

**RFP Volume 2**  
**DRAFT AGREEMENT**

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    - Insurance against loss of or damage to (i) software developed in whole or in part for fulfillment of obligations under this Contract (ii) the Private Operator’s assets and property used in the performance of the Services, (iii) any documents prepared by the Private Operator in the performance of the Services, and (iv) Insurance coverage for the Parking lots up to Rs. 1,00,00,000 (rupees one crore) covering the damage or theft of the vehicle and injury to a personnel in the parking lot. ....32*

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*iii. at the TMC's request, shall provide evidence to the TMC showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. ....33*

5.5. LIMITATION OF PRIVATE OPERATOR'S LIABILITY TOWARDS THE TMC .....33

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b. Except in the case of Gross Negligence or Willful Misconduct on the part of the Private Operator / Private Operator 's Team or on the part of any person or firm acting on behalf of the Private Operator executing the work or in carrying out the services, the Private Operator, with respect to damage caused by the Private Operator including to property and/or assets of the TMC or of any of TMC's vendors shall regardless of anything contained herein, not be liable for any direct loss or damage that exceeds (A) the Project Capital Cost or (B) the proceeds the Private Operator may be entitled to receive from any insurance maintained by the Private Operator to cover such a liability, whichever of (A) or (B) is higher. ....33

c. For the purposes of this Clause 5.5 (b) of this section, "Gross Negligence" means any act or failure to act by a Party which was in reckless disregard of or gross indifference to the obligations of the Party under the Contract and which causes harmful consequences to life, personal safety or real property of the other Party which such Party knew, or would have known if it was acting as a reasonable person, would result from such act or failure to act. Notwithstanding the foregoing, Gross Negligence shall not include any action taken in good faith for the safeguard of life or property. "Willful Misconduct" means an intentional disregard of any provision of this Contract which a Party knew or should have known if it was acting as a reasonable person, would result in harmful consequences to life, personal safety or real property of the other Party but shall not include any error of judgment or mistake made in good faith. ....33

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b. Investigate, study, operate and maintain the Project .....34

c. Obtain all applicable permits as required by or under the applicable law and be in compliance thereof at all the times during the Contract Period; .....34

d. Shall indemnify TMC in respect of any claims made against it (TMC) in relation to the use of licences, permits, and/or any intellectual property, used/required for the Project. ....34

e. Procure and maintain in full force and effect, as necessary appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used in or incorporated into the project. ....34

f. Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the project and hereby indemnifies TMC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall TMC be treated as employer in this regard. ....34

g. Be responsible for all the health, security, environment and safety aspects of the project at all times during the Contract Period. ....34

h. Obtain certificate for successful third party audit of the IT Security of the Project .....34

i. Shall at all times obtain and maintain necessary insurance, workmen compensation insurance policies throughout the Contract Period for the other employees deployed for this Project. ....34

j. Upon receipt of a request thereof, afford access to the Project Facilities to the authorised representatives of TMC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement. ....34

k. Pay all taxes, duties, outgoings relating to the Project. ....34

l. Establish a standard protocol for addressing complaints from persons in the Project Area to the satisfaction of the Project Officer. ....34

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c. TMC shall make available its existing space free of cost to the Private Operator for installation of Gateway, Switches, Routers, Cameras, LED/LCD displays etc. for smart parking services. Any additional form of infrastructure required for installation of such equipments shall be the responsibility of the Private Operator and its own cost. ....	35
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b.	<i>The Private Operator shall bear all corporate taxes, levied or imposed on the Private Operator on account of payments received by it from the TMC for the work done under this Agreement. ....</i>	37
c.	<i>The Private Operator shall bear all taxes and duties etc. levied or imposed on the Private Operator under the Agreement including but not limited to Sales Tax, Customs duty, Excise duty, LBT, Service Tax, VAT, Works Contracts Tax and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof up to the date for submission of final price bid, i.e., on account of payments received by him from the TMC for work done under the Contract. It shall be the responsibility of the Private Operator to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. The Private Operator shall also provide the TMC such information, as it may be required in regard to the Private Operator’s details of payment made by the TMC under the Agreement for proper assessment of taxes and duties. The amount of tax withheld by the TMC shall at all times be in accordance with Indian Tax Law and the TMC shall promptly furnish to the Private Operator original certificates (Challans) for tax deduction at source and paid to the Tax Authorities. ....</i>	37
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b.	<i>TMC agrees to indemnify and hold harmless the Private Operator and its officers and employees (each known as “Private Operator Indemnified Party”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys’ fees and disbursements) and expenses (collectively known as “Losses”) to which Supplier Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:.....</i>	39
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EVENTS OF DEFAULT.....41  
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a. *Private Operator event of default .....41*

*Any of the following events shall constitute an event of default by the Private Operator (“Private Operator event of default”) unless such event has occurred as a result of one or more reasons set out in clause 5.7 :*

*.....41*

*i.The Private Operator has failed to replenish the Performance security within 5 (five) working days of the encashment by TMC of the earlier Performance Security;.....41*

*ii.The Private Operator has failed to make any payments due to TMC and more than 60 (sixty) days have elapsed since such payment default;.....41*

*iii.Any representation made or warranty given by the Private Operator under this Agreement is found to be false or misleading; .....41*

*iv.The Private Operator has abandoned the Project; .....41*

*v.The Private Operator has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement; .....41*

*vi.The Private Operator has suffered an attachment levied on any of its assets which has caused or is likely to cause a material adverse affect on the project and such attachment has continued for a period exceeding 90 (ninety) days.....41*

*vii.Any other instance explicitly mentioned in this Agreement as having constituted an event of default.....41*

b. *TMC event of default .....42*

*Any of the following events shall constitute an event of default by TMC (“TMC” event of default), unless caused by a Private Operator event of default or a force majeure event:.....42*

*i.TMC has failed to make any payments due to the Private Operator and more than 180 (one eighty) days have elapsed since such default; .....42*

*ii.TMC is in material breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Private Operator;...42*

*iii.TMC has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;.....42*

*iv.Any representation made or warranties given by TMC under this Agreement has been found to be false or misleading.....42*

TERMINATION DUE TO EVENT OF DEFAULT .....42

a) *Termination notice.....42*

*Subject to procedures in clause 13&14, if a party having become entitled to do so decide to terminate this Agreement pursuant to the preceding sub clause (a) or (b), it shall issue termination notice setting out:..42*

*i.In sufficient detail the underlying event of default;.....42*

*ii.The termination date, which shall be a date occurring not earlier than 60 days from the termination notice;.....42*

*iii.The estimated termination payment including the details of computation thereof; and, .....42*

*iv.Any other relevant information .....42*

b) *Withdrawal of termination notice .....42*

*Notwithstanding anything inconsistent contained in this Agreement, if a party who has been served with the termination notice cures the underlying event of default to the satisfaction of the other party at any time before the termination occurs, the termination notice shall be withdrawn by the party which had issued the same.....42*

*Provided that the party in breach shall compensate the other party for any direct costs/consequences occasioned by the event of default which caused the issue of termination notice.....42*

TERMINATION PAYMENTS AND RIGHTS OF ON TERMINATION .....42

*i. TMC shall be entitled to appropriate the amounts in the Performance Security, .....42*

*ii. Enter upon and take possession and control of the Project forthwith; .....42*

*iii. Prohibit the Private Operator and any person claiming through or under the Private Operator from using/dealing with the Project;.....42*

*i. Private Operator shall be entitled to appropriate the amounts in the Performance Security if subsiding, .....43*

*ii. Private Operator shall be entitled to receive all expenses done with respect to the Project as on date of Termination Notice, provided the Private Operator produce proof all such unpaid expenses. ....43*

*Notwithstanding anything contained in this Agreement, TMC shall not, as a consequence of termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Private Operator in connection with the Project, and the hand over of the Project and Project Facilities by the Private Operator to TMC shall be free from any such obligation. ....43*

**12. HAND BACK AND TRANSFER REQUIREMENTS .....43**

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PRIVATE OPERATOR’S OBLIGATIONS .....43

a. *At least 6 (six) months before the expiry of the Contract Period a joint inspection of the Project and Project Facilities shall be undertaken by TMC, Project Officer and the Private Operator. TMC/ Project Officer shall, within 15 (fifteen) days of such inspection prepare and furnish to the Private Operator a list of works/ jobs, if any, to be carried out. The Private Operator shall promptly undertake and complete such works/ jobs at least 3 (three) months prior to the expiry of the Contract Period and ensure that the Project and Project Facilities continue to meet such requirements until the same are handed back to TMC. ....43*

b. *TMC/ Project Officer shall within 15 (fifteen) days of the joint inspection undertaken under preceding clause (b) prepare and furnish to the Private Operator a list of items, if any, with corresponding distinctive descriptions, which are to be handed back to TMC.....43*

c. *The Private Operator hereby acknowledges TMC’s rights specified in Clause 11.3 enforceable against it upon Termination and its corresponding obligations arising thereof. The Private Operator undertakes to comply with and discharge promptly all such obligations. ....43*

TMC’S OBLIGATIONS.....43

a. *Carrying out works/ jobs listed under Clause 12.2, which have not been carried out by the Private Operator.....44*

b. *Purchase of items, which have not been handed back to TMC in terms of Clause 12.2 and.....44*

c. *Any outstanding dues, which may have accrued in respect of the Project during the Contract Period Duly discharge and release to the Private Operator, the amounts in the Performance Security account or balance therein after deductions in respect to a), b) and c) above, as the case may be, upon issuance of certificate from Project Officer regarding compliance by the Private Operator with the Hand back and Transfer Requirements. ....44*

**13. DISPUTE RESOLUTION.....44**

a. *A Joint Committee of 5 (five) members, comprising of 3 (three) members from TMC and 2 (two) members from Private Operator shall be set up for this Project. The Joint Committee shall be chaired by the Municipal Commissioner of TMC. The objective of Joint Committee shall be to arrive at amicable decisions in case of any disputes or disagreement with respect to this Project and this Agreement. ....44*

b. *Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties and/or their associates/nominees, howsoever arising under, out of or in relation to this Agreement, at first level shall be referred to the Joint Committee. ....44*

**14. ARBITRATION .....44**

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*Pending the resolution of any dispute, the parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such resolution. ....45*

**15. CHANGE IN LAW .....45**

*Change in law shall mean the occurrence or coming into force of any of the following, after the Appointed Date: .....45*

i. *The enactment of any new Indian law;.....45*

ii. *The repeal, modification or re-enactment of any existing Indian law .....45*

iii. *A change in the interpretation or application of any Indian law by a court of record.....45*

*Provided that change in law shall not include .....45*

i. *Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,.....45*

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c. <i>It has taken all necessary corporate and other action under applicable laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;.....</i>	45
d. <i>It has the financial standing and capacity to undertake the project;.....</i>	45
e. <i>This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;.....</i>	45
f. <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 the Private Operator’s memorandum and articles of association or any applicable laws or any covenant, Agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected; .....</i>	45
g. <i>There are no actions, suits, proceedings or investigations pending or to the Private Operator’s knowledge threatened against it at law or in equity before any court or before any judicial, quasi judicial or other authority, the outcome of which may constitute Private Operator event of default or which individually or in the aggregate may result in material adverse effect; .....</i>	45
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i. <i>Subject to the receipt by the Private Operator from TMC of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Private Operator in and to the Project shall pass to and vest in TMC on the termination date free and clear of all encumbrances without any further act or deed on the part of the Private Operator or TMC.....</i>	46
j. <i>No representation or warranty by the Private Operator contained herein or in any other document furnished by it to TMC or to any government agency in relation to applicable permits contains or will contain any untrue statement of material fact or omits or will omit to state material fact necessary to make such representation or warranty not misleading. ....</i>	46
k. <i>No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Private Operator to any person to procure the Contract.....</i>	46
l. <i>Without prejudice to any express provision contained in this Agreement, the Private Operator acknowledges that prior to the execution of this Agreement, the Private Operator has after a complete and careful examination made an independent evaluation of the project requirements and the information provided by TMC, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Private Operator in the course of performance of its obligations hereunder.....</i>	46
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*SIGNED, SEALED AND DELIVERED.*.....49

(a) *The Parties hereby agree to indemnify and keep indemnified and hold harmless the Escrow Agent from and against any and all claims and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, the operation of the Escrow Account pursuant to the terms and conditions contemplated by this Escrow Agreement.* .....50

(b) *The Parties hereby agree that the Escrow Agent shall have no liability towards the Parties for any loss or damage that the Parties may claim to have suffered or incurred, either directly or indirectly, by reason of this Escrow Agreement or any transaction contemplated by the provisions hereof, unless occasioned by the gross negligence or willful misconduct of the Escrow Agent. In no event shall the Escrow Agent be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labour difficulties or other causes beyond the Escrow Agent's reasonable control or for indirect, special or consequential damages.* .....52

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    b. *The Private Operator shall install the equipments/ machinery/ hardware required for the Project in accordance with the tentative list of equipment/ machinery/ hardware and software details and specifications provided in SCHEDULE E: and SCHEDULE F: respectively. The Private Operator may provide additional infrastructure over and above the list of items provided at its own cost to meet the objectives of the Project. ....31*

    c. *The Private Operator shall complete the implementation of the Project as per the timelines specified in SCHEDULE B:(2) and shall obtain Readiness Certificate from the Project Officer to further commence the operations. In the event, the Private Operator fails to implement the Project within the stipulated time period, unless, such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay damages in accordance with penalties mentioned in SCHEDULE D:of this Agreement.....31*

    d. *The Private Operator shall be responsible for safety of all assets deployed as part of this Project and shall make necessary safety and security arrangements including insurance of such assets..31*

    e. *The Private Operator shall commence levy of parking fee from users from COD. The parking fee shall be levied in a manner as provided in SCHEDULE B: (4) of this Agreement.....31*

    f. *The Private Operator shall levy parking tariff as stipulated in SCHEDULE A:of this Agreement. The parking tariff shall be increased by 15% (fifteen percent) (rounded to nearest rupee(s) ) every 3 (three) years during the Contract Period. The parking tariff shall be rounded off for convenience of levy to the users.....31*

    g. *The Private Operator may undertake operations and maintenance of the Project in accordance to obligations mentioned in SCHEDULE B:, by itself or through a sub-contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Private Operator shall remain solely responsible to meet the Project requirements. ....31*

    h. *The Private Operator shall have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the project, to deal with the Project Officer/ TMC and to be responsible for all necessary exchange of information required pursuant to this Agreement. ....31*

    i. *The Private Operator shall suspend forthwith the whole or part of the operations upon receiving a written notice from the Project Officer who may require the Private Operator to suspend the activities in whole or part if in the reasonable opinion of the Project Officer; the operations are being carried on in a manner that is not in conformity with the terms and conditions of this Agreement. Such notice from the Project Officer shall specify the non-conformity of Private Operator’s obligations. The Private Operator shall be entitled to continue performance as soon as said non-conformity is remedied. ....31*

    j. *The Private Operator shall be deemed to be in material breach if the Project Officer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Private Operator: .....31*

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*of which a material breach has occurred, be entitled to both levy a penalty and thereafter terminate this Agreement if the breach is serious in nature.*.....32

5.3. TAXES, DUTIES AND STATUTORY LEVIES .....32

*The Private Operator shall pay in a timely manner all taxes, duties, levies, cess and charges including but not limited to income tax, sales tax, service tax, excise duty, customs duty, Local Body Tax (LBT) and other rates and taxes that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project.* .....32

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i. *shall take out and maintain, at his own cost but on terms and conditions approved by the TMC, insurance with financially sound and reputable insurers against the risks, and for the coverage, as specified below:* .....32

*TMC's liability and workers' compensation insurance in respect of the Personnel of the Private Operator / Private Operator's Team, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and*.....32

*Insurance against loss of or damage to (i) software developed in whole or in part for fulfillment of obligations under this Contract (ii) the Private Operator's assets and property used in the performance of the Services, (iii) any documents prepared by the Private Operator in the performance of the Services, and (iv) Insurance coverage for the Parking lots up to Rs. 1,00,00,000 (rupees one crore) covering the damage or theft of the vehicle and injury to a personnel in the parking lot.* .....32

ii. *shall pay all premia in relation thereto and shall ensure that nothing is done to make such insurance policies void or voidable* .....33

iii. *at the TMC's request, shall provide evidence to the TMC showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.* .....33

5.5. LIMITATION OF PRIVATE OPERATOR'S LIABILITY TOWARDS THE TMC .....33

a. *Neither Party shall be liable to the other Party for any indirect or consequential loss or damage (including loss of revenue and profits) arising out of or relating to the Contract.*.....33

b. *Except in the case of Gross Negligence or Willful Misconduct on the part of the Private Operator / Private Operator 's Team or on the part of any person or firm acting on behalf of the Private Operator executing the work or in carrying out the services, the Private Operator, with respect to damage caused by the Private Operator including to property and/or assets of the TMC or of any of TMC's vendors shall regardless of anything contained herein, not be liable for any direct loss or damage that exceeds (A) the Project Capital Cost or (B) the proceeds the Private Operator may be entitled to receive from any insurance maintained by the Private Operator to cover such a liability, whichever of (A) or (B) is higher.* .....33

c. *For the purposes of this Clause 5.5 (b) of this section, "Gross Negligence" means any act or failure to act by a Party which was in reckless disregard of or gross indifference to the obligations of the Party under the Contract and which causes harmful consequences to life, personal safety or real property of the other Party which such Party knew, or would have known if it was acting as a reasonable person, would result from such act or failure to act. Notwithstanding the foregoing, Gross Negligence shall not include any action taken in good faith for the safeguard of life or property. "Willful Misconduct" means an intentional disregard of any provision of this Contract which a Party knew or should have known if it was acting as a reasonable person, would result in harmful consequences to life, personal safety or real property of the other Party but shall not include any error of judgment or mistake made in good faith.*.....33

d. *This limitation of liability stated in Clause 5.5 of this section, shall not affect the Private Operator liability, if any, for direct damage by Private Operator / Private Operator 's Team to a Third Party's real property, tangible personal property or bodily injury or death caused by the Private Operator / Private Operator 's Team or any person or firm/company acting on behalf of the Private Operator in executing the work or in carrying out the Services."* .....33

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b.	<i>Investigate, study, operate and maintain the Project .....</i>	34
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d.	<i>Shall indemnify TMC in respect of any claims made against it (TMC) in relation to the use of licences, permits, and/or any intellectual property, used/required for the Project. ....</i>	34
e.	<i>Procure and maintain in full force and effect, as necessary appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used in or incorporated into the project.....</i>	34
f.	<i>Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the project and hereby indemnifies TMC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall TMC be treated as employer in this regard.....</i>	34
g.	<i>Be responsible for all the health, security, environment and safety aspects of the project at all times during the Contract Period. ....</i>	34
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i.	<i>Shall at all times obtain and maintain necessary insurance, workmen compensation insurance policies throughout the Contract Period for the other employees deployed for this Project. ....</i>	34
j.	<i>Upon receipt of a request thereof, afford access to the Project Facilities to the authorised representatives of TMC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.....</i>	34
k.	<i>Pay all taxes, duties, outgoings relating to the Project.....</i>	34
l.	<i>Establish a standard protocol for addressing complaints from persons in the Project Area to the satisfaction of the Project Officer. ....</i>	34
m.	<i>Operator shall take all approvals, permissions and authorisations which he may require or is obliged to seek from TMC or any other Organisation under its Agreement, in connection with implementation of the Project and the performance of its obligations. ....</i>	34
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b.	<i>TMC shall provide parking yard for towed vehicles. The parking yard shall be managed by the Private Operator. ....</i>	35
c.	<i>TMC shall make available its existing space free of cost to the Private Operator for installation of Gateway, Switches, Routers, Cameras, LED/LCD displays etc. for smart parking services. Any additional form of infrastructure required for installation of such equipments shall be the responsibility of the Private Operator and its own cost. ....</i>	35
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b. <i>The Private Operator shall guarantee a minimum parking revenue to TMC of Rs. 15,00,000/- ( rupees fifteen lakhs) per month or above percentage whichever is higher irrespective of the Private Operator being able to collect such amounts from parking fee from users. The minimum guaranteed parking revenue shall be increased with increase in parking tariff increase mentioned in clause 5.2 (f). ....</i>	37
c. <i>The parking revenue share shall be through an escrow account mechanism as mentioned in SCHEDULE H: of this Agreement. In the event TMC is not able to recover parking revenue share through the escrowed mechanism for whatsoever reason, it shall deduct the same from the Performance Security submitted by the Private Operator. ....</i>	37
d. <i>The revenue collected by Private Operator from towing of vehicles due to non-observance of traffic rules shall be shared between Traffic Police and the Private Operator in the ratio of 50:50 respectively. The 50% (fifty percent) share received by the Private Operator from towing shall form part of the parking revenue overall and shall be shared with TMC in the manner provided in the table in clause 7.2 (a) above. The rates for towing charges shall be as per the rates defined from time to time by Traffic Police/ TMC. ....</i>	37
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b. <i>The Private Operator shall bear all corporate taxes, levied or imposed on the Private Operator on account of payments received by it from the TMC for the work done under this Agreement. ....</i>	37
c. <i>The Private Operator shall bear all taxes and duties etc. levied or imposed on the Private Operator under the Agreement including but not limited to Sales Tax, Customs duty, Excise duty, LBT, Service Tax, VAT, Works Contracts Tax and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof up to the date for submission of final price bid, i.e., on account of payments received by him from the TMC for work done under the Contract. It shall be the responsibility of the Private Operator to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. The Private Operator shall also provide the TMC such information, as it may be required in regard to the Private Operator’s details of payment made by the TMC under the Agreement for proper assessment of taxes and duties. The amount of tax withheld by the TMC shall at all times be in accordance with Indian Tax Law and the TMC shall promptly furnish to the Private Operator original certificates (Challans) for tax deduction at source and paid to the Tax Authorities. ....</i>	37
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e. <i>Should the Private Operator fail to submit returns/ pay taxes in times as stipulated under the Indian Income Tax Act and consequently any interest or penalty is imposed by the Indian Income Tax authority, the Private Operator shall pay the same. Private Operator shall indemnify TMC against any and all liabilities or claims arising out of this Contract for such taxes including interest and penalty any such Tax Authority may assess or levy against the TMC / Private Operator. ....</i>	38
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- c. *The Private Operator shall make available the audit report and the auditor’s statement along with copies of the books for inspection by TMC within 10 (ten) days of completion of such audit and the accounts audited should be as per the prevalent provisions of the Indian Companies Act, 1956. ....38*

**9. INDEMNITY 38**

- a. *The Private Operator agrees to indemnify and hold harmless the TMC and its officers and employees (each known as “TMC Indemnified Party”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys’ fees and disbursements) and expenses (collectively known as “Losses”) to which TMC Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:.....38*
- b. *TMC agrees to indemnify and hold harmless the Private Operator and its officers and employees (each known as “Private Operator Indemnified Party”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys’ fees and disbursements) and expenses (collectively known as “Losses”) to which Supplier Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:.....39*  
*For the avoidance of doubt, indemnification of Losses pursuant to this article shall be made in an amount or amounts sufficient to restore each Supplier Indemnified Party to the financial position it would have been in had the Losses not occurred. ....39*
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*.....41*
  - i.*The Private Operator has failed to replenish the Performance security within 5 (five) working days of the encashment by TMC of the earlier Performance Security;.....41*
  - ii.*The Private Operator has failed to make any payments due to TMC and more than 60 (sixty) days have elapsed since such payment default; .....41*
  - iii.*Any representation made or warranty given by the Private Operator under this Agreement is found to be false or misleading; .....41*
  - iv.*The Private Operator has abandoned the Project; .....41*
  - v.*The Private Operator has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement; .....41*
  - vi.*The Private Operator has suffered an attachment levied on any of its assets which has caused or is likely to cause a material adverse affect on the project and such attachment has continued for a period exceeding 90 (ninety) days.....41*
  - vii.*Any other instance explicitly mentioned in this Agreement as having constituted an event of default.....41*
- b. *TMC event of default .....42*  
*Any of the following events shall constitute an event of default by TMC (“TMC” event of default), unless caused by a Private Operator event of default or a force majeure event:.....42*
  - i.*TMC has failed to make any payments due to the Private Operator and more than 180 (one eighty) days have elapsed since such default; .....42*
  - ii.*TMC is in material breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Private Operator;...42*
  - iii.*TMC has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement; .....42*

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iii. The estimated termination payment including the details of computation thereof; and, .....	42
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<i>c. It has taken all necessary corporate and other action under applicable laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement; .....</i>	<i>45</i>
<i>d. It has the financial standing and capacity to undertake the project;.....</i>	<i>45</i>
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<i>f. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Private Operator’s memorandum and articles of association or any applicable laws or any covenant, Agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected; .....</i>	<i>45</i>
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c. <i>This Agreement constitutes TMC legal, valid and binding obligation enforceable against it in accordance with the terms hereof;</i>	46
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ii. <i>Shall not be effective unless it is in writing and executed by a duly authorised representative of such party; and</i>	47
iii. <i>Shall not affect the validity or enforceability of this Agreement in any manner.</i>	47
b. <i>Neither the failure by either party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a party to the other party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.</i>	47
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*This Agreement and the schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the parties on the subject hereof and no amendment or modification hereto will be valid and effective unless agreed to by all the parties hereto and evidenced in writing.....47*

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*Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the parties at their respective addresses set forth below:.....47*

*If to TMC: .....48*

*The Municipal Commissioner.....48*

*If to the Private Operator: .....48*

*The Chief Executive .....48*

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NO PARTNERSHIP .....49

*Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the parties. Neither party shall have any authority to bind the other in any manner whatsoever. 49*

LANGUAGE.....49

*All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language. ....49*

EXCLUSION OF IMPLIED WARRANTIES ETC. ....49

*This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other Agreement between the parties and any representation by any party not contained in a binding legal Agreement executed by the parties.....49*

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*This Agreement may be constituted in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only one Agreement.....49*

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*The Private Operator shall bear all the costs related to the signing and registration of this Agreement including but not limited to stamp duties and registration charges. ....49*

*IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.....49*

*SIGNED, SEALED AND DELIVERED .....49*

**A. PERFORMA OF PERFORMANCE SECURITY .....50**

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- (a) *The Parties hereby agree to indemnify and keep indemnified and hold harmless the Escrow Agent from and against any and all claims and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, the operation of the Escrow Account pursuant to the terms and conditions contemplated by this Escrow Agreement. ....83*
- (b) *The Parties hereby agree that the Escrow Agent shall have no liability towards the Parties for any loss or damage that the Parties may claim to have suffered or incurred,*

*either directly or indirectly, by reason of this Escrow Agreement or any transaction contemplated by the provisions hereof, unless occasioned by the gross negligence or willful misconduct of the Escrow Agent. In no event shall the Escrow Agent be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labour difficulties or other causes beyond the Escrow Agent's reasonable control or for indirect, special or consequential damages. ....83*

*SIGNED, SEALED AND DELIVERED.....84*

The Agreement mutually agreed and entered into on this \_\_\_\_ day of \_\_\_\_ (month), Two thousand and \_\_\_\_\_ at Thane.

**BETWEEN**

Thane Municipal Corporation (hereinafter referred as “**TMC**”), having its principal office at \_\_\_\_\_ and represented by Shri \_\_\_\_\_, the \_\_\_\_\_ officer at Thane Municipal Corporation (hereinafter called the “\_\_\_\_ Officer”) in which expression are included unless such inclusion is inconsistent with the context, his successor or successors for the time being holding the office of the Municipal Commissioner and in view of the powers delegated to the \_\_\_\_ Officer by the Commissioner vide his Order no. \_\_\_\_\_, of ONE PART,

**AND**

\_\_\_\_\_, a company<sup>1</sup> incorporated under provisions of the \_\_\_\_\_, having its Registered office at \_\_\_\_\_, (hereinafter referred to as “**Private Operator**”) which expression shall unless repugnant to the context include its successors and permitted assigns, OF THE OTHER PART.

**WHEREAS**

1. Thane Municipal Corporation (TMC) is responsible for providing municipal services to 18.41 lakh citizens (2011 census population) within its jurisdiction of 128.23 sq.km;
2. The provision of infrastructure services such as water supply, drainage, sewerage, solid waste management and sanitation, roads, traffic, transportation & parking, street lighting, fire fighting, education and primary health etc. in the city of Thane is the responsibility of the Authority.
3. TMC has prepared a parking policy, which identifies various on-street and off-street parking locations across various locations within its jurisdiction. TMC intends the providing of parking spaces and its management on smart concept with use of ICT;
4. For this purpose TMC had invited competitive proposals from eligible Bidders for implementing the Project and in response thereto received proposals from several Bidders including the Private Operator for implementing the Project.
5. TMC, after evaluating the aforesaid Proposals accepted the Proposal submitted by the Private Operator \_\_\_\_\_ and issued Letter of Award (LOA) vide letter No. \_\_\_\_\_ dated \_\_\_\_\_ to the Private Operator for implementing the Project.
6. TMC confirms the receipt of a Performance Security in the form of a Bank Guarantee dated \_\_\_\_\_ for an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as Performance Security, for the performance of the obligations of the Private Operator under this Agreement.

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<sup>1</sup> In case of a Consortium, the Lead member shall sign the Agreement

7. The Parties hereto are required to enter into the Agreement being these presents to record the terms, conditions and covenants of the Agreement.

NOW THIS AGREEMENT witness as follows:

## 1. Definitions and Interpretation

### Definitions

1. **Affected Party** shall mean the party claiming to be affected by a Force Majeure event in accordance with clause 10.
2. **Agreement** shall mean this Agreement and including schedules hereto. (i) Request for Proposal (RFP) (ii) Bidder's submission to RFP (iii) terms and conditions of Agreement (iv) work specifications (v) offer of the Bidder (vi) schedules to the Agreement (vii) any correspondence exchanged with respect to this Agreement or additional document constituting part of the Agreement.
3. **Applicable Law** shall mean all laws in force and effect, as of date hereof and which may be publicized or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project.
4. **Applicable permits** shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Private Operator under applicable law, in connection with the project during the subsistence of this Agreement.
5. **Appointed Date** shall mean the date of signing of this Agreement between the Private Operator and TMC.
6. **Authority** Means any agency, legislative, judicial or executive authority, public or statutory person, whether autonomous or not, of the GoI (Government of India) or GoM (Government of Maharashtra) or any local authority including the TMC, its division or any other sub-division or instrumentality or any thereof.
7. **Bidders** shall mean a Bidding Company or Bidding Consortium, which has submitted a Bid in response to this RFP Document.
8. **Capex Contribution** shall mean the amount quoted in Indian Rupees by the Private Operator in the financial proposal and payable by TMC to the Private Operator as a contribution to the capital cost of the Project.
9. **Conditions Precedent** shall have meaning as ascribed under Article 3.
10. **Commercial Operations Date (COD)** shall be the date on which the Project Officer has issued the Readiness Certificate.
11. **Commissioning Period** shall mean the period of 6 (six) months from the Appointed Date to the COD.
12. **Contract Period** shall mean a period of 15 (fifteen) years and 6 (six) months from the Appointed Date.
13. **Consortium** shall mean the consortium to which the Project has been awarded, consisting of <<details of members the Consortium>> and acting pursuant to the Joint Deed Agreement.

14. **Emergency** shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the project or which poses an immediate threat of material damage to any of the Project and Project Facilities.
15. **Encumbrance** shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the project, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges.
16. **Good Industry Practice** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations as under this Agreement, which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof, of any of them of a project similar to that of the project.
17. **Government Agency** shall mean Government of India (GoI), Government of Maharashtra (GoM), Corporation of Thane or any other state government or central government department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state or local, having jurisdiction over the Private Operator, or the performance of all or any of the services or obligations of the Private Operator under or pursuant to this Agreement.
18. **Joint Deed Agreement (JDA)** shall mean a duly stamped and registered agreement which was submitted by the Consortium during the Request for Proposal (RFP) stage and annexed with this Agreement.
19. **Lead Member (LM)** shall mean <<name of the LM>> the consortium member authorized by the Consortium to enter into this Agreement on behalf of the Consortium.
20. **Letter of Award** shall mean the letter issued by TMC to the successful Bidder, post the successful completion of the bidding process.
21. **Material Adverse Effect** shall mean a material adverse effect on (a) the ability of the Private Operator to exercise any of its rights to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.
22. **Material Breach** shall mean a breach by either party of any of its obligations under this Agreement which has or is likely to have a material adverse effect on the project and which such party shall have failed to cure.
23. **Parties** means the parties to the agreement and “party” means one of them, as the context may admit or require.
24. **Performance Security** means the deposit provided by the Private Operator as a guarantee for the performance of its obligations and is in accordance with clause 5.1.1.
25. **Person** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or government agency or any other legal entity.

26. **Preliminary Notice** shall mean the notice of intended termination by the party entitled to terminate this Agreement to the other party setting out, inter alia, the underlying event of default.
27. **Project** shall mean design, finance, develop, implement, operate & maintain smart systems for on-street and off-street parking spaces in accordance with the provisions of this Agreement.
28. **Project Agreements** shall mean collectively this Agreement and any other material contract (other than any commercial agreement with the users) entered into or may enter into by the Supplier in connection with the Project.
29. **Project Officer** shall mean a TMC official appointed for supervision and monitoring of compliance by the Private Operator with the O&M and commissioning requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in the work specifications.
30. **Project Area** shall mean jurisdiction of TMC.
31. **Project Facilities** shall mean facilities provided by TMC to Private Operator for undertaking the Project.
32. **Proposal / Request for Proposal (RFP)** shall mean the 'Request for Proposal Document', dated \_\_\_\_\_ issued by TMC to the interested bidders in the proposal stage, as amended and modified from time to time together with all Annexures, Schedules, Maps along with such common set of deviations, corrigendum, addendum, amendments which have been issued from time to time.
33. **Readiness Certificate** shall mean the certificate issued by the Project Officer certifying inter alia, that the Private Operator has implemented smart on-street and off-street parking spaces and is ready for commercial operations.
34. **Rupees” or “Rs.”** refers to the lawful currency of the Republic of India.
35. **Private Operator** means M/s-----, a company having its registered office in ----- who has been appointed as “Private Operator” by TMC for the Project, includes the Private Operator’s personnel, representatives, successors and permitted assignees.
36. **Standards of Reasonable and Prudent Supplier** means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions.
37. **Sub Contractor** shall mean any person with whom the Private Operator has entered into/may enter into any material contract in relation with the O&M requirements for this project.
38. **Tax** shall mean and include all taxes, fees, cesses, levies that may be payable by the Private Operator under the applicable law.
39. **Termination** shall mean the early termination of this Agreement pursuant to termination notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

40. **Termination Date** shall mean the date specified on the termination notice as the date on which the termination occurs.
41. **Termination Notice** shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

### **Interpretations**

In this Agreement, unless the context otherwise requires

1. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transaction entered into herein under;
2. References to Applicable Laws shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
3. The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
4. The headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
5. The words “include” and “including” are to be construed without limitation;
6. Any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
7. The schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
8. 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;
9. Reference to recitals, clause(s), sub-clause(s), or schedule(s) in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, clause(s), sub-clause(s), and schedule(s) of or to this Agreement;
10. Any Agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any other party or by Project Officer shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such party or Project Officer in his behalf and not otherwise;
11. 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 and dates.

## **2. The Agreement**

### **Appointed Date**

The Appointed Date shall be the date of signing of this Agreement.

### **Grant of Agreement**

Subject to and in accordance with the terms and conditions and covenants set forth in this Agreement, TMC hereby grants and authorises the Private Operator to undertake the Project as per the specific instruction by the Project Officer and to exercise and/or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement.

### **Acceptance of Agreement**

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

### **Start of Operations**

The Private Operator shall commence the operation within 30 (thirty) days from the date of work order subject to the satisfaction or waiver of the Conditions Precedent contained in this Agreement.

### **Contract Period**

The rights hereby granted is for a period<sup>2</sup> of 15 (fifteen) years and 6 (six) months commencing from the Appointed Date and ending on the Expiry date during which the Private Operator is authorised to design, finance, procure, operate and maintain the Project in accordance with the provisions hereof. Provided that in the event of termination, the Contract Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

### **Exclusivity of the Contract**

The Private Operator shall be the sole and exclusive person entitled to undertake the Project in the Project Area in line with the scope of work assigned to the Private Operator in this Agreement and TMC agrees that no agreement or arrangement permitting such activities by any other party shall be entered into by TMC during the Contract Period.

## **3. Conditions Precedent**

### **Responsibilities of the Private Operator**

The Private Operator shall fulfil the following conditions precedent within 30 (thirty) days from the Appointed Date:

- a. The Private Operator shall have executed a Performance Security in favour of Thane Municipal Corporation for a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) in the form of Bank Guarantee as per clause 5.1.1 (a).

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<sup>2</sup> 6 (six) months of implementation period and 15 (fifteen) years of operation and maintenance period

- b. The Private Operator shall submit a Project implementation and operation & maintenance report to ensure successful implementation and operations of the Project. The Private Operator shall also submit Standard Operating Procedures (SOPs) for command and control center and various parking services.
- c. The Private Operator shall have deployed the requisite team for implementation of the Project.
- d. The Private Operator shall have received the applicable permits and clearances if any from concerned authorities under relevant laws applicable.

**Responsibilities of TMC**

TMC shall fulfill the following conditions precedent within 30 (thirty) days from the Appointed Date:

- e. TMC shall handover on-street and off-street parking spaces mentioned under this Project to the Private Operator.
- f. TMC shall provide support to the Private Operator in obtaining timely approvals, permissions and authorisations for performance of obligations for the project.
- g. Submit copies of the council resolution authorising TMC to execute the Agreement.
- h. TMC shall provide office space for parking control and command centre without any additional cost to the Private Operator at TMC office for commencing the operations.

**Cost of satisfying the conditions precedent**

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

**Non- fulfilment of the Conditions Precedent**

- a. In case of non-fulfilment of the Conditions Precedent attributable to reasons beyond the control of the Private Operator or TMC, the period for satisfaction of Conditions Precedent may be extended by mutual consent of the Private Operator or TMC.
- b. If any of the conditions precedent contemplated in clauses 3.1 and 3.2 has not been satisfied in full or has not been waived, within the time stipulated or such extended time that the Parties may agree upon, then and in such event either party shall have the right to terminate this Agreement by 30 (thirty) days notice in writing to the other party, given at any time thereafter, but prior to such conditions precedent being satisfied or waived, and if the conditions precedent are not satisfied or waived within such notice period, upon expiry of such notice, this Agreement shall terminate.
- c. If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth in clause 3.1, the Private Operator shall not be compensated in any manner whatsoever and the Performance Security shall be forfeited and encashed.
- d. If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth in clause 3.2, then TMC shall release the Performance Security.
- e. The termination under the above circumstances shall be subject to terms & conditions as per clauses 13&14.

### **Rights, Title and Use of Project Facilities**

The Private Operator shall use the Project Facilities solely for this Project and shall hand over to TMC free of cost without any encumbrances after the expiry of this Contract or any early Termination.

## **4. Project Officer**

### **Project Officer**

TMC shall appoint a TMC official as Project Officer. The Project Officer shall undertake, inter alia, the following activities during the Commissioning Period:

- a. Ensure that the commissioning procedure is followed in accordance with the provisions of this Agreement
- b. Shall issue a Readiness Certificate if he/she is satisfied about the fulfilment of the commissioning requirements.
- c. Designate tests on equipment and machinery;
- d. The Project Officer shall, in the ordinary course, maintain a record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
  - i. Manpower deployed and other organisational arrangements of the Private Operator;
  - ii. Reviews of documents submitted to it by the Private Operator to meet the commissioning requirements as mentioned in clause 3.1 (b);
  - iii. Inspections undertaken and notices/instructions issued to the Private Operator;
  - iv. Review of compliance with the commissioning requirements;
  - v. Payments;
  - vi. Force majeure events;
  - vii. Breaches and defaults by the parties.

## **5. Private Operator's obligations**

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

### **5.1. Financial Obligations**

#### **5.1.1. Performance Security**

- a. The Private Operator shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to TMC,
  - i. A bank guarantee in favour of Thane Municipal Corporation, for a sum of **Rs.** \_\_\_\_\_/- (**Rupees** \_\_\_\_\_ **only**)<sup>3</sup>, shall be kept valid for the first 3 (three)

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<sup>3</sup> The amount of bank guarantee shall be sum of a) 10% of Capex Contribution from TMC and b) 5% of the capital cost contribution from the Private Operator.

years of the Contract Period and shall deliver this simultaneously with the execution of this Agreement.

- ii. A bank guarantee in favour of Thane Municipal Corporation, for a sum of **Rs. 2,00,00,000/- (Rupees two crores only)**, shall be kept valid for the balance 12 (twelve) years of the Contract Period and shall be delivered 1 (one) month before the expiry of the bank guarantee mentioned in clause (i) above.
  - iii. The bank guarantee should be in the format as provided in SCHEDULE A:
- b. Provided that if the Agreement is terminated due to any event other than a Private Operator event of default, the Performance Security if subsisting as of the termination date shall, subject to TMC's right to receive amounts, if any, due from the Private Operator under this Agreement, be duly discharged and released to the Private Operator.
  - c. The Private Operator shall keep the Performance Security replenished at all times at a level as specified in sub clause a (i & ii) above. Such replenishment may be required if the TMC has withdrawn/ deducted from the Performance Security owing to a default/ reimbursement of expenses which was initially borne by TMC and the replenishment shall have to be done by the Private Operator within 5 (five) working days of the withdrawal by TMC from the Performance Security. Failure to do so on part of the Private Operator shall result in an event of default by the Private Operator.

**5.2. Project Implementation and Operation & Maintenance (O&M) Obligations**

- a. The Private Operator shall implement and operate and maintain the Project in accordance with the project implementation milestones and obligations mentioned in **SCHEDULE B:** of this Agreement.
- b. The Private Operator shall install the equipments/ machinery/ hardware required for the Project in accordance with the tentative list of equipment/ machinery/ hardware and software details and specifications provided in **SCHEDULE E:** and **SCHEDULE F:** respectively. The Private Operator may provide additional infrastructure over and above the list of items provided at its own cost to meet the objectives of the Project.
- c. The Private Operator shall complete the implementation of the Project as per the timelines specified in **SCHEDULE B:(2)** and shall obtain Readiness Certificate from the Project Officer to further commence the operations. In the event, the Private Operator fails to implement the Project within the stipulated time period, unless, such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay damages in accordance with penalties mentioned in **SCHEDULE D:** of this Agreement.
- d. The Private Operator shall be responsible for safety of all assets deployed as part of this Project and shall make necessary safety and security arrangements including insurance of such assets.
- e. The Private Operator shall commence levy of parking fee from users from COD. The parking fee shall be levied in a manner as provided in **SCHEDULE B: (4)** of this Agreement.
- f. The Private Operator shall levy parking tariff as stipulated in **SCHEDULE A:** of this Agreement. The parking tariff shall be increased by 15% (fifteen percent) (rounded to nearest rupee(s) ) every 3 (three) years during the Contract Period. The parking tariff shall be rounded off for convenience of levy to the users.
- g. The Private Operator may undertake operations and maintenance of the Project in accordance to obligations mentioned in **SCHEDULE B:**, by itself or through a sub-contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Private Operator shall remain solely responsible to meet the Project requirements.
- h. The Private Operator shall have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the project, to deal with the Project Officer/ TMC and to be responsible for all necessary exchange of information required pursuant to this Agreement.
- i. The Private Operator shall suspend forthwith the whole or part of the operations upon receiving a written notice from the Project Officer who may require the Private Operator to suspend the activities in whole or part if in the reasonable opinion of the Project Officer; the operations are being carried on in a manner that is not in conformity with the terms and conditions of this Agreement. Such notice from the Project Officer shall specify the non-conformity of Private Operator's obligations. The Private Operator shall be entitled to continue performance as soon as said non-conformity is remedied.
- j. The Private Operator shall be deemed to be in material breach if the Project Officer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Private Operator:

- k. There has been a failure/undue delay in carrying out a scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the terms and conditions of this Agreement.
- l. There has been a serious and persistent letup in adhering to the requirements and thereby the Project and Project facilities or any part thereof is not safe for operations.
- m. There has been a persistent breach of terms and conditions of this Agreement. For avoidance of doubt, persistent breach shall mean:
  - i. Any breach by the Private Operator which has not been remedied by the Private Operator, as required under the provisions of this Agreement despite a notice to remedy in respect thereof issued by the Project Officer / TMC, and/or
  - ii. Recurrence of a breach by the Private Operator, during the pendency of notice to remedy by the Project Officer / TMC requiring the Private Operator to remedy a breach, and/or
  - iii. Repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to notice to remedy or otherwise.

Upon occurrence of a material breach, TMC shall, without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, depending upon the nature of obligation in respect of which a material breach has occurred, be entitled to both levy a penalty and thereafter terminate this Agreement if the breach is serious in nature.

### **5.3. Taxes, Duties and Statutory Levies**

The Private Operator shall pay in a timely manner all taxes, duties, levies, cess and charges including but not limited to income tax, sales tax, service tax, excise duty, customs duty, Local Body Tax (LBT) and other rates and taxes that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project.

### **5.4. Insurance**

- a. The material procured under this Project shall be fully insured by the Private Operator, against any loss or damage. The Private Operator shall submit to the Purchaser, documentary evidence issued by the insurance company, indicating that such insurance has been taken.
- b. The Private Operator during the term of this Contract:
  - i. shall take out and maintain, at his own cost but on terms and conditions approved by the TMC, insurance with financially sound and reputable insurers against the risks, and for the coverage, as specified below:
    - TMC's liability and workers' compensation insurance in respect of the Personnel of the Private Operator / Private Operator's Team, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and
    - Insurance against loss of or damage to (i) software developed in whole or in part for fulfillment of obligations under this Contract (ii) the Private

Operator's assets and property used in the performance of the Services, (iii) any documents prepared by the Private Operator in the performance of the Services, and (iv) Insurance coverage for the Parking lots up to Rs. 1,00,00,000 (rupees one crore) covering the damage or theft of the vehicle and injury to a personnel in the parking lot.

- ii. shall pay all premia in relation thereto and shall ensure that nothing is done to make such insurance policies void or voidable
- iii. at the TMC's request, shall provide evidence to the TMC showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

#### **5.5. Limitation of Private Operator's Liability towards the TMC**

- a. Neither Party shall be liable to the other Party for any indirect or consequential loss or damage (including loss of revenue and profits) arising out of or relating to the Contract.
- b. Except in the case of Gross Negligence or Willful Misconduct on the part of the Private Operator / Private Operator 's Team or on the part of any person or firm acting on behalf of the Private Operator executing the work or in carrying out the services, the Private Operator, with respect to damage caused by the Private Operator including to property and/or assets of the TMC or of any of TMC's vendors shall regardless of anything contained herein, not be liable for any direct loss or damage that exceeds (A) the Project Capital Cost or (B) the proceeds the Private Operator may be entitled to receive from any insurance maintained by the Private Operator to cover such a liability, whichever of (A) or (B) is higher.
- c. For the purposes of this Clause 5.5 (b) of this section, "Gross Negligence" means any act or failure to act by a Party which was in reckless disregard of or gross indifference to the obligations of the Party under the Contract and which causes harmful consequences to life, personal safety or real property of the other Party which such Party knew, or would have known if it was acting as a reasonable person, would result from such act or failure to act. Notwithstanding the foregoing, Gross Negligence shall not include any action taken in good faith for the safeguard of life or property. "Willful Misconduct" means an intentional disregard of any provision of this Contract which a Party knew or should have known if it was acting as a reasonable person, would result in harmful consequences to life, personal safety or real property of the other Party but shall not include any error of judgment or mistake made in good faith.
- d. This limitation of liability slated in Clause 5.5 of this section, shall not affect the Private Operator liability, if any, for direct damage by Private Operator / Private Operator 's Team to a Third Party's real property, tangible personal property or bodily injury or death caused by the Private Operator / Private Operator 's Team or any person or firm/company acting on behalf of the Private Operator in executing the work or in carrying out the Services."

#### **5.6. General obligations**

The Private Operator shall at its own cost and expense:

- a. Operator shall maintain the amenities for housing his/her team including office space, office furniture, electricity and connectivity infrastructure (adequate Internet and Intranet bandwidth) without any additional cost.

- b. Investigate, study, operate and maintain the Project
- c. Obtain all applicable permits as required by or under the applicable law and be in compliance thereof at all the times during the Contract Period;
- d. Shall indemnify TMC in respect of any claims made against it (TMC) in relation to the use of licences, permits, and/or any intellectual property, used/required for the Project.
- e. Procure and maintain in full force and effect, as necessary appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used in or incorporated into the project.
- f. Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the project and hereby indemnifies TMC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall TMC be treated as employer in this regard.
- g. Be responsible for all the health, security, environment and safety aspects of the project at all times during the Contract Period.
- h. Obtain certificate for successful third party audit of the IT Security of the Project
- i. Shall at all times obtain and maintain necessary insurance, workmen compensation insurance policies throughout the Contract Period for the other employees deployed for this Project.
- j. Upon receipt of a request thereof, afford access to the Project Facilities to the authorised representatives of TMC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.
- k. Pay all taxes, duties, outgoings relating to the Project.
- l. Establish a standard protocol for addressing complaints from persons in the Project Area to the satisfaction of the Project Officer.
- m. Operator shall take all approvals, permissions and authorisations which he may require or is obliged to seek from TMC or any other Organisation under its Agreement, in connection with implementation of the Project and the performance of its obligations.
- n. Operator should make arrangements for connection points and updates (on ERP executions/inclusions, Online payment processes etc.) for facilitating system integration smart parking app and web portal with TMC's App and Web portal on his own cost.

**5.7.No breach of obligations**

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

- a. Force Majeure event, subject to clause 10
- b. TMC's event of default
- c. Compliance with the instructions of the Project Officer /TMC or the directions of any government agency other than instructions issued as a consequence of a breach by the Private Operator of any of its obligations hereunder.
- d. Closure of the Project or part thereof with the approval of the Project Officer /TMC.

### **5.8 Grievance redressal system**

Operator shall provide a helpline number to citizens to report any complaints with respect to the Project. The complaints shall be forwarded to the Private Operator to take necessary actions. In the event, the Private Operator receives any complaints directly from the citizens; the Private Operator shall notify the same to TMC immediately and also maintain a record of the same.

## **6. TMC's Obligations**

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

- a. TMC shall mark all the boundaries of each parking slot in all the parking lots and shall renew/remark as per the applicable standards.
- b. TMC shall undertake civil repair works, cabling works, resurfacing and road marking works, if required, in the parking lots as per TMC requirement from time to time.
- c. TMC shall provide parking yard for towed vehicles. The parking yard shall be managed by the Private Operator.
- d. TMC shall make available its existing space free of cost to the Private Operator for installation of Gateway, Switches, Routers, Cameras, LED/LCD displays etc. for smart parking services. Any additional form of infrastructure required for installation of such equipments shall be the responsibility of the Private Operator and its own cost.
- e. TMC shall provide built-up space for setting up of Central Control Centre with required power and data points within TMC area, free of cost.
- f. Wherever appropriate TMC may provide necessary assistance to the Private Operator in securing applicable permits.
- g. Observe and comply with all its obligations set forth in this Agreement.

## **7. Capex Contribution and Sharing of Parking Revenue**

### **Capex Contribution**

- a. Subject to the provisions of this Agreement and in consideration of the Private Operator accepting and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, TMC agrees and undertakes to pay the Private Operator Capex Contribution specified by the Private Operator in his financial proposal. The Capex Contribution payment to the Private Operator for performing his obligations as per this Agreement shall be paid in the following manner as provided in the table below.

S. No.	Project Milestone	% Capex Contribution by TMC
1	On installation of all the equipments/ hardware for off-street parking locations	10%
2	On installation of all the equipments/ hardware for on-street parking locations	20%
3	On implementation of software module, app and command & control central	25%
4	On issuance of Readiness Certificate by the Project Officer	25%
5	One year after completion of the milestone 4 above	20%

- b. TMC shall make all efforts to make Capex Contribution to the Private Operator within 60 (sixty) days after verification of the receipt(s) and all necessary supporting documents.
- c. TMC shall verify the work done within 15 days from the submission of the receipt(s) and supporting documents.
- d. All payments agreed to be made by TMC to the Private Operator in accordance with the Bid shall be inclusive of all statutory levies, duties, taxes and other charges whenever levied/applicable including costs of maintenance, and TMC shall not be liable to pay any such levies/other charges under or in relation to this Contract and/ or the Services.
- e. In the event of TMC noticing at any time that any amount has been disbursed wrongly to the Private Operator or any other amount is due from the Private Operator to the TMC, the TMC may without prejudice to its rights recover such amounts by other means after notifying the Private Operator or deduct such amount from any payment falling due to the Private Operator. The details of such recovery, if any, will be intimated to the Private Operator. The Private Operator shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in previous invoice by mistake on the part of the TMC or the Private Operator.

**Sharing of Parking Revenue by Private Operator**

- a. The Private Operator shall have access to the parking fee which shall be levied as per the parking tariff provided in this Agreement. The Private Operator shall share parking revenue on the gross revenue ( Gross revenue is the total revenue generated through all the activities covered under this tender without deduction of any taxes and duties applicable) with TMC as per the details provided in the table below.

S. No.	Parking Fee Collection Per Month (in rupees)	Share of TMC	Share of Bidder
1	Upto Rs 1.5 cr	25% of upto Rs 1.5 cr	75% of upto Rs 1.5 cr
2	Above 1.5 cr to Rs 2 cr	25% of upto Rs 1.5 cr + 50% of amount above Rs 1.50 cr to Rs 2 cr	75% of upto Rs 1.5 cr + 50% of amount above Rs 1.5 cr to Rs 2 cr

S. No.	Parking Fee Collection Per Month (in rupees)	Share of TMC	Share of Bidder
3	Above Rs 2 cr	25% of upto Rs 1.5 cr + 50% of amount above Rs 1.50 cr to Rs 2 cr + 60% of amount above Rs 2 cr	75% of upto Rs 1.5 cr + 50% of amount above Rs 1.5 cr to Rs 2 cr + 40% of amount above Rs 2 cr

b.

b.

- b. The Private Operator shall guarantee a minimum parking revenue to TMC of Rs. 15,00,000/- (rupees fifteen lakhs) per month or above percentage whichever is higher irrespective of the Private Operator being able to collect such amounts from parking fee from users. The minimum guaranteed parking revenue shall be increased with increase in parking tariff increase mentioned in clause 5.2 (f).
- c. The parking revenue share shall be through an escrow account mechanism as mentioned in SCHEDULE H: of this Agreement. In the event TMC is not able to recover parking revenue share through the escrowed mechanism for whatsoever reason, it shall deduct the same from the Performance Security submitted by the Private Operator.
- d. The revenue collected by Private Operator from towing of vehicles due to non-observance of traffic rules shall be shared between Traffic Police and the Private Operator in the ratio of 50:50 respectively. The 50% (fifty percent) share received by the Private Operator from towing shall form part of the parking revenue overall and shall be shared with TMC in the manner provided in the table in clause 7.2 (a) above. The rates for towing charges shall be as per the rates defined from time to time by Traffic Police/ TMC.

#### **Duties, Taxes and Statutory levies**

- a. The Private Operator shall bear all personnel taxes levied or imposed on its personnel, vendors, consultants, or any other member of Private Operator's Team, etc. on account of payment received under this Contract.
- b. The Private Operator shall bear all corporate taxes, levied or imposed on the Private Operator on account of payments received by it from the TMC for the work done under this Agreement.
- c. The Private Operator shall bear all taxes and duties etc. levied or imposed on the Private Operator under the Agreement including but not limited to Sales Tax, Customs duty, Excise duty, LBT, Service Tax, VAT, Works Contracts Tax and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof up to the date for submission of final price bid, i.e., on account of payments received by him from the TMC for work done under the Contract. It shall be the responsibility of the Private Operator to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. The Private Operator shall also provide the TMC such information, as it may be required in regard to the Private Operator's details of payment made by the TMC under the Agreement for proper assessment of taxes and duties. The

amount of tax withheld by the TMC shall at all times be in accordance with Indian Tax Law and the TMC shall promptly furnish to the Private Operator original certificates (Challans) for tax deduction at source and paid to the Tax Authorities.

- d. The Private Operator agrees that he and his Team shall comply with the Indian Income Tax act in force from time to time and pay Indian Income Tax, as may be imposed / levied on them, for the payments received by them for the works under the Contract.
- e. Should the Private Operator fail to submit returns/ pay taxes in times as stipulated under the Indian Income Tax Act and consequently any interest or penalty is imposed by the Indian Income Tax authority, the Private Operator shall pay the same. Private Operator shall indemnify TMC against any and all liabilities or claims arising out of this Contract for such taxes including interest and penalty any such Tax Authority may assess or levy against the TMC / Private Operator.
- f. TMC shall if so required by applicable laws in force, at the time of payment, deduct income tax payable by the Private Operator at the rates in force, from the amount due to the Private Operator and pay to the concerned tax authority directly.

#### **8. Accounts and Auditing**

- a. The Private Operator is required to maintain separate and proper books of accounts for the Project as per the prevalent Indian Companies Act, 1956 and applicable provisions of the relevant acts, laws and rules in India.
- b. The Private Operator shall make arrangements for getting these books audited by an independent auditor annually within 60 (sixty) days of close of financial year.
- c. The Private Operator shall make available the audit report and the auditor's statement along with copies of the books for inspection by TMC within 10 (ten) days of completion of such audit and the accounts audited should be as per the prevalent provisions of the Indian Companies Act, 1956.

#### **9. Indemnity**

- a. The Private Operator agrees to indemnify and hold harmless the TMC and its officers and employees (each known as "TMC Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively known as "Losses") to which TMC Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
  - i. any negligence or wrongful act or omission by the Private Operator or the Private Operator's Team or any third party associated with Private Operator in connection with or incidental to this Contract; or
  - ii. any breach of any of the terms of the Private Operator's Bid as agreed, the Tender and this Contract by the Private Operator, the Private Operator's Team or any third party.
  - iii. any infringement of patent, trademark/copyright or industrial design rights arising from the use of the supplied goods and related services or any part thereof.

- iv. against any privilege, claim or assertion made by a third party with respect to right or interest in, ownership, mortgage or disposal of any asset, property, and movable or immovable as mentioned in any Intellectual Property Rights, licenses and permits
- b. TMC agrees to indemnify and hold harmless the Private Operator and its officers and employees (each known as “Private Operator Indemnified Party”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys’ fees and disbursements) and expenses (collectively known as “Losses”) to which Supplier Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
  - i. any mis-statement or any breach of any representation or warranty made by TMC or
  - ii. the failure by TMC to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee of TMC or
  - iii. any claim or proceeding by any third party against Supplier arising out of any act, deed or omission by the TMC.

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

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

## **10. Force Majeure**

### **Definition of Force Majeure**

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

- a. the effect of any natural element or other Act of God, including, but not limited to any rain storm leading to flooding of the Project Area, lightning, earthquake, cyclone or other natural disaster;
- b. fire or explosion, each case not being due to (a) inherent defects of the equipment comprising the Project (b) the failure to operate the Project in accordance with prudent business practices or (c) circumstances within the reasonable control of the affected Party’s contractors;
- c. act of war (whether declared or undeclared), sabotage, terrorism or act of public enemy, (including the acts of any independent unit or individual engaged in activities in furtherance of a program of irregular warfare), acts of belligerents or foreign enemies (whether accorded diplomatic recognition or not), blockades, civil disturbance, revolution, rebellion or insurrection, exercise of military or usurped power, or any attempt at usurpation of power;

- d. strikes, labour disruptions or any other industrial disturbances in Thane City as a whole and not specific to the Project which restrict the Private Operator from performing his duties;
- e. any governmental Agency's unreasonable delay, denial or refusal to grant or renew or any unreasonable revocation of any required permit, license, approval or authorisation, including Governmental Authorisations, provided that such adverse governmental action or inaction did not result from the Private Operator's non compliance with any applicable law or any condition to the granting or maintenance of any such permit, license, approval or authorisation that was in effect on the date of signing this Agreement;
- f. the expropriation or compulsory acquisition by any Government Agency of (a) any shares in the Project Company if the result would be to acquire control of the subject Project Company or (b) any assets or rights of the Project Company.
- g. early termination of this Agreement by TMC for reasons of national security or national emergency

#### **Exclusions from Force Majeure**

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

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

#### **Notification Obligations**

The Party claiming the Force Majeure shall inform the other Party of any event or circumstance of Force Majeure as soon as reasonably practicable. The affected Party shall thereafter furnish weekly reports with respect to its progress in overcoming the adverse effects of such event or circumstance and as soon as reasonable practicable shall submit to the other Party information supporting the claim for relief under this clause.

The Party claiming Force Majeure shall give notice to the other Party of the cessation of the relevant event or circumstance of Force Majeure and the cessation of the effects of such event or circumstance of Force Majeure on the enjoyment by such Party of its rights or the performance by such Party of its obligations under this Agreement as soon as practicable after becoming aware of such cessation.

#### **Consequences of Force Majeure**

- a. Neither Party shall be responsible or liable for or deemed in breach thereof because of any failure or delay in complying with its obligations under or pursuant to this Agreement solely due to one or more Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-for-day basis; provided, however, that no relief shall be granted to the Party claiming Force Majeure pursuant to this clause to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred.

- b. Except as otherwise provided in this clause, any time period specified for the performance of any obligation hereunder by the affected Party shall be extended by a period equal to the duration of the Force Majeure event or circumstance provided that the affected Party shall not be entitled to any such extension to the extent that such delay or failure to perform would have occurred, irrespective of the Force Majeure event or circumstance.
- c. Either Party shall have the right to terminate the Agreement in the event of pendency of the Force Majeure conditions for a consecutive period of 120 (one hundred and twenty) days.

## **11. Events of default and termination**

### **Events of default**

Event of default shall mean either Private Operator event of default or TMC event of default or both as the context may admit or require.

#### **a. Private Operator event of default**

Any of the following events shall constitute an event of default by the Private Operator (“Private Operator event of default”) unless such event has occurred as a result of one or more reasons set out in clause 5.7 :

- i. The Private Operator has failed to replenish the Performance security within 5 (five) working days of the encashment by TMC of the earlier Performance Security;
- ii. The Private Operator has failed to make any payments due to TMC and more than 60 (sixty) days have elapsed since such payment default;
- iii. Any representation made or warranty given by the Private Operator under this Agreement is found to be false or misleading;
- iv. The Private Operator has abandoned the Project;
- v. The Private Operator has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- vi. The Private Operator has suffered an attachment levied on any of its assets which has caused or is likely to cause a material adverse affect on the project and such attachment has continued for a period exceeding 90 (ninety) days.
- vii. Any other instance explicitly mentioned in this Agreement as having constituted an event of default.

**b. TMC event of default**

**Any of the following events shall constitute an event of default by TMC (“TMC” event of default), unless caused by a Private Operator event of default or a force majeure event:**

- i.TMC has failed to make any payments due to the Private Operator and more than 180 (one eighty) days have elapsed since such default;
- ii.TMC is in material breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Private Operator;
- iii.TMC has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- iv.Any representation made or warranties given by TMC under this Agreement has been found to be false or misleading

**Termination due to event of default**

**a) Termination notice**

**Subject to procedures in clause 13&14, if a party having become entitled to do so decide to terminate this Agreement pursuant to the preceding sub clause (a) or (b), it shall issue termination notice setting out:**

- i.In sufficient detail the underlying event of default;
- ii.The termination date, which shall be a date occurring not earlier than 60 days from the termination notice;
- iii.The estimated termination payment including the details of computation thereof; and,
- iv.Any other relevant information

**b) Withdrawal of termination notice**

**Notwithstanding anything inconsistent contained in this Agreement, if a party who has been served with the termination notice cures the underlying event of default to the satisfaction of the other party at any time before the termination occurs, the termination notice shall be withdrawn by the party which had issued the same.**

**Provided that the party in breach shall compensate the other party for any direct costs/consequences occasioned by the event of default which caused the issue of termination notice.**

**Termination Payments and Rights of on termination**

**a. Private Operator event of default**

- i. TMC shall be entitled to appropriate the amounts in the Performance Security,
- ii. Enter upon and take possession and control of the Project forthwith;
- iii. Prohibit the Private Operator and any person claiming through or under the Private Operator from using/dealing with the Project;

**b. TMC event of default**

- i. Private Operator shall be entitled to appropriate the amounts in the Performance Security if subsidizing,
- ii. Private Operator shall be entitled to receive all expenses done with respect to the Project as on date of Termination Notice, provided the Private Operator produce proof all such unpaid expenses.

**Notwithstanding anything contained in this Agreement, TMC shall not, as a consequence of termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Private Operator in connection with the Project, and the hand over of the Project and Project Facilities by the Private Operator to TMC shall be free from any such obligation.**

## **12. Hand back and Transfer Requirements**

### **Ownership**

Without prejudice and subject to the Agreement, the ownership of the Project developed by the Private Operator and Project Facilities provided by TMC to the Private Operator, including all modifications, renovations and improvements made therein by the Private Operator, shall at all times remain that of TMC.

### **Private Operator's Obligations**

The Private Operator shall at the end of the Contract Period hand back peaceful possession of the Project and Project Facilities including fixed assets, improvements made therein by the Private Operator, to TMC free of cost and in good operable condition.

- a. At least 6 (six) months before the expiry of the Contract Period a joint inspection of the Project and Project Facilities shall be undertaken by TMC, Project Officer and the Private Operator. TMC/ Project Officer shall, within 15 (fifteen) days of such inspection prepare and furnish to the Private Operator a list of works/ jobs, if any, to be carried out. The Private Operator shall promptly undertake and complete such works/ jobs at least 3 (three) months prior to the expiry of the Contract Period and ensure that the Project and Project Facilities continue to meet such requirements until the same are handed back to TMC.
- b. TMC/ Project Officer shall within 15 (fifteen) days of the joint inspection undertaken under preceding clause (b) prepare and furnish to the Private Operator a list of items, if any, with corresponding distinctive descriptions, which are to be handed back to TMC.
- c. The Private Operator hereby acknowledges TMC's rights specified in Clause 11.3 enforceable against it upon Termination and its corresponding obligations arising thereof. The Private Operator undertakes to comply with and discharge promptly all such obligations.

### **TMC's Obligations**

TMC shall, subject to TMC's right to deduct amounts from the Performance Security towards:

- a. Carrying out works/ jobs listed under Clause 12.2, which have not been carried out by the Private Operator
- b. Purchase of items, which have not been handed back to TMC in terms of Clause 12.2 and
- c. Any outstanding dues, which may have accrued in respect of the Project during the Contract Period

**Duly discharge and release to the Private Operator, the amounts in the Performance Security account or balance therein after deductions in respect to a), b) and c) above, as the case may be, upon issuance of certificate from Project Officer regarding compliance by the Private Operator with the Hand back and Transfer Requirements.**

### **13. Dispute resolution**

- a. A Joint Committee of 5 (five) members, comprising of 3 (three) members from TMC and 2 (two) members from Private Operator shall be set up for this Project. The Joint Committee shall be chaired by the Municipal Commissioner of TMC. The objective of Joint Committee shall be to arrive at amicable decisions in case of any disputes or disagreement with respect to this Project and this Agreement.
- b. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties and/or their associates/nominees, howsoever arising under, out of or in relation to this Agreement, at first level shall be referred to the Joint Committee.

### **14. ARBITRATION**

The TMC and Private Operator shall make every effort to resolve amicably, by direct negotiation, any disagreement or dispute arising between them under or in connection with the any of the or part of the terms and conditions of the contract.

If within 30 (thirty) days from the commencement of such negotiations, the TMC and Private Operator have been unable to resolve dispute amicably, either party may referred it for resolution to the Hon. Municipal Commissioner, TMC, as a sole arbitrator whose decision shall be final and binding on both the parties.

All legal disputes are subject to the jurisdiction of Civil Courts Thane only.

### **Performance during dispute**

**Pending the resolution of any dispute, the parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such resolution.**

### **15. Change in Law**

**Change in law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:**

- i. The enactment of any new Indian law;
- ii. The repeal, modification or re-enactment of any existing Indian law
- iii. A change in the interpretation or application of any Indian law by a court of record.

#### **Provided that change in law shall not include**

- i. Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
- ii. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
- iii. Any change in the rates of taxes

### **16. Representations and warranties**

#### **Representations and warranties of the Private Operator**

- a. **The Private Operator represents and warrants to TMC that:** It is duly organised, validity existing and in good standing under the laws of India;
- b. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. It has taken all necessary corporate and other action under applicable laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d. It has the financial standing and capacity to undertake the project;
- e. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Private Operator's memorandum and articles of association or any applicable laws or any covenant, Agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g. There are no actions, suits, proceedings or investigations pending or to the Private Operator's knowledge threatened against it at law or in equity before any court or before any judicial, quasi judicial or other authority, the outcome of which may constitute Private Operator event of default or which individually or in the aggregate may result in material adverse effect;

- h. It has complied with all applicable laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have material adverse effect;
- i. Subject to the receipt by the Private Operator from TMC of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Private Operator in and to the Project shall pass to and vest in TMC on the termination date free and clear of all encumbrances without any further act or deed on the part of the Private Operator or TMC
- j. No representation or warranty by the Private Operator contained herein or in any other document furnished by it to TMC or to any government agency in relation to applicable permits contains or will contain any untrue statement of material fact or omits or will omit to state material fact necessary to make such representation or warranty not misleading.
- k. No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Private Operator to any person to procure the Contract.
- l. Without prejudice to any express provision contained in this Agreement, the Private Operator acknowledges that prior to the execution of this Agreement, the Private Operator has after a complete and careful examination made an independent evaluation of the project requirements and the information provided by TMC, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Private Operator in the course of performance of its obligations hereunder.
- m. The Private Operator also acknowledges and hereby accepts the risk of inadequacy. Mistake or error in or relating to any of the matters set forth above and hereby confirms that TMC shall not be liable for the same in any manner whatsoever to the Private Operator.

#### **Representations and warranties of TMC**

##### **TMC represents and warrants to the Private Operator that:**

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

#### **Obligation to notify change`**

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

## **17. Miscellaneous**

### **Assignment and charges**

- a. The Private Operator shall not assign in favour of any person except in case of a sub-contractor for this Agreement or any part of this agreement, the rights, benefits and obligations hereunder save and except with prior consent of TMC
- b. The Private Operator shall not create nor permit to subsist any encumbrance over the Project and Project Facilities

#### **Governing law and jurisdiction**

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

#### **Waiver**

- a. Waiver by either party of any default by the other party in the observance and performance of any provision of or obligations under this Agreement:
  - i. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - ii. Shall not be effective unless it is in writing and executed by a duly authorised representative of such party; and
  - iii. Shall not affect the validity or enforceability of this Agreement in any manner.
- b. Neither the failure by either party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a party to the other party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

#### **Survival**

#### **Termination of this Agreement**

- a. Shall not relieve the Private Operator or TMC of any obligations already incurred hereunder which expressly or by implication survives termination hereof, and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of the either party, shall not relieve the 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.

#### **Amendments**

**This Agreement and the schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the parties on the subject hereof and no amendment or modification hereto will be valid and effective unless agreed to by all the parties hereto and evidenced in writing.**

#### **Notices**

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

*If to TMC:*

**The Municipal Commissioner**

Thane Municipal Corporation

-----  
-----

*If to the Private Operator:*

**The Chief Executive**

----- Limited

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

In the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and

In the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

**Severability**

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

**No partnership**

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the parties. Neither party shall have any authority to bind the other in any manner whatsoever.

**Language**

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

**Exclusion of implied warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other Agreement between the parties and any representation by any party not contained in a binding legal Agreement executed by the parties.

**Counterparts**

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

**Costs**

The Private Operator shall bear all the costs related to the signing and registration of this Agreement including but not limited to stamp duties and registration charges.

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

**SIGNED, SEALED AND DELIVERED**

For and on behalf of TMC by:

For and on behalf of the Private Operator by:

Signature

Name

Designation

In the presence of:

## A. PERFORMA OF PERFORMANCE SECURITY

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

### In Favour of

Thane Municipal Corporation (hereinafter referred as “Corporation”), having its principal office at \_\_\_\_\_, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

### Whereas

By the Agreement (“the Agreement”) being entered into between Corporation and \_\_\_\_\_, a company incorporated under the Companies Act, 1956, having its registered office at \_\_\_\_\_, (“the Private Operator”), the Private Operator has been granted the Rights to undertake the \_\_\_\_\_ project (hereinafter referred to as “the Project”).

- A. In terms of clause 5.1.1 of the Agreement, the Private Operator is required to furnish to Corporation, an unconditional and irrevocable bank guarantee for an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as security for due and punctual performance / discharge of its obligations under the Agreement.
- B. At the request of the Private Operator, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance / discharge by the Private Operator of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s \_\_\_\_\_ (hereinafter called “the Private Operator”) of all its obligations relating to the Project and in connection with achievement of obligations of the Private Operator in accordance with the Agreement.

2. The Guarantor shall, without demur, pay to Corporation sums not exceeding in aggregate Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only), within five (5) calendar days of receipt of a written demand thereof from Corporation stating that the Private Operator has failed to meet its obligations under the Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Private Operator or validity of demand so made by Corporation and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Private Operator or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
3. In order to give effect to this Guarantee, Corporation shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Agreement or other documents or by the extension of time for performance granted to the Private Operator or postponement/non exercise / delayed exercise of any of its rights by Corporation or any indulgence shown by Corporation to the Private Operator and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by Corporation or any indulgence shown by Corporation, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
4. This Guarantee shall be irrevocable and shall remain in full force and effect until \_\_\_\_\_ unless discharged / released earlier by Corporation in accordance with the provisions of the Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only).
5. This Guarantee shall not be affected by any change in the constitution or winding up of the Developer / the Guarantor or any absorption, merger or amalgamation of the Private Operator / the Guarantor with any other Person.
6. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under \_\_\_\_\_ .

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

SIGNED AND DELIVERED

by \_\_\_\_\_ Bank

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

its \_\_\_\_\_ and authorised official.

## **B. OBLIGATIONS DURING IMPLEMENTATION AND O&M PERIOD**

### **1. System Installation (hardware and software)**

The Private Operator shall:

- a) Set up all infrastructure related to parking systems installation and operation like civil, power supply extensions, networking, communication and works related to last mile connectivity;
- b) Install magnetic cum optical/ magnetic cum IR sensors at each of the parking slots for cars for every on-street and induction looping for off-street parking, gateway, network routers/switches, smart parking entry & exit equipment with automatic pay stations and boom barriers for off-street and underground parking;
- c) Install necessary hardware and software for parking management and guidance system for on-street, off-street and indoor parking system;
- d) Install necessary LED signage (small and large size variable messaging sign board). Large size LED signage shall be conforming to IP 55 standard. LED signages shall be for the guidance of public to inform regarding availability of parking spaces and other necessary information, at locations adjacent to each parking lot;
- e) Provide single space identification with LED indicators for indoor parking displaying the availability of parking slots;
- f) Setup and maintain Central Control Centre including Data Centre with appropriate hardware and software for viewing, analyzing, storing and retrieval of the data and monitoring and managing of Smart Parking;
- g) Implement parking meter for every 30 (thirty) parking slots for on-street parking depending on the topography of the location;
- h) Install additional poles at its own cost with prior approval of design from TMC for installation of LED signage(s);
- i) Private Operator may utilize existing street light poles, with prior permission from TMC, for installation of repeaters/ gateways, switches/ routers as necessary and use exclusively for the purpose of this Project, without compromising the aesthetic sense and strength of pole.
- j) Ensure uninterrupted power supply to all hardware (equipments, devices, etc.) installed under the Project;
- k) Provide connectivity (electrical, network, etc.) to all devices / equipments, such as LED signages including variable messages sign boards, sensors, automatic entry device, boom barriers, handheld device, autopay station, manual pay station, Central Control Centre, built / installed and running, maintenance, operation & management cost of these devices/equipments throughout the Contract Period;
- l) Responsible for all installation work related to network connectivity, power supply extensions to devices, installation of devices and equipments, and any other networking, communication,

and infrastructure requirements related to any work under this Project; civil works required for installation of equipments apart from flooring

- m) Develop Citizen App for parking services – app and portal for identification, navigation, pre booking and payment.
- n) During the implementation period, the parking lot may increase or decrease by 10% (ten percent) in such event, the Private Operator shall not claim any additional amount for infrastructure provisioning for smart parking.

**2. Project Implementation Milestones**

- a) The Private Operator shall implement the Project as per the milestones provided in the table below.

S. No.	Project Implementation Milestones	Timelines
1	Installation of all the equipments/ hardware for off-street parking locations	0-6 months
2	Installation of all the equipments/ hardware for on-street parking locations	0-6 months
3	Implementation of software module, app and command & control central	0-6 months
4	Readiness Certificate from Project Officer	0-6 months

- b)
- b)

**3. Parking Management**

The Private Operator shall:

- a) Demarcate parking spaces for priority parking facility for physically challenged, pregnant women, women with children’s and senior citizens in accordance with applicable norms;
- b) Ensure that all the vehicles are parked in the space defined for each vehicle in the parking lot. The parking attendant of the Private Operator shall ensure proper parking of vehicles in each slot. Ensure that the number of vehicles parked shall not exceed the designated capacity. If the Private Operator allows or do parking, except the parking lots defined in the area, a penalty as provided under the SCHEDULE D: shall be imposed on the Private Operator. Thane Police may also impose penalty on the Private Operator, if applicable;
- c) Provide intelligent tow-truck (minimum of 4 trucks) to handle parking enforcement and to support TMC / Traffic Police in collecting penalties as per Government policy;
- d) Be responsible for the enforcement of parking, removal of unauthorized parked vehicle from area. The Private Operator shall deploy intelligent tow-trucks for towing of illegally parked vehicles in the area;

- e) Be responsible for and provide security at the parking lots, and shall report crimes in parking lots to Thane Police and TMC;
- f) Provide for 24/ 7 helpline service for parking operations;
- g) The Private Operator shall provide in the ‘Citizen App’ and ‘Web Portal’ provision for complaint registration by users. The Private Operator shall also provide a dedicated ‘Whatsapp’ number for any complaints/suggestions/feedback with regards to parking. The same shall be monitored by the Private Operator and responses shall be deliver to users within 48 (forty eight) hours of receipt of complaint/ suggestion. The Private Operator shall provide a weekly report to the Project Officer every Monday on the number of complaints received during the previous week (Monday to Sunday) and the number of replies furnished by it to the complainants along with number of complaints on which no response was been made by the Private Operator.

#### **4. Parking Charges**

The Private Operator shall:

- a) Levy parking charges from the date of handing over of the parking lots by TMC to the Private Operator on as and where basis;
- b) Levy parking charge to users as per the tariff rate provided in the **SCHEDULE A**;
- c) Levy penalties to users as per the policy and rates defined and as and when updated by TMC/ the relevant Authority;
- d) Collect parking charges/ penalties from users by using electronic devices, cash payments and providing available cashless payment options including credit/ debit/ cash cards/ digital. Also the payment system should be open for integration with TMC’s digital citizen card/ loyalty card/ Digi thane system. No offline billing of parking charges shall be allowed. The Private Operator has to make standby arrangement of the internet/network connectivity so that in case the online system is down at any time. The Private Operator shall keep the spare hand held device, computers, network equipments and other equipments so that the system will be operational all the time.
- e) Enable information on parking revenue collected on command center on real time basis.
- f) Not charge any parking fees from the user of vehicles having ‘parking passes/ stickers’ issued by TMC. The Private Operator shall not make any claim on the account of non-charging of parking fees from such vehicles. Such ‘parking passes/ stickers’ shall be valid on calendar year basis, and maximum number of such passes/stickers issued by TMC shall not exceed \_\_\_\_\_ numbers every year. TMC shall provide the database of passes/stickers (Vehicle Number, pass/sticker No., Type of Vehicle – Car, Scooter, Motorcycle etc.) issued by it to the Private Operator.

#### **5. Other obligations**

- a) The Private Operator shall apply for road cutting permission to TMC, in one-month advance, showing its requirements, layout plan for services to be laid, plan for restoration with

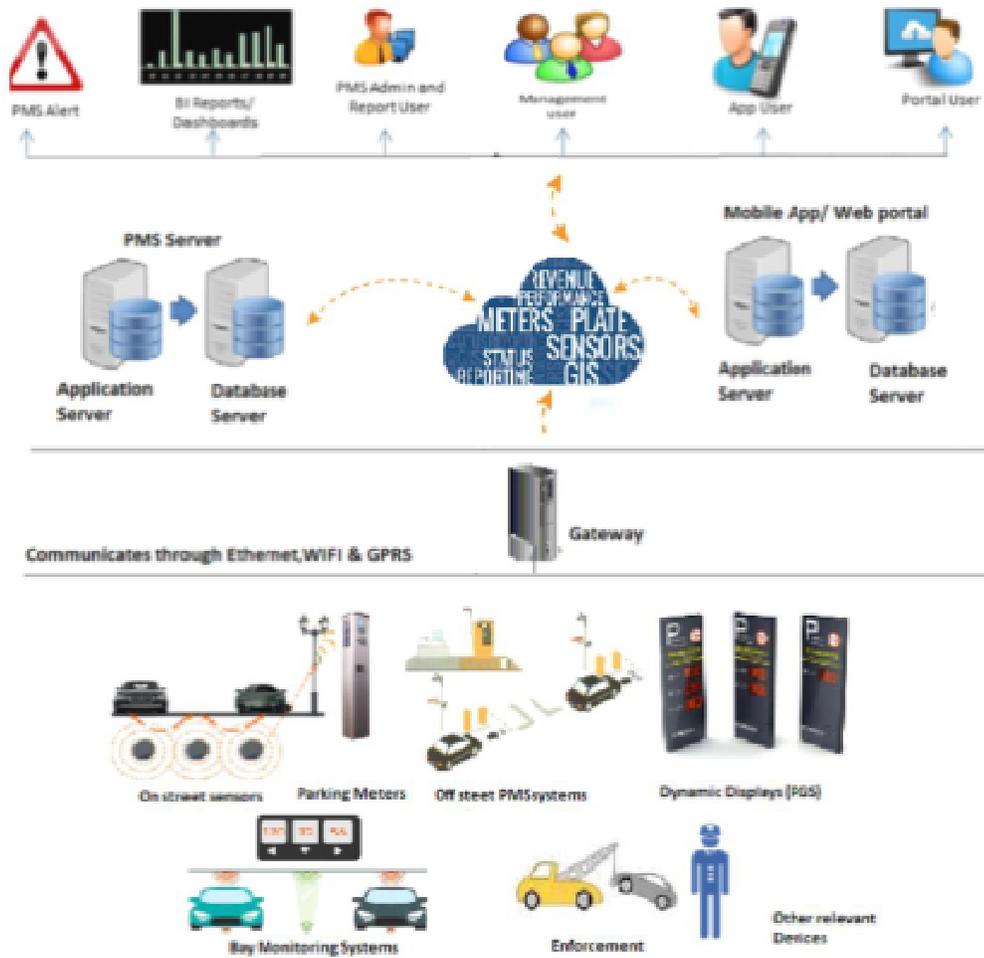
timelines. TMC will get it approved as per feasibility at site. The final route shall be decided/ approved by TMC keeping in view the requirements of the Private Operator and the site conditions. As such, any instructions/policy of TMC, Government of Maharashtra and Government of India issued from time to time shall be applicable on the Private Operator.

- b) The Private Operator shall undertake restoration of roads, footpath, green portion etc. at its own cost as per plan approved by TMC or within 15 (fifteen) days from the date of road cutting, whichever is earlier. Restoration shall be done with equivalent specifications provided by TMC so that after restoration the aesthetics and purpose of use is not compromised. Restoration work shall be carried out as per CPWD specifications.
- c) The location of Parking lots and area given under this RFP document is based on preliminary survey. Area and location may change while preparing detailed design and execution of this Project.
- d) During the Contract period, new parking lot(s) may be added by TMC subject to maximum of 10% of the total parking spaces defined in the RFP document and the Private Operator shall cover such lot(s) under the scope of this Project with the stipulated parking tariff. All cost towards additional infrastructure shall be borne by Private Operator.

#### **6. System Architecture**

- a) Undertake all measures for Cyber security, protection of information and communication technology systems of this Project from cyber-attacks that are purposeful attempts by unauthorized persons to access ICT systems in order to achieve the target of theft, disturbance, damage, or other illegal actions. The Private Operator shall detect, analysis and do mitigation of vulnerabilities and protect Central Control Centre including Data Centre from cyber-attacks throughout the Contract Period.
- b) The Private Operator shall provide necessary support, data and other required information for integration of smart parking solution (parking mobile app, web portal) with Central Command and Control Centre of TMC, as and when such Command and Control Centre will be set-up by TMC by itself or through any other agency.

Figure: Tentative System Architecture of Smart Parking



## C. CITIZEN ENGAGEMENT AND AWARENESS PROGRAMME

The Smart Parking initiative of TMC is aimed at providing parking convenience to citizens as well as reducing traffic congestion currently rampant due to unorganized parking. In order to make this initiative a success, it is imperative that citizens need to be made of aware of the multiple benefits of smart parking including parking availability information and convenience of booking through mobile app such as:

- Convenience in finding parking slots
- Reduction in traffic congestion
- Reduction in parking violations etc.

In order to achieve the expected results, the citizen engagement program shall be carried out at different stages viz.,

- Citizen Awareness program (ongoing activity) and**
- Periodic citizen engagement programs (end of 1-year, 5-years, and 10-years).**

To enable this, the Private Operator shall deploy atleast

- 2 (two) personnel for the 1<sup>st</sup> (first) year of the Contract Period, and
- 1 (one) personnel for 2<sup>nd</sup> (second) to 5<sup>th</sup> (fifth) year of the Contract Period, supported by additional experts / on-field staff / personnel as and when required.

The personnel should be experienced in citizen engagement/ public communication/ marketing.

### 1. Citizen Awareness program (ongoing activity)

- a) The Private Operator shall support TMC in the awareness program, with support for content, campaign strategy, selection of appropriate media channels, identification & empanelment of creative agencies, and overall management of the program. The awareness program should include both a media plan and on-ground activities. Overall, the program shall have:
  - o A quarterly campaign for the 1<sup>st</sup> (first) year of the project operations and
  - o A semi-annual campaign for the 2<sup>nd</sup> (second) to 5<sup>th</sup> (fifth) year of the Contract Period.
  - o Campaigns for 5<sup>th</sup> (fifth) year onwards shall be decided at a later stage, based on the feedback received from the citizens.
- b) The Private Operator shall prepare a detailed media plan and get it approved from TMC before public launch of the Project. The media spaces / properties shall be provided / procured by TMC. The media plan shall include the following:

<b>Tentative Media Plan Coverage</b>		
<b>S. No.</b>	<b>Type of Media Channel</b>	<b>Description</b>
1	Regional TV Network	Advertisement / promotion on regional / local TV channels
2	Local Radio	Radio spots / RJ mentions on channels with maximum citizen outreach
3	Regional Daily Newspapers	Advertisements & editorials in local daily newspapers. Press Conferences for key announcements.
4	Hoardings & Banners	Advertisements at key locations in Thane
5	Digital Media: Web Portals / Mobile apps	Active image banners on Websites/Mobile Applications (Including TMC portals/applications)
6	Videos	Videos for showcasing across workshops, outdoor advertisements & digital platforms (Click to video In App advertisements)
7	Messages / Email	Targeted messages to citizens

- c) The Private Operator shall also help organize activities / seminars in public places such as road shows/ street plays etc., and help in organizing multi-stakeholder workshops. A tentative list of activities is provided in the table below.

<b>Activities, Shows &amp; Workshops</b>					
<b>S.No.</b>	<b>Type of Media Channel</b>	<b>Description of Activity</b>	<b>Frequency of Activity</b>		
			<b>1<sup>st</sup> year of Contract Period</b>	<b>2<sup>nd</sup> to 5<sup>th</sup> year of Contract Period</b>	
1	Activities in Schools, Colleges & Public Places	Organizing activities & leveraging local community networks to disseminate information, educate citizens and organize activities	1 activity every quarter (atleast 4 per year)	1 activity every six months (atleast 2 per year)	
2	Ward Sabha, Road Shows & Street Plays	Conducting activities in each Ward Sabha	1 activity every quarter (atleast 4 per year)	1 activity every six months (atleast 2 per year)	

d)

d)

**2. Periodic citizen engagement programs (end of 1st, 5th and 10th year of the Contract Period)**

- a) Private Operator to formulate a citizen engagement plan and execute citizen satisfaction surveys to understand people’s perceptions and enable communication of benefits of the new system and improvements in information systems, design, etc, which could lead to better user experience.

<b>Citizen Engagement Plan</b>		
<b>S. No.</b>	<b>Activity</b>	<b>Description of Activity</b>
<b>1</b>	<b>Citizen Satisfaction Survey</b>	Design citizen satisfaction survey to gauge level of service available to citizens, extent of citizen adoption and identify barriers to adoption. Get survey format approved from TMC
<b>2</b>	<b>Administration of Survey &amp; Collection of Responses</b>	Public distribution and submission of surveys  Providing online survey portal for citizens through TMC  Leveraging community networks to expand reach of respondents covered
<b>3</b>	<b>Analysis of Survey Results</b>	Perform in-depth analysis of citizen satisfaction survey and develop insights classified by parameters such as type of users, parking locations, parking timings etc.
<b>4</b>	<b>Communication &amp; Engagement Plan</b>	Facilitate focus group discussions to get an in-depth understanding of citizen sentiments  Develop and execute a communication & engagement plan from the learnings of the citizen satisfaction survey. This plan will be approved by TMC.  Communicate results to citizens by integration with media plan and engage with citizens through events such as open day, workshops, road shows etc.

b)

b)

The cost of awareness programme through media (social, print, television and workshop) will be borne by TMC. The Private Operator shall deploy its personnel/ experts in planning, preparation and assist TMC in execution of the citizen engagement and awareness programme.



## D. PENALTIES FOR NON-COMPLIANCE OF OBLIGATIONS

### 1. Penalties during implementation

For delay of every week in completion of the respective milestone, the Private Operator would be charged Rs 5000 (Rupees five thousand) per week.

### 2. Penalties during operation and maintenance period

S. No.	Nature of breach	Penalty
1	Complaint received or any violation noticed of over-charging or collecting parking charges outside the designated parking area	Rs. 10,000/- per incident
2	Vehicles not parked in the space defined for each vehicle	Rs 200/- per vehicle per incident
3	Number of vehicles parked exceeding the designated capacity of each parking lot	Rs 500/- per vehicle per incident
4	Vehicles parked outside parking lot and not towed away/ clamped by the Private Operator	Rs.200/- per vehicle per day
5	Non-operation of database on any of the day	Parking fee of the respective day
6	Offline billing of parking charges/ penalties to users by the Private Operator	Rs. 200/- per incidence
7	Online information of parked vehicles/ availability of parking is not matching with the actual position (99% accuracy)	Rs.5000/- per parking lot per day
8	Down time recorded for parking system has to be rectified and reported within 48 hours. The uptime commitment of all the parking sensors, LED display, or any other equipments/ communication devices used for real-time availability of parking spaces and its billing is 99%. *	Rs. 2000/- per day

3.

( \* The calculation of Gross revenue during the down time recorded for parking system shall be the average revenue generated during the last month plus 10% of last month's gross revenue for respective parking slots. )

For repeated violation of any of the cause in the table above, TMC shall reserve the right to invoke the termination clause.

### 3. Other Penalties

The Private Operator shall comply with all the Policy / Procedural / Regulatory Guidelines enforced by Government of India, Government of Maharashtra, and other statutory and related bodies, as

amended from time to time. The Private Operator shall also safeguard the Application Security and Application Integrity. Penalty would be applicable for non-compliance of relevant security certifications. There would be Zero Tolerance policy against such breaches. The penalties across various breaches could be categorized as follows (this includes but not limited to the following):

- Information Security Breach:** Any data leakage, information sharing, reports sharing without the consent of TMC.
- Network & System Security Breach:** Any instance of hacking, information / data compromise, unauthorized access to public Wi-Fi.
- Guidelines Breach:** Non-compliance to guidelines shared by various government agencies such as complying with standards for website/mobile app development etc.

For any of the breach for above-mentioned category, a penalty would be levied on the Concessionaire for every instance of occurrence if not responded as per the timelines mentioned in the table below:

S. No.	Type	Response Time	Penalty for Non-Responsiveness
1	Information Security Breach	8 hour	Rs.1000/- per 8 <sup>th</sup> hour
2	Network & System Security Breach	8 hour	Rs.1000/- per 8 <sup>th</sup> hour
3	Guidelines Breach	1 week	Rs.5000/- per week

The response time refers to immediate remedial action taken and preventive measures updated by the Private Operator on occurrence of the event. In case the breaches are not responded to in the time frame as specified, penalties would be levied as per the table above and failing to address the breach in desired timeline, recurring penalties would be levied w.r.t. to delay in units as mentioned.

Guidelines Breach includes non-compliance to certain guidelines as set by various agencies like Ministry of Communications and Information Technology, Department of Science and Technology, or other statutory Authorities etc. In such cases, resolution of the issue is mandatory. The Private Operator shall be required to respond with the action plan / change request, as applicable, in order to resolve the guidelines breach within the specified response time.

**4. Penalties shall not be levied to the Private Operator in the following cases:**

- In case of a force majeure event effecting the SLA which is beyond the control of the Private Operator. Force Majeure events shall be considered in line with the Force Majeure clause mentioned in this RFP document.
- Theft cases by default/ vandalism would not be considered as “beyond the control of Private Operator”. Hence, the Private Operator shall take adequate anti-theft measures, spares strategy, insurance as required to maintain the desired required SLA.

**5. Review of Penalties**

A review of penalties shall be conducted by TMC at the end of each year during the Contract Period. TMC, after thorough analysis of the monthly statistics monitored as per the above mentioned

parameters, may consider revision of the penalties and update this agreement. Any revisions shall be binding to the Private Operator.



**E. LIST OF HARDWARE/ EQUIPMENT AND SOFTWARE FOR SMART PARKING**

Sr. No	Item description	Unit	QTY
<b>I</b>	<b>Parking Management System - On street</b>		
1	Surface mount sensors for identification of vehicle presence for on-street parking for cars only	Nos	2703
2	Data communicator - Relay nodes	Nos	270
3	Wireless GPRS Gateway for surface mount sensors - data collector	Nos	
4	Payments terminal with credit/debit card payment for on-street	Nos	166
6	Android Tablet - fall back system, handhelds for monitoring the online pre-booked transactions	nos	20
7	video based identification system for bikes	Nos	166
<b>II</b>	<b>Parking Management System off street parking lots - Outdoor &amp; Indoor</b>		
1	Heavy duty auto gate with microprocessor based Controller and detectors for four wheeler and two wheeler	Nos	12
2	Entry Station with automatic ticket dispenser with networking capability to command centre - cars	Nos	3
3	Entry Station with automatic ticket dispenser with networking capability to command centre - Bikes	Nos	3
4	Express exit with ticket validating unit with networking capability to command centre	Nos	3
5	Express exit with ticket validating unit with networking capability to command centre - Bikes	Nos	3
6	Autopay station with hardware unit for bank note acceptor and dispensor, ticket validator,r/w fro smart card, receipt printer and Customer Display unit	Nos	3
7	Gateway for off-street parking (Outdoor and Indoor) for field devices	Nos	3
8	Handheld device with scanner and printer with 8 hrs battery backup with networking capability to command centre	Nos	3
9	1 KVA Online UPS with in-build batters	Nos	180
10	2 KVA Online UPS with Inbuilt battery with enclosure	Nos	20
11	5 KVA online UPS with external batter at central command centre	Nos	1
12	kiosk for Autopay & Server	Nos	3

Sr. No	Item description	Unit	QTY
<b>III</b>	<b>Parking Guidance System</b>		
1	Variable message Sign :RGB – LED Matrix panel of minimum size 4' X 3' with all necessary accessories - to display the parking availability on the interconnecting road and to display emergency informations	Nos	180
<b>IV</b>	<b>Parking Enforcement</b>		
1	Intelligent Tow Truck for traffic enforcement	Nos	18
2	Wheel clamps with yellow and red paint finish, with lock and key.	Nos	500
3	Handheld device with scanner and printer with 8 hrs battery backup with networking capability to command centre	Nos	13
<b>IV</b>	<b>Other Infrastructure</b>		
1	20' x 10' porta cabin with insulation and wooden flooring	Nos	1
<b>V</b>	<b>CABLING &amp; CONDUITS</b>		
1	Cat 6 Patch cable of 3 meters with RJ45 jack.	RMTS	2000
2	3c x 2.5sqmm copper multi strand cable for powers apply to IPMGS	RMTS	2000
3	Single core 1sqmm copper mulit strand cable for IPMGS	RMTS	1000
4	25mm GI pipe, B Class with necessary fittings	RMTS	1000
5	25mm PVC conduit of ISI make with 2mm thick. With necessary fittings,	RMTS	2000
<b>VI</b>	<b>Command and control centre systems</b>	Lot	1
1	<b>Database SERVER for Central command centre (RACK)</b> (Intel® Xeon® processor ,Processor sockets: 2,Memory Upto : 164 GB,Storage Utp : 32TB)	No	1
2	<b>Application SERVER for Central command centre (RACK)</b> – (Intel® Xeon® processor ,Processor Sockets: 2, Memory Upto : 164 GB ,Storage Utp : 32TB)	No	1
3	<b>Video data storage SERVER (RACK)</b> – (Two 2.5GHz 6-core Intel™ processors per controller, Storage capacity: Up to 960 drives (3PB raw capacity),Memory: Up to 128GB total available cache per dual-controller system)	No	1
4	<b>Core Network Switch and Router Solution for Central Command Centre Control Room</b>	No	1
5	<b>Server Aggregation Network Switch for Data Center</b> - (Throughput in Mpps : Up to 30 Mpps (per system), Bandwidth in Gbps : 1x 8 Gbps (dedicated per slot))	No	1
6	Internet Router for Data Center	No	1
7	Interanet Router Switch for Data Center	No	1

Sr. No	Item description	Unit	QTY
8	Enterprise firewall with IPS Solution for Data Center	No	1
9	Access Network Switch for Control Room ( Min 24 Port)	No	1
10	Video Operation, Control, Management, Recording, application and Processing Software	No	1
11	Support Desktop - PC/Monitor/Keyboard/Mouse	No	5
<b>VII</b>	<b>Software applications</b>		
1	Parking management software for Off street parking	No	1
2	Parking entry station software	No	1
3	Parking exit station software	No	1
4	Parking management software for 2W On street parking	No	1
5	Parking management software for 4W On street parking	No	1
6	PGS Software for bay monitoring	No	1
7	PGS Software for facility guidance for outdoor parking/ VMS	No	3
8	Enforcement software	No	1
9	Software for Business Intelligent reports	No	1
10	Parking App Software	No	1
11	Parking portal software	No	1



## F. SPECIFICATIONS

### **Broad System Description**

- System design shall be modular and of proven reliability.
- All software and/or firmware interface equipment for connection to remote monitoring station from field hardware or the operator's terminal shall be provided.

### **Quality Assurance**

- Responsibility:** The bidder of the smart parking system shall be responsible for inspection and Quality Assurance (QA) for all materials and workmanship furnished by them.
- Component Testing:** Maximum reliability shall be achieved through extensive use of high-quality, pre-tested components. Each and every controller, sensor and all other parking systems, guidance systems shall be individually tested by the manufacturer prior to shipment.
- Tools, and Testing:** The control system supplier shall provide all tools necessary.
- Calibration:** Necessary to ensure reliability and equipment accuracy of the control system.

### **Reference Standards**

Generally the latest IS Codes shall be followed. In the event there are no IS Codes on the subject then the latest edition of the following standards and codes in effect and amended as of supplier's proposal date and any applicable subsections thereof, shall govern design and selection of equipment and material supplied:

- Bureau of Indian Standards (BIS)
- National Electrical Code (NEC)
- FCC Part 15, Subpart J, Class A
- EMC Directive 89/336/EEC (European CE Mark)
- City, country, state, and federal regulations and codes in effect as of contract date.

### **Smart Parking - Technical Specifications**

#### **On street Parking:**

##### **Functional:**

- The system should be able to detect within two seconds whether a car is parked at a specific location that is equipped with a wireless sensor and wireless peripherals
- 95% of parking bay status change (free or occupied) should be made available at the central server within one minute after the status was changed
- The duration of the status 'occupied' should be available within the system
- Parking bay status information must easily be available in third party systems for parking guidance, enforcement or other systems

##### **Architecture:**

- The system uses wireless networking communication using a full mesh network topology
- At ground level the system should consist of wireless sensors that should be available in different models:
  - For situations where drilling into the floor is unwanted, surface mount sensors should be available that can be glued to the surface.
  - For situations where bulldozers are used to clean the surface of the street from dirt, flush mount sensors should be available that can be mounted fully into the floor and remain below the street surface.

- For situation that allow it, sensors should be available that offer improved accuracy in detection by utilizing a combination of more than one sensor technology. Sensor technology should contain magnetic sensors and infrared sensors.
- To improve robustness and speed of the wireless network, the system architecture should consist of an overlay layer in the wireless network consisting of repeaters (relay nodes). These relay nodes should have wireless network range of at least 50 meters radius. These repeaters are battery operated and wireless.
- At one or multiple locations in the network, devices should be available that act as a gateways between the wireless and the IP network. These devices should optionally support powering using solar power and GPRS communication to enable a fully wireless architecture.
- The gateways should forward the individual parking bay status information to a central server. This central server should enable basic configuration and administration tasks using a web browser. The server system should use a SQL Server as a database and should enable connectivity to 3<sup>rd</sup> party systems using REST/SOAP/Web services or a stream of events over a configurable TCP port.
- The system should enable connectivity to APPs on Apple devices and Android devices.
- Displays can be connected over IP with the central server, but the system should also facilitate deployment of displays that connect to the wireless mesh network. Content of displays can be configured using the central server application.

**Single space detection Sensors:**

- The sensor should combine infrared sensor technology and magnetic sensor technology.
- The polling interval for vehicle detection should be every second.
- The sensor should have at least a 5 year battery life.
- The battery lifetime should be extendable to 7 years by reconfiguring network settings and allow more latency.
- The sensors should support wireless communication in the 800/900 MHz frequency spectrum.
- The firmware of the sensor should be upgradable over the wireless network.
- The sensor setting should allow setting of an overdrive filter.
- The sensors should be able to locally queue events when the wireless connection is lost.
- The wireless network protocol used should not be based on a dump protocol, but should be based on time division and should include measures to prevent packet loss.

**Gateway:**

The Gateway must be available in two versions:

- A small version that easily can be built into a third party housing.
- A pole mounted version in IP65 housing.
  - With GPRS
  - Without GPRS (cabled)
- The Gateway should have the option to be solar powered.

**Server:**

- All information must be collected at a central server.
- Supplier should be able to provide the software as a hosted service.
- The server system can be accessed with any modern web browser that supports Java.
- The server should support the following parking facility levels:
  - Parking site
  - Parking zone
  - Parking bay
- The server system should have an import tool to setup a new installation with new sensors.

- The system should have an option to create a vector based graph that is a visual presentation of the parking facility and that will show the actual status of each individual parking bay using color coding.
- The system should have the option to show a list of all parking bays with their actual status.
- The system should support configurable overstay detection and should have the option to show all overstay violations.
- The system should have advanced tools available for analysis of network and sensor node performance:
  - Node analysis tool, node cross check tool.
  - Network latency analysis tool.
  - Compare tool to check accuracy of system.

### **Vehicle identification**

- The system should support the option to identify vehicles using a wireless, battery operated device that is situated inside the car.
- The wireless device will register with the wireless network once the car is parked at a parking bay that is equipped with a wireless parking sensor.
- The system should allow for the possibility to apply a special authorization requirement for parking bays that are intended for a specific audience (handicapped, VIP's, permit holders, pregnant women, etc.)
- These groups and the special parking bays can be administered through the server system.
- If a car is parked at one of these 'special' parking bays, the system will use a formula to calculate the likelihood of a parking violation.
- Parking bays with potential parking violations will be listed in the server system.

### **Parking meters:**

- Pay-Your-way – terminals accepts coins, bills, cards, NFC and pay-by-phone integration
- Real time information on desk top / tablet or smartphone to the parking operator / enforcement team
- Can configure SMS and / or email alerts to field staff
- Easy to integrate with space sensors or any third party device
- Stainless steel and aluminum construction
- Integrated solar panel for long life battery power
- Protected by accelerometers, shock, tilt sensors and tamper switches
- Electronic locks with full access control and auditability of access
- Manual backup lock and recue system
- Separate vault with self locking cash tin

### **Parking Enforcement:**

#### **Intelligent Tow truck:**

- The Bidder shall use brand new truck chassis with power steering. The truck must meet emission control norms as specified by RTO. The chassis shall be built with 12mm checkered plate and finished with 25 mm thick rubber sheet.
- The truck shall have following facilities in addition to the towing assembly
- Manual lifting system with chain pulley mounted on a MS framework for lifting 2 wheelers
- CCTV system with 1 no camera near the towing point and 1 No camera at the top of the driver cabin connected to DVR and color monitor mounted in the drivers cabin with 30 days storage
- PA system with a microphone and amplifier and horn speaker mounted externally

- Tow truck should be GPS enabled and can be monitored live from central and command centre.
- Seating for helpers with storage for tools and tackles
- Truck shall be mounted with beacon and multi-toned siren.
- Power system with battery backup to meet the power requirement of all the devices and equipment as per specifications.
- Truck shall be aesthetically designed and must incorporate appropriate branding with approvals
- Tow assembly specifications:-
  - A slide in fitted to tow truck must be adequately mounted and the load applied to the slider must not be more than the safe working load specified for the slide in unit by its manufacturer or, if no safe working load for the unit has been specified by its manufacturer, the safe working load for the certified by an engineer.
  - A tow truck must be maintained as required under the Transport Regulation.
  - A tow truck must be equipped with sufficient means for supporting a load in its raised position while under tow and be fitted with dual wheels on the rear axle
  - To ensure some of the mass of a towed motor will be taken on at least 2 safety cones on a single axle of the towed motor vehicle before the tow truck is put in motion, be fitted with
  - Space bars designed to minimize any damage that may be caused to the towed motor vehicle.
- A Tow assembly must have the following features:-
  - 2300 Kgs. SELF LOADING WHEELIFT ASSEMBLY
  - EXTENDED WHEELIFT REACH OF 74"
  - 10 TON HYDRAULIC RECOVERY BOOM
  - 8,000 LB PLANETARY WINCH
  - 100 FT 3/8" WIRE ROPE WITH EYE HOOK
  - CABLE TENSIONER
  - SHEAVE HEAD
  - ALL STEEL CLASSIC BODY CONSTRUCTION
  - TWO (2) TOP LOADING OVERSIZE TOOL COMPARTMENTS
  - ALUMINUM ROCK GUARDS
  - LIGHT PYLON
  - IN CAB WHEELIFT REMOTE CONTROL CORD
  - OUT OF CAB RECOVERY BOOM & WINCH REMOTE CONTROL CORD
  - TWO (2) WHEELIFT STRAPS & RATCHETS
  - TRAILER HITCH RECIEVER
  - WHEEL GRID TIRE SPACER BLOCKS
  - GRAB HOOKS WELDED TO DRAWBAR
  - GRADE 70 SECONDARY ATTACHMENT CHAINS
  - PLUG FOR TOW LIGHTS
  - FMVSS 108 LAMP GROUP

**Off street parking (Open and Covered parking):**

**Entry Device:**

The entry device is designed for the automatic issue of Short-Term Parker (Visitors, VIP, and Hourly Parker) media and the processing Long-Term Parker (Seasonal Parker) media at the entrance lane of a car park.

- Real time operating system (reduced risk of virus infection)
- Usage of robust flash cards as memory for operating system
- International standard and proven network technology (Ethernet)
- Industrial embedded PC for the self-sufficient control of the device
- Stainless steel construction with structure effect painting and IP 65
- Temperature Range -20°C to +50°C
- Air Humidity 0% – to 95%
- Terminal is designed for indoor and outdoor use
- Tropicalized PCB's (PCB's are protected against humidity)
- Free choice of housing colour (RAL)
- LED full graphic color display
- Back-out ticket recognition
- Anti-pass recognition
- Low ticket recognition
- Entry device abnormal events recognition
- Dynamic ticket dispensing lock if parking is full
- NFC/RFID compatible
- Presence check for Short-Term Parker media and Long-Term Parker (Seasonal Parker) media
- Vehicle access control integrated by auto gate for legitimate user.
- Fully configurable text display and advertising
- Half-Duplex Intercom sub-station
- Interface to Integrate CCTV Camera
- 10,000 stored transactions – offline redundancy
- Inter-exchangeability of spares between units
- LED display can be switched off in “idle mode” = no present vehicle
- Based on week profile, device can be set into “standby” mode with reduced energy consumption (automatic wake-up if car is present on loop)
- Barcode/QR-Code Scanner for processing of pre-booking users

**Exit Device: (Express lane)**

The exit device is designed for the automatic exit validation of Short-Term Parker (Hourly Parker) and Long-Term Parker (Seasonal Parker) media at the exit lane of a car park.

- Real time operating system (reduced risk of virus infection)
- Usage of robust flash cards as memory for operating system
- International standard and proven network technology (Ethernet)
- LED full graphic color display
- Stainless steel construction with structure effect painting and IP 65
- Temperature Range -20°C to +50°C
- Air Humidity 0% – to 95%
- Terminal is designed for indoor and outdoor use
- Tropicalized PCB's (PCB's are protected against humidity)
- Free choice of housing color (RAL)
- RFID (Contactless) Long-Term Parker (Seasonal Parker) media, fully integrated into Car Park Management System
- Presence check for Short-Term Parker media and Long-Term Parker (Seasonal Parker) media
- Industrial embedded PC for the self-sufficient control of the device

- Half-Duplex Intercom sub-station
- Interface to Integrate CCTV Camera
- 10,000 stored transactions – offline redundancy
- Handling of substitute parking media for processing of lost Short-Term Parker media
- LED display can be switched off in “idle mode” = no present vehicle
- Based on weekly profile, device can be set into “standby” mode with reduced energy consumption (automatic wake-up if car is present on loop)

**RFID Entry/Exit Device :( Long-Term Parker /Seasonal Parker)**

The Long-Term Parker entry/exit device is designed for the automatic processing of Long-Term Parker media like Staffs, Residents, employee etc at the entry or exit lane of a car park.

- Real time operating system (reduced risk of virus infection)
- Usage of robust flash cards as memory for operating system
- Stainless steel housing and pillar with IP 65
- Temperature Range -20°C to +50°C
- Air Humidity 0% – to 95%
- Terminal is designed for indoor and outdoor use
- Tropicalized PCB's (PCB's are protected against humidity)
- Free choice of housing colour (RAL)
- RFID (Contactless) Long-Term Parker (Seasonal Parker) media, fully integrated into Car Park Management System
- Presence check for Long-Term Parker (Seasonal Parker) media
- Half-Duplex Intercom sub-station
- Industrial embedded PC for the self-sufficient control of the device
- 10,000 stored transactions – offline redundancy

**Auto Gate/ Barrier:**

The barrier is designed for the automatic access control of vehicles, triggered by a control terminal (e.g. entry device, exit device, or Express exit).

- Temperature Range -20°C to +50°C
- Air Humidity 0% – to 95%
- Terminal is designed for indoor and outdoor use
- Tropicalized PCB's (PCB's is protected against humidity)
- Free choice of housing colour (RAL)
- Maintenance-free barrier drive
- Useable as right-hand and left-hand drive, easily changeable on-site
- Fast opening and closing times within 1.5 sec
- Barrier arm is equipped with a rubber edge on the bottom to prevent damage
- No parts needed (screw etc.) for replacement of run-off barrier arm

**Automatic Pay Station (Cash/Credit card/Debit Card/Mobile wallet)**

The automatic pay station should be designed for the automatic processing of all payment transactions of Short-Term Parker media and Long-Term Parker (Seasonal Parker) media.

- Real time operating system (reduced risk of virus infection)
- Usage of robust flash cards as memory for operating system
- International standard and proven network technology (Ethernet)
- LED full graphic color touch screen display
- Stainless steel construction with structure effect painting
- Temperature Range -20°C to +50°C
- Air Humidity 0% – to 95%

- Terminal is designed for outdoor use
- Tropicalized PCB's
- Free choice of housing colour (RAL)
- Customized inscription on front plate (e.g. "PAY PARKING HERE")
- Illuminated Top
- Illuminated Top with customized inscription (e.g. "PAY PARKING HERE")
- Illuminated user guidance of all entry slots and dispensing slots
- Escrow function
- Multi-rod security cabinet locking facilities with nine (9) locking points at the door
- Protective 4-Lock-System with high level security and quality, high level key copy protection, highest level of drilling & core pulling protection and highest manipulation protection
- Processing of local banknotes
- Dispensing of local banknotes (up to three (3) types)
- Receipt printer
- Deactivation of the customer display after a pre-set switch-off time following last payment
- Unit can be set into "standby" mode with reduced energy consumption, based on a freely definable time profile
- Remote or manual wake-up command (wake-up by motion detection via radar )
- Payment of Short-Term Parker (Hourly Parker) media
- RFID (Contactless) Short-Term Parker (Hourly Parker) media processing and calculation of tariff in < 1.9 sec.
- Payment of overstay fees for Long-Term Parker (Seasonal Parker) media
- Extension of validity of Long-Term Parker (Seasonal Parker) media with pre-payment contract
- RFID (Contactless) Long-Term Parker (Seasonal Parker) media, fully integrated into Car Park Management System
- Automatic production of parking media as substitute for a lost Short-Term Parker media at a fixed rate by pressing a button
- Remote handling of substitute parking media for processing of lost Short-Term Parker media
- Half-Duplex Intercom sub-station
- Interface to Integrate CCTV Camera
- Industrial embedded PC for the self-sufficient control of the device
- 10,000 stored transactions – offline redundancy
- Barcode/QR-Code Scanner for processing of third party barcodes as means of payment or discount.
- Software evaluation of third party Barcodes/QR-Codes as vouchers

## **SOFTWARE**

### **Car Park Management System**

- State of the art database technology, internationally proven for the integrated management of all parking transactions
- Supporting 64-bit Microsoft Windows® Operating Systems
- Open software architecture (API / Universal Interfaces)
- Management of authorization levels and internal user groups (e.g. admin or service personnel)
- Usage of modern software technology for all GUI applications (operation modules) on the car park management server
- Multi-tasking/multi-application capability allowing to open several operation modules at the same time

- Workstations allowing multiple users managing the car park simultaneously

### **Business Intelligence**

- Ad-hoc reporting with drill down capability
- Modern multi-dimensional data platform
- Separate reporting data base for high-performance data analysis (data warehouse)
- Interactive user interface and flexible formatting capabilities
- Data analysis in integrated browser based client
- Storage of user specific reports
- Import and export existing reports
- Supporting report analysis via Microsoft Excel® (\*.xls file)
- Export in \*.xls, \*.csv, \*.pdf and \*.png files
- Flexible “Top 10” filter criteria

### **User Logging Audit**

- Continuously logging user and application activity
- Information on who has signed on and what occurred during the session (i.e. used which application / performed which function) and the associated timestamps to be provided

### **Difference Counting Module**

- Integrated software module for the management of the occupancy counters in the car park
- Detecting the occupancy of each level and the complete car park, categorized by reserved Spaces (Long-Term Parkers / Seasonal Parkers), non-reserved spaces (Short-Term Parkers / Hourly Parkers), booked spaces (Short-Term Parkers / Hourly Parkers who pre-booked via internet) and total spaces
- Use of threshold values to control signs, car park levels (optionally tariffs)
- Automatic sign control (free/full) depending on the number of cars in the car park
- Automatic sign control, depending on weekday and time

### **Alarm Management Module**

- Integrated software module for the management of alarms or events generated by the field devices or the users of the car park management system
- Alarm prioritization for efficient action and clear instructions to staff
- Configuration of customer specific alarm messages
- Configuration of alarm messages that require a comment by the operator (e.g. manual barrier opening requires a reason to be typed in)
- Alarm logbook (history function)
- Alarm counter for displaying alarms with multiple occurrences
- Alarm forwarding via email

### **Customer Administration Module**

- Integrated software module for the management of Long-Term Parker (Seasonal Parker) data (e.g. address, invoice details, card numbers).
- Extended Long-Term Parker (Seasonal Parker) access profiles (depending on Day/Time and parking area or integrated parking area)
- Flexible list generator allowing for definition of views and queries/reports on Seasonal Parker data details
- Automated invoicing
- Invoicing dates and cycles definable

**Tariff Module**

- Software module for the management of parking fees allowing to modify or create a customized tariff structure
- ‘Lost ticket at exit’ feature (fixed or variable tariff)
- Separate accounting on validation schemes
- Define complex and highly differentiated tariffs (e.g. special tariffs for determined use-cases or user patterns, Daily, hourly on events )
- Tariff tester for tariff verification prior to tariff activation

**Power Management Module**

- Software module for the configuration of device profiles defining “stand by” periods per unit or group of units for scheduled shutdown of the devices
- Control option for "temporary wake-up" of devices out of "stand by" mode

**Server Specification**

<b>Form factor</b>	Tower or Rack
<b>Processors</b>	Intel® Xeon® processor E3-1200 v3 product family and Intel® Pentium® processors
<b>Processor sockets</b>	<b>1</b>
<b>Cache</b>	2.5MB per core; core options: 4, 6, 8, 10
<b>Chipset</b>	Intel C602/ Intel C226
<b>Memory1</b>	4 UDIMM slots, support up to 32GB 1600MT/s DDR3
<b>RAID controller</b>	Intel Rapid Storage Controller 12.0 supporting SATA 6Gb/s (2 ports- SATA0, SATA1) SATA 3Gb/s (2 ports+ SATA2, SATA3) 4 SATA connectors (for hard drives and optical)
<b>Drive bays</b>	Up to six 3.5” hard drives
<b>Maximum internal storage</b>	Up to 16 TB
<b>Embedded NIC</b>	Intel Ethernet Connection I217 10/100/1000
<b>Power supply</b>	<b>290W</b> power supply
<b>Availability</b>	Optional high-efficiency, hot-plug, redundant power supplies; hot-plug drive bays; redundant fans; ECC memory;ENERGY STAR® compliant
<b>Operating systems</b>	Microsoft Windows Server® 2012 R2 Microsoft Windows Server 2012 Red Hat® Enterprise Linux® 6.5 and above

**Central Command and Control Centre including Data Centre:**

**Server Specification for Data server**

<b>Form factor</b>	Rack
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<b>Processors</b>	Up to two Intel® Xeon® processors E5-2600 v3 series with up to 18 cores each
<b>Cache</b>	Up to 45 MB per processor
<b>Memory</b>	Up to 1.5 TB with SK Hynix 64 GB TruDDR4™ Memory LRDIMMs; System supports RDIMM/LRDIMM
<b>RAID controller</b>	12 Gbps dedicated slot for the first RAID; support for up to four RAID adapters
<b>Maximum internal storage</b>	Up to 100 TB
<b>HOT-SWAP COMPONENTS</b>	Power supplies, fan modules and HDDs/SSDs
<b>Power supply</b>	1/2 redundant 550 W AC, 750 W AC, 900 W AC, 1500 W AC, 900 W DC 80 PLUS® Platinum, or 750 W AC 80 PLUS Titanium
<b>NETWORK INTERFACE</b>	4 × 1 GbE (std.) and 1 x IMM; optional 10/40 GbE ML2 or PCIe adapter; Trusted Platform Module built-in
<b>ENERGY-EFFICIENCY</b>	80 PLUS® Platinum, 80 PLUS Titanium; ENERGY STAR® compliance (model dependent)
<b>Operating systems</b>	Microsoft Windows Server, Red Hat Enterprise Linux, SUSE Linux Enterprise Server

**Server Specification for Application server**

<b>Form factor</b>	Rack
<b>Processors</b>	Up to two Intel® Xeon® processors E5-2600 v3 series with up to 18 cores each
<b>Cache</b>	Up to 45 MB per processor
<b>Memory</b>	Up to 1.5 TB with SK Hynix 64 GB TruDDR4™ Memory LRDIMMs; System supports RDIMM/LRDIMM
<b>RAID controller</b>	12 Gbps dedicated slot for the first RAID; support for up to four RAID adapters
<b>Maximum internal storage</b>	Up to 100 TB
<b>HOT-SWAP COMPONENTS</b>	Power supplies, fan modules and HDDs/SSDs
<b>Power supply</b>	1/2 redundant 550 W AC, 750 W AC, 900 W AC, 1500 W AC, 900 W DC 80 PLUS® Platinum, or 750 W AC 80 PLUS Titanium
<b>NETWORK INTERFACE</b>	4 × 1 GbE (std.) and 1 x IMM; optional 10/40 GbE ML2 or PCIe adapter; Trusted Platform Module built-in

<b>ENERGY-EFFICIENCY</b>	80 PLUS® Platinum, 80 PLUS Titanium; ENERGY STAR® compliance (model dependent)
<b>Operating systems</b>	Microsoft Windows Server, Red Hat Enterprise Linux, SUSE Linux Enterprise Server

**Server Specification for Web Portal/Mobile App**

<b>Form factor</b>	Rack
<b>Processors</b>	Up to two Intel® Xeon® processors E5-2600 v3 series with up to 18 cores each
<b>Cache</b>	Up to 45 MB per processor
<b>Memory</b>	Up to 1.5 TB with SK Hynix 64 GB TruDDR4™ Memory LRDIMMs; System supports RDIMM/LRDIMM
<b>RAID controller</b>	12 Gbps dedicated slot for the first RAID; support for up to four RAID adapters
<b>Maximum internal storage</b>	Up to 100 TB
<b>HOT-SWAP COMPONENTS</b>	Power supplies, fan modules and HDDs/SSDs
<b>Power supply</b>	1/2 redundant 550 W AC, 750 W AC, 900 W AC, 1500 W AC, 900 W DC 80 PLUS® Platinum, or 750 W AC 80 PLUS Titanium
<b>NETWORK INTERFACE</b>	4 × 1 GbE (std.) and 1 x IMM; optional 10/40 GbE ML2 or PCIe adapter; Trusted Platform Module built-in
<b>ENERGY-EFFICIENCY</b>	80 PLUS® Platinum, 80 PLUS Titanium; ENERGY STAR® compliance (model dependent)
<b>Operating systems</b>	Microsoft Windows Server, Red Hat Enterprise Linux, SUSE Linux Enterprise Server

## H. PARKING TARIFF

### On Street Parking Rates of TMC

#### a) For Two Wheelers

Type of Road	Parking Rates (Rs.)		
	First 2 hrs	2 to 4 hrs (addl. amt per hour)	Above 4 hrs (addl. Amt per hour)
Class A	10	5	5
Class B	10	5	5
Class C	10	5	5
Class D	10	5	5

#### b) For Four Wheelers

Type of Road	Parking Rates (Rs.)		
	First 2 hrs	2 to 4 hrs (addl. amt per hour)	Above 4 hrs (addl. Amt per hour)
Class A	25	5	10
Class B	20	5	10
Class C	15	5	10
Class D	10	5	10

#### c) Monthly Parking Charges

Type of Road	Overnight Parking Rates (Rs.)		
	Three Wheelers (Per Month)	Four Wheelers (Per Month)	Commercial Vehicles (Per Month)
Class A	500	1000	2000
Class B		750	1500
Class C		500	1000
Class D		500	1000

**Off Street Parking Rates of TMC**

- a) 25% less than the rates mentioned above for on street parking (Rounded to nearest 1 rupee)
- b) Monthly pass charges for off street parking for day time (Upto 12 hours)
  - a. For Four Wheelers: Rs.1000 per month
  - b. For Two Wheelers: Rs.500 per month
- c) Monthly pass charges for night parking

Type of Road	Overnight Parking Rates (Rs.)		
	Three Wheelers (Per Month)	Four Wheelers (Per Month)	Commercial Vehicles (Per Month)
Class A	500	1000	2000
Class B		750	1500
Class C		500	1000
Class D		500	1000

**C. Towing Charges:**

The Private Operator shall deploy intelligent tow truck (as per requirement) for towing of illegally parked vehicles, in the area defined in this RFP and will be accompanied by Thane traffic police personnel. The private operator shall tow vehicles parked in an unauthorized manner to the nearby parking space which is less utilized or at space designated for this purpose by the TMC. The towing charges to be collected from users shall be as provided in the table below. Increase in towing charges shall be as decided by Traffic Police/ TMC from time to time and shall be binding on the Private Operator.

S. No.	Type of Vehicle	Tow
1	2 - wheeler	
2	3 – wheeler	
3	4 – wheeler	
4	Heavy vehicles	



## I. ESCROW ACCOUNT AGREEMENT

This Escrow Account Agreement is made at \_\_\_\_\_ on this \_\_\_\_th day of \_\_\_\_\_, 20\_\_  
 (“**Escrow Agreement**”)

### BETWEEN

1. Thane Municipal Corporation (hereinafter referred to as the “**TMC**”), having its Registered Office at \_\_\_\_\_, and represented by Shri \_\_\_\_\_, the \_\_\_\_\_ officer at Thane Municipal Corporation, which expression shall, unless repugnant to the context or meaning thereof, to mean and include its successors-in-interest, nominee (s) and permitted assigns, of the **First Part**

### AND

2 M/s \_\_\_\_\_, a company<sup>4</sup> incorporated under provisions of the \_\_\_\_\_, having its Registered office at \_\_\_\_\_, (hereinafter referred to as “**Private Operator**”) which expression shall unless repugnant to the context include its successors and permitted assigns, of the **Second Part**.

### AND

3. <<**Name of the bank** >> a Bank constituted and functioning under the Indian Companies Act, 1956 and having its head office at \_\_\_\_\_ (hereinafter referred to as the “**Escrow Agent**”), which expression shall, unless repugnant to the subject or context thereof, mean and include its successors and assigns of the **Third Part**.

### WHEREAS

1. The Private Operator has been granted right by TMC to design, finance, develop, implement, operate & maintain smart systems for on-street and off-street parking spaces (hereinafter referred to as “**Project**”).

The Private Operator has agreed to undertake the Project, vide Agreement dtd. \_\_\_\_\_ between TMC and Private Operator (hereinafter referred to as “**Principal Agreement**”) on terms and conditions enumerated therein.

2. As per one of the conditions stipulated in the Principal Agreement a Joint Escrow Current Bank Account shall be opened jointly by both the Parties for the purpose of receiving the Parking Revenue proceeds from the users of the parking facility in the Project. The title of the account shall be \_\_\_\_\_ **ESCROW A/C** as mutually agreed by the Parties and the same shall be operated under joint signatures of authorized signatories of both the Parties.

<sup>4</sup> In case of a Consortium, the Lead member shall sign the Agreement

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES IT IS AGREED BY THE PARTIES AS FOLLOWS:**

**1. APPOINTMENT OF ESCROW AGENT.**

- a) Subject to the provisions hereof, the Parties do hereby irrevocably appoint <<name of the bank>> with its branch situated at \_\_\_\_\_ as the Escrow Agent and the Escrow Agent hereby accepts its appointment as an Escrow Agent on the terms and conditions appearing hereinafter.
- b) The parties hereby agree that the sole obligation of the Escrow Agent shall be to act in accordance with the provisions of this Agreement and to do, perform and exercise the acts, deeds and powers which the Escrow Agent is hereby authorized and instructed to do, perform and exercise under this Agreement.

**2. ESTABLISHMENT OF ESCROW ACCOUNT**

- a) The \_\_\_\_\_, the TMC and M/s \_\_\_\_\_, the Private Operator shall jointly open an irrevocable Escrow Account Bearing Account No. \_\_\_\_\_ designated as “\_\_\_\_\_ ESCROW A/C ,” with the Escrow Agent at its Branch at \_\_\_\_\_, in form and manner satisfactory to the Parties (“**Escrow Account**”), and it shall be maintained at all times until termination of this Escrow Agreement/ Principal Agreement.
- b) To facilitate easy transfer of funds from/to the above said joint escrow account, each party shall also open and maintain a Current A/c in its own name with the Escrow Agent and the monies received in the Escrow A/c shall be transferred into these Current Accounts by the Escrow Agent as per terms enumerated hereinafter.

**3. RIGHTS AND OBLIGATIONS OF THE PARTIES.**

- a) The Parties hereby agree and undertake:
  - (i) That the TMC and / or Private Operator shall not create any charge, lien or any encumbrance whatsoever, in favour of any person on the amount lying to the credit of the Escrow Account, except with joint written consent of both the Parties and prior written joint instruction / information to the Escrow Agent.
  - (ii) That the Parties shall not do or cause to be done any acts, deed or things which may prejudicially affect the interest of the Escrow Agent.
  - (iii) That both the Parties shall have full authority to monitor all transactions of the Escrow Account including conducting of audits.

- (iv) That the Escrow Agent shall not take cognizance in case of any instruction given by the TMC and / or the Private Operator, unilaterally or any contradictory instructions given by the other party.
- b) The Escrow Agent hereby agree and undertake as under:
- (i) That the Escrow Agent shall furnish statements in respect of the Escrow Account to the Parties at such intervals as may be required by them.
- (ii) That the Escrow Agent shall act only on the instructions which are given in writing jointly by both the Parties.
- c) The Parties hereby irrevocably authorize the Escrow Agent to pay and to transfer the funds from the Escrow Account as per Fund Distribution & Transfer Schedule given in clause 4 below subject to any variations / revisions given jointly by both the Parties in writing from time to time.

**4. DEPOSITS INTO THE ESCROW ACCOUNT AND DISTRIBUTION & TRANSFER THEREOF**

- (a) The parties have decided to distribute the parking fee proceeds received in Escrow A/c in the manner as follows :

S. No.	Parking Fee Collection Per Month (in rupees)	Share of TMC	Share of Private Operator
1	Upto Rs 1.5 cr	25% of upto Rs 1.5 cr	75% of upto Rs 1.5 cr
2	Above 1.5 cr to Rs 2 cr	25% of upto Rs 1.5 cr + 50% of amount above Rs 1.50 cr to Rs 2 cr	75% of upto Rs 1.5 cr + 50% of amount above Rs 1.5 cr to Rs 2 cr
3	Above Rs 2 cr	25% of upto Rs 1.5 cr + 50% of amount above Rs 1.50 cr to Rs 2 cr + 60% of amount above Rs 2 cr	75% of upto Rs 1.5 cr + 50% of amount above Rs 1.5 cr to Rs 2 cr + 40% of amount above Rs 2 cr

- (b) The Parties have decided to keep an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) as balance in the Escrow Account, and all the amount surplus to the Rs. \_\_\_\_\_/- will be transferred to the account of the TMC i.e \_\_\_\_\_ A/C bearing account no. \_\_\_\_\_ and the

Private Operator i.e. \_\_\_\_\_ bearing account no. \_\_\_\_\_ as per the schedule given in the clause (a) above on monthly basis.

**5. REPRESENTATIONS AND WARRANTIES:**

- a) The Parties hereby represent and warrant that:
  - i) The Parties have all requisite legal power and authority to execute this Escrow Agreement and to carry out the terms, conditions and provisions, hereof.
  - ii) This Escrow Agreement constitutes valid, legal and binding obligations on the Parties enforceable in accordance with the terms hereof.
- b) The Escrow Agent warrants with the Parties that the Escrow Agent is licensed under the Banking Regulations Act, 1949 and validly existing under the laws of India and has all requisite legal powers, authority and resources to enter into this Escrow Agreement and to perform its duties and obligations there under.
- c) Each of this Escrow Agreement and the Principal Agreement constitutes the valid, legal and binding obligations of the Parties enforceable in accordance with terms of the Escrow Agreement and the Principal Agreement respectively.
- d) There are no action, suit or proceedings pending or threatened, against or affecting the Escrow Agent before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely or/ and materially the ability of the Escrow Agent to perform its duties and obligations under this Escrow Agreement.

**6. INDEMNITY**

- (a) The Parties hereby agree to indemnify and keep indemnified and hold harmless the Escrow Agent from and against any and all claims and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, the operation of the Escrow Account pursuant to the terms and conditions contemplated by this Escrow Agreement.
- (b) The Parties hereby agree that the Escrow Agent shall have no liability towards the Parties for any loss or damage that the Parties may claim to have suffered or incurred, either directly or indirectly, by reason of this Escrow Agreement or any transaction contemplated by the provisions hereof, unless occasioned by the gross negligence or willful misconduct of the Escrow Agent. In no event shall the Escrow Agent be liable for losses or delays resulting from computer malfunction, interruption of

communication facilities, labour difficulties or other causes beyond the Escrow Agent's reasonable control or for indirect, special or consequential damages.

**7. MISCELLANEOUS**

- (a) The Parties agree to pay or reimburse fee of the Escrow Agent. Such fee shall be shared by the TMC and Private Operator in the ratio of **50:50** respectively.
- (b) All notices or other communications to or upon the parties hereto shall be given or made by registered post or recognized courier service (or, in case of urgency only by email, facsimile, promptly confirmed) to the respective registered/ dealing addresses of the parties.
- (c) All notices or communications made as aforesaid by registered post shall be deemed to have been duly given or made within 3 working days (excluding bank holidays & sundays) after being deposited in the post office provided that those given or made by email, facsimile, as aforesaid shall be deemed to be duly given or made one (1) day (excluding bank holidays & sundays) after such email, facsimile, is sent.
- (d) Any party may by notice change the address to which such notices and communications are to be delivered or mailed.
- (e) This Escrow Agreement shall be binding upon and shall ensure to the benefit of the parties hereto and their respective successors and assigns,
- (f) This Escrow Agreement has been executed in 3 (three) copies, each of which shall be deemed as original and each Party will keep one original copy of the same.

**8. TERMINATION**

- (a) This Escrow Agreement cannot be terminated unilaterally by the TMC or Private Operator under any circumstances. It can only be terminated by joint written instructions of the TMC and Private Operator.

**IN WITNESS WHEREOF**, each of the parties hereto have hereunto set and subscribed their respective hands and seals on the day and year first hereinabove written

**SIGNED, SEALED AND DELIVERED**

	<b>For and on behalf of the by:</b>		
	<b>TMC</b>	<b>Private Operator</b>	<b>Escrow Agent</b>
Signature			
Name			
Designation			
In the presence of:			