**TAMIL NADU STATE HIGHWAYS AUTHORITY**

# VOL. II – REVISED DRAFT CONCESSION AGREEMENT (DCA)

**FOR**

**DEVELOPMENT OF WAYSIDE AMENITIES ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS UNDER PPP MODE FOR TAMIL NADU STATE HIGHWAYS AUTHORITY**

**RFP Ref: 3.TANSHA/WSA/2025**
**Dated: 27.09.2025**

**Tamil Nadu State Highways Authority**
**No. 76, Sardar Patel Road, Guindy, Chennai – 600 025,**
**Tamil Nadu, India**

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# CONCESSION AGREEMENT

**This CONCESSION AGREEMENT ("Agreement")** is entered into on this [■] day of [■] (Month), 20xx at Chennai, Tamil Nadu.

**BETWEEN**

**Tamil Nadu State Highways Authority** having its office at No. 76, Sardar Patel Road, Guindy, Chennai – 600 025 acting through its ********** (hereinafter referred to as the "**Authority**", which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **ONE PART**;

**AND**

[1]{_____, [■] _____[2] incorporated under the provisions of the _____[3], registration number/CIN: [■] and having its registered office at [■] acting through its [■] duly authorised vide Board Resolution/Partner's Resolution dated dd/mm/yy (hereinafter referred to as the "**Concessionaire**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns and substitutes) of the **SECOND PART**;

**OR**

[4]{_____, a special purpose vehicle incorporated under the provisions of Companies Act, 2013/ Limited Liability Partnership Act, 2008, registration number/CIN: [■] and having its registered office at [■] acting through its [■] duly authorised vide Board Resolution/Partner's Resolution dated dd/mm/yy (hereinafter referred to as the "**Concessionaire**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns and substitutes) of the **SECOND PART**;}

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

**WHEREAS**

**A.** Tamil Nadu Road State Highways Authority is a statutory body constituted with the mandate for the construction, development, maintenance and management of the highways and for matters connected therewith or incidental thereto. With a view to enhance the highway network with world-class infrastructure and services, the Authority proposes to develop wayside amenities for the benefit of highway users. The objective is to make long-distance travel safer, more comfortable, and convenient by providing

[1] This will be applicable only where single Bidder is declared the Selected Bidder and elects not to incorporate an SPV for the Project.

[2] Specify the nature of entity.

[3] Specify the relevant Act under which the Selected Bidder is registered, based on the nature of the entity.

[4] If a Consortium is declared the Selected Bidder, it shall mandatorily incorporate a Special Purpose Vehicle (SPV) in the form of a private limited company or an LLP which will execute this Agreement. However, if single Bidder is declared the Selected Bidder, it may either incorporate an SPV in any of the permitted forms or execute the Agreement in its own name.

facilities that reduce fatigue and stress associated with extended journeys. These amenities will be designed to meet global standards and cater to the essential needs of travelers, including rest, recreation, food, fuel, and parking.

**B.** As a part of this endeavour, the Authority has decided to undertake the Development of Wayside Amenities on 7 (seven) different sites adjoining National Highway and State Highway in the state of Tamil Nadu on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis and has decided to carry out the bidding process for the selection of Bidder(s) to whom each of 7 (seven) Sites may be awarded. However, development of each project site will be considered as a separate and distinct project and a separate concession agreement will be executed in respect of each project site.

**C.** As a part of this endeavour, the Authority intends to select a private party to implement the Project. The Authority had accordingly invited Bids under its Request for Proposal No. 3.TANSHA/WSA/2025 dated 27.09.2025 (the "**Request for Proposal" or "RFP")** for selection of bidder for undertaking the Project. Pursuant to the terms of the RFP, the {name of Selected Bidder} ……. was one of the Bidders who had submitted its Bid for the Project.

**D.** Following the evaluation of the Bids submitted by the Bidders, the Authority had accepted the Bid of M/s {name of Selected Bidder} and issued the letter of award bearing no. [____] dated [_____] (the "**Letter of Award" or "LOA**")[5] to the Selected Bidder, for the execution of this Agreement.

**E.** [6]{The Selected Bidder, has since incorporated the Concessionaire and has requested the Authority, by its [letter dated _____]7, to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. By its letter dated ....., the Concessionaire has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purpose hereof.}

**F.** The Concessionaire has furnished Performance Security for an amount of INR [■] **(in words)** by way of unconditional and irrevocable Bank Guarantee no. [■] dated dd/mm/yy issued by [■] Bank as a security to ensure the performance of the obligations during the Concession Period by the Concessionaire under this Agreement.

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[5] As per LOA, in case Consortium is declared the Selected Bidder pursuant to the bidding process, it shall mandatorily incorporate a private limited company or a limited liability partnership (LLP) under the provisions of Companies Act, 2013 or the Limited Liability Partnership Act, 2008, as applicable, for the purpose of executing this Agreement. In such case, the Agreement shall be executed solely through such SPV.

[6] This clause shall apply in case of Consortium, and in the case of single Bidder that elects, at its discretion, to incorporate an SPV.

[7] Relevant details to be inserted.

**NOW, THEREFORE,** in consideration of the promises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Agreement are set out below.

## 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 27) 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 Principles of 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, 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 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 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 (q) 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/ addendum, 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 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.

## 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 the following during the Concession Period:

(i) Plan, design, finance, construction and development of the Project on the Site as set forth in **Schedule-A** in accordance with the requirements specified in **Schedule-B and Schedule C**, Applicable Laws, Applicable Permits, Good Industry Practice and in conformity with the Development Guidelines and Specifications set forth in **Schedule D;**

(ii) Operation and Maintenance of the Project in accordance with the provisions of this Concession Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;

(iii) Undertake such permitted activities as are set forth in **Schedule E (List of Permitted Activities)**, which the Concessionaire may, at its sole discretion, plan, design, finance, construct, develop, operate, and/or maintain during the Concession Period, provided that such activities are consistent with Applicable Laws, Applicable Permits, Good Industry Practice, and the terms of this Agreement; and

(iv) 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 of the obligations of the Concessionaire under this Agreement.

## ARTICLE 3. THE CONCESSION

### 3.1 Grant of Concession

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire, the concession set forth herein including exclusive right, lease and authority to design, finance, procure, construct, operate and maintain the Project and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement **(**the **"Concession")** during the Concession Period 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 in this Agreement and transfer the Project to the Authority on the Transfer Date.

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

(i) Right of Way, access and lease to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement;

(ii) plan, design, develop, finance and implement the Project on DBFOT basis in accordance with the provisions of this Concession Agreement & Schedules thereof;

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

(iv) determine, collect and appropriate User Charges and other Revenues arising from the use and operation of the Project Facilities, including from sub-lease or license of spaces/ areas or out-sourcing of any services thereat. The Concessionaire shall also have the right to enter into appropriate contractual arrangements with third parties for allowing permissible usage of the Project Facilities for commercial activities;

(v) right to permit/ allow and charge for advertisement on the Project Site/ Project Facility as per the Applicable Laws. The Concessionaire shall acquire Applicable Permits from respective authorities. Provided, that such advertising shall not: (i) obstruct the safe and smooth flow of vehicular or pedestrian movement; (ii) impair visibility, safety, or navigation on the adjoining highway or within the Project Site (iii) cause any physical damage to the Project Facilities;

(vi) perform and fulfill all the Concessionaire's obligations under and in accordance with this Agreement including payment of Annual Lease Rent. To fulfil its obligations under this Agreement, the Concessionaire may engage Contractors, sub-contractors, agents, advisors and consultants by entering into appropriate subcontracting arrangements, but this shall not in any way relieve the Concessionaire of its liabilities under this Agreement;

(vii) 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;

(viii) upon Termination of the Concession Period transfer the Project to the Authority in accordance with the terms of this Agreement;

(ix) neither assign, transfer or 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, sub-lease, license or part possession thereof, save and except as expressly permitted by this Agreement;

(x) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, development, management, operation or maintenance of the Project and the Project Site, subject only to the terms of this Agreement and in accordance with Applicable Permits, Applicable Laws and Good Industry Practice;

(xi) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Project; and

(xii) do all things incidental or related thereto or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period.

Provided nothing contained herein, including the act of granting permission to develop the Project at the designated area shall vest or create any proprietary interest in the Project Assets and Project Facility or any part thereof, in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

### 3.2 Actions in Support of the Concessionaire

3.2.1 The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms and conditions of this Agreement and the Schedules hereof.

3.2.2 The Authority undertakes not to terminate or repudiate this Agreement prior to the expiry of the Agreement Period otherwise than in accordance with the provisions of this Agreement.

3.2.3 The Authority may at its discretion, facilitate coordination with the concerned Government Instrumentalities, including GoI, in support of the Concessionaire's applications for Applicable Permits/ clearances/ permissions/ approval that may be needed from time to time for the implementation of the Project; provided that the Concessionaire has made the requisite applications and is in compliance with the necessary conditions at its cost for the grant of such Applicable Permits, clearances etc.

### 3.3 Concession Period

3.3.1 Subject to early termination of this Agreement in accordance with its provisions, the term of Concession under this Agreement is 20 (twenty) years from the Appointed Date (the "**Concession Period**"). The Concession Period is inclusive of Construction Period of 2 (two) years for completion of Minimum Development Requirements reckoned from the Appointed Date.

3.3.2 At the end of the Concession Period or sooner termination of this Agreement for any reasons whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site, Project Facility with all the furniture and fixtures, and other assets permanently attached to it shall revert back to the Authority without any Encumbrances and obligation to Authority to pay or adjust any consideration or other payment to the Concessionaire.

## ARTICLE 4. CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 18, 25 and 26, 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**"). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purpose of this Clause 4.1.1.

4.1.2 The Authority shall be required to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (Ninety) days of this Agreement, and the Conditions Precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:

(i) provided peaceful and vacant possession of the land comprising of the Project Site along with Right of Way, leasehold rights to the Project Site, clear and free from any Encumbrances in accordance with the provisions of Article 10 of this Agreement;

(ii) reviewed the Development Plan submitted by the Concessionaire and given its comments and observations, if any, within 15 (fifteen) days of its submission to the Authority by the Concessionaire simply from the perspective of its compliance with the (i) scope of the Project developments as set out under Schedule-B together with provision of Minimum Development Requirement as specified in Schedule-C in conformity with the Development Guidelines and Specifications set forth in Schedule-D; (ii) coverage/ inclusions with regard to any infrastructure including basic amenities & utilities incidental to the Project; and (iii) provisions of this Agreement;

(iii) approved the updated/ modified the Development Plan submitted by the Concessionaire after incorporating the comments/ suggestions of the Authority, within a period of 10 (Ten) days from the date of submission of revised plan complete in all respects. Provided however, the approval granted herein does not constitute the statutory approval or the Applicable Permits that the Concessionaire would be essentially required to otherwise seek as per Applicable Laws from the concerned Government Instrumentality(s) in relation to the Project;

(iv) appointed a Nodal Officer as the Project Officer for overall monitoring of the Project on behalf of the Authority.

Provided that upon request in writing by the Authority, the Concessionaire may, at its sole discretion and in writing, waive any of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 90 (Ninety) days from the Effective Date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

(i) prepared and submitted to the Authority, its detailed Development Plan in accordance with the requirements set out under Schedule-B together with provision of appropriate infrastructure including basic amenities & utilities incidental to the Project in conformity with the Development Guidelines and Specifications set forth in Schedule-D and Applicable Laws containing construction methodology, quality assurance procedures, environment management plan and safety management plan. The Development Plan shall be submitted to Authority for its review and approval within 30 (thirty) days of the Effective Date. In the event the Concessionaire proposes to undertake development of facilities in addition to the Minimum Development Requirements as part of the Project Facility (to the extent permitted by Schedule E), the design, layout, and relevant details of such additional facilities shall also be incorporated in the Development Plan;

(ii) addressed the comments, observations and incorporated the revisions suggested by the Authority, within a period of 15 (fifteen) days from the date of receipt of such suggestions from the Authority and obtained approval from the Authority on the Development Plan for the Project;

(iii) procured all the Applicable Permits 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 for commencing Construction Works after the Appointed Date;

(iv) paid in advance, Annual Lease Rent for the first year to the Authority;

Provided that upon request in writing by the Concessionaire, the Authority may, in its sole discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.

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 a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

**4.2 Damages for delay by the Authority**

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire, 0.3% (zero point three per cent) of the Performance Security as Damages for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 36% (thirty six per cent) of Performance Security. Provided that the Concessionaire hereby agrees and acknowledges that in no event whatsoever the Authority will be required to pay any Damages to the Concessionaire in the event of delay by any Government Instrumentality other than the Authority, in issuing any Applicable Permits.

### 4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, 0.3% (zero point three per cent) of the Performance Security as Damages for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 36% (thirty six per cent) of Performance Security and upon reaching such limit, the Authority may, in its sole discretion, and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

### 4.4 Commencement of Concession Period

The date on which all the Conditions Precedent specified in Clause 4.1, are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of the commencement of the Concession Period.

### 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 in the event the Appointed Date does not occur, for any reason whatsoever, on or before the 210 (two hundred and ten) days from the date of this Agreement or the extended period (if any) provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

## ARTICLE 5. OBLIGATIONS OF THE CONCESSIONAIRE

### 5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project Facility, and observe, fulfil and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire at its own cost and expenses, shall obtain from the relevant Government Instrumentalities, the Applicable Permits (including renewals as required) and keep in force and comply with the conditions of all Applicable Permits for the development, operation and maintenance of the Project and upon Termination, the transfer of the Project to the Authority.

5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, 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, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

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

(ii) Perform and fulfil its obligations under the Financing Agreements, ensuring that such agreements are consistent with the terms and conditions of this Agreement. The Concessionaire shall submit copies of all executed Financing Agreements to the Authority for verification. Any deviation from the provisions of this Agreement shall be the sole liability of the Concessionaire..

(iii) comply and observe at all times with all Applicable Permits and Applicable Laws including any instructions/ guidelines/ policies/ development norms of the Authority in the performance of its obligations under this Agreement including those being performed by any of its Contractors;

(iv) carry out design, construction and development of the Project Facility in compliance with the approved Development Plan, approved Drawings, Applicable Laws, Applicable Permits and the provisions of this Agreement;

(v) arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for the construction, development, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Concessionaire shall obtain all Applicable Permits and comply with the conditions thereunder for the procurement and use of such infrastructure facilities and utilities;

(vi) carry out its obligations and duties with regard to the operation and maintenance of the Project in accordance with the provision of this Agreement and Schedules

hereof. The obligations shall include all works arising from any obligation of the Concessionaire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project. The Concessionaire shall provide all superintendence, labour, plant, materials, equipment, and all such other things for such operation and maintenance (including remedying of defects);

(vii) take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods of construction, operation and maintenance of the Project, irrespective of any approval or consent by the Authority;

(viii) to pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies,, including GST, stamp duty, registration charges, and any other legal documentation charges, if any, in relation to the Project, as leviable. The applicable amount of Property Tax shall be paid by the Concessionaire to the Authority as a reimbursement in terms of Clause 5.4;

(ix) to duly supervise, monitor and control the activities of Contractors, sub-contractors, their employees and agents under their respective Project Agreements as may be necessary;

(x) ensure and procure that its Contractor(s)/sub-lessee(s)/ licensee comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

(xi) to take all reasonable precautions for the prevention of accidents on or about the Project Facility and provide all reasonable assistance and emergency medical aid to accident victims;

(xii) not to permit any Contractor, sub-contractors, sub-lessees, licensees or any third person, claiming through or under the Concessionaire, to create or place any Encumbrances or security interest over all or any part of Project Site or the Project Assets or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement;

(xiii) to ensure that such Project Site remains free from all encumbrances, encroachments and trespass during the entire Concession Period;

(xiv) shall be solely and primarily responsible to the Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and also on behalf of the sub-lessee/licensees, their employees and agents and any person acting under or for and on behalf of any of them as if they were the acts or defaults of the Concessionaire;

(xv) make payment of the Annual Lease Rent to the Authority in accordance with Article 15;

(xvi) carry out necessary shifting and cutting of trees and make payment for shifting of utility poles necessary for construction of the approved design;

(xvii) transfer the Project Assets to the Authority upon Termination in accordance with the provisions of this Agreement;

(xviii) The Concessionaire shall develop, implement and administer a safety programme for the Project, staff, Users and other persons, which shall include correction of

safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement; and

(xix) The Concessionaire shall keep a copy of every First Information Report (FIR) recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarized and submitted to the Authority at the conclusion of every quarter.

5.1.5 The Concessionaire is free to market, advertise, promote the Project/ Project Facilities in any manner as determined at its sole discretion, such as print media or social media or online platforms or apps, etc.

5.1.6 The Concessionaire shall, at all times, ensure that all aspects of the Project and processes employed in the construction and maintenance thereof shall conform with the laws pertaining to environment, health and safety aspects, policies and guidelines related thereto.

5.1.7 The Concessionaire acknowledges and recognises that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly.

## 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 any other agreement shall excuse the Concessionaire from its obligations or liability hereunder. It shall be the responsibility of the Concessionaire to ensure the Project Agreements are in compliance with the provisions of this Agreement and in the event of any provision in the Project Agreements being in deviations of the terms of the Concession Agreement, the Concessionaire shall be bound to get such provision corrected/ modified at its cost.

## 5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire acknowledges and agrees that the Selected Bidder (whether a single entity[8] or the Members of a Consortium) shall hold 100% (one hundred percent) of the subscribed and paid-up equity share capital / capital contribution of the Concessionaire (whether incorporated as a Company or constituted as a Limited Liability Partnership) until the 3rd (third) anniversary of the COD, and shall thereafter maintain at least 51% (fifty-one percent) of such equity share capital / capital contribution for remaining term of the Concession Period.

5.3.2 In the event that the Selected Bidder is not a Consortium and executes this Agreement in its own name as the Concessionaire, the subscribed and paid-up equity share capital / capital contribution of the Selected Bidder/Concessionaire as existing on the bid submission date shall remain unaltered until the 3rd (third) anniversary of the COD. Thereafter, for remaining term of the Concession Period, equity share capital / capital

[8] Only if single Bidder opts to incorporate SPV for Project.

contribution of the Selected Bidder/Concessionaire shall be maintained such that the shareholders / partners holding equity share capital / capital contribution as on the bid submission date shall collectively continue to hold at least fifty-one percent (51%) of such equity share capital / capital contribution.

5.3.3 Where the Selected Bidder is a Consortium, then, in addition to the requirements under Clause 5.3.1:

5.3.3.1 The Lead Member thereof shall be required, to hold equity share capital/ capital contribution representing not less than 51% (fifty-one per cent) of the subscribed and paid-up equity/capital contribution of the SPV/ Concessionaire until the 3rd (third) anniversary of the COD and shall thereafter hold not less than 26% (twenty six percent), for the entire Concession Period;

5.3.3.2 Each other consortium member whose technical capacity or financial capacity was evaluated for the purposes of qualification under the RFP, shall, until the 3rd (third) anniversary of the COD, hold equity share capital/ capital contribution representing not less than 26% (twenty-six per cent) of the subscribed and paid up equity/ capital contribution of the SPV/ Concessionaire.

5.3.4 Any dilution, transfer or modification in the shareholding/capital pattern in the breach of equity share capital / capital contribution lock-in requirements stipulated in this Clause would be treated as Concessionaire Default.

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

(a) In case of the Concessionaire being a Company:

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

ii. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him;

(b) In case of the Concessionaire being partnership firm or LLP:

i. any change in the ownership, directly or indirectly, resulting in the admission of a new partner holding, individually or together with others acting in concert, an aggregate interest of 25% (twenty-five per cent) or more in the profits or capital of the Concessionaire; or

ii. acquisition of any control, directly or indirectly, over the management or decision-making powers of the Partnership Firm/LLP 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 share capital/ capital or profit, as applicable or control of the Board of Directors/ management or decision-making powers, as applicable of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2(a), in case of Concessionaire being Company:

(a) the expression "**acquirer**", "**control**" and "**person acting in concert**" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of share Capital, or the control of the Board of Directors, as the case may be, of the Concessionaire;

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

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the equity share capital 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.

For the purposes of this Clause 5.3.2(b), in case of Concessionaire being partnership firm or LLP:

(a) , the terms 'control', 'ownership' and 'person acting in concert' shall be interpreted in accordance with their plain commercial meaning, or as applicable under relevant commercial laws.

**5.4 Obligations relating to taxes and other charges**

5.4.1 The Concessionaire shall at all times during the subsistence of this Agreement, pay all present and future outgoings, cesses, Taxes including local taxes and other charges whatsoever and all increases thereto, in respect of the Project Site on the due dates thereof, whether such charges are imposed on the Project Site or on the buildings/ structures constructed thereon, from time to time. It is hereby clarified that the Authority shall not be liable.

5.4.2 Property Tax in respect of the Project Site at the applicable rate shall be paid by the Authority to the municipal authority concerned. The Concessionaire shall reimburse to the Authority the amount of Property Tax so paid within a period of 30(thirty) days of receiving written intimation from the Authority. Any delay in reimbursement beyond the said period shall entail payment of interest at the rate specified in Clause 26.3, computed for the period of delay.

5.4.3 If the Concessionaire fails to reimburse the Property Tax amount and interest thereon within 90 (ninety) days from the due date as specified above, the Authority shall have the right to recover the same through forfeiture of Performance Security or any other amounts due or becoming due to the Concessionaire under this Agreement, without prejudice to any other remedies available to the Authority.

5.4.4 The Concessionaire shall also make timely payments for all utility services in respect of the Project Site, including water, sewerage, solid waste, electricity, telecommunications, internet, cable charges, etc. Notwithstanding the foregoing, the electricity and water connections shall be obtained in the name of the Authority, and the Concessionaire shall pay all charges relating thereto directly to the relevant service providers.

**5.5 Branding of Project**

The Concessionaire may, in its discretion, name or brand any part of the Project Site and/or the Project Facilities thereof in accordance with the Applicable Laws and Applicable Permits. 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 (<Insert Name>) in its website, marketing journals, other digital marketing channels, etc.

**5.6 Security and Safety at the Project Site and Project Facility**

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

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

(b) install and operate a closed-circuit television system to monitor such parts of the Project as may be necessary and expedient for safe operations of the Project Facilities in accordance with Good Industry Practice.

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

(d) abide by and implement any instructions of the Authority or its authorized Personnel for enhancing the security within and around the Project Site. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or its Authorized Representative.

**5.7 Obligations relating to basic amenities and utilities**

The Concessionaire shall develop, operate and maintain appropriate and adequate basic amenities, utilities and facilities drinking water, toilets for men, women and persons with disabilities, Parking for 2W, 4W and for Trucks wherever applicable, seating areas, first aid facilities and other User conveniences free of cost and ensure hygienic maintenance of same during the entire term of the Concession Period; provisioning of adequate lighting, ventilation, etc. at all times, in accordance with the Applicable Laws, Applicable Permits, approved Project Development Plan and Good Industry Practice. The Concessionaire shall be further responsible for any up-dation required from time to time to meet the growing number of Users visiting the Project Site subject to obtaining of Applicable Permits.

**5.8 Obligations relating to Minimum Development Requirements**

5.8.1 The Concessionaire shall develop, construct, operate, and maintain the Minimum Development Requirements at the Project Site, which shall include essential user amenities and facilities appropriate to a Project, as detailed in **Schedule-C** to this Agreement (the "**Minimum Development Requirements**").

5.8.2 All Minimum Development Requirements shall be developed in accordance with Applicable Laws, including the Tamil Nadu Combined Development and Building Rules, 2019 and in line with the approved Development Plan. The layout and design of the Minimum Development Requirements shall also comply with the standards prescribed in the Harmonised Guidelines and Standards for Universal Accessibility in India, 2021, to ensure barrier-free access to all Users.

5.8.3 The Minimum Development Requirements shall be exclusive of the infrastructure developed for any other commercial facilities proposed by the Concessionaire, and shall be provided irrespective of the development of such commercial facilities. For avoidance of doubt, it is clarified that the subject to prior approval of the Authority, the Concessionaire may construct additional commercial facilities at any time during Concession Period, provided that such development does not in any manner hinder or disrupt the operation and maintenance of the existing Project Facilities and is confined to the activities specified in **Schedule E**.

5.8.4 The Concessionaire further acknowledges and agrees that any such additional commercial facilities shall be developed, operated, and maintained in accordance with the provisions of this Agreement, which shall, for this purpose, apply mutatis mutandis to such facilities.

5.8.5 All essential public amenities such as toilets (for men, women, and persons with disabilities), drinking water facilities, first aid, seating areas, and signage shall be made

available to Users free of cost and maintained in a clean and hygienic condition at all times during the Concession Period.

5.8.6 The Concessionaire shall have the flexibility to adopt any construction methods for development of the Project Facilities, subject to compliance with Applicable Laws, the Applicable Permits, and the provisions of this Agreement. Any development proposed beyond the Minimum Development Requirements shall also be subject to applicable building regulations and shall not compromise the quality, safety, or accessibility of the core amenities and services.

**5.9 Sub-leasing or licensing of spaces at the Project Facility**

5.9.1 The Concessionaire shall have the right to sub-lease or license only the built-up areas such as food courts, retail outlets, EV charging stations, and other commercial facilities developed as part of the Project Facility for allowing permissible usage of the Project Facility for commercial activities, by entering into appropriate sub-lease/license deeds with the sub-lessee/licensees or any third parties. For the avoidance of doubt, Project Facility shall not include the underlying land, and no rights in the land forming part of the Project Site shall be transferred, sub-leased, or otherwise alienated by the Concessionaire, except in respect of land allocated and approved for the fuel station, where sub-leasing of land may be permitted in accordance with Applicable Laws and Applicable Permits.

5.9.2 The Concessionaire shall ensure that such sub-lease/license deed shall, incorporate clauses, that (i) the sub-lease/license deed(s) shall be co-terminus with this Agreement and shall stand terminated immediately upon Termination of this Agreement (either by efflux of time or pre- mature, as the case may be). In no event the term of such sub-lease(s)/license(s) shall extend beyond the term of this Agreement and the Project Facility shall be handed back to the Authority free of such sub-lease/licensees; (ii) the sub-lessees or licensees shall not create any Encumbrance on the taken up commercial space; (iii) the sub-lease/license deed(s) shall become effective with the right to use allowed to sub-lessees/licensees, from the respective date(s) of issuance of the occupation certificate/ completion certificate from the concerned Government Instrumentality subject to the Concessionaire also having received or Completion Certificate from the Nodal Officer under this Agreement; and (iv) the terms of such sub-lease(s)/license(s) shall not be contrary to or in derogation of the terms of this Agreement.

5.9.3 All deeds or contractual arrangements with sub-lessee/licensees or third parties shall specifically stipulate the aforesaid covenant of termination of the sub-lessee/licensees or third parties rights and further that the sub-lessee/licensees or third parties shall not have any claim whatsoever against the Authority for any such termination. The Concessionaire shall prepare a draft standard format of the sub-lease/license deed or contract which the Concessionaire intends to sign with the sub-lessee/licensees or third parties. The Concessionaire shall furnish the draft of such deed or contractual arrangement to the Authority for its review. The Authority shall be entitled to incorporate such clauses as Authority may consider appropriate to protect Authority's interest and revert to the Concessionaire with the same within a period of 15(fifteen) days of submission of the draft of the deed or contract. The Concessionaire shall adopt the format so approved with the covenants stipulated by the Authority and the

Concessionaire shall not incorporate or change in them that would have adverse effect on the covenants incorporated by the Authority. In case of any deviation from the above-mentioned standard format under any particular circumstances, which supersedes or adversely effects Authority's terms and covenants, the prior written consent of the Authority shall be taken before entering into any such agreement with sub- lessee/licensees or third parties. The Concessionaire shall submit the copy of the executed and signed sub-lease/license deed or contract to the Authority for its records within 30 (thirty) days of its execution.

**5.10 Environmental Compliances**

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

## ARTICLE 6. OBLIGATIONS OF THE AUTHORITY

### 6.1 General Obligations

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

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

(i) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide Letter of Recommendation to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for construction, operation and maintenance of the Project, subject to the Concessionaire submitting its applications complete in all respect in a timely manner;

(ii) transfer the Project Site on a lease basis free from Encumbrance to the Concessionaire and ensure that that no barriers are erected or placed on or about the Project by any State 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;

(iii) assist the Concessionaire in procuring police assistance for regulation of movement of public/ traffic, removal of trespassers and security on or at the Project whenever requested by the Concessionaire in writing;

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

(v) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.

## ARTICLE 7. REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

(i) 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;

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

(iii) {the Selected Bidder/ its Associates}[9] has the financial standing and resources to fund the required equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

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

(v) 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;

(vi) 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;

(vii) 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 / Partnership Deed/LLP Deed (as applicable) 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;

(viii) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(ix) 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

[9] Retain as applicable

under this Agreement;

(x) 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;

(xi) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3;

(xii) the Selected Bidder is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(xiii) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date/ 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 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.

(xiv) 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;

(xv) 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;

**7.2 Representations and warranties of the Authority**

The Authority represents and warrants to the Concessionaire that:

(i) 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 under Applicable laws to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

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

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

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

(v) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any

Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;

(vi) 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.

**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, Project Site, Maintenance Requirements, existing structures, local conditions 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/ their Associates or any person claiming through or under any of them.

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

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

8.1.5 Except as specifically set out in this Agreement, all risk relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or consequences thereof.

## ARTICLE 9. PERFORMANCE SECURITY

### 9.1 Performance Security

9.1.1 Prior to the signing of this Agreement, the Concessionaire has provided an unconditional and irrevocable guarantee from a Bank for a sum equivalent to Rs. _____ (Rupees _____ only[10] ) in the form set forth in Schedule-F (the "Performance Security") for the performance of its obligations during the Concession Period under this Agreement.

9.1.2 The Concessionaire shall keep and maintain the Performance Security Bank Guarantee valid and in full force and effect at all times during the term of this Agreement and for a period of 6 (six) months post Concession Period (through periodic renewals, if any required, at least one month prior to the expiry of the subsisting Performance Security Bank Guarantee). In the event the Concessionaire fails to provide the renewed/ extended Performance Security at least one month prior to the expiry of the subsisting bank guarantee, so as to maintain the Performance Security (of the applicable amount) valid throughout the term of the Agreement, the Authority shall have the right to forfeit and appropriate the subsisting Performance Security Bank Guarantee. Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute an event of default by the Concessionaire in terms hereof.

### 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. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 20.

### 9.3 Release of Performance Security

The Performance Security shall remain in force and effect throughout the period of (six)

[10] The Performance Security amount required for each Project Site is specified in Annexure I of Schedule F. Accordingly, the Concessionaire shall deposit the applicable Performance Security corresponding to the Project Site allotted by the Authority.

months beyond the Concession Agreement, provided, however, that the Performance Security shall not be released and shall be kept alive by the Concessionaire if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the necessary particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

## ARTICLE 10. RIGHT OF ACCESS

### 10.1 Project Site for Wayside Amenities

The site of the Project shall comprise the land as described in Schedule-A; and in respect of which the Authority shall provide leasehold rights along with the constructive possession of the site for the Project and all way leaves, easements, unrestricted access and other rights of way howsoever described, necessary for construction, operation and maintenance of the Wayside Amenities to the Concessionaire upon payment of Annual Lease Rent under and in accordance with this Agreement and under the terms of the Lease Deed to be executed in the form and manner as provided in Schedule A (the **"Site"** or **"Project Site"**). The Lease Deed and the leasehold rights granted hereunder shall remain valid for a period of twenty (20) years, and shall be co-terminus with the Concession Agreement. In the event of earlier termination of the Concession Agreement, for any reason whatsoever, the Lease Deed and the leasehold rights shall stand terminated and the Concessionaire shall, at its cost and responsibility, undertake all actions required under Applicable Law for giving effect to such termination, including execution and registration of any deed of surrender or cancellation and completion of all related formalities. . For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land required for the Project as set forth in Schedule-A.

### 10.2 Lease and Right of Access

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

10.2.2 In consideration of the Annual Lease Rent, this Agreement, Lease Deed 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, commencing from the Appointed Date, leasehold rights in respect of all Site (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "**Leased Premises**"), on an "as is where is" basis, free of any Encumbrances, to construct, operate and maintain the said Leased Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Leased Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever. The Concessionaire understands and accepts that the grant of lease in terms hereof does not entitle it to transfer, mortgage or create Encumbrances on the Leased Premises in any manner except as permitted under this Agreement.

10.2.3 The lease, access and right of way granted under this Agreement to the Concessionaire shall always be subject to existing rights of way.

10.2.4 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the rights granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.5 It is expressly agreed that trees on the Project Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

**10.3 Procurement of the Project Site**

10.3.1 Pursuant to the Effective Date, the Authority and the Concessionaire shall, on a mutually agreed date and time, inspect the Project Sites and prepare a memorandum containing an inventory of the Project Site including the vacant land, buildings, structures and any other immovable property on or attached to the Project Site free from Encumbrances ("**Joint Memorandum**"). 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 constitute a valid leasehold rights to the Concessionaire for free and unrestricted use and development of the Project Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

10.3.2 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the 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.

**10.4 Project Site to be free from Encumbrances**

Subject to the provisions of Clause 10.3, the Project Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations.

**10.5 Protection of Project Site from encroachments**

During the Concession Period, the Concessionaire shall protect the Project Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Project 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. Access to any temporary Right of Way shall be arranged by the Concessionaire at its risk and cost. The Concessionaire shall restrict its use strictly to the Project Site and shall not encroach upon any adjacent land parcels adjoining the Project Site that belongs to the Authority.

### 10.6 Right of Access to the Authority and Its Representative

The lease, right of way and right to the Project Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, its duly authorised representative(s), Nodal Officer and any governmental authority and their employees and agents (authorized) for inspection, viewing and exercise of their right and performance of their obligation 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 rights granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the 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 concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that (a) any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority; and (b) if required, the Authority shall, at its sole discretion, grant reasonable extension of the Project Completion Schedule for any delay caused as a direct consequence of any discovery, and any such delay shall not be attributable to the Concessionaire.

## ARTICLE 11. CONSTRUCTION OF THE PROJECT

### 11.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall in compliance with Project Development Plan prepare detailed drawings and:

(a) submit to the Authority its design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in **Schedule-G;**

(b) submit the Good for Construction Drawings and all Drawings as per Clause 11.2;

(a) appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and

(b) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws, Applicable Permits, applicable specifications and standards including obtaining approval of the competent authority in respect of the detailed design of the Project; and all other approvals from the Authority and/or other concerned Government Instrumentality(s) as required for commencement of construction and completion of construction.

### 11.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project, the following shall apply:

(a) The Concessionaire shall prepare the required Drawings in accordance with applicable norms including FSI, height restrictions under the Tamil Nadu Combined Development and Building Rules (TNCDBR), and National Building Code (NBC), and submit 2 (two) sets to the Authority for review, in line with the Project Completion Schedule.

(b) The Authority shall review and return its observations, if any, within 15 (fifteen) days. The Concessionaire shall make necessary revisions and resubmit the Drawings within 7 (seven) days. One set of reviewed Drawings shall be shared with the Nodal Officer for his comments.

(c) No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner.

(d) Within 90 (ninety) days of Appointed Date, the Concessionaire shall furnish to the Authority complete set of Good for Construction (GFC) Drawings including MEP.

(e) Upon completion of construction, the Concessionaire shall also submit 2 sets of As-Built drawings including MEP and structural drawings to the Authority.

**11.3 Construction of the Project**

11.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Minimum Development Requirements in a manner as specified in Schedule-B and Schedule-C and in conformation to Development Guidelines and Specifications set forth in Schedule D. The construction of the Minimum Development Requirements shall be completed within 2 (two) years from the Appointed Date (the "**Scheduled Completion Date**") and the Concessionaire agrees and undertakes that construction shall be completed before the Scheduled Completion Date.

11.3.2 In the event of occurrence of a Force Majeure Event or any reason attributable to the Authority, the Concessionaire fails to achieve completion of the construction of Minimum Development Requirements by the Scheduled Completion Date, the Authority, upon receipt of written request from the Concessionaire for extension in time and giving reason therefor, may grant appropriate extension of time at such terms considered apt under the circumstances of the case. In the event of a delay arising from circumstances other than those specified above, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such construction of Minimum Development Requirements is achieved up to a maximum of 18% (eighteen per cent) of the amount of Performance Security.

**11.4 Maintenance during Construction Period**

During the Construction Period, the Concessionaire shall not cause any damage to the adjoining land/ buildings/ connecting road or street.

**11.5 Clearance and disposal of Debris**

During the Construction Period, the construction and demolition waste shall be disposed-off properly and in a environmentally compliant manner. No waste shall be dumped or stored within the Project Site premises or in any surrounding areas.

**11.6 Temporary labour shelter and Material storage**

All construction materials and the staff/ Labour quarters are to be set up within the Project Site premises only. No such facilities shall be set up on the land parcel owned by the Authority- adjacent to the Site.

**11.7 Certificates to be submitted regarding construction of the facility**

The Concessionaire during construction of the Project Facility, submit the following certificates and documents to the Authority for compliance:

(a) Certificate to show that no child labour is employed in the Project Facility;

(b) Proof of payment of Labour cess;

(c) Adherence to HSE policies and existing labour laws;

(d) Training and safe work practices;

(e) Construction of temporary toilets and ensuring hygiene to the workers/ employees;

(f) Comprehensive workers insurance; and

(g) Adherence to construction standards / NBC and other relevant building codes.

## ARTICLE 12. COMPLETION CERTIFICATE

### 12.1 Completion Certificate

Upon completion of Construction Works and after satisfying himself that:

a) all statutory approvals, clearances, and certificates required under Applicable Laws of GoTN/Central Government have been obtained;
b) the Concessionaire has adhered to all terms of this Agreement;
c) as-built drawings have been submitted;
d) the site is free from debris and no encroachment exists beyond the Project Asset Area; and
e) requisite structural safety certificates and related documents have been provided; the Nodal Officer shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in **Schedule-H** (the "**Completion Certificate**").

### 12.2 Withholding of Completion Certificate

12.2.1 If the Nodal Officer determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation; it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Nodal Officer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Nodal Officer to withhold issuance of the Completion Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 12. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

12.2.2 The Nodal Officer shall, within 7 (seven) days of being satisfied that the requirements under Clause 12.1 have been met, either issue the Completion Certificate or provide written reasons specifying the violations.

### 12.3 Completion Certificate not a cessation of liability

The issuance of Completion Certificate shall not in any way alter the liability of the Concessionaire, constitute a waiver of unfulfilled obligations, bar remedy or rectification of defects or constitute an acceptance of the Construction Works.

### 12.4 Regulatory clearances prior to commencing operation of Project Facility

Notwithstanding the issuance of the Completion Certificate under this Article 12, the Concessionaire shall be required to obtain the requisite completion certification/ occupation certificate/ consent to operate/ readiness certificate, as the case may be, from the concerned Government Instrumentality(s) as per Applicable Laws of GoTN/ Central Govt. prior to commencing commercial operation of the Project Facility.

## ARTICLE 13. ENTRY INTO COMMERCIAL SERVICE

### 13.1 Commercial Operation Date (COD)

13.1.1 The Minimum Development Requirements shall be deemed to be complete when the Completion Certificate for Minimum Development Requirements is issued and accordingly the commercial operation date of the Minimum Development Requirements shall be the date on which such Completion Certificate is issued (the **"Commercial Operations Date" or "COD**).

13.1.2 If the COD is not achieved by the Concessionaire by the Scheduled Completion Date or within any extended period granted under Clause 11.3, unless such delay is on account of reasons attributable to the Authority or the Force Majeure, the Authority shall, without prejudice to its other rights and remedies, be entitled to terminate this Agreement for Concessionaire default and forfeit the Performance Security of the Concessionaire as Damages.

## ARTICLE 14. OPERATIONS AND MAINTENANCE

### 14.1 O&M obligations of the Concessionaire

14.1.1 During the O&M Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either itself or through an experienced O&M Contractor possessing requisite technical, financial and managerial expertise/ capability and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and Good Industry Practice.

14.1.2 The obligations of the Concessionaire hereunder shall include (but not limited to) the following:

(a) permitting and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions;

(b) carrying out periodic preventive and routine maintenance works and repairs of all Project Assets, facilities, utilities, etc. at the Project Facility and common areas in accordance with the provisions of this Agreement particularly **Schedule-B (Scope of the Project)** and **Schedule-I (Maintenance Requirements)**;

(c) ensure to abide by the provisions of the employment and labour welfare legislations like the Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; The Minimum Wages Act, 1948; The Equal Remuneration Act, 1976; The Payment of Gratuity Act, 1972; The Employees State Insurance Act, 1948; The Workmen's Compensation Act, 1923 and other similar legislations, rules and orders as issued and amended from time to time during the Concession Period;

(d) preventing, with the assistance of concerned law enforcement agencies, any encroachments on, or unauthorized entry to or use of the Project;

(e) O&M of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing safe, smooth and uninterrupted use of the Project;

(f) deploying professionally trained staff in adequate number to manage complete operations of the Project Facility and its upkeep, security, etc. in terms of this Agreement and Good Industry Practice;

(g) exercising appropriate control over its Contractors, vendors, agents, staff, etc. 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, advertisement, horticulture, etc. with intimation to the Authority; however, the primary responsibility shall remain with the Concessionaire;

(h) minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the city;

(i) acquiring operational/renewal of licenses for all plant and machinery and any other necessary approvals during operations and maintenance;

(j) ensuring Structural & Quality audit is undertaken every year for the entire facility and ensure optimal functioning of the entire Project Facility;

(k) Payment of usage charges for utilities.

(l) make provision of adequate security to prevent any theft and provide a 24-hour surveillance system which continuously monitors and controls entry into and exit from the facility. A Closed-Circuit Television (CCTV) network shall be provided for security and surveillance as well as for central monitoring purposes. Further access-controlled entry and exit system for vehicles shall be provided; and

(m) handback the Project Facility to the Authority or its nominee in good condition normal wear and tear excepted at the end of Concession Period or early termination.

14.1.3 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, on account of its any act of omission or commission in relation of the maintenance obligations herein, and consequently becomes liable to pay any fine, penalty or interest under the provisions of Applicable Laws, then the same shall be borne solely by the Concessionaire without any liability of the Authority.

In the event the Authority is required to pay any penalty/ fine/ interest to the Government Instrumentality on account of any act of omission or commission of the Concessionaire in relation to the Project being implemented, then the Authority shall be entitled to be indemnified by the Concessionaire under Article 22. For the avoidance of doubt, the Authority shall have the right to encash the Performance Security, in whole or in part, to recover any such amounts payable by the Concessionaire under this clause, without prejudice to any other rights or remedies available to the Authority under this Agreement.

14.1.4 Notwithstanding anything contained herein, the Concessionaire shall be solely responsible for all the claims or proceedings filed with respect to the O&M of the Project whether with regard to any negligence or deficiency in service committed by the Concessionaire at the Project Facility, or otherwise for any reasons whatsoever whether intentionally or unintentionally, and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Concessionaire shall always keep the Authority indemnified in this regard.

### 14.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project is maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the "**Maintenance Requirements**"), as more specifically set out in **Schedule-I**.

### 14.3 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

from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

**14.4 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 public 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 public, provided they can be operated safely.

## ARTICLE 15. ANNUAL LEASE RENT AND ANNUAL CONCESSION FEE

### 15.1 Annual Lease Rent

15.1.1 In consideration of the grant of the Lease for the Project, the Concessionaire shall, be liable to pay to the Authority an annual lease rent of Rs……. (Rupees in words)[11] which shall accrue from the Appointed Date and continue until the end of the Concession Period ("Annual Lease Rent"). For the avoidance of doubt, the expression Annual Lease Rent shall include any escalation of Annual Lease Rent in terms of Clause 15.1.3.

15.1.2 The Annual Lease Rent payable every year under the provisions of this Article 15, shall be due and payable yearly and first such payment of Annual Lease Rent shall be made on or before the Appointed Date and shall constitute a Condition Precedent to be satisfied by the Concessionaire under Clause 4.1.3. Thereafter, the Annual Lease Rent payment shall be paid by the Concessionaire to the Authority within 15 (fifteen) days from the commencement of each successive year from the Appointed Date. In the event of any delay in payment, the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Clause 26.3.

15.1.3 The Annual Lease Rent shall escalate @15% (fifteen percent) every three years till the end of the Concession Period over and above the last applicable amount of Annual Lease Rent.

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

### 15.2 Annual Concession Fee

15.2.1 In consideration of the grant of Concession, the Concessionaire shall, commencing from Appointed Date, pay to the Authority by way of annual concession fee, a sum of Rs. 1 (Rupee one) for each year till the end of the Concession Period ("Annual Concession Fee").

15.2.2 The Annual Concession Fee payable every year under the provisions of this Article 15, shall be due and payable yearly and first such payment shall be made within 15 (fifteen) days from the Appointed Date. Thereafter, the Annual Concession Fee shall be paid within 15 (fifteen) days from the beginning of each subsequent year from the Appointed Date. In the event of any delay in payment, the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Clause 26.3.

15.2.3 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.

[11] Amount of Annual Lease Rent specified in the LOA should be mentioned here.

## ARTICLE 16. COLLECTION OF USER CHARGES

### 16.1 Determine, Charge, Collection and Appropriation of User Charges

16.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to determine, demand, collect and appropriate User Charges from the Users of the Project Facilities. This include without limitation: -

a) charges for the use of Project Facilities;
b) proceeds from sale of goods and services;
c) fee & charges from sub-lessees or licensees of retail outlets/EV stations/food courts/ spaces of every description and kind;
d) charges for the provision of value-added or ancillary services; provided by the Concessionaire at the Project, in accordance with the provisions of this Agreement and subject to Applicable Laws and Applicable Permits.

16.1.2 The Concessionaire acknowledges and agrees that upon payment of User Charges, any User shall be entitled to use the Project 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.

16.1.3 Except for public conveniences such as toilets, drinking water facilities, and parking for Users of the Project, which shall be provided free of cost, the Concessionaire shall be free to determine and charge the User Charges in respect of the use of any part of the Project Facility or value added services/ facilities thereat, by the Users, as it deems fit, from time to time.

16.1.4 The Concessionaire may levy and recover an additional service charge for and in respect of additional facilities or services developed over and above the Minimum Development Requirements as specified in this Agreement.

16.1.5 The Authority expressly recognizes the right of the Concessionaire or its employees, staff or its agents acting on behalf of the Concessionaire (i) to levy, demand, collect, retain, and to appropriate User Charges in accordance with the terms of this Concession Agreement; and (ii) to exercise all rights and remedies available under Applicable Laws and under this Concession Agreement for the recovery of User Charges.

16.1.6 The Concessionaire shall ensure that adequate signage is displayed at prominent locations within the Project Site, clearly indicating the applicable User Charges for services, along with a grievance redressal mechanism for Users.

## ARTICLE 17. INSURANCE REQUIREMENTS

### 17.1 Insurance during the Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy; the Authority shall be a co-insured.

### 17.2 Insurance Cover

Without prejudice to the provisions contained in Clause 17.1, the Concessionaire shall, during the Concession 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 who may enter the Project Site;

(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.

### 17.3 Notices to the Authority

No later than 30 (thirty) days prior to commencement of the Concession Period, 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 17. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure provided in Article 24 shall apply.

### 17.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 17 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.

### 17.5 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances which it is required to obtain pursuant hereto, the Authority shall have the option (not obligation) 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. In case of non-renewal or failure to obtain insurance, the Concessionaire shall indemnify the Authority of any obligations arising due to the same.

### 17.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 17 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.

### 17.7 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.

### 17.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Concessionaire's account and apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement and delivery of the Project Facilities, payment of Damages and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

### 17.9 Application and priority of Insurance proceeds

Insurance proceeds from any insured event shall be applied in the following order of priority:

a) Settlement of valid third-party claims (death, bodily injury, property damage, other covered losses);
b) Payment of compensation to the Authority for losses/damages/liabilities incurred due to the insured event;
c) Repair, reinstatement, or replacement of damaged/lost portions of the Project Facility;
d) Compensation for direct financial losses of the Concessionaire, if covered under the policy;
e) Transfer of any residual balance to the designated Concessionaire account.

### 17.10 Compliance with conditions of insurance policies

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

## ARTICLE 18. FORCE MAJEURE

### 18.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 18.2, 18.3, 18.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### 18.2 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, 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 Project 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 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;

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

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

### 18.3 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, blockade, embargo, riot, terrorist or military action, civil commotion or politically motivated sabotage;

(b) any political or economic upheaval, disturbance, 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 operation of the Project 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 Development Works, 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 an 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 a nature analogous to any of the foregoing.

**18.4 Political Event**

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

(a) Change in Law for which no relief is provided under the provisions of this agreement resulting in Material Adverse Effect;

(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.

### 18.5 Duty to report Force Majeure Event

18.5.1 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 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.

18.5.2 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.

18.5.3 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 18.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

### 18.6 Effect of Force Majeure Event on the Concession

18.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

(a) before COD, the Construction Period and the Schedule Completion Date shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

(b) after COD, whereupon the Concessionaire is unable to operate the Project Facility or any part thereof and User Charges from the Project Facility despite making best efforts or it is directed by the Authority or any Government Instrumentality 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 User Charges on account thereof.

**18.7 Allocation of costs arising out of Force Majeure**

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

18.7.2 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:

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

ii. upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

iii. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

18.7.3 For avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Development Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues from sub-leasing and all incomes derived or collected by it from or on account of the Project Facilities and associated services, or debt repayment obligations, and for determining such costs,

18.7.4 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.

**18.8 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 18, 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.

### 18.9 Termination Payment for Force Majeure Event

In the event of Termination due to Force Majeure, the Authority shall pay the Concessionaire a Termination Payment in accordance with Clause 20.3 of this Agreement.

### 18.10 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.

### 18.11 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 19. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

### 19.1 Suspension upon Concessionaire Default

19.1.1 Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect User Charges, and other revenues pursuant hereto, and (ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice.

### 19.2 Authority to act on behalf of Concessionaire

19.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all User Charges and revenues under and in accordance with this Agreement and shall be entitled to apply such amounts towards meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension.

19.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period.

### 19.3 Revocation of Suspension

19.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

19.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

### 19.4 Termination

19.4.1 At any time during the period of Suspension under this Article 19, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice.

19.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder, set forth in Clause 19.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to

such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

## ARTICLE 20. TERMINATION FOR DEFAULT

### 20.1 Termination for Concessionaire Default

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

(i) the Concessionaire fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;

(ii) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated within an additional Cure Period of 30 (thirty) days;

(iii) the Concessionaire does not complete the Minimum Development Requirements by the Scheduled Completion Date or any extension granted in terms of this Agreement;

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

(v) a Change in Ownership undertaken in violation of the lock in requirements set out in Clause 5.3;

(vi) the Concessionaire is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Authority or the Project;

(vii) the Concessionaire fails to pay Annual Lease Rent for more than 180 days from the scheduled due date.

(viii) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

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

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

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

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

(xiii) 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;

(xiv) 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;

(xv) occurrence of any Insolvency Event;

(xvi) 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:

(a) 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;

(b) 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

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

(xvii) 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;

20.1.2 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, the default is cured by the Concessionaire before the expiry of 15 days, the Authority shall withdraw the Termination Notice and restore all the rights of the Concessionaire under this Agreement.

### 20.2 Termination for Authority Default

20.2.1 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 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be

deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

(i) 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;

(ii) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;

(iii) 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.

(iv) The Authority fails to provide Project Site to the Concessionaire on leasehold basis.

20.2.2 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.

**20.3 Termination Payments**

20.3.1 Upon Termination on account of a Concessionaire Default, no Termination Payment shall be due and payable.

20.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to fair value of the Project Assets determined by the registered valuer.

20.3.3 Termination Payment shall become due and payable to the Concessionaire within 90 (Ninety) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 2% (two per cent) above the prevailing SBI one-year MCLR on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

20.3.4 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire. At the end of the Concession Period, all Project Assets shall be transferred to the Authority at free of cost.

20.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 20 shall constitute a full and final settlement of all claims of the Concessionaire on account

of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder/partner thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

### 20.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) take possession and control of the Project forthwith;

(b) take possession and control of all materials, 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;

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 21.1; and

(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

### 20.5 Survival of Rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 20, 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 21. DIVESTMENT OF RIGHTS AND INTEREST

### 21.1 Divestment Requirements

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

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

(b) deliver forthwith the actual or constructive possession of the Project and Project Assets, free and clear of all Encumbrances;

(c) cure Project of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets and the Project Site shall be handed over on '*as is where is'* basis after bringing them to a safe condition;

(d) deliver and transfer the Project Assets in good working condition (subject to normal wear and tear) together with all applicable warranties, guarantees, and valid operational licenses as may be required;

(e) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete '*as built*' Drawings as on the Transfer Date, For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;

(f) ensure that all the details of existing contracts including AMC agreements, guarantees and warranties, maintenance manuals etc. is handed over to the Authority;

(g) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

(h) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

(i) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

21.1.2 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.

### 21.2 Inspection and cure

21.2.1 Not earlier than 30 (thirty) days prior to Termination but not later than 7 (seven) days prior to the effective date of such Termination, the Nodal Officer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements and other obligations under this Agreement. Such verification shall include inspection of all Project Assets to assess any damages, excluding normal wear and tear, and, if necessary, the Nodal Officer may arrange for appropriate tests to be conducted at the Concessionaire's cost. Defaults, if any, in the Maintenance Requirements and other obligations shall be cured by the Concessionaire at its cost and the provisions of Article 14 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 21.

21.2.2 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 the Authority. 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 Transfer Date in order to identify any defects.

ii. Round 2: A joint inspection will be conducted between 30 days and 15 days prior to the Transfer Date in order to identify and address any left-out defects.

21.2.3 Failure to rectify any defects or failure to comply on the part of the Concessionaire under this Clause, shall entitle the Authority to recover the actual costs incurred in rectifying/ remedying such defect/ deficiency, including a sum equal to 10% (ten per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. The decision of the Authority shall be final and binding.

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

### 21.3 Cooperation and assistance on transfer of Project

21.3.1 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 public, other members of the public or the lawful occupiers of any part of the Site.

21.3.2 The Parties shall provide to each other, 6 (six) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may

be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 3 (three) months after the Transfer Date.

21.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project, but which does not form part of the Project Assets specified in Clause 21.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

**21.4 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 **Schedule-J** (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.

**21.5 Divestment costs etc.**

21.5.1 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.

21.5.2 In the event of any dispute relating to matters covered by and under this Article 21, the Dispute Resolution Procedure shall apply.

**21.6 Liability for defects after Termination**

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 6 (six) months after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Nodal Officer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project 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 Performance

Guarantee provided thereunder. In addition, an amount equal to ten percent (10%) of such costs shall be payable by the Concessionaire to the Authority as Damages for failure to comply with the Authority's instructions. For the avoidance of doubt, the provisions of this Article 21 shall not apply if Termination occurs prior to COD.

## ARTICLE 22. LIABILITY AND INDEMNITY

### 22.1 General Indemnity

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

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

### 22.2 Additional Indemnities by the Concessionaire

22.2.1 Without limiting the generality of Clause 22.1 the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

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

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

(d) its omissions or acts of fraud, gross negligence and wilful misconduct;

(e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or

(f) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

22.2.2 Without limiting the generality of the provisions of this Article 22, 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.

22.2.3 The Concessionaire hereby agrees and undertakes that from the Appointed Date and during the Concession Period and thereafter, it shall indemnify and keep indemnified and otherwise save harmless, Authority, its agents and employees, from and against all claims, demands made against and/ or loss caused and/ or damages suffered and/ or cost, charges/ expenses incurred or put to and/ or penalty levied and/ or any claim due to injury to or death of any person and/ or loss or damage caused or suffered to property owned or belonging to Authority, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Concessionaire or as a result of failure on the part of Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or on the failure of the Concessionaire to perform any of its statutory duty and/ or obligations or failure or negligence on the part of Concessionaire to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by any third party or Government Instrumentality or as a result of any failure or negligence or default of Concessionaire or its contractor(s) and/ or sub-contractors as the case may be, in connection with or arising out of this Agreement and/ or arising out of or in connection with Concessionaire's use and occupation of Project Site and/ or Project and/ or the provision of services on the Project in terms hereof.

### 22.3 No consequential claims

Notwithstanding anything to the contrary contained in this Article, 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.

### 22.4 Limitation of Liability

Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, shall not exceed Total Project Cost . 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 wilful 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.

**22.5 Survival on Termination**

The provisions of this Article 22 shall survive Termination.

## ARTICLE 23. ASSIGNMENT AND CHARGES

### 23.1 Restrictions on assignment and charges

23.1.1 Subject to Clauses 23.2 and 23.3, and except as otherwise expressly permitted by this Agreement, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

23.1.2 Subject to the provisions of Clause 23.2, 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.

### 23.2 Permitted assignment and charges

23.2.1 The restraints set forth in Clause 23.1 shall not apply to:

(i) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;

(ii) mortgages/ pledges/ hypothecation of goods/ assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/ or for working capital arrangements for the Project.;

(iii) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, as security for financing provided by Senior Lenders under the Financing Agreements; and

(iv) liens or encumbrances required by any Applicable Law.

23.2.2 The Parties agree that any assignment under this Article 23 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

### 23.3 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 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 24. DISPUTE RESOLUTION

### 24.1 Dispute resolution

24.1.1 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 24.2.

24.1.2 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.

### 24.2 Conciliation and further resolution

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to Member- Technical of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 24.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to the appropriate court of law in Chennai, Tamil Nadu for adjudication.

### 24.3 Performance during Dispute

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Article 24. The provisions for dispute settlement shall be binding upon the successors, assigns and any trustee or receiver of either the Authority or the Concessionaire.

## ARTICLE 25. REDRESSAL OF PUBLIC GRIEVANCES

### 25.1 Complaints Register

25.1.1 The Concessionaire shall maintain a public relations office at the Project 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 Project office so as to bring it to the attention of all Users.

25.1.2 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.

25.1.3 Without prejudice to the provisions of Clauses 25.1.1 and 25.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

### 25.2 Redressal of complaints

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

25.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Nodal Officer a true photocopy of the register and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 2019, and advise the complainant to pursue the complaint at his own risk and cost.

## ARTICLE 26. MISCELLANEOUS PROVISIONS

### 26.1 Governing Law and Jurisdiction

This Concession Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Chennai[12], Tamil Nadu shall have jurisdiction over all matters arising out of or relating to this Concession Agreement.

### 26.2 No Waiver; Remedies

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

### 26.3 Delayed payments

26.3.1 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. 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 2% (two per cent) above the prevailing SBI one-year MCLR, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

26.3.2 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.

### 26.4 Exclusion of implied warranties

This Concession Agreement expressly excludes any warranty, condition or any 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.

### 26.5 Survival

26.5.1 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.

[12] This shall be updated based on the location of the Authority's office.

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

**26.6 Severability**

If for any reason whatever any provision of this Concession Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other legal and valid 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 upon one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Agreement.

**26.7 Entire Agreement**

This Concession Agreement along with the Schedules and the Annexures 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 Proposal, shall be deemed to form part of this Agreement and treated as such.

**26.8 Confidentiality**

Neither the Concessionaire nor the Authority shall, unless otherwise agreed (which agreement may be on such general or specific terms as the parties may determine), disclose to any third party (other than its directors, officers, employees, consultants, lenders, agents, to the extent required or incidental to the performance of its obligations under the Project Agreements) any information which is the property of the other party to this Agreement or which otherwise relates to its business, secrets, dealings, transactions or affairs unless, and to the extent that, such disclosure:

(a) is reasonably required for the exercise or performance by either Party of its rights or obligations under this Agreement; or

(b) is required pursuant to any relevant statutory or regulatory requirements or duties or any relevant terms of the Applicable Laws or in the public interest; or

(c) relates to information which is already in the public domain, other than as a result of breach of this Article by the party seeking to make such disclosure;

Provided that, in the case of any disclosure in accordance herewith, the Party disclosing such information shall, so far as reasonably practicable, impose on the third party receiving such information such obligations as may be appropriate to maintain its confidentiality.

**26.9 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.

**26.10 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.

**26.11 Successors and assigns**

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

**26.12 Notices**

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

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

{Attention:

Designation:

Address:

Fax No:

Email :}

(b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the 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 facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{Name:

Designation:

Address:

Fax No:

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 facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

**26.13 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.

**26.14 Stamp Duty**

Any stamp duty, registration charges, legal fees or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Concessionaire.

**26.15 Counterparts**

This Agreement may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Concession Agreement.

## ARTICLE 27. DEFINITIONS

### 27.1 Definitions

In this Agreement, unless repugnant to the context in which these words and expressions appear the words and expressions defined below shall have the meanings 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**" shall mean this Agreement, its Recitals and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

**"Annual Concession Fee"** shall have the meaning set forth in Article 15;

"**Annual Lease Rent**" shall have the meaning as set forth in Article 15;

**"Applicable Laws"** means all laws, brought into force and effect by GOI or the State Government including rules, regulations together with local development regulations, Tamil Nadu Combined Development and Building Rules, 2019 (as applicable from time to time), National Building Code, etc. 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;

**"Appointed Date"** means the date on which every Condition Precedent is satisfied or waived, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be.

**"Applicable Permits"** means all clearances, licenses, permits, authorizations, no objection certificates, consents, registrations, filings or other authorisations of whatever nature, which is necessary for effective implementation of the Project, any approvals and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws during the subsistence of this Agreement;

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

"**Authority Default**" shall have the meaning set forth in Clause 20.2;

"**Authority Indemnified Persons**" shall have the meaning set forth in Clause 22.1.1;

"**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 Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

"**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 Due 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, any addendum, corrigendum thereof, 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;

**"Change in Ownership"** shall be construed in accordance with the ownership and lock-in requirements set out in Clause 5.3;

**"Commercial Operations Date"** or **"COD"** shall have the meaning set forth in Clause 13.1;

**"Completion Certificate"** means the Certificate issued under Clause 12.1;

**"Concession"** shall have the meaning set forth in Article 3;

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

"**Concessionaire Default**" shall have the meaning set forth in Clause 20.1;

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

**"Conditions Precedent"** means the conditions set out in Article 4 hereof;

**"Consortium"** means any combination of persons that have formed a consortium or association by fulfilling the requirements set out in the Request for Proposal, including executing a joint bidding agreement, for the purposes of submitting the Bid and for implementing the Project, if such consortium or association is declared as the Selected Bidder;

"**Construction Period**" means the period beginning from the Appointed Date and ending on COD of the Project;

**"Construction Works"** means all works and things necessary to complete the Project in accordance with this Agreement;

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

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

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

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

**"Day"** means calendar day, "**Month**" means 30 (thirty) days and "**Year**" means 365/366 days.

**"Damages"** shall have the meaning as set forth in sub-clause (u) of Clause 1.2.1;

**"Development Plan"** means the detailed design, drawings and plans (as per statutory requirements under applicable laws) of the Project Facility prepared by the Concessionaire in line with the (i) Applicable Laws including applicable development control regulations/ zoning regulations; (ii) scope of the Project developments as set out under Schedule-B together with provision of Mandatory Development Requirements as specified in Schedule-C; (iii) coverage/ inclusions with regard to any infrastructure including basic amenities & utilities incidental to the Project; (iv) the Development Guidelines and Specifications set forth in Schedule-D and (v) provisions of this Agreement, and submitted to the Authority and also to other competent authority) to grant approval under the Applicable Laws;

"**Development Guidelines and Specifications**" means the mandatory guidelines and specifications as set forth in **Schedule-D**;

**"Dispute"** shall have the meaning set forth in Clause 24.1;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 24 of this Concession Agreement;

**"Divestment Requirements"** means the obligations of the Concessionaire for and in respect of Termination as set forth in Article 21;

"**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;

**"Drawings"** means all of the drawings, calculations and documents pertaining to the Project and Project Facility, and shall include 'as built' drawings of the Project and Project Facility;

**"Effective Date"** means the date of the signing of this Concession Agreement;

**"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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Site, where applicable herein but excluding any existing utilities;

**"EPC Contract"** means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

**"EPC Contractor"** means the person with whom the Concessionaire has entered into an EPC Contract;

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

**"Financing Agreements"** means the agreements executed by the Concessionaire in respect of financing of the Project to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents relating to the financing of the Total Project Cost;

**"Financing Package"** means the financing package indicating the total capital cost of the Project Facility and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes equity, all financial assistance specified in the Financing Agreements;

**"Force Majeure" or "Force Majeure Event"** shall mean an act, event, condition or occurrence specified in the Article 18;

**"Good Industry Practice"** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced developer/ operator engaged in construction and operation of projects akin to the Project under this Agreement. It would include good engineering practices in the design, engineering, construction and project management which would be expected to result in the performance of its obligation by the Concessionaire and in operation and maintenance of the Facilities in accordance with this Concession Agreement, Applicable Laws, and Applicable Permits, reliability, safety, environment protection, economy and efficiency;

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

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

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

**"Insolvency Event"** in respect of a Party shall mean:

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 (the "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; (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 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 17, and includes all insurances required to be taken out by the Concessionaire under Clause 17.2 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"** shall mean all patents, trademarks, service marks, logos, getup, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, 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;

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

**"Leased Premises"** shall have the meaning as set forth in Clause 10.2.2;

"**Maintenance Requirements**" shall have the meaning set forth in Clause 14.2;

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

**"Minimum Development Requirements"** means the minimum threshold of construction or infrastructure developments specified in **Schedule-C** that the Concessionaire is contractually required to complete within a specified timeframe under this Agreement;

**"O&M"** means the operation and maintenance of the Project Facility and includes all matters connected with or incidental to such operation and maintenance, provision of

services and facilities, and collection of User Charges in accordance with the provisions of this Agreement.

"**O&M Contract**" means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of a part of O&M obligations of the Concessionaire;

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

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

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

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

**"Performance Security"** shall have the meaning set forth in Clause 9.1;

**"Person"** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name;

**"Project"** shall mean designing, engineering, procuring, financing, construction, operation and maintenance of the Project Facilities along with associated amenities & facilities and other infrastructure, services, etc. on DBFOT basis in accordance with the provisions of this Agreement and Schedules hereof, and includes all works, services and equipment relating to or in respect of the Scope of the Project and subsequent transfer of the same to the Authority at the end of the Concession Period or prior on termination of the Concession Agreement;

**"Project Agreements"** means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, hire purchase, agreements, implementation agreements, deeds, 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 any agreement for procurement of goods and services involving a consideration of up to [Rs…..Lakhs][13];

**"Project Assets"** means all physical and other assets relating to and forming part of the Project Site including but not limited to; (a) rights over the Project Site in the form of

[13] This may be fixed at 2% (two per cent) of the Total Project Cost.

lease, right-of-way or otherwise; (b) tangible assets such as civil works, foundations, pavements, service area, store rooms, equipment, drainage works, sign boards, communication systems, digitized billing system, facility management softwares, administrative office, HVAC works, MEP works, lift(s), escalator(s), if installed, fire-fighting system, etc. at the Project Facility; (c) Project facilities situated on the Project Site; (d) buildings and immovable fixtures or structures forming part of the commercial facility; (e) all rights of the Concessionaire under the Project Agreements; (f) financial assets, such as receivables, cash, security deposits, etc.; (g) insurance proceeds; (h) Applicable Permits and authorizations relating to or in respect of the Project; (i) temporary structures; (j) stock of any consumables, spares & accessories for the upkeep of the Project Facility, and any other current assets; (j) finishes and interior works; (k) computers, communication devices and all movable assets including furniture and fixtures, etc.;

**"Project Completion Schedule"** means the schedule of Construction Works set forth in **Schedule-G** for completion of the Project on or before the Scheduled Completion Date;

**"Project Facility"** mean and includes all infrastructure, buildings, amenities, utilities, and services developed and maintained by the Concessionaire on the Project Site during the Concession Period, in accordance with the approved Development Plan and provisions of this Agreement. It shall comprise both the Minimum Development Requirements specified in **Schedule-C** and any additional commercial facilities (with the prior approval of Authority) that fall within the List of Permitted Activities under **Schedule E**, together with all incidental and supporting infrastructure;

**"Project Site" or "Site"** shall have the meaning set forth in Clause 10.1;

"**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.

**"Right of Way"** means the constructive possession of the Project Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

**"Scheduled Completion Date"** shall have the meaning ascribed to it under Clause 11.3.1;

**"Schedules"** mean the Schedules to this Concession Agreement;

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

**"Selected Bidder"** means the Bidder selected by the Authority for award of the Project upon completion of the bidding process, whether such Bidder is a single entity or a Consortium acting through its lead member, as identified in its Bid.

**"Senior Lenders"** means the financial institutions, funds and banks who have advanced or agreed to advance term loan to the Concessionaire under any of the Financing Agreements for meeting all or part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

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

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

**"Statutory Auditors"** means, in the case of the Concessionaire being a company, an Independent, recognised and reputable firm of the Chartered Accountants duly licensed to practice in India acting as the Independent statutory auditors of the Concessionaire under the provisions of Companies Act, 2013 including any statutory modification or re-enactment or replacement thereof, for the time being in force, and in the case of the Concessionaire being a partnership firm, or limited liability partnership (LLP), any independent, recognised and reputable firm of Chartered Accountants duly licensed to practice in India and generally engaged by the Concessionaire for auditing its financial statements in the ordinary course of business;

**"Tax"** means any tax, duty, levy, cess, and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project Facility charged, levied or imposed by any Government Instrumentality, but excluding any interests, 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 Concession Agreement by a Party to the other Party for terminating this Agreement;

**"Termination Payment"** means the amount payable by the Authority to the Concessionaire upon the termination of this Concession Agreement as are expressly provided for under this Agreement;

**"Third Party"** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement**.**

**"Tests"** means the tests to be carried out as per Applicable Laws and Good Industry Practice under this Agreement;

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

(b) the capital cost of the Project as set forth in the Financial Package; and
(c) the actual capital cost of the Project upon completion of the Project as certified by the Statutory Auditors;

provided that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the Bid Due Date and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

**"Transfer Date"** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice, in accordance with the terms of the Concession Agreement;

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

**"User Charges"** refers to all fees, charges, and revenue collected by the Concessionaire from Users in connection with the Project. This includes, but is not limited to, usage charges for paid facilities, parking fees, maintenance charges, advertising fees, charges for any value-added services, etc. Additionally, it covers revenue derived from sub-leasing/licensing, subcontracting, or any other arrangement related to the Project Facilities;

**"Vesting Certificate"** means the certificate issued under Clause 21.4, after the termination of this Concession Agreement;

**"Wayside Amenities"** means the facilities developed and operated at the Project Site to provide essential and value-added services to road users, including restrooms, drinking water, food courts, retail outlets, fuel stations, EV charging, parking, and other user conveniences, as specified in **Schedule-C & Schedule E**[14], and in accordance with Applicable Laws and Good Industry Practice;

"**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 for the period ending with the preceding month.

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

**SIGNED SEALED AND DELIVERED**

[14] In case additional facilities are developed by the Concessionaire as per Schedule E.

For and on behalf of

**The Authority by:**
_____ (Signature)
_____ (Name)
(Designation)

**SIGNED SEALED AND DELIVERED**

For and on behalf of

**Concessionaire by:**
_____ (Signature)
(Name)
(Designation)

**In the presence of**

1. _____ (Signature)
   _____ (Name)
   _____ (Designation)

2. _____ (Signature)
   _____ (Name)
   _____ (Designation)

**SCHEDULES**

## SCHEDULE A: PROJECT SITE[15]

| Sl. No. | Site Name | Highway | Total land area available for development (in acres) |
|---|---|---|---|
| 1. | Ayyankovilpathu, Villupuram | SHU 138 | 1.00 |
| 2. | Palangarai, Tiruppur | SHU 155 | 1.91 |
| 3. | Tirupachur, Tiruvallur | SHU 91 | 1.01 |
| 4. | Kalendira, Tirupathur | SHU 144 | 0.84 |
| 5. | Karripatti, Salem | NH 79 | 1.63 |
| 6. | Puduchatram, Dindigul | SH 37 | 0.98 |
| 7. | Kilmattai, Tiruvannamalai | SH 5 | 1.35 |

[15] It is clarified that a separate Concession Agreement will be executed for each Project Site. Therefore, while executing the Concession Agreement, only the details of the specific Project Site being awarded to Concessionaire should be included.

**Annexure I**
**LEASE DEED**

This Lease Deed ("**Lease Deed**") together with its Annexes is made and executed on this ……..day of ……..[●] by and between:

**Tamil Nadu State Highways Authority, having its principal office at [●] represented by the ****************[(hereinafter referred to as the "**Authority**" or "**Lessor**", which expression shall, unless excluded by and/or repugnant to the context, mean and include its successors, legal representatives and permitted assigns)] of the one part;

**AND**

{******}, having its registered office at **[●]** represented through its [*****] (hereinafter referred to as the "**Lessee**", which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assigns) of the other part.

The Lessor and the Lessee are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**".

WHEREAS

(A) The Lessor and the Lessee have entered into a Concession Agreement dated -------- (the "**Concession Agreement**") wherein the Lessee has agreed to agreed to design, build, finance, own and operate the Wayside Amenities, upon the terms and conditions specified in the Concession Agreement;

(B) The Lessor owns and is in possession of, the land constituting the Project Site, as specified in the Concession Agreement and as delineated and set out in the Annexure A (herein referred to as the " **Project Site**");

NOW THEREFORE, in consideration of the promises and covenants herein set forth and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties mutually agree as hereunder.

## 1. Definitions and Interpretation

### 1.1 Definitions

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

"**Annual Lease Rent**" shall have the meaning set forth in Clause 5;

"**Applicable Permits**" means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under applicable laws in connection with the Project Site and the Project during the subsistence of the Lease Deed;

**"Dispute"** shall have the meaning set forth in Clause 17.1;

**"Encumbrance"** means any encumbrance such as an easement, right of way, licence, mortgage, charge, pledge, lien, hypothecation, pre-emptive right or security interest, assignment, whether or not registered and howsoever arising, including by statute or common law;

**"Force Majeure"** shall have the meaning set forth in Clause 16.1;

"**Project Site**" shall have the meaning set forth in Recital (B); and

"**Term**" shall have the meaning set forth in Clause 3.

**1.2. Interpretations**

In this Lease Deed, except to the extent that the context requires otherwise:

(a) the Annexes to this Lease Deed forms part of this Lease Deed and will be of full force and effect as though it is expressly set out in the body of this Lease Deed;

(b) the terms of this Lease Deed should be read in consonance with and not in derogation with the terms of Concession Agreement;

(c) the rules of interpretation in the Concession Agreement shall apply, *mutatis mutandis*, to this Lease Deed; and

(d) the words and expressions beginning with capital letters and defined in this Lease Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Lease Deed and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

**2. Grant of lease and possession**

2.1.1 The provisions of this Lease Deed shall take effect and become binding on the Parties from the Appointed Date ("**Effective Date**").

2.1.2 In consideration of the Annual Lease Rent, the Lessor grants on lease to the Lessee and the Lessee agrees to accept the lease from the Lessor, free from Encumbrances and/or encroachments, of all that piece and parcel in the Schedule A of the Concession Agreement together with all and singular rights, liberties, privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Project Site or any part thereof, and to hold, possess, use and enjoy the Project Site and/or any part thereof, in accordance with the provisions of this Lease Deed.

## 3. Term

The lease granted in pursuance of this Lease Deed shall be for a period of 20 (twenty) years from the Effective Date (the "**Term**") unless the Lease Deed is determined prematurely in accordance with Clause 7 or extended in accordance with Clause 4. For avoidance of doubt, this Agreement and shall be co-terminus with the executed Concession Agreement.

## 4. Extension of Term of Lease

4.1 The Term of the Lease shall be co-terminus with the Concession Period. In the event the Concession Period is extended in accordance with the Concession Agreement, the Term of the Lease shall automatically stand extended for a corresponding period..

4.2 The Lessee may, no later than 2 (two) years prior to the expiration of the Term of Lease Deed, submit a written request to the Lessor to formalize the extension of the Term of the Lease Deed subject to extension of Concession Agreement (if any).

4.3 Upon receipt of application of extension of the Lease Deed, the Lessor may in its sole discretion and subject to extension of Concession Agreement (if any), no later than 9 (nine) months prior to the expiration of the Lease Period, execute an addendum to the Lease Deed which shall reflect the mutually agreed terms and conditions for the extension of the Term of Lease Deed.

## 5. Annual Lease Rent

The Annual Lease Rent payable by the Lessee in respect of the Project Site shall be as specified in the Concession Agreement entered into between the Lessor and the Lessee. All terms and conditions relating to the amount, manner of payment, escalation, and consequences of non-payment of Annual Lease Rent shall be governed solely by the said Concession Agreement, and shall be deemed incorporated herein by reference to the extent applicable.

## 6. Use of Project Site

6.1 During the Term of this Lease Deed, the Lessee agrees to use the Project Site for the carrying out the following:

(a) implementing the Project;

(b) developing, design, financing, constructing, building, operating, and maintaining the Project;

(c) designing, building, owning, operating and maintaining the utilities, services and facilities required for operating and maintaining the Project;

(d) extraction of ground water and harvesting of rain water for the Lessee's requirements;

(e) developing and landscaping the Project Site; and

(f) any other purpose incidental or consequential to the development, operation and maintenance of the Project.

6.2 The Parties agree that the Lessee may, with the approval of the Lessor, and in addition to the above stated purposes, utilise the Project Site for any other purpose(s), limited to the development of the Project and which in the Lessee's opinion is:

(a) conducive or incidental to operation and management of the Project;

(b) enhances the efficiency of the Project;

(c) improves the commercial viability of the Project; or

(d) facilitates further investment in or around the Project.

**7. Determination of Lease Deed**

7.1 This Lease Deed may be determined earlier by mutual agreement between the Parties in writing.

7.2 The Lessor shall have the right to determine this Lease Deed on occurrence of any one or more default(s) by the Lessee as enlisted hereunder:

(a) passing of a resolution for winding up of the Lessee or filing of a voluntary bankruptcy petition by the Lessee;

(b) institution of winding up proceedings against Lessee and such proceedings not being stayed or discharged by a competent court within 180 (one hundred and eighty) days;

(c) appointment of a receiver of Lessee's assets or any general assignment for the benefit of Lessee's creditors and such appointment or assignment is not stayed by a competent court within 180 (one hundred and eighty) days;

(d) failure of the Lessee to make payments to the Lessor in accordance with the provisions hereof, where such failure continues for a period of 30 (thirty) days after a written notice from the Lessor;

(e) material failure by Lessee to perform any of the covenants, conditions, or obligations imposed on it by this Lease Deed where the failure continues for a period of 60 (sixty) days after notice from the Lessor;

(f) transfer or assignment of this Lease Deed or creation of any Encumbrance on the Project Site, without securing prior written approval of the Lessor;

(g) use of the Project Site for any purpose other than the purposes stated under Clause 6 of this Lease Deed and such breach is not remedied within a period of 60 (sixty) days after a notice from the Lessor in this behalf; and

(h) voluntary abandonment by the Lessee of its operations at the Project Site for a continuous period of 90 (ninety) days or more.

7.3 Upon determination under Clause 7.1 and Clause 7.2, the Lessor shall have the following additional rights:

(a) the recovery of any unpaid Annual Lease Rent due and payable at the time of termination;

(b) the recovery of any damages, costs, fees and expenses incurred by the Lessor as a result of the breach of the Lease Deed by the Lessee; and

(c) any other right or remedy, legal or equitable, that the Lessor is entitled to under the Applicable Laws.

7.4 The Lessee shall have the right to determine this Lease Deed on account of the occurrence of any of the following events:

(a) any material breach of the terms and conditions of the Lease Deed by the Lessor, which material breach is not remedied by the Lessor within 90 (ninety) days of receipt of notice regarding such breach; or

(b) any interference with the peaceful possession of the Project Site by the Lessor due to which the Lessee is not able to carry on its business for a continuous period of 60 (sixty) days or more, which interference is not rectified by the Lessor within a period of 60 (sixty) days from the date on which the Lessee notifies the same to the Lessor.

**8. Lessor's obligations and covenants**

The Lessor hereby agrees and warrants that:

(a) subject to the terms of the Lease Deed, the Lessee shall be entitled to possess, hold, use and enjoy the Project Site and every part thereof during the Term of the Lease Deed, without any interruption by the Lessor;

(b) the Lessee shall, during the Term of the Lease Deed, enjoy free ingress and egress to and from the Project Site without any hindrance;

(c) subject to timely payment of the Annual Lease Rent and performance of the covenants and conditions of the Lease Deed, the Lessee shall peacefully hold and enjoy the Project Site during the Term of the Lease Deed;

(d) upon execution of the Lease Deed and subject to the terms thereof, the Lessor shall deliver, or cause to be delivered, to the Lessee vacant possession of the Project Site. The Lessor shall, at its cost and expense clear any Encumbrances, including possession or occupation, if any, by third parties prior to delivery of vacant possession of the Project Site to the Lessee;

(e) the Lessor shall pay and discharge all payments/dues in respect of the Project Site prior to execution of this Lease Deed. Post execution of this Lease Deed, all such payments/dues in respect of the Project Site shall be borne by the Lessee during the Term of the Lease Deed;

(f) the Lessor shall pay the property tax in respect of the Project Site directly to the concerned municipal authority and shall issue a written intimation to the Lessee, for the purposes of reimbursement in accordance with this Lease Deed;

(g) upon execution of the Lease Deed, the Lessor shall provide the Lessee with any consent(s) or no objection(s) of the Lessor in obtaining power, water, telephone and such other facilities that the Lessee may require, to use and enjoy the Project Site effectively for the purposes stated in Clause 6 of this Lease Deed. Such consents or no objection(s) shall be provided by the Lessor within a reasonable time; and

(h) the Lessor shall not create any Encumbrances on the Project Site otherwise part with or alienate any of its rights, title or interest in or to the Project Site except as provided in Clause 9 of this Lease Deed.

**9. Sale, transfer or disposal of the Project Site**

9.1 The Lessor may sell, transfer or otherwise dispose of the Project Site to any Government Authority or any other entity owned or controlled by the Government of India.

9.2 The Parties agree that any sale, transfer or other disposal of the Project Site or any part thereof as provided in this Clause 9 shall always be subject to the leasehold rights of the Lessee set out in this Lease Deed and the Lessor shall ensure that simultaneously with the sale, transfer or other disposal of the Project Site or any part thereof, the transferee thereof shall acknowledge the leasehold rights of the Lessee therein and shall execute an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this Lease Deed.

**10. Lessee's obligations and covenants**

Lessee hereby covenants, agrees and represents that:

(a) upon execution of this Lease Deed and subject to the terms thereof, the Lessee shall accept the Project Site in the condition it is handed over and undertakes to use the same only for the purposes as enlisted in Clause 6 of this Lease Deed;

(b) this Lease Deed has been duly authorized, executed, and delivered by the Lessee after fulfilling all legal formalities and constitutes its legal, valid and binding obligation;

(c) during the Term of the Lease Deed, the Lessee shall pay the Annual Lease Rent in accordance with terms and conditions set out in this Lease Deed and shall observe and fulfil each of its obligations and covenants set forth herein;

(d) during the Term of the Lease Deed, the Lessee shall undertake the development of the Project Site, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the Project, and obtain necessary approvals/clearances from the appropriate authorities for the same;

(e) at its own cost and expense, the Lessee shall obtain all utilities such as water, electricity from the appropriate authorities;

(f) it shall obtain and keep current all Applicable Permits that may be required under the Applicable Laws;

(g) it shall pay all taxes (except property tax), service tax, cesses, assessments and levies in respect of the Project Site, which are leviable at any time during the Term of the Lease Deed;

(h) It shall reimburse the Lessor for the property tax paid in respect of the Project Site within 30(thirty) days of receipt of the Lessor's written intimation;

(i) it shall not create any lien, charge or Encumbrance on the Project Site, except as expressly permitted in this Lease Deed or the Concession Agreement, without prior approval of the Lessor;

(j) it shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Project Site;

(k) it shall (i) keep and maintain the Project Site and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Project Site shall be free from encroachments at all times and to the extent that there occur any encroachments on the Project Site, it shall make diligent efforts to remove such encroachments from the Project Site, as soon as practicable;

(l) it shall take all necessary care to keep the premises neat and clean and in sanitary conditions consistent with the environment; and

(m) it shall, after expiry or termination of the Lease Deed, forthwith hand over possession of the Project Site to the Government.

**11. Regulatory approvals for construction**

The Lessee agrees and covenants that the Lessee shall undertake construction of buildings and/or structures at the Project Site only after obtaining all Applicable Permits as are necessary for such constructions. The Lessee further agrees that the Lessee shall at all times comply with the conditions of such Applicable Permits.

**12. Inspection by the Lessor**

12.1 The Lessee agrees and covenants that during the Term of the Lease Deed, the Lessee shall not restrict or obstruct the Lessor and its authorised agents to enter upon and inspect the Project Site at all reasonable hours on any working day.

12.2 The Lessee undertakes that the Lessee shall notify the Lessor of any material breach by the Lessee of any Applicable Permits acquired in relation to the Project Site.

**13. Stamp duty and registration charges**

The Parties agree that all stamp duties, registration charges and any other charges payable in respect of the lease contemplated herein shall be to the account of and borne by the Lessee.

**14. Indemnities and limitation of liability**

The Lessee shall fully indemnify, defend and hold harmless the Lessor, its officers, servants, agents, against any and all suits, proceedings, actions, demands, claims and liabilities, which may be incurred or suffered by the Lessor and which may arise out of or as a result of any of the following causes:

(a) any breach by the Lessee of any of its obligations, covenants, agreements, representations or warranties set forth in this Lease Deed;

(b) any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused wilfully or negligently by the Lessee; and

(c) any breach, violation or non-compliance by the Lessee of any Applicable Laws and/or Applicable Permits.

**15. Assignment**

The Lessee shall not, without the Lessor’s prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this Lease Deed.

**16. Force Majeure**

16.1 Neither Party shall be liable to the other for non-performance of its obligations under this Lease Deed (other than the obligation to make payments when due) on account of any event of Force Majeure including but not limited to fire, flood, act of God or irresistible force, civil disobedience, riots, terrorism, strikes, lock-out, act of government, or any other event beyond the reasonable control of such Party.

16.2 Where the event of Force Majeure exists for a continuous period of 6 (six) months, the Parties shall mutually decide on the course of action to be adopted, which may include the determination of this Lease Deed.

16.3 Notwithstanding anything to the contrary in this Lease Deed**,** if the Lease Deed is determined in accordance with Clause 16.2 above, neither Party shall be liable to pay any compensation to the other for such termination.

## 17. Dispute Resolution

17.1 The Parties shall use their respective reasonable endeavours to settle any dispute, difference, claim, question or controversy between the Parties arising out of, in connection with or in relation to this Lease Deed ("**Dispute**") amicably between themselves through negotiation.

17.2 Any Dispute which the Parties are unable to resolve pursuant to Clause 17.1, within 60 (sixty) days (or such longer period as the Parties may agree) of notice by one Party to the other of the existence of a Dispute, shall be resolved in accordance with the provisions of Article 24 of the Concession Agreement.

## 18. Governing Law

This Lease Deed is governed by and shall be construed in accordance with the laws of India.

## 19. General Provisions

### 19.1 Entire Agreement

This Lease Deed together with the Annexes constitutes the entire agreement between the Parties with respect to the subject matter and the transaction envisaged in this Lease Deed, but shall be subject to the provisions of the Concession Agreement at all times.

### 19.2 Waiver

19.2.1 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 Lease Deed:

(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 Lease Deed;

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

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

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

**19.3 Severability**

If for any reason whatever, any provision of this Lease Deed 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 Lease Deed or otherwise.

**19.4 Specific Performance**

In the event of default or breach in performance of obligations by any Party, the Party not in default or breach shall be entitled, without prejudice to its other rights and remedies, to seek and enforce specific performance of this Lease Deed.

**19.5 Expenses**

Each Party shall pay its own costs and expenses (including, without limitation, the fees and expenses of its agents, authorised representatives, advisors, counsel and accountants) necessary for the negotiation, preparation, execution, delivery, performance of and compliance with this Lease Deed.

**20 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 Lease Deed shall be in writing and shall:

(a) in the case of the Lessee, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Lessee may from time to time designate by notice to the Lessor; 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 facsimile or e mail to the number as the Lessee may from time to time designate by notice to the Lessor;

**Attention**:

**Designation:**

**Address:**

**Fax No**:

**Email**:

(b) in the case of the Lessor, be given by facsimile or e-mail and by letter delivered by hand to the address given below with a copy delivered to the Lessor's Representative or such other person as the Lessor may from time to time designate by notice to the Lessee; provided that if the Lessee does not have an office in Chennai, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier;

**Attention**:

**Designation: Address:**

**Fax No**:

**Email**:

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

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

| | |
|---|---|
| SIGNED, SEALED AND DELIVERED<br>For and on behalf of THE LESSOR by: | SIGNED, SEALED AND DELIVERED<br>For and on behalf of<br>by LESSEE: |

| | |
|---|---|
| (Signature) | (Signature) |
| (Name) | (Name) |
| (Designation) | (Designation) |

In the presence of:

1. 2.

## SCHEDULE B: SCOPE OF THE PROJECT[16]

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

The scope of work is primarily divided into three stages namely development, operations and maintenance and Handover upon completion of Concession Period. Though the scope includes all the activities required for fulfilling the objective some of them are detailed hereunder as per project timeline.

a) Development Phase

i. Taking over of encumbrance free site to Plan, Design, Finance and establish the Project Facility, including Construction, Marketing, provision of relevant assets, equipment, facilities, obtaining Clearances/approvals, ancillary services and amenities related to the Wayside Amenity at the Project Site conforming to Applicable Laws including Building Bye-Laws and regulations and as per terms of the Agreement and Schedules hereof.

ii. Site clearance and cordoning off the Site; providing and deputing of Security including dismantling of Existing Structure if any, removal of debris to specified debris disposal sites (shall be property of Concessionaire) etc.

iii. Planning & designing, to obtain necessary approvals including planning and structural approval, arrange for required funding and to construct the way side amenities and the auxiliary facilities as required to be developed at the Project Site as per the laid down provisions of the Concession Agreement and Schedules hereof. Timely completion of the construction activity and to ensure availability of envisaged facility as per timelines of the Concession Agreement.

iv. Ensure necessary solar provision is made as per TNCDBR.

v. Ensure adherence & conformity with all the Applicable Laws and regulations including MoRTH Guidelines / Requirements, Harmonised guidelines and Standards of Universal Accessibility, etc. with respect to development and operational requirement

vi. Ensure Compliance with provisions of the labour welfare legislations like the Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; The Minimum Wages Act, 1948; The Equal Remuneration Act, 1976; The Payment of Gratuity Act, 1972; The Employees State Insurance Act, 1948; The Workmen's Compensation Act, 1923 and other similar legislations, rules and orders as issued from time to time;

[16] It is clarified that a separate Concession Agreement will be executed for each Project Site. Therefore, while executing the Concession Agreement, only the scope of specific Project Site being awarded to Concessionaire should be included.

vii. The concessionaire shall ensure development of Minimum Development Requirement as per Annexure D within the construction timeline as per the Article 11 of Concession Agreement

viii. The construction shall strictly comply with all applicable provisions of the National Building Code of India, including the latest amendments and corrections, to ensure structural safety, fire safety, accessibility, environmental sustainability, and other relevant aspects as mandated by the code.

b) Operations and Maintenance

i. Common roads / Circulation

1. Undertake periodical maintenance, annual maintenance and preventive maintenance for all the common areas/ roads / Parking areas provided in the Site as per Annexure E.
2. To provide basic facilities and amenities like drinking water, toilets, etc. for the users at free of cost and to ensure hygienic maintenance of same. Further, additional Value-Added Services shall be provided and shall levy, demand and collect Service Charges from the Users for same.
3. Entry and exits for the Wayside amenity shall be provided and developed considering proper overall Traffic Circulation within the site as per MoRTH Guidelines and IRC Standards.
4. Adequate well-lit signages are to be provided and maintained in the Site.
5. To obtain adequate all risk Insurance cover for all the project assets during the Concession Period to protect the interest of Authority, Concessionaire and the users of site in case of unforeseen event. A copy of the insurance document so obtained shall be provided to the authority including renewal documents until completion of Concession Period.
6. To obtain all necessary Operational Licenses from the Local Body, FSSAI and any other government agencies depending on the development components and to provide the copy of same to the authority
7. Determine, demand, levy, collect, enforce, retain and appropriate User Charges including Service Charges on the commercial developments if any from the sub-licensees/ Users as per the laid down provisions of the Concession Agreement and the Schedules hereof.
8. Determine, demand, levy, collect, enforce, retain and appropriate User Charges for other activities such as advertisement, events and activities etc. with the approval of the authority as per applicable law.
9. To make payment of all applicable existing and future taxes, charges, fees, levies, Annual Lease Rent, Annual Concession Fee etc. as may be applicable to the Project and/ or any activities in pursuance of the Concession Agreement during the Concession Period.
10. To undertake all the Operations and Maintenance activities as mentioned in Article 14 of the Concession Agreement and to

proactively undertake any other related / additional activity to ensure Hygienic & Safe operations of the project site.

11. To undertake and comply with the directions of the Authority to ensure compliance with the terms and conditions of the Concession Agreement or adherence with Applicable Laws, safe operations of Site and to ensure Cleanliness, Hygiene and Safety aspects of Site and for all the Users of Site.

c) Handover Stage

i. Handover of the Project Facility without any defect in good condition excluding normal wear and tear as per directions of the Authority.

ii. Ensure that all the details of existing contracts, guarantees and warranties, maintenance manuals etc. is handed over to the Authority.

iii. Ensure that no advances, loans, dues or outstanding balances, statutory dues, utility bills payments or any kind of liability is there as on date of handover

iv. The Project Facility shall be handed-over to the Authority clear and free of all encumbrances in compliance with the Divestment Requirements set forth in the Concession Agreement

v. To extend the performance bank guarantee until completion of Defect Liability Period and to undertake all repairs or make good the damages caused by the Concessionaire during the Defect Liability Period

vi. Replenishment of the Performance Bank Guarantee if partly or fully appropriated by the Authority until completion of defect liability period.

## SCHEDULE-C: MINIMUM DEVELOPMENT REQUIREMENTS[17]

| **Project Site: Ayyankovilpathu, Villupuram** | |
|---|---|
| **Development Required** | **Area** |
| Retail / Food court / Dhaba / Restaurants | 4,000 sq.ft |
| Medical/ESS & Babycare | 100 sq.ft |
| Toilet | 430 sq.ft |
| 2W/ 4W Parking | 4,000 sq.ft |
| Bus/ Truck Parking | 2,000 sq.ft |
| Kids Play Area | 300 sq.ft |
| EV Station | As per requirement |

| **Project Site: Palangarai, Tirupur** | |
|---|---|
| **Development Required** | **Area** |
| Retail / Restaurant / Food court/ Dhaba | 3,000 sq.ft |
| Toilet | 430 sq.ft |
| Medical/Ess & Babycare | 100 sq.ft |
| 2W/ 4W Parking | 5,500 sq.ft |
| Bus/ Truck Parking | 1,600 sq.ft |
| Kids Play Area | 600 sq.ft |
| EV Station | As per requirement |

| **Project Site: Thirupachur, Thiruvallur** | |
|---|---|
| **Development Required** | **Area** |
| Retail / Food court / Dhaba / Restaurants | 200 sq.ft |
| Toilet | 182 sq.ft |
| Medical/Ess & Babycare | 80 sq.ft |
| 2W/ 4W Parking | 2,200 sq.ft |
| Bus/ Truck Parking | 2,200 sq.ft |
| Kids Play Area | 300 sq.ft |
| EV Station | As per requirement |

| **Project Site: Kalendira, vaniyambadi, Thirupathur** | |
|---|---|
| **Development Required** | **Area** |
| Retail / Restaurant / Food court/ Dhaba | 6,000 sq.ft |
| Medical/ ESS & Baby care | 80 sq.ft |
| Toilet | 182 sq.ft |
| 2W/ 4W Parking | 2,500 sq.ft |
| Bus/ Truck Parking | 2,000 sq.ft |
| Kids Play Area | 650 sq.ft |
| EV Station | As per requirement |

| **Project Site: Karipatti, Salem** | |
|---|---|
| **Development Required** | **Area** |

[17] It is clarified that a separate Concession Agreement will be executed for each Project Site. Therefore, while executing the Concession Agreement, only the details of the specific Project Site being awarded to Concessionaire should be included.

| | |
|---|---|
| Retail / Restaurant / Food court/ Dhaba | 400 sq.ft |
| Toilet | 82 sq.ft |
| Medical/Ess & Babycare | 80 sq.ft |
| 2W/ 4W Parking | 5,000 sq.ft |
| Bus/ Truck Parking | 2,000 sqft |
| Kids Play Area | 300 sq.ft |
| EV Station | As per requirement |

| **Project Site: Ayyankovilpathu, Villupuram** | |
|---|---|
| **Development Required** | **Area** |
| Retail / Food court / Dhaba / Restaurants | 4,000 sq.ft |
| Medical/ESS & Babycare | 100 sq.ft |
| Toilet | 430 sq.ft |
| 2W/ 4W Parking | 4,000 sq.ft |
| Bus/ Truck Parking | 2,000 sq.ft |
| Kids Play Area | 300 sq.ft |
| EV Station | As per requirement |

| **Project Site: Pudhuchatram, Dindigul** | |
|---|---|
| **Development Required** | **Area** |
| Medical/ Baby care | 100 sq.ft |
| Retail / Restaurant / Food court/ Dhaba | 2,500 sq.ft |
| Toilet | 430 sq.ft |
| 2W/ 4W Parking | 2,000 sq.ft |
| Bus/ Truck Parking | 2,000 sq.ft |
| Kids Play Area | 700 sq.ft |
| EV Station | As per requirement |

| **Project Site: Kilmattai, Thiruvannamalai** | |
|---|---|
| **Development Required** | **Area** |
| Retail / Restaurant / Food court/ Dhaba | 3,000 Sq.ft |
| Medical/ESS& Baby Care | 100 Sq.ft |
| Toilet | 430 Sq.ft |
| 2W/ 4W Parking | 5,800 sq.ft |
| Bus/ Truck Parking | 2,000 sq.ft |
| Kids Play Area | 700 sq.ft |
| EV Station | As per requirement |

## SCHEDULE-D: DEVELOPMENT GUIDELINES AND SPECIFICATIONS

Facilities must have a minimum of the amenities as per Schedule -C: The facilities shall be developed as per following guidelines:

### 1. Pedestrian and Vehicular Movement

**General Design Criteria for Paths and Parking**

a) Traffic Safety: Design of all circulation routes and parking areas should reflect good traffic engineering design practice to enhance the safety of users during circulation and parking.
b) Aesthetics: Landscaping should be utilized to enhance the appearance of paths and parking areas.

**Minimum road widths: Passenger vehicle movement**

| | |
|---|---|
| i. | One way drive: 3.5 m (min.) |
| ii. | Two-way drive: 7.0 m (min.) |
| | Two-way car - truck/bus/trailer 7.0m (max vehicle width 2.45m) |

**Trailer/ Truck access**

a) For one-way truck/trailer (access only): 4.0 m (movement into and out of parking bays as per turning radii requirement of vehicles)
b) For two-way truck/trailer (access only): 8.0 m (movement into and out of parking bays as per turning radii requirement of vehicles)
c) Recommended minimum radius: 22 m; turning radius should be based on vehicles to be accommodated.
d) Vehicles should circulate in a clockwise direction, making right hand turns, permitting driver to see rear of unit when backing into parking space.
e) Fire Lanes: Minimum width: 6 m; Engineered surface to support recommended weight (as per Fire Code requirement)

### 2. Automobile Parking Facilities

**Recommended Parking Stall Sizes**

a) Passenger Vehicle Stall size: **minimum 2.5 m x 5.0 m**, 90-degree parking with two-way traffic movement. A standard stall (rather than a mix of full and compact size spaces) is preferred.
b) Stalls in service/ delivery and loading dock areas should be adequately designed to accommodate service vehicles, including large trucks if required.
c) Bus parking bay: **4.0 m x 13.5 m (min.)**
d) Trailer parking bay: minimum **4.0 m (min.) x 13.5 m** (or length of trailer + 1.5 m)
e) Road width between bays min.6.0m

**Surface Parking Lots**

a) Parking areas should be durable and ease of maintenance.
b) Lot should provide for adequate drainage and minimize puddling and erosion.
c) Lots accommodating over 50 vehicles should have at least two ingress/ egress points.

d) Where possible, select pervious paving materials and surface finishes to reduce runoff and increase infiltration.

**Service Areas and Truck Trailer Parking**

a) Sufficient horizontal clearances and turning radii should be provided to accommodate all service/ delivery and emergency vehicles, including long truck trailers.
b) Adequate vertical clearance for vehicles and loading dock heights for trucks should be provided to accommodate all service/ delivery and emergency vehicles. Minimum vertical clearance: 5.5 m.
c) Where possible, delivery & service areas should be screened from view public used areas. Such screening should not create a security problem.
d) Lighting should support evening use and enhance safety.

## 3. Topography

The existing topography of the site should be an important consideration in the design of the highway facility. Significant natural landforms and drainage features such as hilltops and drainage channels within or next to the site should be preserved where possible.

## 4. Landscape & Use of Plant Materials:

The landscape/ site should respect existing attributes of the site while responding to the context created by surrounding areas and facilities. One of the priorities thus must be to design green spaces in an equitable way. Durable hard landscape materials, street furniture, signage, and other features which can withstand wear, abuse, and vandalism shall be used.

The habits of living plants should be fully understood in both plant selection and landscape layout to avoid over-planting, excessive maintenance, excessive water requirements and conflict between plantings and structures. Use plant materials in a manner suitable to their growth habit and life span, minimizing future pruning and plant removal. Use plants for their aesthetic as well as environmental uses.

The following functions may be considered when selecting plants.

a) **Way finding and Space Articulation**: Such as defining roads and paths with tree rows; accentuating entry points and drop-off with plants having interesting form, colour, or texture.
b) **Screening** undesirable views or service equipment.
c) **Traffic Control**: Plants should be used to direct people through the site in a definite desired pattern or direction, and also as vehicle barriers.
d) **Glare and Reflection Control:** A judicious balance between hard and soft paved areas can minimize glare and reflection.
e) **Solar Radiation Control:** Plants can be used to filter or completely block out the incident sun. Single or groups of plants can be used to control direct solar

radiation by shading the sun, or to intercept radiation reflected from hard surfaces. Mix evergreen and deciduous planting to achieve summer shading and winter solar access. Keeping paved areas to a minimum and increasing vegetative cover (including large areas of ground cover -not limited to lawns) reduces direct as well as reflected solar heat gain.

f) **Noise Control:** The effectiveness of plants to control sound levels is determined by the sound - its Type, decibel level, intensity and origin; the planting - Type, height, density, and location; and the climatic factors - wind direction and velocity, temperature and humidity. Plants cannot screen out all sound, but are effective at screening out sound levels sensitive to human ears. Scattering and absorption of sound waves by plants, grass and groundcovers, reduces sound levels. Excessive sound (noise) levels on highways need careful consideration in the selection of plant materials to maximize their sound attenuation properties.

g) **Water Conservation and Plant Selection**

i. Use drought tolerant plantings
ii. Use native or naturalized plants at interfaces with natural open spaces, and wherever desirable.
iii. Grouping plantings which require more water in high use/high visibility areas, and using plantings with lower water requirements in other less visible locations.
iv. Limiting use of turf to recreational use areas; use of groundcovers or permeable surfaces for other areas.

h) **Landscape Furniture**

Site furniture (response to site character) should be placed, where required, for the comfort, convenience, information, circulation, control, protection and enjoyment of users. Landscape/Street furniture may include the following elements:

i. Seating, Bollards, Kiosks, News Racks and Vending Machines
ii. Light Standards, Landscape Pottery and Sculpture
iii. Trash and Recycling Containers
iv. Signage

i) **Guidelines for landscapes in parking areas**

i. Landscape development in parking areas shall be designed to provide safety and comfort to the drivers and pedestrians, enhance the visual quality while reducing auto noise, lights and glare, and ambient temperature.
ii. All lots should receive landscape treatment (for example, screen plantings) for visual enhancement, shade, and erosion control.
iii. All lots should receive interior landscaping (planting islands or raised beds) to enhance appearance and provide significant shade. Landscaping should effectively divide lots into smaller paved expanses.

iv. Provide a "finger" landscape island for tree plantation (every 10-15 stalls) to sub-divide large parking lots.
v. Linear landscape islands must be a minimum of 3.0m wide, and ideally without curbs, and designed to receive the runoff from the parking lot.
vi. Parking lot trees shall be a minimum of 3.0m tall with stem diameter of 2.5 cm (min.) at the time of plantation.
vii. Parking lot trees shall be planted at a cleared distance from light standards so the trees will not interfere with the lighting pattern of the light fixture. Light standards shall be shown on conceptual plans and subsequent planting plans.
viii. All soil surfaces in the planting area shall be covered with shrubs and/or ground covers.
ix. Where possible select pervious paving material to increase infiltration

**5. Lighting**

All facilities should have proper lighting arrangement in ventilation system. The specification should be in line with good industry practice.

**a) Guidelines for Lighting**

Lighting should be to enhance the safety of vehicular and pedestrian flows. Lighting shall be concentrated at intersections, especially with pedestrian paths. The fixtures shall be designed for required roadway clearances of trucks and emergency equipment.

**b) Lighting for Parking**

- Lighting standards should be located within outdoor parking islands and to prevent unwanted glare.
- Outdoor parking lots and their pedestrian links should be provided with a "minimum maintained on the floor surface" of 16 lux of light on the parking and 27 lux walkway surface during hours of darkness.

**c) Pedestrian and Entry Lighting**

- To ensure the safety of pedestrians at twilight and evening hours, light fixtures shall be located along all pedestrian paths. The fixtures must be positioned in such a manner as to minimize glare or distraction for the pedestrian or motorist.
- For safety and easy identification, the entrances of buildings and parking areas should be illuminated with a "minimum maintained" of 27 lux of light on the floor surface during hours of darkness.

**6. Fire**

a) Provide smoke detectors for all areas
b) Clearly mark all exits
c) Provide sprinkler system in kitchen and all high-risk areas
d) Install firefighting devices as per local fire norms

Provide fire tank as per local norms

## SCHEDULE E: LIST OF PERMITTED DEVELOPMENTS

In addition to the Minimum Development Requirements as specified in Schedule – C, the Concessionaire in accordance with the provision of this Agreement may develop one or multiple of the following list of developments:

i. Fuel stations , EV charging stations
ii. Parking areas – 2W/ 4W/ Truck parking/ Layby area
iii. Hotels/ Motels
iv. Restaurant/ Dhabas / Food courts
v. Any kind of Retail facility
vi. Indoor & Outdoor Sports & Play Areas
vii. Vehicle repair facilities/ Garages
viii. Medical facilities
ix. Drivers Dormitories, Canteen etc.
x. Parks, Landscapes & Kids Play area
xi. Public Convenience Facility / Toilets
xii. Open or Closed Nursery
xiii. ATM, Public Information centre etc.
xiv. Advertisement
xv. Necessary infrastructure facility for above development
xvi. Roads & Pavements
xvii. Any other facility as approved by TANSHA upon written request of bidder

## SCHEDULE F: FORMAT OF PERFORMANCE SECURITY

To,
<Insert Designation and Address of the Authority>

**WHEREAS**:

A. _____(the "**Concessionaire**") and Tamil Nadu State Highways Authority having its principal office at No. 76, Sardar Patel Road, Guindy, Chennai – 600 025(the "**Authority**") having to enter into a Concession Agreement (the "**Agreement**") for the***"Development of Wayside Amenities on Design, Build, Finance, Operate and Transfer (DBFOT) Basis under PPP Mode for Tamil Nadu State Highways Authority"*** (the "**Project**") including any extension in Concession Period, subject to and in accordance with the provisions of the Agreement.

B. The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. [▪] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Concession Period (as defined in the Agreement).

C. We, _____through our Branch at _____ (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of _____(mention designation of the officer) in the Tamil Nadu State Highways Authority that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Concession Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained herein, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee shall be unconditional and irrevocable and will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect after expiry of a period of 6(six) months from Concession Period provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire being Company or by a Chartered Account in any other case, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it

has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive. The Bank shall also accept e-mail as a valid notice of claim by the Authority delivered to [insert e-mail id of the Bank]

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of 6 (six) months after the expiry of Concession Period or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED
For and on behalf of the BANK by:
(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

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

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

## Annexure-I
## Performance Security of Project Sites

| Sl. No. | Site Name | Performance Security (In INR Lakhs) |
|---|---|---|
| 1. | Ayyankovilpathu, Villupuram | 26 |
| 2. | Palangarai, Tiruppur | 32 |
| 3. | Tirupachur, Tiruvallur | 21 |
| 4. | Kalendira, Tirupathur | 26 |
| 5. | Karipatti, Salem | 35 |
| 6. | Puduchantram, Dindigul | 15 |
| 7. | Kilmattai, Tiruvannamalai | 20 |

**SCHEDULE G: PROJECT COMPLETION SCHEDULE**

*(As per the approved Development Plan)*

## SCHEDULE H: COMPLETION CERTIFICATE

1 I, …… (Name of the Nodal Officer), acting as Nodal Officer, under and in accordance with the Concession Agreement dated …… (the "**Agreement**"), for "***Development of Wayside Amenities on Design, Build, Finance, Operate And Transfer (DBFOT) Basis under PPP Mode for Tamil Nadu State Highways Authority"*** (the "Project") through .....…… (Name of Concessionaire), hereby certify that the Tests specified in the Agreement have been successfully undertaken to determine compliance of the Project Facility with the provisions of the Agreement, and I am satisfied that the Project Facility can be safely and reliably placed in commercial service of the Users thereof.

2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Project Facility have been completed and all the Applicable Permits to commence operations having been obtained by the Concessionaire from the concerned Government Instrumentality, accordingly, the Project Facility is hereby declared fit for entry into commercial operation on this the …… day of …… 20…..

SIGNED, SEALED AND DELIVERED
For and on behalf of
the NODAL OFFICER by:

(Signature)
(Name)
(Designation)
(Address)
(Regn. No.)
(Ref. No.)

AGREED, ACCEPTED AND SIGNED
For and on behalf of the Concessionaire by:

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

## SCHEDULE I: MAINTENANCE REQUIREMENTS

During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either itself or through an experienced O&M Contractor possessing requisite technical, financial and managerial expertise/ capability and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and Good Industry Practice.

The obligations of the Concessionaire hereunder shall include (but not limited to) the following:

(a) permitting and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions;

(b) repair the Facility upon any loss, damage, breakage being noticed or reported and rebuild them if necessary to ensure they are in good condition;

(c) installing, operating, managing and maintaining the Project in accordance with the Applicable Laws, Applicable Permits and the operations and maintenance Requirements such that it shall achieve the Service Level Indicators.

(d) minimizing disruption in the event of accidents or other 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 all the Project Assets such as A/C, Generators, Lifts, Escalators, Power Panel, STPs, WTP's, RO Plant, firefighting systems, etc. as per the Equipment Manufactures requirements or as per good industrial practise. This includes undertaking AMC's, periodic maintenance activities, making timely replacements of all replaceable and consumables and to ensure desired operational performance of all Plant & Machinery and MEP fittings / installations

(f) Undertaking routine maintenance of the entire Project site to ensure it remains in good working condition and meets operational and safety standards. This shall include prompt repairs and upkeep of civil structure, joints, lighting, drains, structures, pavement markings, plumbing, electrical and mechanical installations, sign boards, building works including whitewash/ painting, any overhead/ underground services, repairs/ replacement of all electrical works/ services and electronic equipment and prompt repairs/ replacement of all computer hardware, networking and software works etc.;

(g) ensure sufficient stock of spares, at Project Site and any default/ fault is attended/ rectified/ carried out immediately for smooth functioning of the facility;

(h) To ensure safe disposal of Hazardous materials including Smoke, Mechanical Waste, Medical Waste etc. protection of the environment and operating the site as per standard / best practise.

(i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing safe, smooth and

uninterrupted use of the Project;

(j) complying with Safety Requirements in accordance with best industrial practice and in compliance with this RFP & Concession Agreement

(k) exercising appropriate control over Contractors and managing, directing, administering, and supervising their working to ensure compliance with the provisions of this Agreement. However, the primary responsibility shall remain with the Concessionaire;

(l) ensuring effective coordination with the Authority and other relevant departments to facilitate the seamless operation of the Project Facility at the Site and to provide necessary operational information at the instruction of the authority

(m) acquiring operational/renewal of licenses for all plant and machinery and any other necessary approvals during operations and maintenance;

(n) ensuring Structural & Quality audit is undertaken every three year once for the entire facility and ensure optimal functioning of the entire Project Facility;

(o) ensure to abide by the provisions of the labour welfare legislations like the Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; The Minimum Wages Act, 1948; The Equal Remuneration Act, 1976; The Payment of Gratuity Act, 1972; The Employees State Insurance Act, 1948; The Workmen's Compensation Act, 1923 and other similar legislations, rules and orders as issued from time to time;

(p) Payment of Annual Lease Rent, Annual Concession Fee, all utilities charges including power, water, Tele communication, etc. Proofs of such payment made shall be submitted to the authority for its record.

(q) The minimal maintenance requirement for the Toilets is detailed below, if any additional maintenance is required the same shall be undertaken

- All sanitaryware including sinks, wash hand basins, WC / IC bowls, seats, covers, hinges, tops, undersides, rims, taps, overflows, outlets, chains, plugs, urinals, brushes, toilet roll holders, tiled surfaces, splash backs, and vanity units must be free from scum, grease, hair, scale, dust, soil, spillages and removable stains. In addition, the surfaces should be disinfected.
- Floors should be cleaned to the good industry standards. In addition, there should be no evidence of scum, grease, hair, and scale and the floors must be disinfected.
- Soap dispensers must be filled, operating correctly with clean nozzles, the external surfaces must be clean dry and free from smears.
- All toilets should be kept fully stocked with supplies and should be made available at all times.
- Dispensers must be clean, dry and free from dust, marks and smears with clean towels fitted. Hot air dryers must be clean, dry and free from dust, marks and smears.

- Cleaning and maintenance of toilets shall be undertaken as per below mentioned frequency
    - Daily Maintenance of Floor Dry / Wet Area, sinks, wash hand basins, hinges, tops, undersides, rims, taps, outlets WC / IC bowls, seats, covers, urinals, chains, plugs, brushes, toilet roll holders etc. – Hourly Basis or as and when required
    - Daily Maintenance - The Concessionaire shall maintain a checklist covering cleaning and sanitation of toilets. This checklist is to be attached on the back of the toilet door. It is to be updated and filled up by the Concessionaire on duty at regular intervals each time the toilet is cleaned
    - Periodic Maintenance – Regular maintenance through Machine Scrub / Hand Scrub / Scrub on Floor, Wall, Basins & Bowls including Urinals, Sopa Dispensers, Exhaust Fans, Lights etc. to be taken on Weekly Basis to ensure removal of Soiles from Grouting area, Stubborn Stains ( including yellow stains ), dirt, dust, grease etc.
- Toilet cleaners / Toilet attendant should be properly trained and certified to perform the task well. Supervisors should also be trained with the right knowledge and skills to effectively supervise the cleaners.

(r) All common area including the circulation and parking area shall be free from graffiti, debris, litter, cigarette ends, dirt or spillages, dried leaves, grease, dust, soil, oil marks and removable stains. Maintenance frequency for of all the circulation and common area shall be undertaken as detailed below

- Cleaning of Internal & External Walls of height less than 6 Feet – Daily
- Cleaning of Internal & External Walls, Terrace area etc. of height above 6 Feet – Weekly Once
- Cleaning of Internal Walkways / Corridors / Floor Area etc – Thrice Daily / as and when required
- Clearing of Litterbins - Thrice Daily / as and when required
- Checking of all electrical / Plumbing Fittings – Weekly Once
- Cleaning of Doors / Windows / Handrails etc. – Daily Once
- Cleaning of all internal furniture & fittings including Chairs, Tables etc – Thrice daily
- Cleaning of external Circulation Area including Roads / Pavements / Parking area – Twice Daily
- Cleaning of external façade including glass surfaces – Weekly Once or as per recommended practice

(s) The Concessionaire shall be responsible for ensuring proper maintenance and upkeep

of all horticulture works in the landscaping area. Adequate equipment shall be maintained by Concessionaire including grass cutting machine and other tools required for maintenance of horticulture areas. The activities of landscape maintenance shall include

- daily watering, weed removing, trimming and pruning;
- soil mulching; applying fertilizer or compost manure/vermi culture manure as per direction or as and when required;
- lawn mowing; hedges and shrubs cutting etc.;
- cleaning garden areas, applying pesticides and fungicide as per direction or as and when required
- maintenance of vermi compost pits, disposal of dry/fallen leaves etc.
- Any other maintenance activity as per requirement

(t) Ensure surveillance of all common area through CCTVs / Providing entry access / restricting entry to admin / control rooms etc., monitory all entry and exits of vehicles, pedestrians etc. and to avoid trespassing etc.

## SCHEDULE J: VESTING CERTIFICATE

1. The **Tamil Nadu State Highways Authority** represented by _____ (the **"Authority"**) refers to the Concession Agreement dated …….. (the **"Agreement"**) entered into between the Authority and ……. (the **"Concessionaire"**) for ***Development of Wayside Amenities on Design, Build, Finance, Operate and Transfer (DBFOT) Basis under PPP Mode for Tamil Nadu State Highways Authority*** (the "**Project**").

2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 21.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project Facility shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this …….. day of ……., 20……. at ……...

| | |
|---|---|
| AGREED, ACCEPTED AND SIGNED | SIGNED, SEALED AND DELIVERED |
| For and on behalf of<br>CONCESSIONAIRE by: | For and on behalf of<br>AUTHORITY by: |
| (Signature)<br>(Name)<br>(Designation)<br>(Address) | (Signature)<br>(Name)<br>(Designation)<br>(Address) |

In the presence of:

1. 2.