GREATER CHENNAI CORPORATION

DRAFT CONCESSION AGREEMENT (DCA)

FOR

SELECTION OF A CONCESSIONAIRE FOR DEVELOPMENT OF MULTI LEVEL PARKING FACILITY AT KODAMBAKKAM IN CHENNAI CITY ON 'DBFOT' BASIS FOR A PERIOD OF 25 YEARS

RFP Ref: S.P.D.C.No.B1/0241/2025
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CONCESSION AGREEMENT

This CONCESSION AGREEMENT ("**Agreement**") is executed on this [●] day of [●] 202-- at Chennai, Tamil Nadu ("**Effective Date**"):

BETWEEN

GREATER CHENNAI CORPORATION, having its principal office at [●] represented by the Commissioner (hereinafter referred to as the "**Authority**", which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) of **One Part**.

AND

[● Limited], a special purpose company incorporated under the provisions of the Companies Act, 2013 with Corporate Identity Number (CIN) [●] and having its registered office at [●], represented by its [●] authorized vide Board Resolution dated [●] (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the **Second Part.**

*……the Authority and the Concessionaire shall be collectively referred to as "**Parties**" and individually as a "**Party**"*

WHEREAS:

A. The Greater Chennai Corporation is a statutory authority established under the Chennai City Municipal Corporation Act, 1919 as a body corporate having perpetual succession and a common seal.

B. The Authority, to address the growing problem of parking in the city of Chennai, Tamil Nadu recognized the need for developing multi-level parking facilities at various sites in the city through Public Private Partnership (the "**PPP**") mode. As a part of this endeavour, the Authority has decided for the development of a Multi-Level Parking Facility (MLP) on 1667 sq. mtr. land belonging to the Authority at *Kodambakkam* in Chennai (the "**Site**") on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis, in accordance with the terms and conditions to be set forth in an Agreement (the "**Project**").

C. The Authority had accordingly invited Bids by prescribing technical and commercial terms and conditions by its Request for Proposal No. ……. dated ……. (the "**RFP**") for

short listing of Bidders for implementation of the Project on DBFOT basis and had shortlisted certain Bidders including, inter alia, M/s……..…….. {name of the single entity Selected Bidder/ consortium comprising of ……. and …… (collectively the "**Consortium**") with …….. as its lead member (the "**Lead Member**") and ……. as its other Consortium Member.

D. After evaluation of the Bids received, the Authority had accepted the Bid of the {Selected Bidder/ Consortium} and issued its Letter of Award No. ……. dated ……. (hereinafter called the **"LOA"**) to the {Selected Bidder/ Consortium} requiring, inter alia, the execution of this Agreement within 45 (forty-five) days of the date of issue thereof, subject to submission of all the requisite documents including the constitutional documents, as directed by Authority.

E. The {Selected Bidder/ Consortium} has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/ Consortium under the LOA} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.

F. By its letter dated the Concessionaire has also joined in the said request of the Selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder/ Consortium for the purposes hereof.

G. The Authority has agreed to the said request of the Selected Bidder/ Consortium and the Concessionaire, and has accordingly agreed to enter into this Agreement with the Concessionaire for implementation of the Project on Design, Build, Finance, Operate & Transfer basis, subject to and on the terms and conditions set forth hereinafter.

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

PART I: PRELIMINARY

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement (including those in **Article 41**) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

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

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

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

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

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

(f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation, operation & maintenance and other activities incidental thereto, and "**develop**" shall be construed accordingly;

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

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

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

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

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

(m) 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;

(n) the words importing singular shall include plural and vice versa;

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

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

(q) "**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;

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

(s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document

as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(t) 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;

(u) 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;

(v) 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;

(w) 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

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

1.2.2 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.

1.2.3 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/ Addendum;

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

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

b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

c) between any two Schedules, the Schedule relevant to the issue shall prevail;

d) between the written description on the Drawings and the specifications, the latter shall prevail;

e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

f) between any value written in numerals and that in words, the latter shall prevail.

PART II: THE CONCESSION
ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project

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

(a) 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 (as required from time to time) and in conformity with the Operational Standards set forth in **Schedule D;**

(b) Operation & Maintenance of the Project in accordance with the provisions of this Agreement; and

(c) 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 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire, the concession set forth herein including the exclusive right, license and authority to design, 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**") , and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein 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, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

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

(b) plan, design, finance, construct and develop the Project;

(c) manage, operate and maintain the Project in terms of this Agreement and regulate the use thereof by third parties;

(d) demand, collect and appropriate Parking Fees from Users of the Parking Facility including the parking spaces developed for the Commercial Facility as per the rates mentioned under **Schedule-L**;

(e) determine, collect and appropriate User Charges/ other Revenues including maintenance charges, for undertaking commercial activities in the Commercial Facility, if developed, including from sub-license of spaces/ areas or out-sourcing of any services thereat. The Concessionaire shall also have the right to enter into appropriate contractual arrangement with third parties for allowing permissible usage of the Commercial Facility for commercial activities;

(f) right to permit/ allow and charge for advertisement on the Project Site/ Project Facility as per the prevailing laws. The Concessionaire shall acquire applicable permits from respective authorities. Provided, no such activity shall affect the safe and smooth flow of vehicular and or pedestrian movement or cause any physical damage to the Project Facilities;

(g) perform and fulfill all the Concessionaire's obligations under and in accordance with this Agreement including payment of Annual License Fee and Annual Concession

Fee;

(h) 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;

(i) appoint contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms;

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

(k) 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, lease or part possession thereof, save and except as expressly permitted by this Agreement;

(l) 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;

(m) 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

(n) 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.

3.2 Concession Period

Subject to early termination of this Agreement in accordance with its terms, the term of Concession for this Agreement is 25 (twenty-five) years from the Appointed Date (the **"Concession Period"**). The Concession Period is inclusive of Construction Period of 24 (twenty four) months reckoned from the Appointed Date.

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, 21, 27, 37 and 40, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**").

4.1.2 The 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 180 (one hundred and eighty) 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:

(a) provided peaceful and vacant possession of the land comprising of the Project Site along with the Right of Way, leave and license rights in respect of the same, clear and free from any encumbrances in accordance with the provisions of Article 10 of this Agreement;

(b) appointed an Independent Engineer in terms of this Agreement;

(c) 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) 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 Minimum Development Requirement as specified in Schedule-C in conformity with the Operational Standards set forth in Schedule-D; (iii) coverage/ inclusions with regard to any infrastructure including basic amenities & utilities incidental to the Project; and (iv) provisions of this Agreement;

(d) approved the updated/ modified the Development Plan submitted by the Concessionaire after incorporating the comments/ suggestions of the Authority, within a period of 15 (fifteen) days. 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;

(e) appointed a dedicated official not below the rank of Superintending Engineer as the Project Officer to act the representative of the Authority for overall monitoring of the Project on behalf of the Authority;

(f) granted Applicable Permits within its power and authority for commencement of the

Construction Works by the Concessionaire;

(g) shall obtain necessary notification from the competent authority that no vehicles shall be parked on-street in and the surrounding areas / roads within 500 M from the Project Site after the Commercial Operations Date of the Project;

(h) executed the Escrow Agreement along with the Concessionaire, Lenders' Representative and Escrow Bank;

(i) executed the Substitution Agreement along with the Concessionaire and Lenders' Representative.

Provided, that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive 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 180 (one hundred and eighty) days from the Effective Date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) 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 Operational Standards set forth in Schedule-D and Applicable Laws containing construction methodology, quality assurance procedures, environment management plan and safety management plan. The detailed design shall be submitted to Authority for its review and approval within 30 (thirty) days of the Effective Date. In the event, the Concessionaire plans to additionally develop the Commercial Complex as a part of the Project Facility, then the proposed design, plan, details, etc. in respect of the same should be essentially provided in the Development Plan. Further, if automated parking structure is proposed, then the Concessionaire shall provide complete details of the vendor, installation requirements, timelines for installation, operational details like parking & retrieval time, parking system or technology used, maintenance requirements, power consumptions, client satisfaction/ performance report of same machinery at past, software licenses and control mechanism etc. including any renewals on license fee etc.;

(b) addressed the comments, observations and incorporated the revisions suggested by the Authority within a period of 7 (seven) days from receipt of the same from the Authority and obtained approval from the Authority on the detailed Development Plan for the Project;

(c) procured all the Applicable Permits as specified in **Schedule-E** (the list is indicative only) 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;

(d) executed and procured execution of the Escrow Agreement in the form provided in **Schedule-M**;

(e) executed and procured execution of the Substitution Agreement in the form provided in **Schedule-O**;

(f) executed the Financing Agreements, if any, and same shall be delivered to the Authority in 3 (three) true copies thereof, duly attested by a Director of the Concessionaire. However, in case the Project is to be financed entirely (100%) through Equity by the Concessionaire then the Concessionaire shall inform the Authority in writing (duly attested by a Director of the Concessionaire) about the same and shall have deposited an amount equal to atleast 30% (thirty percent) of the total Equity in advance in the Escrow Account prior to the Appointed Date;

(g) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

(h) delivered to the Authority {from the Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (j), (k) and (l) of Clause 7.1 of this Agreement;

(i) appointed a qualified and professionally experienced persons (having prior experience of construction management and operating and managing similar projects) as its representative who shall be designated as the "**Construction Manager"** and **"Project Manager**" respectively;

(j) delivered to the Authority a legal opinion from the Indian legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

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 or grant extension of time for fulfilment thereof, as the case may be or grant any waiver hereunder with such conditions as it may deem fit.

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

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

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire, 0.2% (zero point two per cent) of the Performance Security as Damages for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, 0.3% (zero point three per cent) of the Performance Security as Damages for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty 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 fulfillment 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 fulfillment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Commencement of Concession Period

The date on which Financial Close is achieved and 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. For avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction of the Project in accordance with the terms of this Agreement.

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, within a period of 180 (one hundred and eighty) days from the Effective Date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or

arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and 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 encased and appropriated by the Authority as Damages thereof.

4.6 Extension of period for fulfilment of Conditions Precedent

The Parties instead of levying Damages and/ or terminating the Agreement under this Article 4 may mutually agree to extend the time period mentioned hereinabove for the fulfilment of Conditions Precedent for a period not exceeding two times the original timeline stipulated for fulfilling Conditions Precedent i.e. not more than 360 (three hundred and sixty) days from the Effective Date.

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 be responsible, at its own cost and expense, for designing, engineering, financing, procurement, construction, operation and maintenance of the Project and observing, fulfilling, complying with and performing all its obligations set out in this Agreement or arising hereunder.

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

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

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

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining/ renewing) Applicable Permits, and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project including for building plans, infrastructure facilities, utilities including power, water supply, drainage, sewerage, fire-fighting, telecommunications, etc. The Concessionaire shall also be liable to procure requisite approval and make payment (if any) for debris disposal;

(c) carry out design, construction and development of the Project Facility in compliance with the approved Development Plan, approved Drawings, Applicable Laws, Applicable Permits, TNCDBR, 2019, the National Building Code (NBC), and the provisions of this Agreement;

(d) perform and fulfill its obligations under the Financing Agreements or ensure compliance with the Equity Financing and Deposit Requirements in terms of Clause 5.16, as the case may be;

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

(f) to obtain environmental clearances required for the purposes of the Agreement. The Authority will provide necessary assistance required for obtaining such clearances;

(g) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

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

(i) ensure that the Users are treated with due courtesy and consideration and provided with ready access to services and information;

(j) ensure employment of the local population during the Concession Period;

(k) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement or Applicable Laws and Applicable Permits;

(l) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;

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

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

(o) not do or permit any activity on the Project Site which may be nuisance, annoyance or disturbance to the owners, occupiers or residents of other premises in the vicinity;

(p) procure that all equipment and facilities comprising the Project are developed, operated and maintained in accordance with the Maintenance Requirements, Safety Requirements and Good Industry Practice;

(q) carry out its obligations and duties with regard to the O&M (Operation and Maintenance) of the Project in accordance with the provision of this Agreement. 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. Further, subject to the provisions of Clause 36.3, the Concessionaire shall be liable to make payment of all taxes, duties, levies, etc. as may be applicable to the Project from time to time during the Concession Period;

(r) pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities other than Property Tax;

(s) upon termination of this Agreement either due to efflux of time or default, handback and transfer the Project along with all the Project Assets free from all Encumbrances and free of cost to the Authority in accordance with the provisions of this Agreement.

5.2 Obligations relating to Project Agreements

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

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

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the

avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

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

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

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

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

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

shall constitute a Change in Ownership requiring prior written approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it

shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement. For the purposes of this Clause 5.3.2:

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

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

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

5.4 Obligations relating to employment of trained personnel

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

5.5 Facilities for differently abled and elderly persons

The Concessionaire shall, in conformity with existing guidelines, norms, rules, and regulations, guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof and any policy issued by the GoTN, procure a barrier free environment for the differently abled and for elderly persons using the Project. Notwithstanding the above, the Concessionaire shall provide a ramp structure for differently abled users along with handrails for support.

5.6 Sole purpose of the Concessionaire

The Concessionaire having been incorporated for the sole purpose of exercising the rights and

observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.7 Obligations relating to basic amenities and utilities

The Concessionaire shall develop, operate and maintain appropriate and adequate basic amenities, utilities and facilities like staircase, lift(s), drinking water, toilets for both Men and Women, etc. for the parking users 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 noise control

The Concessionaire shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Project during Construction Period and its impact on the neighborhood.

5.9 Obligations relating to taxes and other charges

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

5.10 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.

5.11 Obligations relating to medical aid

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

5.12 Security and Safety at the Project Site and Project Facility

5.12.1 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.

5.13 Obligations relating to Minimum Development Requirements

5.13.1 The Concessionaire is obligated to develop and provide at the Project Facility the following mandatory spaces (the "**Minimum Development Requirements**"):

i. **2-wheeler: 422 parking spaces;**
ii. **4-wheeler: 75 parking spaces;**
iii. **GCC Office Space: 16,000 sq.ft. free of cost (***warm shell as per approved Development Plan***)**

5.13.2 The above parking spaces at point no. (i) & (ii) as prescribed by TNCDBR – 2019, are dedicated for public parking and exclusive (i) of the captive parking requirements of the GCC Office Space; and (ii) of the parking space to be allotted and developed for the Commercial Facility, which shall be created additionally to above public parking spaces, as per the applicable development norms for such commercial development at the Project Site. The entire development must adhere to the standards prescribed by Harmonious guidelines and standards for universal accessibility in India – 2021. In addition to the development of the public parking facility, basic facilities/ services to the Users such as toilets for both men and women, drinking water facilities should be provided adequately and free of cost to the Users of the Parking Facility.

5.13.3 The Concessionaire shall develop and provide commercial office space for Greater Chennai Corporation office space (GCC Office Space) free of cost with a minimum built up area of 16,000 square feet as per development regulations of TNCDBR – 2019 which is exclusive of parking facility, setbacks, and other non FSI areas. The GCC Office Space shall be developed on ground floor plus upper floor(s) with separate lift access to upper floors of GCC office. The standards and specifications for development of warm shell GCC Office Space and dedicated parking facility are specified in Annex-I to Schedule-C.

5.13.4 The Concessionaire shall be free to construct and develop the Parking Facility either as automated parking or conventional type, or even a mix of both subject to adhering to Applicable Laws including the local development norms of the Chennai Metropolitan Development Authority (**CMDA**), Applicable Permits and provisions of this Concession Agreement. The Concessionaire for operation of the Parking Facility during the O&M Period, shall also be responsible to regularize or restrict the on-street parking facility along with towing the unauthorized vehicles within a radius of 500 mtr. from the Parking Facility or as per the Site requirement. The Concessionaire shall also bear the cost of purchase, operation and maintenance of Towing Vehicle and Buggy. The manpower cost for operation and maintenance of Towing Vehicle and Buggy shall be borne by the Concessionaire.

5.14 Sub-licensing of Spaces at the Commercial Facility

The Concessionaire shall have the right to sub-license built up shops, showrooms, spaces, etc. in the Commercial Facility for allowing permissible usage of the commercial facility for commercial activities, by entering into appropriate sub-license deeds with the sub-licensees/ third parties. The Concessionaire shall ensure that such sub-license deed shall, incorporate clauses, that (i) the Sub-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-license(s) shall extend beyond the term of this Agreement and the Commercial Facility shall be handed back to the Authority free of such sub-licensees; (ii) the Sub-licensees shall not create any Encumbrance on the taken up commercial space; (iii) the Sub-License Deed(s) shall become effective with the right to use allowed to sub-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 Provisional Completion Certificate or Completion Certificate from the Independent Engineer under this Agreement; and (iv) the terms of such sub- license(s) shall not be contrary to or in derogation of the terms of this Agreement.

5.14.1 All deeds or contractual arrangements with sub-licensees/ third parties shall specifically stipulate the aforesaid covenant of termination of the sub-licensees/ third parties rights and further that the sub-licensee/ third party shall not have any claim whatsoever against the Authority for any such termination. The Concessionaire shall prepare a draft standard format of the sub-license deed/ contract which the Concessionaire intends to sign with the sub-licensees. 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. 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-licensees. The Concessionaire shall submit the copy of the executed and signed sub-license deed(s)/ contracts to the Authority for its records within 30 (thirty) days of its execution. The sub-licensee/s shall pay the license fees etc. under the sub-license deeds directly into the Escrow Account.

5.15 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 Agencies and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Project Facilities.

5.16 Equity Financing and Deposit Requirements

5.16.1 In the event that the Total Project Cost is to be financed entirely (100%) through Equity by the Concessionaire, the Concessionaire shall be required to deposit thirty percent (30%) of the total Equity in advance into the Escrow Account prior to the Appointed Date.

5.16.2 The remaining seventy percent (70%) of the total Equity shall be deposited by the Concessionaire into the Escrow Account progressively and in advance, in accordance with the approved Development Plan so as to ensure that sufficient funds are available for the implementation of the Project in accordance with the terms of this Agreement.

5.16.3 The deposits made by the Concessionaire under this provision shall be utilized exclusively for the development and implementation of the Project, as per the terms specified in the Concession Agreement and the Escrow Agreement.

5.16.4 Any failure to deposit the required equity funds in the manner prescribed above shall constitute an Escrow Default and be subject to the provisions governing defaults under the Escrow Agreement and the Concession Agreement.

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

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

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

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

(b) granted Applicable Permits within its power and authority for commencement of the Construction Works by the Concessionaire;

(c) upon written request from the Concessionaire provide reasonable assistance to the Concessionaire for obtaining Applicable Permits including environmental clearances;

(d) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure utilities, such as electricity at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services; However, the Concessionaire shall be responsible for paying any utility charges associated with the use of the such utilities by them.

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

(f) 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;

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

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

Notwithstanding anything in this Article, the Authority shall not be required to provide any financial support or financial assistance to the Concessionaire.

6.2 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior written consent of the Authority, which consent shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period. Further the refinancing documents should not contain any clause which is inconsistent with the Concession Agreement and in case of any disagreement/ inconsistency /interpretation issue, the Concession Agreement shall alone prevail over any other agreements including financing / refinancing agreements.

ARTICLE 7: REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

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

(b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(c) 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;

(d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(e) {the Selected Bidder/ Consortium Members and its/their Associates} 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;

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

(g) 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;

(h) 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;

(i) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} 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;

(j) 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;

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

(l) 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;

(m) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the Concessionaire (i) in case of a single entity, it shall hold a minimum issued and paid-up equity capital of 100% in the Concessionaire till the 5th (fifth) anniversary of the COD and atleast 26% (twenty six percent) thereafter for the balance Concession Period; or (ii) in case of a Consortium, shall ensure the consortium members together hold 100% (hundred percent) with the Lead Member holding not less than 51% (fifty-one percent) and the Consortium Member whose financial capacity was evaluated for the purposes of qualification and award of Project in response to the RFP shall hold at least 26% (twenty six per cent) of the issued and paid up Equity as on the date of this Agreement till the 5th (fifth) anniversary of the COD, and 51% (fifty one percent) thereafter for the balance Concession Period with the Lead Member holding atleast 26% (twenty six percent);

(n) 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;

(o) 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.

(p) 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;

(q) 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;

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

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

(t) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

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

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

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

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

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

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

(g) 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;

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

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

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

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

7.3 Disclosure

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

ARTICLE 8: DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Operational Standards, 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, the Selected Bidder 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.

PART III DEVELOPMENT AND OPERATIONS

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.90,00,000/- (Rupees Ninety Lakhs only) 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 (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 90 (ninety) 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 30.

9.3 Release of Performance Security

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

Concession Agreement and shall be released within 6 (six) months after the expiry of Concession Period, 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 The Site

The site of the Project shall comprise the land as described in Schedule-A; and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee on a leave and license basis under and in accordance with this Agreement (the **"Project Site"**). 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 License and Right of Access

10.2.1 The Authority hereby grants to the Concessionaire access to the 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 Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Annual Concession Fee, this Agreement and the warranties and representations on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, license 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 "**Licensed Premises**"), on an "*as is where is*" basis, free of any Encumbrances, to construct, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever. The Concessionaire understands and accepts that the grant of license in terms hereof does not entitle it to transfer, mortgage or create Encumbrances on the Licensed Premises in any manner.

10.2.3 The license, access and right of way granted under this Agreement to the Concessionaire shall always be subject to existing rights of way. It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the license in respect of the Site shall automatically

terminate, without any further act of the Parties, upon Termination of this Agreement.

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 license 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 Site

10.3.1 Pursuant to the Effective Date, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Project Site including the vacant land, buildings, structures, road works, trees and any other immovable property on or attached to the Project Site, free from Encumbrances. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid Right of Way 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. For the avoidance of doubt, it is agreed that the Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

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

10.3.3 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Project Site required and necessary for the Project. For avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the development and construction of the critical elements or any part of the Project without which the Completion Certificate or Provisional Completion Certificate may not be granted.

10.3.4 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.

10.3.5 The Concessionaire shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs.1000/- (Rupees One Thousand) per day for every 500 (five hundred) sq. mtr. or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.

10.3.6 Upon receiving Right of Way to and in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice. Provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before the Scheduled Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.

10.4 Site to be free from Encumbrances

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

10.5 Protection of Site from Encumbrances

During the Concession Period, the Concessionaire shall protect the Site from any and all

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

10.6 Special/ temporary right of access

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

10.7 Access to the Authority and Independent Engineer

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

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

10.7.3 The Concessionaire shall, for the purpose of operation and maintenance of any utility specified in Article 11, allow free access to the Site at all times for the authorized persons of the controlling body of such utility.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges 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: UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining road / electric lines / water supply / cabling / fencing and other necessary infrastructure utilities to the Project Site. Upon receipt of a notice hereunder, the connecting portion thereof to the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 16, and the maintenance of any of such infrastructure thereof if assigned by the Authority may be considered by the Concessionaire in accordance with the proviso to Clause 17.1.2.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the development, construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

11.5 Reasonable Support of the Authority

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

ARTICLE 12: CONSTRUCTION OF THE PROJECT

12.1 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 and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in **Schedule-G**;

(b) submit the Good for Construction Drawings and all Drawings to the Independent Engineer as per Clause 12.2;

(c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws, 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; and

(d) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Drawings

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

(a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies of each of all Drawings for review to the Independent Engineer. The Drawings should be prepared compliant with the permissible Floor Space Index for the Project/ Project Site as per applicable local norms, maximum height upto which the Project Facilities can be constructed in accordance with applicable Tamil Nadu Combined Development and Building Rules (TNCDBR) and National Building Code (NBC).

(b) Upon completion of the review, the Independent Engineer shall share one copy of the reviewed Drawings with the Concessionaire for execution and provide one copy to the Authority for its review. The Independent Engineer shall retain one copy for its records.

(c) By submitting the Drawings for review to the Independent Engineer, the

Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering and the same are in conformity with the Scope of the Project, Development Plan, Applicable Laws, Applicable Permits and Good Industry Practice.

(d) Within 15 (fifteen) days, the Independent Engineer or the Authority as the case may be shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project, approved Development Plan and applicable specifications and standards as per norms of the Authority.

(e) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity as above, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review within 7 (seven) days. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.

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

(g) Without prejudice to the foregoing provisions of this Clause 12.2 the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the Project and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments hereunder.

(h) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-constructed Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including the layout of the Project and setback lines, if any, of the structures forming part of Project Facilities.

12.3 Construction of the Project

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule-B and Schedule-C to conform to Operational Standards set forth in Schedule D. The 730th (seven hundred and thirtieth) day from the Appointed Date shall be the scheduled date for completion of construction of the Project (the "**Scheduled Completion**

Date") and the Concessionaire agrees and undertakes that construction shall be completed before the Scheduled Completion Date.

12.3.2 The Concessionaire shall construct and develop the Project in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved and in the event, the Project Milestone is not achieved even after 90 days from the date set forth for such Project Milestone in Schedule-G, then w.e.f. the 91st day, the applicable rate of Damages shall be 0.3% (zero point three per cent) of the amount of Performance Security for each day of delay beyond the 90th day until the relevant Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.3 In the event that the Project is not completed and COD does not occur within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement. Without prejudice to the Authority's rights under this Agreement and/or any other right that it may have under Applicable Laws or equity, the Authority may in its sole discretion choose not to terminate this Agreement after the said period of 180 (one hundred and eighty) days and allow for a weekly extension beyond such period of 180 (one hundred and eighty) days; provided that the Concessionaire agrees and pays the Damages calculated in accordance with Clause 12.3.2 above, for each day of such extension and in the event of the Concessionaire failing to make payment of Damages then the Authority shall recover the same by appropriating the requisite sum by encashing the Performance Security. To the extent that the Authority has agreed to allow for an extension and the Concessionaire has paid the Damages as stated above, the Authority shall not terminate this Agreement in accordance with the provisions of this Clause 12.3.3. Notwithstanding the foregoing, the Parties agree that this Article shall not prejudice, in any manner whatsoever, the Authority's right of Termination under any other provision of this Agreement

12.4 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall not cause any damage to the existing roads along and shall ensure that the traffic worthiness and safety are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of the Construction Works and conforms to Good Industry Practice along with permission from the appropriate authority(ies), including the police authority; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld.

ARTICLE 13: MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

During the Construction Period, the Independent Engineer shall (individually or jointly with the Project Officer of the Authority as may be required) inspect the Project at least once a month and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and requirements set forth in this Agreement. The Independent Engineer shall send a copy of the Inspection Report to the Authority and the Concessionaire, within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conforms to the requirements of this Agreement, Applicable Laws and Applicable Permits including specifications and standards prescribed by the Authority (and where no standards are prescribed by the Authority then as per specifications and standards prescribed by the State Government or any Government Instrumentality for similar nature of developments, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the Tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such Tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Tests which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire

shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any Tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report in this behalf to the Independent Engineer. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests to determine that such remedial measures have brought the Construction Works into compliance with the requirements set forth in Clause 13.3.1, and the procedure set forth in this Clause 13.3, shall be repeated until such Construction Works conform to the such requirements. For the avoidance of doubt, it is agreed that Tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the Tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such Tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.3.3, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that commissioning of the Project is not likely to be achieved by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve Project Completion.

13.5 Suspension of unsafe Construction Works

13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the public. Provided, however, that in case of an Emergency, the Authority may *suo moto* issue the notice referred to hereinabove.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works. The Concessionaire may, by notice, require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the

Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 27.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

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

ARTICLE 14: COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the expiry of the Construction Period, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project including the automated parking system, to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by giving not less than 10 (ten) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

14.1.2 All Tests shall be conducted at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the requirements of this Agreement, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with requirements of this Agreement, Applicable Laws and Applicable Permits including specifications and standards prescribed by the Authority (and where no standards are prescribed by the Authority then as per specifications and standards prescribed by the State Government or any Government Instrumentality for similar nature of developments).

14.2 Completion Certificate

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

14.3 Provisional Certificate

The Independent Engineer may, at the request of the Concessionaire, issue a provisional

certificate of completion substantially in the form set forth in **Schedule-H** (the "**Provisional Certificate**") if the Tests are successful and Mandatory Minimum Development Requirements at the Site in entirety can be safely and reliably placed in commercial operation though certain associated works and / or facilities forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items which in the opinion of the Independent Engineer are minor ren construction ovation works and shall be signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of

(a) 0.1% (zero point one per cent) of the Performance Security, and

(b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer.

14.4.2 Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause.

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

14.5 Withholding of Provisional or Completion Certificate

14.5.1 If the Independent Engineer 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 Independent

Engineer 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 Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

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

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

14.7 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.

Notwithstanding the issuance of the Provisional or Completion Certificate under this Article 14, 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 operation of either the Parking Facility and/ or the Commercial Facility.

ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, for the Project Facility is issued and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "**COD**"). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect user charges in accordance with the provisions of Article 23 subject to the Concessionaire having obtained requisite completion certification/ occupation certificate/ readiness certificate, as the case may be, from the concerned Government Instrumentality(s) as per Applicable Laws of GoTN/ Central Govt. for allowing occupation and commencing operations.

15.2 Damages for delay

Subject to the provisions of Clauses 12.3 and 15.1 above, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until Project Completion is achieved. In case the Project Completion is not achieved by the Concessionaire even by the end of the 91st day then w.e.f. the 92nd day the applicable rate of Damages shall be 0.3% (zero point three per cent) of the amount of Performance Security for delay of each day until the Project Completion is achieved in terms of this Agreement. In the event, the Concessionaire fails to achieve Project Completion within a period of 180 (one hundred and eighty) days from Scheduled Completion Date, without prejudice to the other rights of the Authority under this Agreement, the Authority shall have the right to terminate the Agreement for Concessionaire Default.

ARTICLE 16: CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope, which decision of the Authority shall be final and binding. In the event, the Change of Scope proposed by the Concessionaire under this Clause 16.1.2 has been accepted by the Authority, costs thereof towards the said Change of Scope shall be expended solely by the Concessionaire and no claims shall be reimbursed by the Authority.

16.1.3 Any works or services which are provided under and in accordance with this Article shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

(a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with the assistance of the Independent Engineer thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

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

16.3 Payment for Change of Scope

16.3.1 Within 30 (thirty) days of issuing a Change of Scope Order under the provisions of Clauses 16.1.1, 16.2.1 and 16.2.2, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 2% (two per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with

Clause 16.3.1. For the avoidance of doubt, it is agreed that the aforesaid 2% (two per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.4 Restrictions on certain works

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

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 15% (fifteen per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

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

ARTICLE 17: OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 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.

17.1.2 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) repair the Project 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 the Project;

(f) Undertaking routine maintenance for keeping the Project in good health including prompt repairs of cracks, joints, markings, lighting, drains, structures, pavement markings, sign boards, other traffic control devices, building works including white wash/ painting, any overhead/ underground services, repairs/ replacement of all electrical works/ services and electronic equipments and prompt repairs/ replacement of all computer hardware, networking and software works etc.;

(g) undertaking major maintenance of the Project Facility such as resurfacing of pavements, underground and overhead services, repairs to structures, and repairs and refurbishment of the equipment;

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

(i) ensure to repair or replace any part required to be changed due to normal wear and tear. The frequency of inspection by the Authority official shall depend on the type of equipment and recommended by the manufacturer;

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

(k) Protection of the environment and provision of equipment and materials thereof;

(l) 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;

(m) complying with Safety Requirements in accordance with Article 18.

(n) 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;

(o) ensuring coordination with the Authority and other relevant departments to facilitate the seamless operation of the MLP Facility at the Site;

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

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

(r) 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; and

(s) Payment of usage charges for utilities, excluding property tax.

Provided the Concessionaire shall have no liability of operation or maintenance of the GCC Office Space allocated to the Authority at the Project Site.

Provided further that in the event, the Authority assigns the maintenance of the infrastructure to the Concessionaire in terms of Clause 11.3.2 of this Agreement, then the Concessionaire shall maintain the same in conformity with Good Industry Practice.

17.1.3 The Concessionaire shall remove promptly from the Site, all, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice. For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at the location as specified by the Authority.

17.1.4 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, 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. For avoidance of doubt, payment of any penalty/ fine/ interest under the provisions of the Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement. 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 35.

17.1.5 The Concessionaire recognizes and acknowledges the fact that the Project is intended to provide a public facility, and the Concessionaire shall have no right to prevent, impede or obstruct any bonafide Users from using the facilities, save and except for regulating such usage (i) from security perspective, (ii) under the terms of this Agreement and (iii) Applicable Laws.

17.1.6 The Concessionaire for operation of the Parking Facility during the O&M Period, shall also be responsible to regularize or restrict the on-street parking facility along with towing the unauthorized vehicles within a radius of 500 mtr. from the Parking Facility or as per the Site requirement. The Concessionaire shall also bear the cost of purchase, operation and maintenance of Towing Vehicle and Buggy. The manpower cost for operation and maintenance of Towing Vehicle and Buggy shall be borne by the Concessionaire.

17.1.7 The Concessionaire shall carry out real time monitoring of entire Parking Facility by installing CCTVs, etc. for safe, secure and smooth operations, and to provide complete access of the same to the Authority for audit purposes. The collection of Parking Fee, billing, payment collection and entire operations shall be done through digitization.

17.1.8 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement. In the event the Authority is required to pay any penalty to the Government Instrumentality under any Applicable Laws then the Authority shall be indemnified by the Concessionaire under Article 35.

17.2 Maintenance Requirements

17.2.1 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** and in compliance with the Service Level Indicators set forth in **Schedule-I.**

17.2.2 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured at the rate specified in **Schedule-I**. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement for persistent default/ breach of this Agreement by the Concessionaire, including the right of Termination thereof.

17.2.3 The Damages set forth in Schedule-I may be assessed and specified by the Independent Engineer/ Supervision Committee, as the case may be; provided that the Authority may in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder.

17.3 Maintenance Manual

17.3.1 No later than 90 (ninety) days prior to the Commercial Operation Date, the Concessionaire shall in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 3 (three) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*.

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

17.4 Maintenance Program

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

(a) preventive maintenance schedule;

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

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

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

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

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

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

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Program, the Independent Engineer or the Authority, as the case may be, may review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Manual and Safety Requirements.

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

17.5 Safety, breakdowns and accidents

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

17.5.2 The Concessionaire's responsibility for rescue operations in the Project shall include safe evacuation of all Users, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation until such time as the Competent Authority takes charge and shall also include prompt and safe removal of dangerous spills, leakages, vehicles, debris or any other obstruction, which may endanger or interrupt the use of the Project.

17.6 De-commissioning due to Emergency

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

17.6.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re- commission the Project and shall notify the Authority of the same without any delay.

17.7 Parking Facility closure

17.7.1 The Concessionaire shall not close any section of the Parking Facility or part thereof for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer or the Authority. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer/ Authority shall grant permission with such modifications as it may deem necessary, and a copy of such permission shall be sent to the Authority. However, the provisions of this Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any one section for a period not exceeding 4 (four) hours in a day at any time of the day.

17.7.2 The Concessionaire may close any part of the Commercial Facility for undertaking maintenance or repair works and complete the maintenance works or repairs in a reasonable time.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.2% (zero point two per cent) of the Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 Authority's right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Parking Facility or any part

thereof in conformity with the Maintenance Requirements, Maintenance Manual, Maintenance Program or in accordance with Service Level Indicators, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.

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

17.10 Overriding powers of the Authority

17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Operational Standards, Service Level Indicators and Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the public, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions under the Escrow Agreement.

17.10.3 In the event of a national emergency, civil commotion or any other act specified under Clause 27.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and

exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Force Majeure. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10 and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 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.

17.12 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Maintenance Requirements, Good Industry Practice, Applicable Permits and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer with a copy to the Authority of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 7 (seven) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Applicable Laws and the provisions of this Agreement.

Notwithstanding the above, the Concessionaire is strictly not allowed to make any modifications to the Project which makes the public parking spaces specified in Clause 5.13 fall below such numbers i.e. 75 parking spaces for 4-wheelers and 422 parking spaces for 2-wheelers or reduce the area specified in this Agreement for GCC Office Space.

17.13 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.

17.14 Advertising on the Site

The Concessionaire shall may undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Site and generate revenue therefrom in conformity with Applicable Laws including any re-enactment or amendment thereof. Concessionaire is prohibited from displaying any advertisement that indecent or objectionable or against moral decency or prohibited by Applicable Laws.

17.15 Installation and operation of CCTV

The Concessionaire shall install and operate a closed-circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof.

17.16 Barriers and diversions

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

17.17 Service Level Indicators

17.17.1 Without prejudice to the obligations specified in this Agreement, the Concessionaire shall throughout the Concession Period adhere to the performance/ service level indicators specified in **Schedule-I** (the "**Service Level Indicators**").

17.17.2 The Concessionaire shall ensure and procure compliance of each of the Service Level Indicators specified in **Schedule-I** and in the event that the Concessionaire fails to resolve or rectify the same within the response/ repair time as specified in Schedule-I, then it shall be liable to pay Damages as specified in Clause 17.8.

17.17.3 In the event, the Concessionaire is in breach of meeting any or all of the Service Level Indicators on 3 (three) instances in a continuous calendar year, then the Authority shall be entitled to terminate this Agreement being a Concessionaire Event of Default.

ARTICLE 18: SAFETY REQUIREMENTS

18.1 Safety Requirements

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

18.1.2 The Independent Engineer shall carry out the safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

ARTICLE 19: MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

19.1.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Engineer a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Operational Standards, Service Level Indicators, Maintenance Requirements, Maintenance Manual, Maintenance Program and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer/ Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Independent Engineer shall inspect the Project at least once a quarter. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the non-compliances, if any, with Operational Standards and Service Level Indicators, defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Program and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Remedial measures

19.3.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the Test results referred to in Clause 14.1.2 in accordance with Clause 17.8 dealing with damages for breach of maintenance obligations.

19.3.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.3 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.4 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the public and Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.4, accidents and unusual occurrences on the Project shall include:

(a) death or injury to any person;

(b) any damage or obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;

(c) disablement of any material/equipment during operation;

(d) communication failure affecting the operation of the Project;

(e) smoke or fire;

(f) flooding of the Project; and

(g) such other relevant information as may be required by the Authority.

ARTICLE 20: INDEPENDENT ENGINEER

20.1 Appointment of Independent Engineer

The Authority shall appoint a consulting architectural/ engineering firm to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made within 180 (one hundred eighty) days from the date of this Agreement. The appointment shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

20.2 Duties and functions

20.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms set forth in **Schedule-K**.

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

20.2.3 True copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority, shall be sent forthwith by the Independent Engineer to the Concessionaire.

20.2.4 True copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

20.2.5 Independent Engineer shall periodically submit data on the progress/ status of Construction Works, financial progress and other requisite details at such interval, as mentioned in its TOR.

20.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority. One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

20.4 Termination of appointment

20.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 20.1.

20.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation

to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.

20.5 Authorized signatories

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

20.6 Dispute resolution

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

20.7 Interim Arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 20.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

PART IV: FINANCIAL COVENANT

ARTICLE 21: FINANCIAL CLOSE

21.1 Financial Close

21.1.1 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within a period of 180 (one hundred eighty) days from the date of this Agreement. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

21.1.2 The Concessionaire shall provide to the Authority 3 (three) copies of the Financial Package and Financial Model furnished by it to the prospective Senior Lenders. As and when such Financial Package is agreed with the Senior Lenders, with or without modifications, and such agreement is confirmed by the signing of the agreed Financial Package by both the Concessionaire and the Senior Lenders, a copy of the same shall be furnished by the Concessionaire to the Authority forthwith. Where the Project is proposed to be financed through 100% Equity by the Concessionaire, then the Concessionaire shall furnish confirmation to this effect in writing to the Authority along with the Financial Model and supporting documents as required by the Authority, forthwith within the time period specified in Clause 21.1.1.

21.2 Termination due to failure to achieve Financial Close

21.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 27.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

21.2.2 Upon Termination under Clause 21.2.1, the Authority shall be entitled to encash an amount equal to the Bid Security from the Performance Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure or as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, release the Performance Security along with the Damages due and payable under Clause 4.2.

ARTICLE 22: ANNUAL LICENSE FEE AND ANNUAL CONCESSION FEE

22.1 Annual License Fee

22.1.1 In consideration of the License for the Project, the Concessionaire shall, commencing from the Appointed Date, pay to the Authority, by way of yearly License Fee (the **"License Fee"**) of Rs.10,00,000/- (Rupees Ten Lakhs only) per year.

22.1.2 The Annual License Fee payable every year, under the provisions of this Article 22 shall be due and payable yearly and the first such payment shall be made within 7 (seven) days of the Appointed Date. Thereafter, the Annual License Fee payment shall be due and payable by the Concessionaire to the Authority every year on or before the anniversary of the Appointed Date. In the event of delay beyond such period, the Operator shall pay interest for the period of delay, calculated at the rate specified in Clause 40.3.

22.1.3 The License Fee shall be increased by 15% (fifteen percent) every 3 (three) years over and above the last payable amount of License Fee under this Agreement.

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

22.2 Annual Concession Fee

22.2.1 In consideration of the grant of Concession, the Concessionaire shall, commencing from COD, pay to the Authority by way of concession fee each year an amount of Rs……. (Rupees in words)[1] till the end of the Concession Period ("**Annual Concession Fee**").

22.2.2 The Annual Concession Fee payable every year under the provisions of this Article 22, shall be due and payable yearly and first such payment of Annual Concession Fee shall be made on COD on the pro-rata basis as applicable for the remaining months of such Financial Year in which the COD occurred. Thereafter, the Annual Concession Fee payment shall be due and payable by the Concessionaire to the Authority every year within 15 (fifteen) days from the commencement of each Financial Year and 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 40.3.

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

22.2.4 The Parties clearly agree that any liability arising on account of GST and all other applicable taxes and levies on the Annual Concession Fee payable by the Concessionaire to the

[1] Amount of Concession Fee specified in the LOA should be mentioned here

Authority, shall be borne by the Concessionaire only.

22.3 Mechanism of Payment

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

ARTICLE 23: COLLECTION OF USER CHARGES AND PARKING FEE

23.1 Determine, Charge, Collection and Appropriation of User Charges

23.1.1 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, proceeds from sale of goods and provisioning of other services at the Project, fee & charges from sub-licensee of shops/ kiosks/ spaces of every description and kind, provided by the Concessionaire at the Project, in accordance with the provisions of this Agreement.

23.1.2 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.

23.1.3 The Concessionaire shall be free to determine (excluding rates for Parking Fee) 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/ visitors, as it deems fit, from time to time.

23.1.4 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 Obligations as specified in this Agreement.

23.1.5 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.

Notwithstanding anything to the contrary contained elsewhere in this Agreement, basic facilities and amenities like drinking water, toilets (separate for men and women), etc. for the Users of the Parking Facility shall be provided free of cost by the Concessionaire.

23.2 Charge, Collection and Appropriation of Parking Fee

23.2.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate the Parking Fee at the rates specified in Schedule-L of this Agreement or as may be notified by the Authority from time to time. The Parking Fee rate shall increase at the rate of 15% (fifteen percent) every 3 (three) years. He Parking Fee rates provided in Schedule-L are inclusive of GST.

23.3 Display of Parking Fee rates

23.3.1 The Concessionaire shall, at the entry & exit of the Parking Facility and at any other appropriate location(s) thereat, prominently display the applicable rates of Parking Fee for 2-wheelers and 4-wheelers, for information of Users, both in English and Tamil.

ARTICLE 24: ESCROW ACCOUNT

24.1 Escrow Account

24.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

24.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative (if any), which shall be substantially in the form set forth in **Schedule-M**.

24.2 Deposits into Escrow Account

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

(a) all monies received in relation to the Project from any source, including the Senior Lenders and the Authority (if any);

(b) all funds received by the Concessionaire from its shareholders, in any manner or form including deposit of the required Equity funds in the manner prescribed under Clause 5.16;

(c) all funds constituting the Financial Package;

(d) all User Charges, Parking Fee and other revenues including revenues from the usage of the Project Facilities in respect of the Project;

(e) all rentals, deposits or capital receipts, or insurance claims as the case may be;

(f) all proceeds received pursuant to any insurance claims;

(g) all fees, charges, service taxes, duties levied and collected by the Concessionaire; and

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

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

24.3 Withdrawals during Concession Period

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

such month and retained in the Escrow Account and paid out therefrom in the month when due:

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

(b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) Annual License Fee due and payable to the Authority in the month when due;

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

(e) O&M Expenses, if any, subject to the ceiling, as referenced from the Financial Model submitted as part of the Financing Agreements;

(f) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(g) monthly proportionate provision of Debt Service due in an Accounting Year;

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

(i) any reserve requirements set forth in the Financing Agreements; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

24.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 24.3.1, except with the prior written approval of the Authority.

24.4 Withdrawals upon Termination

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

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

(b) 90% (ninety per cent) of Debt Due as per the terms of the Financing Agreements

(c) outstanding Annual License Fee and Annual Concession Fee, if any;

(d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(e) retention and payments relating to the liability for defects and deficiencies set forth

herein;

(f) outstanding Debt Service Payments including the balance of Debt Due;

(g) incurred or accrued O&M Expenses;

(h) any other payments required to be made under this Agreement; and

(i) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 24.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of this Agreement.

24.4.2 The provisions of this Article 24 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 24.4.1 have been discharged.

ARTICLE 25: INSURANCE

25.1 Insurance during Concession Period

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

25.2 Insurance Cover

Without prejudice to the provision contained in Clause 25.1, the Concessionaire shall, during the Concession Period and Defect Liability Period, procure and maintain Insurance Cover including but not limited to the following:

(a) loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;

(b) comprehensive third-party liability insurance including injury to, or death of personnel of the Authority or others caused by the Project;

(c) the Concessionaire's general liability arising out of the Concession;

(d) liability to third parties for goods or property damage;

(e) workmen's compensation insurance; and

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

25.3 Notices to the Authority

No later than 45 (forty-five) 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. 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 37 shall apply.

25.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 25 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 premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

25.5 Remedy for failure to insure

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

25.6 Waiver of subrogation

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

25.7 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.

25.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 24.3 apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

25.9 Compliance with conditions of insurance policies

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

ARTICLE 26: ACCOUNTS AND AUDIT

26.1 Audited accounts

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

26.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

26.1.3 On or before the 31st (thirty-first) day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project, and such other information as the Authority may reasonably require.

26.2 Appointment of auditors

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

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

26.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

26.3 Certification of claims by Statutory Auditors

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

26.4 Set-off

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

26.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditor and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

PART V FORCE MAJEURE AND TERMINATION

ARTICLE 27: FORCE MAJEURE

27.1 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 27.2, 27.3, 28.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

27.2 Non-Political Event

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

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

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

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

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

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

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

27.3 Indirect Political Event

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

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

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

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

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

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

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

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

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

27.4 Political Event

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34 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.

27.5 Duty to report Force Majeure Event

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

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

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

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

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

27.5.2 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.

27.5.3 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 27.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

27.6 Effect of Force Majeure Event on the Concession

27.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set

forth in Clause 4.1 for fulfillment of Conditions Precedent and in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

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

(b) after COD, whereupon the Concessionaire is unable to operate the Project Facility or any part thereof and collect Parking Fee/ 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 fee on account thereof.

27.7 Allocation of costs arising out of Force Majeure

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

27.7.2 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:

27.7.2.1 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;

27.7.2.2 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 as certified by its Statutory Auditor along with supporting documents, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

27.7.2.3 upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event as certified by its Statutory Auditor along with supporting documents, shall be reimbursed by the Authority to the Concessionaire provided that no Force Majeure Costs shall be payable by the Authority if the Concession Period is increased as per Clause 27.6.2 so that the Concessionaire recovers the certified Force Majeure Costs.

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

27.7.3 Save and except as expressly provided in this Article 27, 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.

27.8 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 27, 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.

27.9 Termination Payment for Force Majeure Event

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

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

27.9.2.1 Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and

27.9.2.2 100% (one hundred per cent) of the Adjusted Equity.

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

27.10 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.

27.11 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 28: Deleted

ARTICLE 29: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

29.1 Suspension upon Concessionaire Default

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:

(a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to generate revenue from advertisements; and

(b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**").

Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders/ Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

29.2 Authority to act on behalf of Concessionaire

29.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension and thereafter for defraying the expenses specified in Clause 24.3.

29.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it under Clause 29.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

29.3 Revocation of Suspension

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

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

29.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 29.1 for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

29.5 Termination

29.5.1 At any time during the period of Suspension under this Article, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 29.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 30 as if it is a Concessionaire Default under Clause 30.1.

29.5.2 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 or within the extended period, if any, set forth in Clause 29.1, 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 30: TERMINATION

30.1 Termination for Concessionaire Default

30.1.1 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:

(a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated within an additional Cure Period of 90 (ninety) days;

(c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 60 (sixty) days;

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

(e) Project Completion does not occur within the period specified in Clause 12.3.3;

(f) the Concessionaire fails to rectify Operational Standards mentioned in Schedule-D even after issuance of notice by the Authority granting Cure Period of upto 30 (thirty) days from date of issuance of such notice;

(g) the Punch List items have not been completed within the period specified therein;

(h) the Concessionaire has failed to make any payments to the Authority including Annual License Fee and Annual Concession Fee within the period specified in this Agreement;

(i) an Escrow Default has occurred, and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;

(j) upon occurrence of a Financial Default, the Lenders' Representative has by notice

required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

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

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

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

(n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

(o) 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;

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

(q) 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;

(r) 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;

(s) occurrence of any Insolvency Event;

(t) the Concessionaire has been or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

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

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

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

(u) 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;

(v) non-adherence with Service Level Indicators as provided in Schedule-I at three instances in a continuous calendar year;

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

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

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

(z) misappropriation of income from the Project or non-deposit of any cash inflow into Escrow account.

30.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 30.1.3.

30.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 30.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement.

Provided that the Lenders' Representative may, instead of exercising the Lenders' right of

substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

30.2 Termination for Authority Default

30.2.1 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:

(a) the Authority fails to provide, within a period of 90 (ninety) days from the Appointed Date, the Right of Way; or

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

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

30.3 Termination Payments

30.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to: 90% (ninety per cent) of the Debt Due less Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

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

(a) Debt Due; and

(b) 120% (one hundred and twenty per cent) of the Adjusted Equity.

30.3.3 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) 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 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.

30.3.4 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.

30.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 30 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

30.4 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; and

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 31.1; 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.

30.5 Survival of Rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 30.3.5, 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 31: DIVESTMENT OF RIGHTS AND INTEREST

31.1 Divestment Requirements

31.1.1 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 Site, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

(c) cure 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 Site in good working condition subject to normal wear and tear including warranties, guarantees, and any required operational licenses;

(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.

31.1.2 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.

31.2 Inspection and cure

31.2.1 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 Independent Engineer 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 if required, cause appropriate Tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 35 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 31.

31.2.2 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.

31.2.3 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.

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 Escrow Account/ Concessionaire and/ or to appropriate the Performance

Security, as the case may be

31.3 Cooperation and assistance on transfer of Project

31.3.1 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.

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

31.3.3 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 31.1.1 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.

31.4 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-N** (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.

31.5 Divestment costs etc.

31.5.1 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.

31.5.2 In the event of any Dispute relating to matters covered by and under this Article 31, the Dispute Resolution Procedure shall apply.

ARTICLE 32: DEFECTS LIABILITY AFTER TERMINATION

32.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 12 (twelve) months after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer 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 Escrow Account under the provisions of Clause 32.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 32 shall not apply if Termination occurs prior to COD.

32.2 Retention in Escrow Account

32.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.2.3, a sum equal to the Performance Security shall be retained in the Escrow Account for a period of 365 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 32.1.

32.2.2 Without prejudice to the provisions of Clause 32.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 32.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 365 (three hundred and sixty five) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

32.2.3 The Concessionaire may, for the performance of its obligations under this Article, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 32.2.1 or 32.2.2 as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "**Performance Guarantee**"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 32. Upon furnishing of a Performance Guarantee under this Clause 32.2.3, the retention of funds in the Escrow Account

in terms of Clause 32.2.1 or 32.2.2, as the case may be, shall be dispensed with.

PART VI OTHER PROVISIONS

ARTICLE 33: ASSIGNMENT AND CHARGES

33.1 Restrictions on assignment and charges

33.1.1 Subject to Clauses 33.2 and 33.3, 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.

33.1.2 Subject to the provisions of Clause 33.2, 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.

33.2 Permitted assignment and charges

33.2.1 The restraints set forth in Clause 33.1 shall not apply to:

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

(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;

(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

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

33.2.2 The Parties agree that any assignment under this Article 33 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.

33.3 Substitution Agreement

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

33.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the

Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty)] days to the Concessionaire for curing such breach.

33.4 Assignment by the Authority

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

ARTICLE 34: CHANGE IN LAW

34.1 Costs

34.1.1 Any increase in costs or reduction in net after tax return or other financial burden, due to Change in Law shall be borne by the respective Parties. Provided however, if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

34.2 No claim

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

ARTICLE 35: LIABILITY AND INDEMNITY

35.1 General indemnity

35.1.1 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.

35.1.2 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.

35.2 Indemnity by the Concessionaire

Without limiting the generality of Clause 35.1 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.

35.2.1 Without limiting the generality of the provisions of this Article 35, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights,

copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the specifications and standards prescribed by the Authority (and where no standards are prescribed by the Authority then as per specifications and standards prescribed by the State Government or any Government Instrumentality for similar nature of developments), either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non- infringing.

35.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 35 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4 Defense of claims

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

Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

35.4.2 If the Indemnifying Party has exercised its rights under Clause 35.3 the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

35.4.3 If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

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

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

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

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

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

Provided that if Sub-clauses (b), (c) or (d) of Clause 35.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

35.5 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.

35.6 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, save and except where amounts exceeding the Total Project Cost are specifically prescribed in this Agreement as Termination Payment, shall not exceed the 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.

35.7 Survival on Termination

The provisions of this Article 35 shall survive Termination.

ARTICLE 36: RIGHTS AND TITLE OVER THE SITE

36.1 Licensee rights

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

36.2 Access rights of the Authority and others

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

36.3 Property taxes

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

36.4 Restriction on sub-letting

The Concessionaire shall not sublease or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

ARTICLE 37: DISPUTE RESOLUTION

37.1 Dispute resolution

37.1.1 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 37.2.

37.1.2 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.

37.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Secretary / Principal Secretary / Additional Chief Secretary of the Administrative Department, Government of Tamil Nadu, 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 37.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 37.3.

37.3 Arbitration

37.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 37.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 37.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration Centre, Chennai (the "**Rules**"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the Chennai and the language of arbitration proceedings shall be English.

37.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the

event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

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

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

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

ARTICLE 38: DISCLOSURE

38.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Agreement during normal business hours on all working days at the Concessionaire's Site office.

38.2 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 38.1, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005 to any person in pursuance of the aforesaid Clause.

ARTICLE 39: REDRESSAL OF PUBLIC GRIEVANCES

39.1 Complaints Register

39.1.1 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 of each Phase and its Project office so as to bring it to the attention of all Users.

39.1.2 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.

39.2.1 Without prejudice to the provisions of Clauses 39.1.1 and 39.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

39.2 Redressal of complaints

39.2.2 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.

39.2.3 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer 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 40: MISCELLANEOUS

40.1 Governing law and jurisdiction

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

40.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

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

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

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

40.3 Delayed payments

40.3.1 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 MCLR, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

40.3.2 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.

40.4 Waiver

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

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

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

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

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

40.5 Liability for review of Documents

Except to the extent expressly provided in this Agreement

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

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

40.6 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties. Further, the Parties agree that there is no express or implied warranty or guarantee given by the Authority to the Operator of any minimum business or minimum sales or revenue generation at the Project Facility and no term of this Agreement shall be interpreted to imply any such warranty or guarantee.

40.7 Survival

40.7.1 Termination shall:

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

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

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

40.8 Entire Agreement

This Agreement and the Schedules together with the Annexes, 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 Proposals shall be deemed to form part of this Agreement and treated as such.

40.9 Severability

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

40.10 No partnership

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

40.11 Third parties

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

40.12 Successors and assigns

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

40.13 Notices

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

(a) in the case of the Concessionaire, be given by 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

(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.

40.14 Language

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

40.15 Counterparts

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

ARTICLE 41: DEFINITIONS

41.1 Definitions

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

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

"**Additional Auditors**" shall have the meaning set forth in Clause 26.2.3;

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

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

(b) from COD till the expiry of the Concession Period, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "**Base Adjusted Equity**") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each year following COD to the extent of variations in WPI occurring between COD and Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made.

"**Affected Party**" shall have the meaning set forth in Clause 27.1;

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

"**Annual Concession Fee**" shall have the meaning set forth in Clause 22.2;

"**Annual License Fee**" shall have the meaning as set forth in Clause 22.1;

"**Appendix**" shall have the meaning as set forth in Clause 10.3.1;

"**Applicable Laws**" means all laws, brought into force and effect by GOI or the State Government including rules, regulations together with development control regulations of

CDMA, 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;

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

"**Appointed Date**" means the date on which Financial Close is achieved and 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;

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

"**Associate**" or "**Affiliate**" means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member}. For the purposes of this definition, the term "control" (including with correlative meaning, the terms "controlled by" and "under common control with") as applied to any Party or Bidder or a member of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Bidder or a member of Consortium whether through ownership of 26 (twenty six) % or more of the voting securities, by contract, or otherwise;

"**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 30.2;

"**Authority Indemnified Persons**" shall have the meaning set forth in Clause 35.1.1;

"**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 bank incorporated in India and having a minimum net worth of Rs. 1,000

crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

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

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

"**Bid Documents**" shall collectively mean RFP, 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 Law**" means the occurrence of any of the following after the Bid Date:

(a) The enactment of any new Indian law;

(b) The repeal, modification or re-enactment of any existing Indian law as applicable to the State;

(c) The commencement of any Indian law, as applicable to the State, which has not entered into effect until the Bid Date;

(d) a change in the interpretation or application of any Indian law, as applicable to the State, by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date;

"**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {Selected Bidder/ Consortium Members} in the total Equity to decline below (i) 100% (hundred per cent) thereof till the fifth anniversary of the COD {with the Lead Member holding not less than 51% (fifty-one percent) of its issued and paid up Equity and the Consortium Member whose financial capacity was evaluated for the purposes of qualification and award of Project in response to the RFP shall hold at least 26% (twenty six per cent)}, and (ii) 51 (fifty one percent) thereafter for the balance Concession Period {with the Lead Member holding atleast 26% (twenty six percent)}. Provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be,) in the proportion of the equity holding of {the Selected Bidder / any Consortium Member} to the total Equity, if it occurs prior to expiry of Concession Period, shall constitute Change in Ownership;

"**Change of Scope**" shall have the meaning set forth in Clause 16.1.1;

"**Change of Scope Notice**" shall have the meaning set forth in Clause 16.2.1;

"**Change in Scope Order**" shall have the meaning set forth in Clause 16.2.3

"**CMDA**" Chennai Metropolitan Development Authority

"**COD**" or "**Commercial Operation Date**" shall have the meaning set forth in Clause 15.1;

"**Commercial Facility**" means the area designed and developed as per Applicable Laws and Applicable Permits at the Project Site, primarily for various business activities featuring a variety of retail stores, office spaces, restaurants, entertainment venues, cafes, food courts, service centers, etc. along with appropriate & adequate parking spaces in addition to the numbers specified under the Minimum Development Requirements;

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

"**Completion Certificate**" shall have the meaning set forth in Clause 14.2;

"**Concession**" shall have the meaning set forth in Clause 3.1.1;

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

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

"**Concessionaire Default**" shall have the meaning set forth in Clause 30.1.1;

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

"**Consortium**" shall have the meaning set forth in Recital (C);

{"**Consortium Member**" means a company specified in Recital (C) as a member of the Consortium;}[2]

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

"**Construction Works**" means all works and things necessary to complete the construction of the Project, Project Utilities and Project Facilities 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;

[2] Retain if applicable

"**Covenant**" shall have the meaning set forth in Clause 5.2.4;

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

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement;

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

"**Damages**" shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;

"**DBFOT**" or "**Design, Build, Finance, Operate and Transfer**" shall have the meaning as set forth in Recital (B);

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

(a) the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Total Project Cost (the "**principal**") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date; and

(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to Lenders', and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default;

Provided that if all or any part of the Debt Due is convertible into Equity at the option of the Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken; provided further that the Debt Due, on or after COD, shall in no case exceed 70% (seventy percent) of the Total Project Cost;

"**Debt Service**" means the sum of all payments on account of principal, interest, financing fees

and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

"**Development Plan**" means the detailed design, drawings and plans (as per statutory requirements under applicable laws) of the Project Facility prepared 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; and (iv) provisions of this Agreement, and submitted to the Authority (and also to CMDA, if required depending on the size of the facility proposed to be developed) for approval, being the competent authority/ies to grant approval under the Applicable Laws;

"**Dispute**" shall have the meaning set forth in Clause 37.1.1;

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes set forth in Article 37;

"**Divestment Requirements**" means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 31.1;

"**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 shall include 'as built' drawings of the Project;

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

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

"**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;

"**Equity**" means the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the total project cost, and

for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

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

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

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

"**Escrow Default**" shall have the meaning set forth in Schedule-M;

"**Financial Close**" means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements or ready availability of an amount equal to atleast 30% (thirty percent) of the entire (100%) Equity committed by the Concessionaire for financing the Total Project Cost in the Escrow Account in terms of Clause 5.16;

"**Financial Default**" shall have the meaning as set forth in Schedule-O;

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

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

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

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 27.1;

"**Force Majeure Costs**" shall have the meaning set forth in Clause 27.7.2;

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

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

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

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

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to Article 35;

"**Indemnifying Party**" means the Party obligated to indemnify the other Party pursuant to Article 35;

"**Independent Engineer**" shall have the meaning set forth in Article 20;

"**Indirect Political Event**" shall have the meaning as set forth in Clause 27.3;

"**Inspection Report**" shall have the meaning as set forth in Clause 13.2;

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

insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect happen under the provisions of the Companies Act, 1965 or the Companies Act, 2013 or the Code in relation to the winding up of the company;

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 25, and includes all insurances required to be taken out by the Concessionaire under Clause 25.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

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

"**Lead Member"** shall have the meaning set forth in Recital (C);

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

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

"**Maintenance Manual**" shall have the meaning ascribed to it in Clause 17.3.1;

"**Maintenance Program**" shall have the meaning ascribed to it in Clause 17.4.1;

"**Maintenance Requirements**" shall have the meaning set forth in Clause 17.2.1;

"**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**" shall have the meaning set forth in Clause 5.13;

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

"**Non-Political Event**" shall have the meaning as set forth in Clause 27.2;

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

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

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

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

"**O&M Inspection Report**" shall have the meaning set forth in Clause 19.2;

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

"**Operational Standards**" means the standards set forth in Schedule-D;

"**Parking Facility**" means the multi-storey conventional or automated parking facility and such other parking area along with related facilities and amenities developed by the Concessionaire at the Project Facility whether enclosed or unenclosed, covered or open, sufficient in size to meet **422 parking spaces** for 2-wheelers and 75 parking spaces for 4-wheelers for public use and shall include any additional car parking spaces developed at the Project Site at the sole discretion of the Concessionaire, together with driveway connecting the parking space with a street or alley and permitting ingress or egress of vehicles, developed in accordance with the approved Development Plan, Applicable Laws, Applicable Permits and as per the provisions of this Agreement read with Schedules hereto;

"**Parking Fee**" means the fees for parking of Vehicles at the Car Parking developed at the Project Site that is payable at any time and from time to time by the Users to the Concessionaire for such parking. The Concessionaire shall have the right to demand and collect the Parking Fees as per the rates mentioned in **Schedule-L** which are subject to revision in rates/ fee as provided in this Agreement;

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

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

"**Political Event**" shall have the meaning as set forth in Clause 27.4;

"**Preservation Costs**" shall have the meaning set forth in Clause 13.5.3;

"**Project"** shall mean designing, engineering, procuring, financing, construction, operation and maintenance of the Parking Facility, Commercial Facility and 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 the Escrow Agreement or the Substitution Agreement;

"**Project Assets**" means all physical and other assets relating to and forming part of the Project Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, drainage works, pavements, electrical systems, communication systems, digitized billing system/ Parking Fee/ User Charges/ revenue collection systems and administrative offices; (c) facilities situated on the Site; (d) all intangible assets (e) all rights of the Concessionaire under the Project Agreements; (f) financial assets, such as receivables, security deposits etc.; (g) insurance proceeds; and (h) Applicable Permits and authorizations relating to O&M of the Project;

"**Project Completion**" means the completion of the Construction Works;

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

"Project Facilities" mean and include all the developments and facilities designed, developed and constructed as per approved Development Plan, as a part of the Project, by the Concessionaire during the Concession Period on the Project Site and includes Project Utilities, and other infrastructure considered ancillary and incidental to the Project Site, which are operated, managed and maintained by the Concessionaire in terms of this Agreement;

"Project Facility" means the multi-storey Parking Facility and Commercial Facility developed herein including all Project Facilities and other related structures, buildings, internal & external building services etc., common areas to be developed, designed, financed, constructed, upgraded, completed, commissioned, operated and maintained at the Project Site along with any Project Utilities, and other infrastructure considered ancillary and incidental to the Project Site, which are operated, managed and maintained by the Concessionaire in terms of this Agreement;

"**Project Milestones**" means the project milestones as set forth in Schedule-G;

"**Provisional Certificate**" shall have the meaning set forth in Clause 14.3;

"**Punch List**" shall have the meaning ascribed to it in Clause 14.3;

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

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

"Revenue" shall mean all amounts charged and recovered by the Concessionaire from the Users on mutually agreed terms and shall include User Charges and shall also include but not be limited to all charges, rent, license fees, Parking Fee, User Charges, compensation, benefits, deposits (whether long term or short term and whether refundable or not), capital receipts, insurance claims, any proceeds earned by the Concessionaire from providing value added services, display of advertisements, from organizing of events and parties, proceeds from sale of products, consumables, etc. and sub-license fee in the form of monthly fee/ charge/ rent or revenue share, security deposit, premium and advances as the case may be, collected from the vendors/ sub-licensees, or any other similar payment by whatever name called, received by or paid to or receivable by the Concessionaire, or or due and realisable by the Concessionaire under this Agreement;

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

"**Request for Proposal**" or "**RFP**" shall have the meaning as set forth in Recital (C);

"**Right of Way**" means the constructive possession of the 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;

"**Safety Requirements**" shall have the meaning set forth in Clause 18.1.1;

"**SBI MCLR**" means the prevailing marginal cost of funds based lending rate for a tenor of 1 (one) year, notified by State Bank of India from time to time;

"**Scheduled Completion Date**" shall have the meaning as set forth in Clause 12.3.1;

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

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

"**Service Level Indicators**" shall have the meaning set forth in Clause 17.17;

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

"**Specified Documents**" shall have the meaning set forth in Clause 38.1;

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

"**Statutory Auditors"** means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 26.2.1

"**Substitution Agreement**" shall have the meaning set forth in Clause 33.3.1 of this Agreement.

"**Suspension**" shall have the meaning set forth in Clause 29.1;

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

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

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

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

"**Tests**" means the tests to be carried out to determine the completion of the Project in accordance with the provisions of this Agreement;

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

(a) the capital cost of the Project, as set forth in the Financial Package or in the Financial Model where such cost is being financed entirely through Equity by the Concessionaire; and

(b) the actual capital cost of the Project upon completion of the Project

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable,

and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

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

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

"User 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, parking fees, maintenance charges, advertising fees, charges for any value added services, etc. Additionally, it covers revenue derived from sub-licensing, subcontracting, or any other arrangement related to the Project;

"**Vesting Certificate**" shall have the meaning set forth in Clause 31.4;

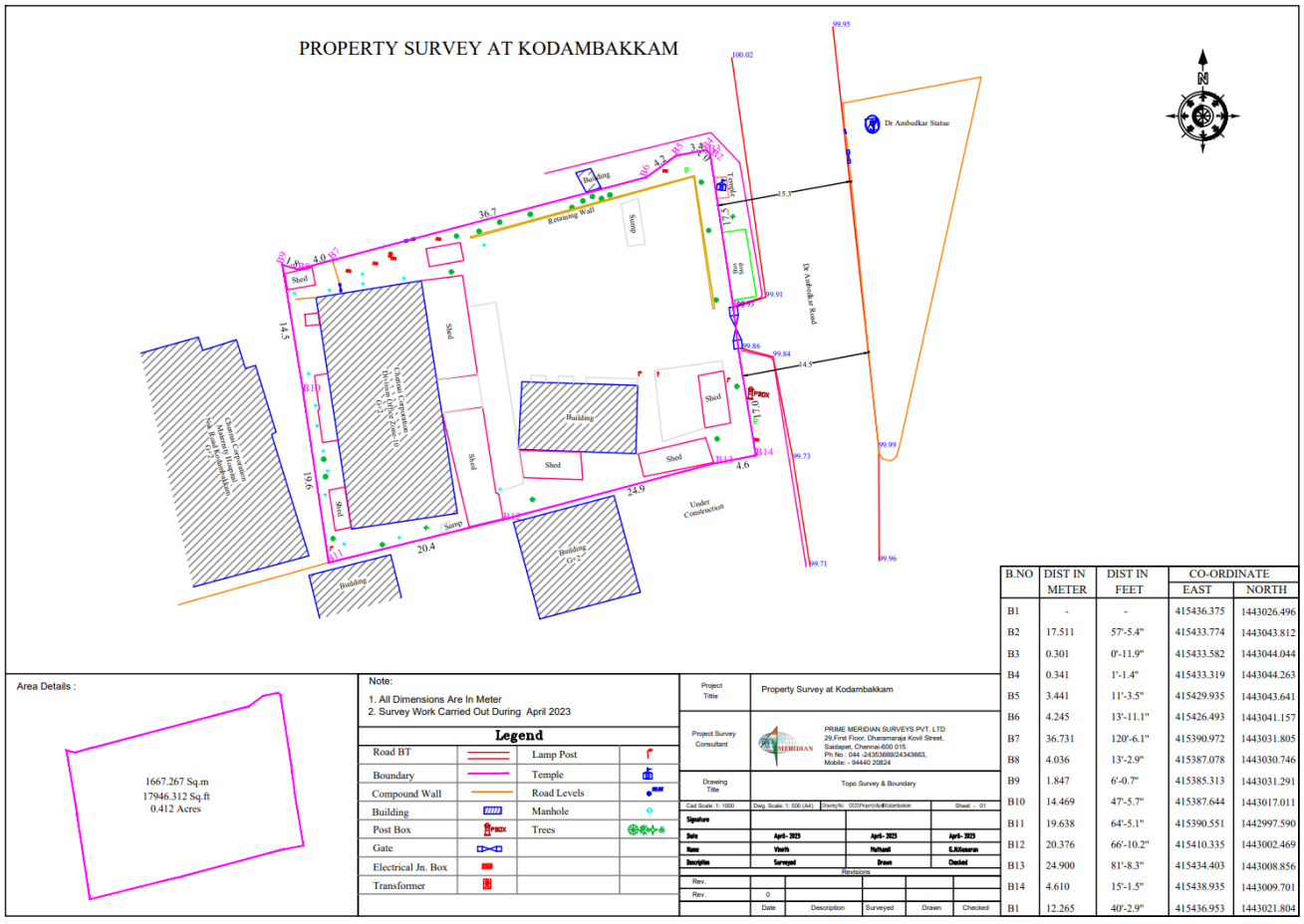
"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no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

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

SIGNED AND DELIVERED For and on behalf of THE **AUTHORITY** by:	**SIGNED AND DELIVERED** For and on behalf of THE **CONCESSIONAIRE** pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the …… day of 202__…… in the presence of … , Director, who has signed these presents in token thereof and , Company Secretary / Authorized Officer who has countersigned the same in token thereof *
(Signature) (Name) (Designation)	(Signature) (Name) (Designation)
In the presence of witnesses:	
1.	2.

SCHEDULES

SCHEDULE-A: SITE OF THE PROJECT



B.NO	DIST IN METER	DIST IN FEET	CO-ORDINATE EAST	CO-ORDINATE NORTH
B1	-	-	415436.375	1443026.496
B2	17.511	57'-5.4"	415433.774	1443043.812
B3	0.301	0'-11.9"	415433.582	1443044.044
B4	0.341	1'-1.4"	415433.319	1443044.263
B5	3.441	11'-3.5"	415429.935	1443043.641
B6	4.245	13'-11.1"	415426.493	1443041.157
B7	36.731	120'-6.1"	415390.972	1443031.805
B8	4.036	13'-2.9"	415387.078	1443030.746
B9	1.847	6'-0.7"	415385.313	1443031.291
B10	14.469	47'-5.7"	415387.644	1443017.011
B11	19.638	64'-5.1"	415390.551	1442997.590
B12	20.376	66'-10.2"	415410.335	1443002.469
B13	24.900	81'-8.3"	415434.403	1443008.856
B14	4.610	15'-1.5"	415438.935	1443009.701
B1	12.265	40'-2.9"	415436.953	1443021.804

SCHEDULE-B: SCOPE OF THE PROJECT

1. **Objective:** To Design, Build, Finance & Construct the minimum development criteria as detailed in the agreement, to develop any other additional facility, amenities, Commercial Facility within the specified timeline, to ensure availability of the said development completely in a hassle free, clean and hygiene environment for all the users and to handover the property upon completion of concession period in good working condition without compromising the title or interest of the authority.

2. Scope of Work

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, Clearances/approvals, ancillary services and amenities related to the Parking Facility at the Complex along with Commercial Facility conforming to 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 incorrect work, 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 Multi-Level Parking facility along with Commercial Facility 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 adherence & conformity with all the Applicable Laws & Permits including building byelaws and acts, rules and applicable regulations etc. with respect to development and operational requirement

b. Operations and Maintenance

i. Parking Facility

1. Operations and maintenance of the entire facility including collection from 2W and 4W parking facility as per the provisions and rate mentioned in the Concession Agreement and Schedules hereof for 24 hours a day for the entire year
2. To undertake periodic maintenance and refurbishment for the entire facility once in every 3 Years to ensure that the optimum life of the developed facility is achieved
3. Undertake periodical maintenance, annual maintenance and preventive maintenance as prescribed by the automated parking facility supplier and to ensure optimum efficiency as per KPI's
4. Ensure regularization and enforcement of the 2W & 4W Parking as per the Concession Agreement and the Schedules hereof as per directions of the authority and Chennai City Traffic Police Department which includes provision of Tow Vehicle, support staffs and any other operational requirement
5. To provide basic facilities and amenities like drinking water, toilets, etc. for the parking 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
6. Provision of sufficient number of stairs and lifts in the parking area as well as Commercial Facility for smooth and vertical movement of users.
7. Entry and exits for the Parking at the Complex shall be provided and developed considering proper overall Traffic Circulation within the complex and on roads outside the complex.

ii. Common / Other Facilities

1. 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.
2. 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
3. To make payment of all applicable existing and future taxes, charges, fees, levies, Concession Fee etc. as may be applicable to the Project and/ or any activities in pursuance of the Concession Agreement during the Concession Period.
4. Ensure Structural & Quality audit is undertaken every year for the entire facility and ensure optimal functioning of the entire facility
5. To undertake maintenance of all the common area and parking facility except areas marked as Greater Chennai Corporation Office Space
6. Ensure adherence with KPI and to maintain the property without causing any damages to the structure with clean & hygienic environment
7. Complete security system shall be arranged including CCTV Cameras, Boom Barriers, access-based entries etc. wherever possible.
8. All the open spaces in and around the Project Facility/ Complex shall be landscaped
9. 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

iii. Handover Stage

1. Handover of the Project Facility without any defect in good condition excluding normal wear and tear as per directions of the Authority.
2. Ensure that all the details of existing contracts, guarantees and warranties, maintenance manuals etc. is handed over to the Authority.
3. Ensure that no advances, loans, dues or outstanding balances, statutory dues, utility bills payments etc. are there as on date of completion.
4. 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.

SCHEDULE-C: MINIMUM DEVELOPMENT REQUIREMENT

1. Develop and provide commercial office space (warm shell) for Greater Chennai Corporation Office Space at free of cost with a minimum built up area of 16,000 square feet as per development regulations of TNCDBR – 2019 which is exclusive of parking facility, setbacks, and other non FSI areas. The GCC Office Space shall be developed on ground floor plus upper floor(s) with separate lift access to upper floors of GCC office. The standards and specifications for development of GCC Office Space and dedicated parking facility are set forth in Annex-I to this Schedule.

2. Develop public parking facility to provide a minimum of 422 number of 2Wheeler parking slots and 75 numbers of 4Wheeler parking slots as prescribed by TNCDBR – 2019, which shall be exclusive of the captive parking requirements of the GCC Office space and any additional retail / commercial development proposed by the Concessionaire in the Development Plan. Entire development must adhere to the standards prescribed by Harmonious guidelines and standards for universal accessibility in India – 2021.

   In addition to the development of the public parking facility, basic facilities / services to the users such as Toilets for both Men and Women, Drinking Water facilities, should be provided adequately and maintained free of cost by the Concessionaire.

ANNEX-I

The standards and specifications for warm shell development of GCC Office Space and dedicated parking facility

S.No	Particulars	Unit	Amount
1	Total GCC Office Area	Sq.ft	16,000
2	GCC Office – Ground Floor	Sq.ft	5,000
3	GCC Office – Other Floors	Sq.ft	11,000

Notes

1. Spread of GCC Office Area of 11,000 sq. ft. in other floors (*as per sr. no. 3 in the above table*) shall be proposed by the Concessionaire in its Development Plan.
2. Separate Entry / Exit for the GCC Office Area shall be provided with exclusive lift access for all the floors (designed for universal access).
3. The frontage for GCC Office area shall be preferably along Arcot Road or as approved by GCC.
4. Dedicated Sanitation/ Public Convenience facility for GCC staffs and visitors separately.
5. Furnishing of Common Area including Lobby, Toilet Areas and provision for Infrastructure facility like power, water, centralized air conditioning system, internet etc. at each floor shall be provided by the Concessionaire free of cost. GCC shall undertake the furnishing or interior works for the proposed space.
6. Dedicated parking area is to be provided by the Concessionaire free of cost as per Tamil Nadu Combined Development and Building Rules, 2019 for the GCC Office Area
7. 100% Power backup for GCC Office area including for common areas, lifts, etc. at GCC office area is to be provided by the Concessionaire at its cost.
8. GCC shall undertake the maintenance of the total GCC office area space (internal) of 16,000 sq.ft. including payment of utility bills.
9. GCC shall reimburse to the Concessionaire on a monthly basis for the water and electricity consumed at the GCC Office area as per the sub-meter(s) installed for the same, to the Concessionaire for onward payment to the concerned utility owning agency.
10. Maintenance of common area including captive and public parking facility shall be undertaken by the Concessionaire including but not limited to Housekeeping,

Security, BMS, payment of utility bills, etc.

SCHEDULE-D: OPERATIONAL STANDARDS

i. *Minimum operational efficiency if the Concessionaire intends to develop a fully automated parking facility, then the following performance indicator shall be met.*

Average Waiting Period for Parking / Retrieving: 60 Seconds – 75 Seconds

Maximum Waiting Period for Parking / Retrieving: 120 Seconds

Operational Efficiency (Running Hours): Monthly efficiency of more than 90%

$$\text{Operation Efficiency} = \frac{\text{Total Active Parking Hours}^{1} \text{ (excluding non-operation period)}}{\text{Total No of Parking Lots Installed} * 24 * \text{No. of Days in a Month}}$$

ii. *Real time monitoring of entire parking operations and Maintenance of the facility and to provide complete access of the same to Greater Chennai Corporation for audit purposes.*

iii. *Digitalization of billing / Payment collection and entire operations.*

iv. *For Conventional parking method: the byelaws as mentioned in TNCDBR -2019, as amended from time to time, shall be adhered to.*

[1] – The non – operational hours of the parking facility may be calculated based on actuals.

SCHEDULE-E: APPLICABLE PERMITS

1 Applicable Permits

1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits (***including but not limited to***) on or before the Appointed Date in accordance with Clause 4.1.3 of the Agreement:

S.No.	AN INDICATIVE LIST
1.	Statutory approvals for design, plans, etc.
2.	Water Connection
3.	Shifting of Services and Utilities
4.	Traffic Management during operation
5.	Application for PAN, GST, ESI, EPF and other mandatory registrations etc. as required as per Applicable Laws
6.	Electricity Connection
7.	Clearance for employing labour as Primary Employer
8.	Employment of migrant labour
9.	Cutting of Trees
10.	License for Installation of Lifts/Elevators/Escalators
11.	Fire NOC
12.	Sewerage
13.	Boiler and Diesel Generator Set
14.	Labour Camps
15.	Working in Night Shifts
16.	NOCs from Pollution Control Board
17.	All Operation Licenses including from FSSAI
18.	Any other approvals, permits or clearance /No Objection Certificates required under Applicable Laws

1.2 The list of Applicable Permits as tabulated above is only indicative. The Concessionaire to do its due diligence and determine the kind, nature and extent of Applicable Permits required to implement the Project and to keep the Project in compliance with the Applicable Permits at all times during the Concession Period.

SCHEDULE-F: PERFORMANCE SECURITY

To,
<Insert Designation and Address of the Authority>

WHEREAS:

A. _____(the "**Concessionaire**") and _____, Greater Chennai Corporation having its principal office at _____ (the "**Authority**") having to enter into a Concession Agreement (the "**Agreement**") for the ***"Development of Multi-Level Parking Facility at Kodambakkam in Chennai City on 'DBFOT' Basis for a period of 25 years"*** (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 Greater Chennai Corporation 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 throughout the Concession Period and until the expiry of 6 months after Concession Period 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 be released within 6 (six) months after the expiry of 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, 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.

SCHEDULE-G: PROJECT COMPLETION SCHEDULE

(As per the approved Development Plan)

SCHEDULE-H: COMPLETION CERTIFICATE

TO WHOM IT MAY CONCERN

1. I/We, _____ (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated _____(the "**Agreement**"), for ***Development of Multi-Level Parking Facility at Kodambakkam in Chennai City on 'DBFOT' Basis for a period of 25 years*** (the "**Project"**) through _____(Name of Concessionaire), hereby certify that the Tests specified in Article 14 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in service of the Users thereof.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into operation on this the ****day of **** 20**.

SIGNED, SEALED AND DELIVERED

For and on behalf of the Independent Engineer by:

(Signature)

(Name)

(Designation)

(Address)

AGREED, ACCEPTED AND SIGNED

For and on behalf of the Concessionaire by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

1. I/We,…… (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated _____(the "**Agreement**"), for ***Development of Multi-Level Parking Facility at Kodambakkam in Chennai City on 'DBFOT' Basis for a period of 25 years***, through _____(Name of Concessionaire), hereby certify that the Tests specified in Article 14 of the Agreement have been undertaken for the Project/section _____ of the Project to determine compliance thereof with the provisions of the Agreement.

2. Construction Works forming part of the Project/section of the Project that were found to be incomplete and/or deficient have been specified in the list of remaining works appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. *[Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Operator,]*[3] I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold operation of the Project/section……. of the Project, pending completion thereof.
3. In view of the foregoing, I/We am/are satisfied that the Project/section of the Project can be safely and reliably placed in service of the Users thereof, and in terms of the Agreement, the Project/section of the Project is hereby provisionally declared fit for entry into operation on this the ____ day of _____ 20_____

ACCEPTED, SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
FOR AND ON BEHALF OF CONCESSIOANIRE by:	FOR AND ON BEHALF OF INDEPENDENT ENGINEER by:
(Signature)	(Signature)
(Name and Designation)	(Name and Designation)
(Address)	(Address)

[3] May be struck out if not applicable. Also strike out other parts which are not applicable.

SCHEDULE-I: MAINTENANCE REQUIREMENTS

The overall responsibility of the concessionaire with respect to operations and maintenances shall be in line with the objective and scope of work as detailed in the agreement. Though the Schedule I details maintenance requirements, any additional maintenance or operational requirement for meeting out the Operational Standards and the requirement of the authority shall be the responsibility of the concessionaire.

Operation and Maintenance Manual

a. The Concessionaire shall in consultation with the "Authority" and/or Independent Engineer evolve an Operation and Maintenance Manual.
b. The Concessionaire shall maintain the Project Facility in good and usable condition throughout the Concession Period or any extension thereof through regular and preventive maintenance of the Project Facility.
c. The Operation and Maintenance Manual shall include all the activities required for regular and periodic maintenance of the facility during the Operations Period, so that facility is maintained in a manner that at all times it complies with the specifications and standards applicable as per Applicable Laws, building codes and Good Industry Practice, and at the time of divestment of rights and interest by the Concessionaire in terms of the Concession Agreement, it is handed back in sound, durable and functional condition.
d. Detailed manual on Periodic maintenance, structural verification, preventive and periodic maintenance of all the MEP facilities including automated parking facility if opted shall be provided by the Concessionaire to the Authority with details of authorized & reputed Machinery Suppliers or Vendors etc. in consultation with the Independent Engineer.

Parking Areas and Parking Fee Collection

a. Automated Parking fee collection system should be able to provide for vehicle identification based on type of vehicle and duration of stay, fee etc. Daily backup / record of the parking fee collection shall be maintained and shared with authority. Further, the parking ticket shall bear the vehicle number, type of vehicle and entry and exit time of the vehicle.
b. Parking Service shall provide maintain, operate and replace when necessary, access and egress equipment, mechanical or otherwise to ensure parking areas are always accessible to public for its designated use.

c. Concessionaire shall ensure the access/egress control mechanisms are of suitable design for use by disabled drivers as well.

Traffic Management

a. Concessionaire shall keep all entrances, exits and access road of the facility clear from vehicular and other obstructions, thus maintaining free flow of traffic at access roads at all times
b. To ensure not more than 3 vehicles are on queue at the entry or exit points always
c. To provide proper signages for vehicular movement for entry, exit etc., display for number of parking slots available in all the floors, providing overall status for the users, to provide for the data on real time basis as per requirement of authority in the specified formats

Car Parking Maintenance

a. Concessionaire shall undertake routine, periodic and preventive maintenance activities of the Parking Facility including civil, electrical and mechanical works for meeting the performance standards.
b. Maintain all Parking Areas such that they are kept clean, free from litter and debris and properly ventilated. The dustbins shall be provided at appropriate places in the facility
c. Provide complete details of periodic maintenance, preventive maintenance, annual maintenance schedules, complete specification of the automated parking structure if developed, specification of replaceable and other materials to be used etc. from the supplier to ensure optimum usage of same
d. Provide copy of all the warranties and guarantees for all the machineries, electrical equipment etc. installed in the said facility
e. Details of all the material supplier, service vendors and contractors etc. shall be provided in detail
    i. Name of equipment (*)
    ii. Name and contact No. of Manufacturer and/or Supplier (*)
    iii. Serial No and other unique identifier (*)
    iv. Warranty and/or guarantee information
    v. Acquisition Date (*)
    vi. Cost of Equipment

vii. Installation date (*)
viii. Life of Equipment/Replacement date/Next date of service (*)
ix. Recommended Replacement Date
x. Depreciation per year
xi. Servicing and/or calibration requirements and timetable
xii. Associated hazards and safety bulletins and notices
xiii. Repair and Maintenance Schedule
xiv. Contact details of authorized service agents etc.

Staffing and Personal Training

a. Concessionaire shall make provision of adequate staff required for construction, operation, maintenance and management of facility as prescribed in the staffing plan approved by the IE.
b. Concessionaire shall ensure that only trained staffs are engaged in the delivery of the Services all the times who are properly adequately notified, educated, instructed and informed to take care of daily operations
c. Concessionaire shall ensure that all staff are properly and presentably dressed in appropriate uniforms and work wears and wear identification badges at all times while working in the facility
d. To adhere with all applicable labour laws, safety standards etc., for all the staffs as per best industry standards

Security

a. Concessionaire shall take all reasonable precautions to ensure that no theft, injury to visitors or their property does not happen in the project facility
b. Concessionaire shall make a 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
c. Concessionaire shall take the responsibility of the parked vehicles without any liability of the Authority against the damage of the parked vehicles. The Authority shall be indemnified by the Concessionaire for any claim that may be brought against the Authority in this regard

d. To provide complete support to the authority, Tamil Nadu Police Department or any other authorized person by providing all the data immediately without any delay in case of any unforeseen events

Services Level Specifications/ Performance Standards for Maintenance

a. Buildings
    i. All elements of external and internal building (Including fixtures, fittings, floor, and floor-coverings), finishes, furniture and equipment or a services system component shall be functional, operational and satisfy the performance requirement.
    ii. Building shall be free from damp penetration, debris and moss growth.
    iii. Free from structural cracks and / or deflection.
    iv. Function as intended & free from all but minor surface blemishes and wear and tear, corrosion.
    v. Floor/ floor covering is free from tears, scoring, cracks or any other damage that is unsightly and/ or could cause a health and safety hazard.
    vi. Façade is maintained by timely intervention and regular painting
b. Distribution System: Distribution system (including distribution equipments, protective devices, fuse switches, isolators, distribution boards, cables systems for IT, Lighting, communication, safety, alarm system)
    i. Ratings clearly marked,
    ii. Fuse elements and circuit breakers mechanism in working order,
    iii. Contact and connection clean and mechanically tight,
    iv. No overheating during normal operating loads
    v. Cable joining boxes free from compound leaks
    vi. Marking and covering notices wherever necessary
    vii. All electrical installation to comply with IS Codes
    viii. Wiring, fittings, fixtures, controls and safety devices shall be properly housed and fastened securely to their intended point of anchorage and label
c. Water Systems: Pipe network and fittings shall be fastened securely to their intended points of anchorage and there shall be no drips and leaks of water from pipe network, taps, valves and/or fittings.
    i. All pipe network and fittings fastened securely to the intended points of anchorage

ii. There shall be no leaks of waste and / or foul water and / or rainwater
iii. Shall be provided with suitable pumping system for pumping of waste water into sewers to avoid any risk of sewerage heading back into the basement at any time.

d. Fire Fighting Equipment
   i. Fire safety systems complaint with statutory regulations and service standards at all times
   ii. Fire extinguisher and fire-fighting equipment shall be maintained as per IS code
   iii. Fully operational within manufacturer's recommendations
   iv. Hydrants, sprinklers and hoses shall be at correct operating pressure and capacity
   v. Pipe network free from corrosion, leaks and drips
   vi. The maintenance and Operation Manual shall have a write up on the procedure to be followed in case of fire
   vii. There has to be a description of the system used for fire-fighting and schedule of maintenance and refilling, if any.
   viii. There shall be drawing showing the location of the detectors and nozzles for distribution / spraying of the fire-fighting media.
e. Horticulture: Trees, Shrubs Hedges, Grassed areas, Flower beds trimmed, pruned and / or cut to maintain healthy growth including manuring, mulching, watering, de-weeding etc.
f. Site Circulation Routes including paving, paths, driveways, roads, parking area, facility entrance as to maintained without any undulations, damages, cracks etc. and shall be painted at regular intervals
g. Signs and marking
   i. Be in appropriate locations
   ii. Highly visible during day and night
   iii. Offers clear and concise information
h. Gutter and Drains: Free from litter, leaves, weeds, extraneous material and bad smell
i. Utilities Maintenance
   i. Any disruption in power supply shall be rectified in six hours. Standby power supply shall be ready to be operated and should be available 24 hours. Standby power source shall be operational secure and tested regularly.

ii. Ensure utility infrastructure like water supply, drainages, communication system is maintained in fully functioning conditions

iii. All utility licenses are current and correct for the current supply requirement.

No.	Description	**Minimum Service Standards**	Response/Repair Time	**Penalty**	Frequency of Monitoring by authority
A	**General Maintenance**				
1	Rectification of Customer Complaint	100%	Response time within 5 days	INR 100 / Day / Complaint after 5 Days	Monthly
2	Downtime of System (entry and exit barriers, fee collection equipment, etc.)	Nil	Repair time within 6 hours except for major repairs and replacement *	INR 2,500 / Day / Instance beyond 6 Hours	Monthly
3	Power Supply	100%	Any disruption in power supply rectified in six hours. Standby power supply shall be readily available 24 hours throughout the year	INR 500 / Downtime Hour	Monthly
4	Drainage System	100%	Obstruction cleared with 12 hours after detection, damages repaired within 1 week	INR 5,000 / Day / Instance after 12 Hours or 1 Week as applicable	Quarterly
5	Utilities like water supply, lighting, telecommunication network, elevators	100%	Repair within 24 hours; to be available and remain operational 24 hours a day throughout the year	INR 2,000 / Day / Instance after 24 Hours	Monthly
6	Potholes, cracks and rutting in pavements	100%	Repair within 1 week after detection	INR 5,000 / Week after 1 Week	Quarterly

No.	Description	**Minimum Service Standards**	Response/Repair Time	**Penalty**	Frequency of Monitoring by authority
7	Fixing of Cracks, spalling, scaling, blistering of plaster and damages to walls and façade including paints and finishes	100%	Repaired within 2 weeks and painting at regular interval as mutually agreed by the Parties	INR 10,000 / Week after 2 Week	Quarterly
8	Housekeeping & Maintenance of Common Area and Pavement Surface – 3 Times a Day	NA	Soil debris, trash and other objects on the pavement surface shall be removed within 4 hours	INR 200 / Hour after 4 Hours	Daily
9	Signages and Markings	NA	Repair within 3 days; damages and missing signs shall be replaced within 2 week	INR 1,000 / Week / Instance after 3 Days or 2 Weeks as applicable.	Quarterly
10	Emergency Response and fire Fighting	100%	Repair within 24 hours	INR 10,000 / Day after 24 Hours	Monthly
11	Cleaning & Housekeeping of Toilets	NA	Hourly Maintenance (Operational Hours) Repair & Replacements within 24 hours	INR 200 / Hour / Instance for Housekeeping including replenishment of consumables INR 2,000 / Day / Instance for Repairs & Replacements	Daily
12	Drinking Water	100%	Repair within 24 hours	INR 200 / Hour / Instance	Daily
13	Security System	100%	Repair within 24 hours. Ensure 100%	INR 10,000 / Day after 1 Day	Daily

No.	Description	Minimum Service Standards	Response/Repair Time	Penalty	Frequency of Monitoring by authority
			functioning of alternate / standby security system.		
B	**Operational Efficiency of Parking facility**				
S.No	Description	Performance Level	Penalty	Frequency of Maintenance by Authority	
1	Maximum parking / Retrieval Time	180 Seconds	INR 100 / Instance beyond 180 Seconds	Monthly	
2	Average Parking / Retrieval Time	120 Seconds	INR 100 / Second / Day	Monthly	
3	Queue Length (Automated / Manual)	3 Vehicle at any time	INR 100 / Instance	Monthly	
4	Downtime of Machinery	1%	INR 20,000 for every percent below 99%	Monthly	
5	No of Crime or unforeseen Incidents		INR 10,000 or Actual Damages / Claim whichever is higher	Daily	

Notes:

1. The above standards can be modified by the Authority at any time to ensure safety, convenience of users and to ensure optimum functioning of the facility as per Good Industry Practise.
2. The Concessionaire shall compensate GCC in case of any claims or damages or any other financial obligations on GCC due to accidents, theft, breakdown of vehicles or due to any other eventualities at the facility whether or not attributable to the Concessionaire.
3. Downtime of Machinery shall be computed on hourly basis for every parking slot for arriving at overall downtime percentage for entire facility for 24 hours of operations on monthly basis.
4. All the penalty as mentioned above will be escalated at 15% every 3 Years.
5. The Penalty rates are subject to revision up to actual loss suffered and the

No.	Description	**Minimum Service Standards**	Response/Repair Time	**Penalty**	Frequency of Monitoring by authority
	Concessionaire shall hold GCC harmless in case any other eventualities than those envisaged above or when the actual loss exceeds the penalty amount as stated above.				

SCHEDULE-J: SAFETY REQUIREMENTS

1. Guiding principles

1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.

1.2. Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - l of this Schedule J.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following in so far as they relate to safety of the Users:

(a) Applicable Laws and Applicable Permits;

(b) provisions of this Agreement;

(c) relevant Standards/Guidelines contained in nationally accepted codes; and

(d) Good Industry Practice.

3. Safety measures during Operation Period

3.1. The Concessionaire shall develop, implement and administer a safety programme for the Project, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.

3.2. The Concessionaire shall keep a copy of every 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.

3.3. The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 3 (three) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Clause 3.1 of this Schedule L for averting or minimizing such accidents in future.

4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Clause 2 of this Schedule L, shall be borne by the Concessionaire in accordance with the provisions of Clause 18.2.

Annex - I (Schedule-J) Safety Guidelines

1. System integrity

In the design of the Project and Project Infrastructure, particular care shall be taken to minimize the likely incidence of failure.

2. Safety management

A safety statement shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. 2 (two) copies of the statement shall be sent to the Independent Expert within 15 (fifteen) days of the close of every year.

3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the Disaster Management Manual) to be prepared and published by the Concessionaire prior to the Commercial Operation Date. The Concessionaire shall provide 3 (three) copies each of the Disaster Management Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to Commercial Operation Date.

4. Fire safety

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

4.2. To deal with incidents of fire, the Concessionaire shall provide a hydrant-based fire-fighting system in conformity with the provisions of the Concession Agreement.

5. Surveillance and Safety Manual

The Concessionaire shall, no later than 90 (ninety) days prior to Commercial Operation Date, evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.

6. Watch and Ward

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

SCHEDULE-K: ROLES AND FUNCTIONS OF INDEPENDENT ENGINEER

The Independent Engineer (IE) as appointed by the Authority for the entire Concession Period shall have the following role and functions including but not limited to:

a. review of the Drawings and Construction Documents submitted by the Concessionaire including review of the detailed drawings, Good for Construction drawings, plans, construction methodology, quality assurance procedures, construction time schedule, etc. sent to it by the Concessionaire to ensure its compliance with the provisions of the Concession Agreement including Schedules, Applicable Laws and Applicable Permits, within the "Review Period" which shall not exceed 15 days subject to any shorter time period envisaged in the Concession Agreement for any of the aforesaid activities;

b. review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 15 (seven) days of receiving such Drawings or Documents subject to any shorter time period envisaged in the Concession Agreement for any of the aforesaid activities;

c. review, inspection and monitoring of Construction Works as and when required and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the local building bye laws/ norms, and on the points where such rules are silent and stipulate no conditions or norms, National Building Code of India published by the Bureau of Indian Standards or any other standards, the Scope of the Project, Technical Requirements and Performance Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project;

d. review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report;

e. for determining that the Construction Works conform to the applicable building construction codes, Technical Requirements and Performance Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in

accordance with Good Industry Practice for quality assurance. The sample size of the tests, to be specified by the Independent Engineer shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests under applicable standards / Good Industry Practice. However, if required the Independent Engineer may for reasons to be recorded in writing, increase the aforesaid sample size for protecting the interest of the authority

f. if at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof. In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Implementation Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same;

g. carry out, or cause to be carried out, all the Tests upon completion of Construction Works and issue a Completion Certificate or Provisional Certificate substantially in the form set forth in Schedule-H of the Concession Agreement, as the case may be. For carrying out the functions and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the relevant provisions of the Concession Agreement regarding:

   i. aid and advise the Concessionaire in preparing the Maintenance Manual;
   ii. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
   iii. undertaking all other duties and functions in accordance with the Agreement;
   iv. Upon reference by the Authority, the Independent Engineer shall review and comment on the construction contract or any other sub-contract for

construction of the Project Facility, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority;

v. The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

vi. The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

vii. The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

viii. The Independent Engineer shall perform all other duties and functions specified in the Agreement. Independent Engineer shall also comply with any other instructions and/ or directions issued by the Authority with respect to the Project.

h. Ensure a copy of all communications, comments, instructions, Drawings or Documents are maintained by the Concessionaire including copy of all the test results with comments of the Independent Engineer which shall be submitted to the Authority at any time.

i. Ensure that at least three copy of all the detailed Drawings and Documents, approved structural drawings, MEP drawings, as-built drawings etc. are keep in its safe custody of the Authority.

j. The Independent Engineer is also responsible for monitoring effective and efficient functioning of operations and maintenance. The IE shall conduct regular inspections, audits, tests etc. in pursuance of the Concession Agreement, to instruct the Concessionaire for any repairs, rectifications, modifications etc. and to ensure adherence with the KPI, maintenance standards and any other requirement as specified in the agreement and to certify the compliance of same.

k. To inspect and audit during regular structure audits or during handover process at the completion or earlier termination of concession period to ensure that the development is handed over back to the Authority in good working condition.

SCHEDULE-L: RATES OF PARKING FEE

For 4 wheelers -

1 Hour: INR 60 including GST

2 Hour: INR 120 including GST

3 Hours: INR 180 including GST

4 Hours: INR 240 including GST

5 Hours: INR 300 including GST

6 Hours: INR 360 including GST

7 Hours: INR 420 including GST

8 Hours: INR 480 including GST

9 Hours: INR 540 including GST

10 Hours: INR 600 including GST

(For every additional hour an incremental fee of INR 60 including GST shall be charged)

For 2 wheelers -

1 Hour: INR 15 including GST

2 Hour: INR 30 including GST

3 Hours: INR 45 including GST

4 Hours: INR 60 including GST

5 Hours: INR 75 including GST

6 Hours: INR 90 including GST

7 Hours: INR 105 including GST

8 Hours: INR 120 including GST

9 Hours: INR 135 including GST

10 Hours: INR 150 including GST

(For every additional hour an incremental fee of INR 15 including GST shall be charged)

Escalation: The parking rates/fee shall escalate at the rate of 15% (fifteen percent) every 3 years.

SCHEDULE-M: ESCROW AGREEMENT

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

AMONGST

1. [*****Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ******* (hereinafter referred to as the **"Concessionaire"** which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. **** (insert name and particulars of the Lenders Representative) and having its registered office at **** acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **"Lenders' Representative"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. **** (insert name and particulars of the Escrow Bank) and having its registered office at **** (hereinafter referred to as the **"Escrow Bank"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. The Greater Chennai Corporation represented by _____(name of the officer) and having its principal offices at _____ (hereinafter referred to as the **"Authority"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

(A). The Authority has entered into a Concession Agreement dated _____with the Concessionaire (the "**Concession Agreement**") for ***"Development of Multi-Level Parking Facility at Kodambakkam in Chennai City on 'DBFOT' Basis for a period of 25 years"*** (the "**Project**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B). Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C). The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the

context or meaning thereof, have the meaning hereinafter respectively assigned to them:

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

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

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

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

"**Escrow Default**" shall have the meaning ascribed thereto in Clause 6.1;

"**Indemnified Party**" shall have the meaning ascribed thereto in Clause 9.2;

"**Indemnifying Party**" shall have the meaning ascribed thereto in Clause 9.2;

"**Lenders' Representative**" shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

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

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

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

1.2 Interpretation

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

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

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

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

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

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

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

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and operation of Escrow Account

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

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

account from time to time.

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

2.4 Escrow Bank's fee

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

2.5 Rights of the Parties

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

2.6 Substitution of the Concessionaire

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

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

(a) all monies received in relation to the Project from any source, including the Senior Lenders and the Authority (if any);

(b) all funds received by the Concessionaire from its shareholders, in any manner or form including Equity to finance the Project;

(c) all funds constituting the Financial Package;

(d) all User Charges, Parking Fee and other revenues including revenues from the usage of the Project Facilities in respect of the Project;

(e) all rentals, deposits or capital receipts, or insurance claims as the case may

be;

(f) all proceeds received pursuant to any insurance claims;

(g) all fees, charges, service taxes, duties levied and collected by the Concessionaire; and

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

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

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

(a) Any monies disbursed by the Authority to the Concessionaire, if any;
(b) All revenues collected by the Authority in exercise of its rights under the Concession Agreement, if any.

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any amounts due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

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

3.4 Interest on deposits

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

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

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

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

(b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) Annual License Fee due and payable to the Authority in the month when due;

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

(e) O&M Expenses, if any, subject to the ceiling, as referenced from the Financial Model submitted as part of the Financing Agreements;

(f) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(g) monthly proportionate provision of Debt Service due in an Accounting Year;

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

(i) any reserve requirements set forth in the Financing Agreements; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2. No later than [60 (sixty)] days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

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

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

(b) 90% (ninety per cent) of Debt Due as per the terms of the Financing Agreements

(c) outstanding Annual License Fee and Annual Concession Fee, if any;

(d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(e) retention and payments relating to the liability for defects and deficiencies set forth herein;

(f) outstanding Debt Service Payments including the balance of Debt Due;

(g) incurred or accrued O&M Expenses;

(h) any other payments required to be made under this Agreement; and

(i) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 4.2 until a Vesting Certificate has been issued by the Authority under the provisions of Clause 18.4.1 of the Concession Agreement.

4.3 Application of insufficient funds

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

4.4 Application of insurance proceeds

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

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 29 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

5.3 Communications and Notices

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

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

5.4 No set off

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

5.5 Regulatory approvals

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

6. ESCROW DEFAULT

6.1 Escrow Default

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

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

(b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

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

(d) the Concessionaire fails to deposit the required equity funds in the manner prescribed under Clause 5.16 of the Concession Agreement and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days[4].

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

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

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

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

[4] Applicable only in case the Total Project Cost is being financed entirely through Equity by the Concessionaire in terms of Clause 5.16 of the Concession Agreement.

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2 herein, and upon confirmation of receipt of such payments, close the Escrow Account and Sub- Accounts after 180 (One Hundred and Eighty) days from the Termination and/or expiry of this Agreement. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary Escrow Agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.l.l and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire shall indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

9.1.3 The Escrow Bank shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss,

damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

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

10. DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of 3 (three) Arbitrators comprising one nominee of each Party to the dispute, and such nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Nani Palkhivala Arbitration Centre, Chennai (the **"Rules"**) or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time.

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

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

(b) agrees that, should any proceedings be brought against it or its assets, property

or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

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

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

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

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

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

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

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

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

11.11 Language

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

11.12 Authorized representatives

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

11.13 Original Document

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

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

SIGNED AND DELIVERED For and on behalf of THE **CONCESSIONAIRE** pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the …… day of 202__…… in the presence of ……....……, Director, who has signed these presents in token thereof and ……, Company Secretary / Authorized Officer who has countersigned the same in token thereof. **(Signature)** **(Name)** **(Designation)** **(Address)** **(Fax No.)** **(E-mail address)**	**SIGNED AND DELIVERED** For and on behalf of **ESCROW BANK** by: **(Signature)** **(Name)** **(Designation)** **(Address)** **(Fax No.)** **(e-mail address)**
SIGNED AND DELIVERED For and on behalf of THE SENIOR LENDERS by the Lenders Representative: **(Signature)** **(Name)** **(Designation)** **(Address)** **(Fax No.)** **(E-mail address)**	**SIGNED AND DELIVERED For and on behalf of THE AUTHORITY by:** **(Signature)** **(Name)** **(Designation)** **(Address)** **(Fax No.)** **(E-mail address)**

SCHEDULE-N: VESTING CERTIFICATE

[The _____] represented by ..... (the "**Authority**") refers to the Concession Agreement dated .... (the "**Agreement**") entered into between the Authority and ..... (the "**Concessionaire**") for the Project i.e. ***Development of Multi-Level Parking Facility at Kodambakkam in Chennai City on 'DBFOT' Basis for a period of 25 years***.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 33.1 of the Agreement, on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

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	AGREED, ACCEPTED AND SIGNED
For and on behalf of Concessionaire by:	For and on behalf of Authority by:
(Signature) (Name) (Designation) (Address)	(Signature) (Name) (Designation) (Address)

In the presence of:

1. 2.

SCHEDULE-O: SUBSTITUTION AGREEMENT

(See Clause 35.3.1)

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

AMONGST

The Greater Chennai Corporation represented by _____ (name of the officer) and having its principal offices at _____ (hereinafter referred to as the **"Authority"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

.... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ...., (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

.... (insert name and particulars of Lenders' Representative) and having its registered office at ...., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

i. The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for ***"Development of Multi-Level Parking Facility at Kodambakkam in Chennai City on 'DBFOT' Basis for a period of 25 years"*** **(the "Project"),** and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

ii. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

iii. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

iv. In order to enable implementation of the Project including its financing, construction, development, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

"**Agreement**" shall mean this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"**Financial Default**" shall mean occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of [3 (three) months];

"**Indemnified Party**" shall have the meaning ascribed thereto in Clause 7.2;

"**Indemnifying Party**" shall have the meaning ascribed thereto in Clause 7.2;

"**Lenders' Representative**" shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

"**Nominated Company**" shall mean a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the Concession as provided in this Agreement;

"**Notice of Financial Default**" shall have the meaning ascribed thereto in Clause 3.2.1;

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

"**Rules**" shall have the meaning ascribed thereto in Clause 8.1.1.

1.2. Interpretation

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

1.2.2. References to clauses are, unless stated otherwise, references to clauses of this Agreement.

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

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

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

2. ASSIGNMENT

2.1. Assignment of rights and title

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

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1. Rights of substitution

Pursuant to the rights, title and interest assigned under Clause 2.l, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record, A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire

and undertake the operation and maintenance of the Project in accordance with the provisions of Article 29 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within [180 (one hundred and eighty)] days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days.

3.3. Substitution upon occurrence of Concessionaire Default

3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant [15 (fifteen)] days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of [15 (fifteen)] days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of [180 (one hundred and eighty)] days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of [180 (one hundred and eighty)] days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. Procedure for substitution

3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:

(a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
(b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
(c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within [15 (fifteen)] days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within [15 (fifteen)] days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5. The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than [75% (seventy five per cent)] of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5. Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have

any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1. Substitution of Nominated Company in Project Agreements

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

5. TERMINATION OF CONCESSION AGREEMENT

5.1. Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 30 of the Concession Agreement.

5.2. Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of [180 (one hundred and eighty)] days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3. Realisation of Debt Due

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

6. DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

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

(a) Termination of the Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1. General indemnity

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

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

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

7.2. Notice and contest of claims

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

and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1. Dispute resolution

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration Centre, Chennai (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Chennai and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

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

9.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

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

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

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

9.3. **Priority of agreements**

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

9.4. **Alteration of terms**

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

9.5. **Waiver**

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

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

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

9.6. **No third party beneficiaries**

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

9.7. **Survival**

Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

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

9.8. **Severability**

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

9.9. **Successors and assigns**

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

9.10. **Notices**

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

9.11. **Language**

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

9.12. **Authorised representatives**

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

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

9.13. **Original Document**

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the .. day of 20 .... .. hereunto affixed in the presence of ...., Director, who has signed these presents in token thereof and . . . ., Company Secretary / Authorised Officer who has countersigned the same in token thereof:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of THE AUTHORITY by

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail Address)

In the presence of:

1. 2.

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail Address)