevant departments to facilitate the seamless operation of the Site;

(k) Acquiring operational/renewal of licenses for all plant and machinery and any other necessary approvals during O&M;

(l) Carry out day-to-day repairs and maintenance;

(m) Conducting structural audits on an annual basis;

(n) Payment of utilities, excluding property tax;

(o) Ensuring that the Concessionaire has AMC/warranty validity in place for all plant and machineries throughout the entire Concession Period. The initial AMC or warranties provided by the supplier, along with the installation, shall be provided by the Authority to the Concessionaire in case of the plant and machinery provided by the Authority. Thereafter, the renewal of AMCs and extension of warranties, if and wherever applicable, shall be carried out by the Concessionaire in collaboration with suppliers or any agency authorized by the machinery supplier at its cost.

(p) Service level requirements under the service level agreement are indicative in nature, any further changes in service level requirements shall be at the cost of the Concessionaire without any financial implication or claim on the Authority and without affecting the annual Concession Fee payable to the Authority. If the Authority makes any modifications to the maintenance programme in order to comply with the service level agreement, the Concessionaire shall ensure that they follow the guidelines outlined in the manufacturers' manual or adhere to Good Industry Practice. These modifications will not result in any financial or legal implications for the Authority.

12.1.2 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads or other structures situated on the Site. Without prejudice to any other rights or remedies arising under the Agreement if the Concessionaire fails in performing the O&M obligations and such a failure is not cured in accordance with Clause 12.5 dealing with damages for breach of maintenance obligations then such a failure shall constitute a breach of or default under this Agreement.

12.2 Maintenance Manual

12.2.1 No later than 30 (thirty) days prior to the Appointed Date, the Concessionaire shall, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project in conformity with the Safety Requirements and Good Industry Practice, and shall provide 2 (two) copies thereof to the Authority for their written approval. The Maintenance Manual shall be revised and updated every year or as required by the Authority.

12.2.2 Without prejudice to the provision of Clause 12.2.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life

cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

12.3 Maintenance Program

12.3.1 On or before Appointed Date and no later than 15 (Fifteen) days prior to the beginning of each Accounting Year during the Concession Period, as the case may be, the Concessionaire shall provide to the Authority its proposed annual program of preventive, urgent and other scheduled maintenance (the "**Maintenance Program**") to comply with the Maintenance Manual and Safety Requirements. Such Maintenance Program shall include:

(a) preventive maintenance schedule;

(b) arrangements and procedures for carrying out urgent repairs;

(c) criteria to be adopted for deciding maintenance needs;

(d) intervals and procedures for carrying out inspection of all elements of the Project;

(e) intervals at which the Concessionaire shall carry out periodic maintenance;

(f) arrangements and procedures for carrying out safety related measures; and

(g) intervals for major maintenance works and the scope thereof.

12.3.2 Within 15 (fifteen) days of receipt of the Maintenance Program, the Authority may review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Manual and Safety Requirements. Notwithstanding the foregoing, the Authority is not liable in any manner to review and convey its comments.

12.3.3 The Concessionaire may modify the Maintenance Program as may be reasonable in the circumstances, and the procedure specified in this clause shall apply *mutatis mutandis* to such modifications.

12.3.4 Any changes suggested by the Authority to the Maintenance Program shall be adhered to as per the manual of manufacturers or Good Industry Practice. These changes shall not

have any financial or legal impact on the Authority.

12.4 Safety and accidents

12.4.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, closures, and accidents, it shall follow the relevant operating procedures including the setting up of temporary lights and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

12.4.2 The Concessionaire's responsibility for rescue operations on the Project shall be limited to an initial response to any particular incident until such time as the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the use of the Project. For this purpose, it shall take appropriate measures to maintain and operate appropriate round-the-clock vigilance.

12.5 Damages for breach of maintenance obligations

In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Schedule C- Annexure 4 – Key Performance Indicators under service level agreement within the standard repair period specified therein (hereinafter referred to as "**Minimum Requirement Period**"), notice shall be given by the Authority at the expiry of the Minimum Requirement Period as per the Schedule C- Annexure 4 granting an additional repair period along with imposition of appropriate penalty mentioned in Schedule C- Annexure 4 of this Agreement for the rectification of the defect (hereinafter referred to as "**Additional-Compliance Period**"). If the defect is not fixed within the specified Additional-Compliance Period, the Authority will send a second notice to the Concessionaire at the expiration of the Additional-Compliance Period, providing a one-time Cure Period to rectify the defect. The duration of the Cure Period shall be as per Minimum Required Period, or any further extension as determined by the Authority. If the defect is not remedied by the end of the aforementioned Cure Period, the same shall be considered as an event of default and the Authority may at its discretion rectify the defect at the cost of the Concessionaire. If the Concessionaire fails to rectify the defect three times in a continuous period of 365 (Three Hundred and Sixty-Five) days, the Authority shall have the right to terminate this Agreement, without prejudice to any other remedies available to the Authority under this Agreement or under any Applicable Law

.Written permission from the Authority shall be required in the event of any extraordinary circumstances. If the Concessionaire fails to comply with the service level agreement and this results in any financial loss to the Authority, the Concessionaire shall be responsible for rectifying the damages at actual costs. The decision of the Authority shall be final and binding on the Concessionaire. The Damages set forth in this clause may be assessed and specified forthwith by the Authority either by itself or through its designated representative; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The decision of the Authority shall be final and binding.

12.6 Authority's right to take remedial measures

12.6.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the, the Maintenance Manual, Maintenance Program or in accordance with Schedule C- Annexure 4 – Key Performance Indicators under service level agreement, as the case may be, by the end of the Cure Period, the same shall considered as an event of default and the Authority may at its discretion rectify the defect at the expense of the Concessionaire. If the Concessionaire fails to rectify defect three times in a continuous period of 365 (Three Hundred and Sixty-Five) days, the Authority shall have the right to terminate this Agreement, without prejudice to any other remedies available to the Authority under this Agreement or under any Applicable Law. An administrative officer from the Authority's office shall be appointed to the Project, and this administrative officer shall oversee all the operations of the Project, in order to ensure the effective and efficient functioning of the Climate Park.

12.6.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 12.5 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this clause and debit the same to O&M Expenses.

12.7 Overriding powers of the Authority

12.7.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the service level agreement and

such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

12.7.2 In the event that the Concessionaire, upon notice under Clause 12.7.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 12.7 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 12.5 along with the Damages specified therein.

12.7.3 In the event of a national emergency, civil commotion or any other act specified under Indirect Political Event (defined herein), the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Force Majeure. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 12.7, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

12.8 Restoration of loss or damage to the Project

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

provisions of this Agreement. In the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any other cause whatsoever, the cost and expense shall be recovered under the insurance procured by the Concessionaire.

12.9 Modifications to the Project

If any structural modifications are required to be made to the existing Project asset/facilities by the Concessionaire, the same shall be carried out at the cost of the Concessionaire with prior written approval of the Authority. If any structural modifications are required to be made to the existing Project asset/facilities by the Authority, the same shall be carried out at the cost of the Authority without affecting the revenue of the Concessionaire and after completion of structural modifications, these Project assets/ facilities shall be handed over to the Concessionaire during the Concession Period (*defined herein*). The Concessionaire shall be responsible for the O&M of such facility without any financial implication or claim on the Authority. The structural changes shall be in conformity with the Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Authority with the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Authority may make within 15 (fifteen) days of receiving the Concessionaire's proposal. The decision of the Authority shall be considered final, and the modification will be implemented by the Concessionaire with minimal or no disruption to the O&M of the Project.

For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Applicable Laws and the provisions of this Agreement.

12.10 Excuse from performance of obligations

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

(a) an event of Force Majeure;

(b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

(c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project.

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority without any delay;

Provided further that the Concessionaire shall keep all unaffected parts of the Project open to Users, provided they can be operated safely.

12.11 Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding violates Applicable Laws including any re-enactment or amendment thereof.

The Concessionaire shall provide at his own expense billboards on the Site for the purpose of advertisements at designated location upon obtaining approval from the Authority, preferably digital. The Concessionaire has the freedom to select the location of the advertisement at the designated location, provided that the Concessionaire has obtained the approval of the Authority. However, 10% (ten percent) of the advertisement slots shall be reserved and dedicated for the Authority and/or GoTN free of cost.

12.12 Barriers and diversions

The Authority shall procure that during the Concession Period, no barriers are erected or placed by any Government Instrumentality on the Project except for reasons of Emergency, national security, law and order or collection of taxes. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Project that may cause a Material Adverse Effect on the flow of traffic to and from the Project.

ARTICLE 13. SAFETY REQUIREMENTS

13.1 Safety Requirements

13.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, administer a surveillance and safety program for providing a safe environment on or about the Project, and shall comply with the safety requirements and guidelines set forth in Schedule-I (the "**Safety Requirements**") and Schedule L of this Agreement.

13.1.2 The Authority either by itself or by a designated entity shall carry out the safety audit of the Project in accordance with the Safety Requirements and shall take all other actions necessary for securing compliance with the Safety Requirements.

13.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

ARTICLE 14. MONITORING OF OPERATION AND MAINTENANCE

14.1 Monthly status reports

During the Concession Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Manual, Maintenance Program and Safety Requirements, and shall promptly provide feedback from Users, including any complaints recorded in the complaint register, a report of any accidents that may have occurred at the Project or a report of any defaults committed by the Concessionaire. Such a report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification. The report shall also include other relevant information or requirement as indicated by the Authority.

14.2 Inspection

The Authority or the Authority's Representative shall perform inspections of the Project regularly at any time, and the Concessionaire is required to offer any necessary support as required by the Authority or the Authority's Representative. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Manual, the Maintenance Program and Safety Requirements, and send a copy thereof to the and the Concessionaire.

14.3 Compliances

For determining that the Project conforms to the service level agreement the Authority shall require the Concessionaire to carry out, or cause to be carried out, any required compliances in accordance with Good Industry Practice and service level agreement. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such compliances in accordance with the instructions of the Authority and furnish the report of such compliances to the Authority.

14.4 Remedial measures

14.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the compliance report referred to in Clause 14.3 in

accordance with Clause 12.5 dealing with damages for breach of maintenance obligations.

14.4.2 The Authority shall require the Concessionaire to carry out or cause to be carried out compliance, at its own cost, to determine that such remedial measures have brought the Project into compliance with the service level agreement. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 12.5

14.5 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 14.5, accidents and unusual occurrences on the Project shall include:

(a) death or injury to any person;
(b) damaged or dislodged fixed equipment;
(c) any damage or obstruction on the Project, which results in slow down of the services, if any being provided by the Concessionaire;
(d) disablement of any material/equipment during operation;
(e) smoke or fire;
(f) flooding of the Project; and
(g) such other relevant information as may be required by the Authority.

Part IV Financial Covenants

ARTICLE 15. FINANCIAL CLOSE

15.1 Financial Close

15.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 60 (Sixty) days from the Effective Date of this Agreement.

15.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have submitted to the Authority the details of working capital arrangement, as per Clause 4.1.3 of this Agreement.

ARTICLE 16. CONCESSION FEE

16.1 Concession Fee

16.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority, by way of concession fee (the "**Concession Fee**") of Rs. _____ (Rupees _____only) per annum payable quarterly, which will be an amount as quoted by the Selected Bidder in its final offer at the Request for Proposal and approved by the Authority.

16.1.2 The Concession Fee payable under the provisions of this Article 16 during the Concession Period shall be due and payable quarterly and the first quarterly payment shall be released on the Effective Date of the Agreement. Thereafter, the Concession Fee payment shall be due and payable by the Concessionaire to the Authority at the beginning of every quarter within 15 (fifteen) days of the beginning of the quarter during the Concession Period. In the event of delay beyond such period, the Concessionaire shall pay interest for the period of delay, calculated at the rate specified under 'Delayed Payments' in this Agreement.

16.1.3 The annual Concession Fee shall be increased by 15% (fifteen percent) every 3 (three) years of the Concession Period over and above the last payable amount.

16.1.4 The Parties clearly agree that any liability arising on account of GST and all other applicable taxes and levies on the annual Concession Fee payable by the Concessionaire to the Authority, shall be borne by the Concessionaire only.

16.2 Mechanism of Payment

16.2.1 The payment of this annual Concession Fee shall be through Escrow Account as per the provisions of this Agreement.

ARTICLE 17. USER FEE

17.1 Collection and Appropriation of Fee

17.1.1 On and from the Appointed Date of the Project till the Date of Handover, the Concessionaire shall have the right to demand, collect, revise and appropriate User Fee from the Users of the Project, as per Schedule E of this Agreement. Provided that for ease of payment and collections, such fee shall be rounded off to the nearest Re.1 (Rupee One).

17.1.2 The Concessionaire acknowledges and agrees that upon payment of fee, any User shall be entitled to use the Project, as applicable, and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

17.1.3 The Concessionaire acknowledges and agrees that any User who is not liable for payment of the fee shall be entitled to use the Project without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

17.1.4 The Concessionaire may offer special discounted tariffs or charges to any individual or class of clients as it may deem necessary for promotion of its business. Provided,

however, that it shall formulate a policy for offering such discounts and submit it to the Authority before implementing that policy.

17.1.5 The Concessionaire shall collect sub-license fee from retail shops which may be sub-licensed to an individual or business entity. The sub-license fee for such retail shops shall be fixed as per the market rate by the Concessionaire.

17.1.6 The Concessionaire shall dedicate a portion of the Climate Park as designated in consultation with the Authority for public events. The sub-license fee for the designated area for public events shall be fixed as per the market standards by the Concessionaire.

17.2 Display of User Fee

17.2.1 The Concessionaire shall, at entry of the Project premises, prominently display the applicable User Fee for information of Users in Tamil and English with respect to the parking and any other User Fee that is charged to the Users in general.

17.2.2 The Concessionaire shall display direction boards at various places on Site for entrance to the Project and ticket counters. Such instructions shall be visible and shall be in English, Tamil and Hindi.

ARTICLE 18. ESCROW ACCOUNT

18.1 Escrow Account

The Concessionaire shall, prior to the commencement of the Trial Run Period, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

The nature and scope of the Escrow Account are fully described in the Agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority and the Escrow Bank, which shall be substantially in the form set forth herein.

18.2 Deposits into Escrow Account

18.2.1 The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

(a) all monies received in relation to the Project from any source, including the working capital from lenders;

(b) all funds received by the promoters of the Concessionaire in relation to the Project , in any manner or form;

(c) all User Fee levied and collected by the Concessionaire and other revenues in respect of the Project such as sub-license fee, any form of advance payments from sub-license fee, deposits or capital receipts, as the case may be;

(d) all proceeds received pursuant to any insurance claims; and

(e) all payments, if any, by the Authority, after deduction of any outstanding payments, if any.

18.2.2 Any form of advance payment must be deposited into an Escrow Account and-promptly transferred to Term deposit account opened in the name of the Authority. Proof of deposit shall be submitted to the Authority immediately by the Concessionaire.

18.2.3 The interest on the shall be transferred to the Escrow Account and shall be utilised solely for meeting maintenance expenses.

18.2.4 The utilisation of advance payments for maintenance or any other expenses is not permitted. Any violation shall amount to breach of this Agreement. The decision of the Authority shall remain final and binding.

18.3 Withdrawals during Concession Period

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

(a) For deposit of any form of advance received into Term Deposit

(b) all taxes and statutory payments due and payable by the Concessionaire for and in respect of the Project;

(c) Utility payments

(d) Annual Concession Fee due and payable to the Authority;

(e) Debt service payments for working capital as per the Financing Agreement;

(f) O&M expenses incurred or accrued including but not limited to vendor payments ;

(g) All payments, penalties and Damages certified by the Authority as due and payable to it by the Concessionaire;

(h) Balance, if any, in accordance with the instructions of the Concessionaire.

18.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 18.3.1, except with the prior written approval of the Authority.

18.3.3 The Escrow Account shall be audited by Statutory Auditors appointed as per Clause 20.2

of this Agreement.

18.4 Withdrawals upon Termination

18.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

(a) all taxes and statutory payments due and payable by the Concessionaire for and in respect of the Project;
(b) Utility payments
(c) Annual Concession Fee due and payable to the Authority;
(d) Debt service payments for working capital as per the Financing Agreement;
(e) O&M expenses incurred or accrued including but not limited to vendor payments;
(f) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire including annual Concession Fee;
(g) retention and payments relating to the liability for defects and deficiencies set forth herein;
(h) any other payments required to be made under this Agreement; and
(i) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 18.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 24.4.

18.4.2 The Concessionaire is prohibited from making any withdrawals for purposes other than covering operational and maintenance expenses during the Termination Notice period or in the event of Termination of the Agreement for a period of 6 (Six) months post effective date of Termination.

18.4.3 Any remaining funds after 6 months from the Termination of this Agreement will be handed over to the Concessionaire, provided that all operational and maintenance

expenses, including but not limited to vendor payments and debts, incurred during the Concession Period have been paid.

18.4.4 The Escrow Account shall be closed only after 180 (One Hundred and Eighty) days from the Termination and/or expiry of this Agreement.

18.4.5 The provisions of this Article 18 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 18.4.1 have been discharged.

ARTICLE 19. INSURANCE

19.1 Insurance during Concession Period

The Concessionaire shall affect and maintain at its own cost, during the Concession Period and the defects liability period, such insurances for the entire development cost of the Project i.e. Rs. 15.20 Crores (Rupees Fifteen Crores and 20 Lakhs) and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure insurance policy in the name of the Authority, the Concessionaire shall be a co-insured and the insurer shall pay the proceeds of insurance into the Escrow Account.

Notwithstanding anything to the contrary contained in this Agreement, but subject to Force Majeure, in the event that the Concessionaire fails to affect and maintain such insurances, for any reason whatsoever, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. However, the Authority is entitled to levy Damages and exercise any other rights in law and/or under this Agreement.

19.2 Insurance Cover

Without prejudice to the provisions contained in Clause 19.1, the Concessionaire shall, during the Concession Period and defect liability period, procure and maintain Insurance Cover including but not limited to the following:

(a) loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
(b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
(c) the Concessionaire's general liability arising out of the Concession;
(d) liability to third parties for goods or property damage;
(e) workmen's compensation insurance; and

(f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items(a) to (e) above.

19.3 Notices to the Authority

No later than 45 (forty-five) days prior to commencement of the Concession Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article. Within 10 (ten) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

19.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 19 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

19.5 Remedy for failure to insure

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

19.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors,

undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

19.7 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

19.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Authority by credit to the Escrow Account and the Concessionaire shall apply such proceeds for any necessary repair, reinstatement, replacement, improvement and delivery of the Project. If the Authority successfully recovers all losses through insurance proceeds, the remaining balance, if any, may be transferred to the Concessionaire through an Escrow Account.

19.9 Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all direct and indirect losses, damages and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies affected in accordance with this Agreement.

ARTICLE 20. ACCOUNTS AND AUDIT

20.1 Audited accounts

20.1.1 The Concessionaire shall maintain separate books of accounts solely for this Project recording all its receipts (including all User Fee and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors for this Project, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

20.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its statement of Escrow Account. Audit of Escrow Account shall be undertaken by Statutory Auditors who shall be appointed as per Clause 20.2 of this Agreement. Further, summary of every line item of expenditure shall be detailed by categorizing and narrating every payment, advances remitted to Term deposit, details of every deposit etc. Any additional information sought by the Authority shall be provided and failure to comply shall lead to event of default.

20.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year a) statement duly audited by its Statutory Auditors giving summarized information of the fee charged and received and the total revenues derived from the Project, b) details of footfall c) details of total

expenditure, major vendor payments, details of major vendor / suppliers, AMC contractors etc. d) and such other information as the Authority may reasonably require.

20.2 Appointment of auditors

20.2.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm having at least 3 (three) chartered accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

20.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed as per the provisions of the Companies Act, 2013 and Clause 20.2.1 above.

20.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint, at its cost, from time to time and at any time, additional auditors to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

20.3 Certification of claims by Statutory Auditors

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

20.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

20.5 Dispute resolution

In the event that there is a discrepancy between the findings of the additional auditors appointed by the Authority and the certification provided by the Statutory Auditors appointed by the Concessionaire, both Statutory Auditor and additional auditors shall

meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure. However, the Concessionaire and Authority shall discharge their respective obligations pending resolution of the Dispute.

Part V Force Majeure and Termination

ARTICLE 21. FORCE MAJEURE

21.1 Force Majeure

As used in this Agreement, the expression **"Force Majeure"** or **"Force Majeure Event"** shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined herein, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

21.2 Non-Political Event

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

(a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth herein;

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

(e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a Site inspection; or

(f) any event or circumstances of nature analogous to any of the foregoing.

21.3 Indirect Political Event

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

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the operation of the Project to be financially unviable or otherwise not feasible;

(c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(d) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(e) failure of the Authority to permit the Concessionaire to continue the Scope of Work, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

(f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(g) any Indirect Political Event that causes a Non-Political Event; or

(h) any event or circumstances of nature analogous to any of the foregoing.

21.4 Political Event

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of herein and its effect, in financial terms, exceeds the sum specified in clause dealing with 'Increase in costs' under Change in Law;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

(c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

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

21.5 Duty to report Force Majeure Event

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

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this article with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event;

(d) Any other information relevant to the Affected Party's claim.

21.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure

Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

21.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 21.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

21.6 Effect of Force Majeure Event on the Concession

21.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent and in Clause 15.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

(a) whereupon the Concessionaire is unable to operate the Project or any part thereof and earn revenue or collect User Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, as certified by its Statutory Auditor along with supporting documents, equal in length to the period during which the Concessionaire was prevented from collection of fee on account thereof.

21.7 Allocation of costs arising out of Force Majeure

21.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs, and neither Party shall be required to pay to the other Party any costs thereof.

21.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure**

Costs") shall be allocated and paid as follows:

(a) upon the occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon the occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event as certified by its Statutory Auditor along with supporting documents, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event as certified by its Statutory Auditor along with supporting documents, shall be reimbursed by the Authority to the Concessionaire provided that no Force Majeure Costs shall be payable by the Authority if the Concession Period is increased as per Clause 21.6.2 so that the Concessionaire recovers the certified Force Majeure Costs.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt due for working capital, O&M Expenses, and all other costs directly attributable to the Force Majeure Event but shall not include loss of revenues or debt repayment obligations, and for determining such costs, information contained in the financial package may be relied upon to the extent that such information is relevant.

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

21.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith;

provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

21.9 Termination Payment for Force Majeure Event

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 180 days, the Affected Party shall, after the expiry of the said period of 180 days, be entitled to terminate the Agreement as per Clause 21.8 and Termination Payment shall be made as per Clause 18.4 of this Agreement.

21.10 Dispute resolution

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

21.11 Excuse from performance of obligations

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

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 22. INTENTIONALLY DELETED

ARTICLE 23. TERMINATION

23.1 Termination for Concessionaire Default

23.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth and in the event of breach of maintenance obligation in accordance with Clause 12.5 dealing with damages for breach of maintenance obligations, or where no Cure Period is specified, then within a Cure Period of 30 (Thirty) days, the Concessionaire shall be in default of this Agreement (the "**Concessionaire Default**"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

(a) the Performance Security has been encashed and appropriated in accordance with provisions herein and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with the provisions herein, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated within a Cure Period of 30 (Thirty) days;

(c) the Concessionaire abandons or manifests intention to abandon the operation of the Project without the prior written consent of the Authority;

(d) the Concessionaire is in breach of the service level agreement or the Safety Requirements, as the case may be;

(e) the Concessionaire has failed to make any payment including annual Concession Fee to the Authority within the period specified in this Agreement;

(f) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

(g) the Concessionaire creates any Encumbrance in breach of this Agreement;

(h) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(i) a Change in Ownership has occurred without the written approval of the Authority;

(j) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

(k) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

(l) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(m) occurrence of any Insolvency Event;

(n) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire has been or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

(iii) each of the Project Agreements remains in full force and effect;

(o) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

(p) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(q) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;

(r) the Concessionaire issues a Termination Notice in violation of this Agreement;

(s) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority;

(t) Misappropriation of advance or income from the Project or non-deposit of any cash inflow into Escrow Account or any other default under the Escrow Agreement;

(u) Failure of Concessionaire to comply with instructions given by the Authority to rectify the defect or if the Concessionaire has committed default three times in a continuous period of 365 days pertaining to maintenance obligations.

23.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall, by a notice, inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice. In the event of a Concessionaire Default, the Authority shall have an unconditional right to encash and appropriate Performance Security, in whole or in part.

23.1.3 Without prejudice to any other rights or remedies as mentioned above, if Concessionaire is in willful default due to misuse of advance money, misappropriation of funds, non-compliance with the accounting standards, willful misrepresentation of facts or any liability or vendor dues then the Authority shall claim Damages as per actual loss suffered

by it beyond the amount available in Escrow Account excluding the advance money, insurance, claim, etc.

23.2 Termination for Authority Default

23.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 30 (Thirty) days or such longer period as has been expressly provided in this Agreement, the Authority shall be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

(a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

(b) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

23.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice. In case of Authority Default, the Performance Security shall be handed over to the Concessionaire subject to deductions specified under Clause 18.4 of this Agreement.

23.3 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) Be deemed to have taken possession and control of the Project forthwith;

(b) take possession and control of all materials, stores, implements, plants and equipment, if any, on or about the Site;

(c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project; and

(d) require the Concessionaire to comply with the Divestment Requirements set forth herein.

23.4 Survival of Rights

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

ARTICLE 24. DIVESTMENT OF RIGHTS AND INTEREST

24.1 Divestment Requirements

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

(a) notify the Authority forthwith the location and particulars of all Project Assets created during the Concession Period;

(b) vacate and handover the Site in good working condition subject to normal wear and tear including warranties, guarantees, and any required operational licenses as well as carryout snagging, de-snagging and testing of the Project.

(c) cure all defects, so that the Project is compliant with the service level agreement;

(d) deliver and handover relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its O&M, including all programmes and manuals as on the Date of Handover. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the O&M of the Project and shall be assigned to the Authority free of any Encumbrance; and

(e) handover and/or deliver all O&M licenses that should be effective and valid /AMC contracts/Applicable Permits to the extent permissible under Applicable Laws along with all guarantees/warranties.

24.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

24.2 Inspection and cure

Not earlier than 30 (Thirty) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Authority shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the service level agreement or damages caused to the Project, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the service level agreement shall be cured by the Concessionaire at its cost and the provisions of Article

25 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 24.

24.3 Cooperation and assistance on handover of Project

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

24.3.2 The Parties shall provide to each other, 2 (Two) months prior to the Date of Handover in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Date of Handover . The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its Concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Date of Handover.

24.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in the Agreement (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

24.5 Divestment costs etc.

24.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, of the Concessionaire in the Project Assets in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents

executed by the Concessionaire in connection with such Divestment shall be borne by the Authority.

24.5.2 In the event of any Dispute relating to matters covered by and under this Article 24, the Dispute Resolution Procedure shall apply.

ARTICLE 25. DEFECTS LIABILITY AFTER TERMINATION AND HANDOVER OF PROJECT ASSETS

25.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 180 (One Hundred and Eighty) days after Termination and/or expiry of the Agreement, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within the period specified in Clause 12.5 dealing with damages for breach of maintenance obligations, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of herein or from the Performance Security provided thereunder. For the avoidance of doubt, the provisions of this Clause shall not apply if Termination occurs prior to Appointed Date. Upon the expiration of the 180 (One Hundred Eighty) days period, the responsibility for any defects and deficiencies in the Project shall pass on to the Authority.

25.2 Retention in Escrow Account

Notwithstanding anything to the contrary contained in this Agreement, all payments shall be retained in the Escrow Account except for payments authorized for O&M by Authority for a period of 180 (One Hundred and Eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 25.1. The Authority is entitled to encash and appropriate Performance security for any defects or any other liability incurred under the Project for a period of 180 (One Hundred and Eighty) days after Termination.

25.3 Handing Over of the Project Assets

Upon the expiry of the Concession by efflux of time and in the normal course, the Concessionaire shall at the end of the Concession Period, hand over encumbrance free

and peaceful possession of the Project Assets in good working conditions except for normal wear and tear including Site at no cost to Authority.

25.4 Joint Inspection and Removal of Deficiency

The handing over process shall be initiated at least 6 (six) months before the actual date of expiry of the Concession Period by a joint inspection by the Authority and the Concessionaire. Two rounds of joint inspection shall be conducted.

i. Round 1: A joint inspection will be conducted between 180 days and 120 days prior to the Date of Handover in order to identify any defects.
ii. Round 2: A joint inspection will be conducted between 30 days and 15 days prior to the Date of Handover in order to identify and address any defects.

Failure to rectify any defects or failure to comply on the part of the Concessionaire, shall entitle the Authority to recover the actual costs incurred, including supervision costs. The decision of the Authority shall be final and binding.

For this purpose, Authority shall without prejudice to any other right/remedy available to it, under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by Authority to the Concessionaire to the extent required/ available and to recover deficit amount, if any, from the Concessionaire.

25.5 First Right of Refusal

25.5.3 Prior to the end of term of the Agreement, the Authority may decide to either operate the Project itself or may re-bid the Project by suitably re-defining or re-structuring the Project parameters at its sole discretion. In the event of re-bidding, if the Concessionaire chooses to participate in the re-bidding process and does not emerge as the successful Bidder quoting the highest bid (hereinafter referred to as the "**Highest Bidder**" (H1 Bidder), the Authority shall provide the Concessionaire time period of 15 (fifteen) days following the date of bid opening to present such offer to decide whether to match the financial quote of Highest Bidder or to better the financial offer of Highest Bidder. Provided however, this right shall be given to the Concessionaire of this Agreement only subject to the condition that the Concessionaire is not in default in respect of its obligations under the Agreement and its performance is considered good and

satisfactory by the Authority. The decision of the Authority in this regard shall be final and binding.

Part VI Other Provisions

ARTICLE 26. ASSIGNMENT AND CHARGES

26.1 Restrictions on assignment and charges

26.1.1 This Agreement shall not be assigned by the Concessionaire to any person.

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

26.2 Assignment by the Authority

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

ARTICLE 27. CHANGE IN LAW

27.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 25 lakhs (Rupees Twenty-Five) lakhs in any Accounting Year, the Concessionaire may notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (Thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (Ninety) days of the aforesaid notice, the Concessionaire may, by notice, require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (Fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall Dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 27.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

27.2 Reduction in Costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 25 lakhs (Rupees Twenty-Five) lakhs in any Accounting Year, the Authority may notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (Thirty) days from the date of

notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (Ninety) days of the aforesaid notice, the Authority may, by notice, require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (Fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall Dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 27.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

The increase or reduction in costs shall be duly certified by Statutory Auditor at the end of accounting year shall be binding. In case of any Dispute, the same shall be addressed as per Dispute Resolution Procedure provided under the Agreement.

27.3 No claim in the event of recovery from Users

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

ARTICLE 28. LIABILITY AND INDEMNITY

28.1 Indemnity by the Concessionaire

28.1.1 The Concessionaire shall fully indemnify, hold harmless and defend the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") from and against any and all loss and/or Damages arising out of or with respect to:

(a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's Contractors, suppliers and representatives;

(c) non-payment of amounts due as a result of services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors;

(d) Outstanding payment / vendor dues / debts due;

(e) Any fund diverted like advance, insurance claims, false payment or any money siphoned out or deviation from Escrow mechanism.

28.1.2 Without limiting the generality of the provisions of this Article 28 the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly

make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

28.2 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 28 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

28.3 Defense of claims

28.3.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. The Indemnified party shall provide all reasonable support to the Indemnifying Party by providing necessary information and shall act jointly for mutual benefit of the Parties and the Project.

28.3.2 The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party.

28.3.3 If the Indemnifying Party has exercised its rights under Clause 28.2 the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

28.3.4 If the Indemnifying Party exercises its rights under Clause 28.2 the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may

participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 28.3.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

28.3.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 28, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

28.4 Limitation of Liability

Notwithstanding anything to the contrary in this Agreement, the liability of Concessionaire towards the Authority for any Damages or compensation of any nature whatsoever under this Agreement, shall not exceed the Total Project Cost or the actual amount of loss suffered, whichever is higher, save and except where amounts exceeding

the Total Project Cost are specifically prescribed in this Agreement as Termination Payment. Similarly, the liability of Authority towards the Concessionaire for any Damages or compensation of any nature whatsoever under this Agreement, shall not exceed the amount available in the Escrow Account. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to: (a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and willful misconduct; (b) breach of any Applicable Laws or any Applicable Permits; (c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire; (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or (e) any loss of or physical damage to property of the Authority or any third part by Concessionaire.

28.5 Survival on Termination

The provisions of this Article 28 shall survive Termination.

ARTICLE 29. RIGHTS AND TITLE OVER THE SITE

29.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to sub-license the retail space in the Project subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement. On Termination of sub-license agreement, the advance payment shall be transferred into an Escrow Account from the Term Deposit account of the Authority. Such advance shall be returned to the sub-licensee subject to deductions at the discretion of the Authority.

29.2 Access rights of the Authority and others

29.2.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of the Authority, lenders, and for the persons duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons, reasonable assistance necessary to carry out their respective duties and functions.

29.3 Property taxes

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

ARTICLE 30. DISPUTE RESOLUTION

30.1 Dispute resolution

30.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 30.2.

30.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

30.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the [Member Secretary] of the Authority and the Chairman/Director of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 30.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 30.3.

30.3 Arbitration

30.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 31.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 30.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration Centre, Chennai (the "**Rules**"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the Chennai, and the language of arbitration proceedings shall be English.

30.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall

select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

30.3.3 The arbitral tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

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

30.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon Disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 30.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 31. DISCLOSURE

31.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Program and the Safety Requirements, files, people and any information related to the Concessionaire (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Site and the Concessionaire's Registered Office. The Concessionaire shall prominently display at a suitable place in its office and at the Site, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

31.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire's Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

31.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 31.1 and 31.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 31.1 and 31.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2019.

ARTICLE 32. REDRESSAL OF PUBLIC GRIEVANCES

32.1 Complaints Register

32.1.1 The Concessionaire shall maintain a public relations office at the Site where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Site and its offices so as to bring it to the attention of all Users.

32.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number. Any complaint / suggestion made by any User shall be disclosed to the Authority in writing. Rectification shall be made immediately or as per Clause 12.5 dealing with damages for breach of maintenance obligations or as instructed by Authority. The compliance / rectification report shall be shared by Concessionaire in writing. Failure on part of Concessionaire shall be construed as material breach of Agreement and the same shall stand terminated without any transfer of any loss or liabilities to Authority.

32.1.3 The Concessionaire shall also maintain a separate register for reporting thefts. However, neither Concessionaire nor its staff shall be liable for any loss or damage sustained by the User.

32.1.4 Without prejudice to the provisions of Clauses 32.1.1 and 32.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

32.2 Redressal of complaints

32.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

32.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the

Authority a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, the Authority may advise the Complainant to seek appropriate remedy under the Consumer Protection Act, 2019, at his own risk and cost.

ARTICLE 33. MISCELLANEOUS

33.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in Chennai shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

33.2 Waiver of immunity

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

33.3 Delayed payments

33.3.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (Thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (Three per cent) above SBI MCLR for 1 year, and recovery thereof shall be without prejudice to the rights of the Parties under this

Agreement including Termination thereof.

33.3.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

33.4 Waiver

33.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

33.5 Liability for review of Documents

Except to the extent expressly provided in this Agreement

(a) no review, comment or approval by the Authority of any Project Agreement, Document submitted by the Concessionaire nor any observation or inspection of the operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and

(b) The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in sub-clause (a) above.

33.6 Exclusion of implied warranties etc.

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

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

33.7 Survival

33.7.1 Termination shall:

(a) Not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

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

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

33.8 Entire Agreement

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

33.9 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 will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

33.10 No partnership

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

33.11 Third parties

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

33.12 Successors and assigns

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

33.13 Notices

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

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

number as the Concessionaire may from time to time designate by notice to the Authority.

{Attention:

Designation:

Address:

Email;}

(b) in the case of the Authority, be given by e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Chennai it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier.

{Name:

Designation:

Address:

Email:}; and

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

33.14 Language

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

33.15 Counterparts

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

ARTICLE 34. DEFINITIONS

34.1 Definitions

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

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

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

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

"**Applicable Permits**" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals, applicable Development Control Regulations/Zoning Regulations and exemptions required to be obtained or maintained under Applicable Laws in connection with the O&M of the Project during the subsistence of this Agreement;

"**Appointed Date**" means the next date after the expiry of the Trial Run Period, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

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

"**Authority Representative**" means such person or persons as may be authorized in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

"**Bank**" means a scheduled bank approved by RBI incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the Authority;

"**Bid**" means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposals in accordance with the provisions thereof and "**Bids**" shall mean the bids submitted by any and all pre-qualified bidders;

"**Bid Date**" means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

"**Bid Documents**" shall collectively mean RFP, corrigendum thereof, and other documents explicitly marked as bidding documents including the draft Concession Agreement, provided by the Authority for this Project.

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

"**Climate Park**" means the Climate Park and Archeological Interpretation Park at Kilambakkam together with the associated amenities and facilities as described in Schedule A.

"**Change in Law**" means the occurrence of any of the following after the Bid Date:

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

"**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that results in the aggregate shareholding of the Concessionaire in the total Equity to fall below 75% of its shareholding pattern as existing on the Bid Due Date, at any time from the Effective Date until the expiry of the Concession Period.

"**Company**" means the company acting as the Concessionaire under this Agreement;

"**Concession Period**" means the period starting on and from Appointed Date and ending on the Date of Handover;

"**Contractor**" means the person or persons, as the case may be, with whom the Concessionaire has entered into any material agreement or contract for matters incidental

to the Project, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; and
(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement;

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

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes set forth in Article 30;

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

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

"**Encumbrances**" means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any

designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

"**Equity**" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire which shall include any convertible instruments or other similar forms of capital , which shall compulsorily convert into equity share capital of the Concessionaire, and any interest-free funds advanced by any shareholder of the Concessionaire;

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

"**Financial Close**" means the date on which the Financing Agreements providing for financial assistance by the lenders for the Project have become effective and the Concessionaire has access to such financial assistance;

"**Financing Agreements**" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

"**GOI**" means the Government of India;

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

"**Government**" means the Government of Tamil Nadu;

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

"Insolvency Event" in respect of a Party means: (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 ("Code"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-

up or the composition or readjustment of debts or, (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect happen under the provisions of the Companies Act, 1965 or the Companies Act, 2013 or the Code in relation to the winding up of the company;

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 19, and includes all insurances required to be taken out by the Concessionaire under Clause 19.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

"**LOA**" or "**Letter of Award**" means the letter of award;

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

"**O&M**" means the O&M of the Project and includes all matters connected with or incidental to such O&M, provision of services and facilities, and collection of User Fee in accordance with the provisions of this Agreement;

"**O&M Expenses**" means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premier for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, and (e) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

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

"**Project"** means the Operation And Maintenance (O&M) of Climate Park at Kilambakkam for Chennai Metropolitan Development Authority (CMDA) on PPP Mode for an initial Period of 5 (Five) years with an additional period of 5 (Five) years, if extended by the Authority at its sole discretion subject to satisfactory performance of the Concessionaire and upon fulfilment of all the terms and conditions of this Agreement, along with associated amenities & facilities in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Project;

"**Project Agreements**" means this Agreement, the Financing Agreements and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, or any agreement for procurement of goods and services;

"**Project Assets**" means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Access or otherwise; (b) tangible assets such as civil works and equipment including foundations, (c) facilities situated on the Site; (d) all intangible assets (e) all rights of the Concessionaire under the Project Agreements; (f) financial assets, such as receivables, security deposits etc.; (g) insurance proceeds; and (h) Applicable Permits and authorizations relating to O&M of the Project;

"**RBI**" means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

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

"**Reference Exchange Rate**" means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted by Reserve Bank of India (RBI);

"**Selected Bidder**" means the Bidder to whom the Project is awarded;

"**State**" means the State of Tamil Nadu and "**State Government**" means the government of Tamil Nadu;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors for the Project under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with the provisions herein;

"**Taxes**" means any Indian taxes including Goods and Service Tax (GST), local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

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

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

"**Termination Payment**" means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

"Total Project Cost (TPC)" shall be the annual O&M cost for operation and maintenance of the Project;

"**User**" means a person who uses or intends to use the Project or any part thereof in accordance with the provisions of this Agreement and Applicable Laws;

"**User Fee**" means all charges, tariffs, fees, etc. levied on and payable by the Users to the Concessionaire for using the Project or a part thereof in accordance with the provisions of this Agreement.

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder;

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

SIGNED AND DELIVERED For and on behalf of **THE AUTHORITY** by: (Signature) (Designation) (Name) (Address) (e-mail)	**SIGNED AND DELIVERED BY CONCESSIONAIRE** authorized pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the [] day of [ ] 20[ ] in the presence of …….. Director, who has signed these Presents in token thereof and,……, Company Secretary/Authorized Officer who has countersigned the same in token thereof[1]: (Signature) (Designation) (Name) (Address) (e-mail)

In the presence of:

1. 2.

[1] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.