

APPENDIX - 10

DRAFT CONCESSION AGREEMENT

BETWEEN

PUNE SMART CITY DEVELOPMENT CORPORATION LIMITED

AND

[•]

DATED [•]

DRAFT CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (the “Agreement”) is entered into on this [●] day of [●], 2017 (“Execution Date”)

BY AND BETWEEN

PUNE SMART CITY DEVELOPMENT CORPORATION LIMITED, a company incorporated under the provisions of the Companies Act, 2013, represented by its Chief Executive Officer and having its principal office at Pune Municipal Corporation, Shivajinagar, Pune-05 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its representatives, successors and assigns) of One Part

AND

[●], a company incorporated under the provisions of the Companies Act, 2013 with Corporate Identity Number [●] and having its registered office at [●] (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

Each of the Authority and the Concessionaire are hereinafter collectively referred to as “**Parties**” and individually as a “**Party**”.

WHEREAS:

- A. The Authority intends to contract for operation, maintenance and management of certain areas indicated in Schedule A of this Agreement, in Pune, Maharashtra (the “**Project**”).
- B. The Authority had accordingly invited proposals by its Request for Proposals dated [●] (the “**Request for Proposals**” or “**RFP**”) prescribing the technical and commercial terms and conditions and invited bids for selection of bidders for operation, maintenance and manager of the Project. After evaluation of the bids received, the Authority has accepted the bid of the selected Bidder [please put name of bidder / bidders in case of a consortium]
- C. The Authority has issued the Letter of Award No. [●] dated [●] (the “**LOA**”) to the selected bidder at the Concession Fee specified hereinafter, requiring, *inter alia*, the submission of documentary evidence and other supporting information for all self attested documentation submitted by the selected bidder.
- D. The Authority after confirmation of above documentation submitted by the selected bidder, has, *inter alia*, further required the execution of this Agreement within 15 days of the date of issue thereof.
- E. The Concessionaire and the Authority are now desirous of entering into this Agreement for the operation, maintenance and management of the Project in accordance with the terms and conditions set out herein.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

“Agreement” means this Agreement, the RFP, LOA along with all annexures, schedules, Project Information Memorandum, Architectural drawings, technical specifications and contractors documents and all amendments and modifications made thereto from time to time.

“Applicable Law” or **“Law”** means all laws, brought into force and effect by Government of India or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement and as amended, re-enacted or consolidated from time to time;

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the O&M of the Project during the subsistence of this Agreement and which are set out in Schedule E;

“Change in Law” means the occurrence of any of the following after Execution Date:

- (i) the introduction/enactment of any new Law;
- (ii) the repeal, modification or re-enactment of any existing Law;
- (iii) the commencement of any Law which has not entered into effect until Execution Date;
- (iv) a change in the interpretation or application of any Law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to Execution Date; and
- (v) introduction of any new or change in the existing rates, of any of the taxes /duties/ cess etc. that have a direct effect on the Project.

“COD” shall mean the commercial operations date of the Project which shall be the date on which the Engineer-in-charge has issued the completion certificate or the provisional certificate upon completion of all the activities as envisaged under the Project, but not later than 1 (One) year from Execution Date.

“Concessionaire’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature pertaining to the O&M of the Project supplied by the Concessionaire under this Agreement.

“Concessionaire’s Equipment” means all apparatus, machinery, vehicles, and other things required for the O&M of the Project and the remedying of any Defects. However, Concessionaire’s Equipment excludes, Plant, Materials and any other things intended to form or forming part of the O&M.

“Concessionaire’s Personnel” means the Concessionaire’s Representative and all personnel whom the Concessionaire utilizes on Site including sub-contractors and consultants, who may include the staff, labour, authorized representatives and other employees of the Concessionaire or any other personnel assisting the Concessionaire in the execution of the Project.

“Concessionaire’s Representative” means the person named by the Concessionaire in the Agreement or appointed from time to time by the Concessionaire under Clause 6.6 of the Agreement, who acts on behalf of the Concessionaire.

“Concession Fee” shall have the meaning ascribed to in Clause 9.1.1 of this Agreement.

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall;

- a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement;
- c) not in any way be extended by any period of Suspension under this Agreement provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Engineer-in-charge hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or Engineer-in-charge to accord their approval;

Defect” means any material deficiency in the intended use of the Project and facilities as desired under this Agreement which shall exclude the fair wear and tear in the Concession Period.

“Earnest Money Deposit” or “EMD” shall mean Earnest money deposit in their entirety comprised in the bid submitted by the Concessionaire in response to the Request for Proposals in accordance with the provisions thereof;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project including users thereof or which poses an immediate threat of material damage to any of the Project Facilities.

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein.

“Engineer-in-charge” shall mean the person appointed / nominated by the Authority to act as the engineer-in-chief under this Agreement.

“Execution Date” means the later of the date of the signing of this Agreement by both Parties and the date on which the Concessionaire has delivered the Performance Security and Security Deposit;

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 18 of the Agreement;

“Goods” means Concessionaire’s Equipment, materials, plant and temporary works, or any of them as appropriate.

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

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

“Lead Member” shall in the case of a consortium, mean the member of such consortium, who shall have the authority to represent and bind each member of the consortium; and shall be deemed to be the Concessionaire for the purposes of this Agreement;

“Minimum Maintenance Requirements” shall have a meaning as set forth in Schedule C;

“Materials” means things of all kinds (other than Plant) intended to form or forming part of the Works, including the supply-only materials (if any) to be supplied by the Concessionaire under the Agreement.

“Material Adverse Effect” means any act or event having (or could reasonably be expected to have) a material adverse effect on (a) the Project, (b) the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement or (c) the business, properties or assets of the Concessionaire or its conditions, financial or otherwise.

“O&M” means the operation and maintenance of the Project during Concession Period including but not limited to functions of maintenance, collection and retention of fees and charges and performance of other services incidental thereto.

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

“Performance Security” shall have the meaning set forth in Clause 8 of the Agreement;

“Plant” means the apparatus, machinery and vehicles intended to form or forming part of the O&M.

“Project” shall mean the Project described in Schedule ‘A’ and Project Facility described in Schedule ‘B’ which the Concessionaire is required to operate, maintain and manage in accordance with the provisions of this Agreement.

“Project Facility” means collectively the facilities on the Project Site to be operated, maintained and managed by the Concessionaire for use of the users by implementing the Project and more specifically set out in Schedule ‘B’.

“Project Information Memorandum” shall mean the document annexed to the RFP specifying the purpose, scope, and/or other technical criteria, for the O&M of the Project and as included in this Agreement under Schedule F, and any additions and modifications to such document in accordance with the Agreement;

“Site” or **“Project Site”** shall have the meaning as prescribed in Schedule A of this Agreement.

“Specifications and Standards” shall have the meaning as set forth in Schedule D of this Agreement.

“State Government” shall mean Government of Maharashtra.

“Statutory Auditor” means a reputed firm of Chartered Accountants duly licensed to practice in India acting as statutory auditors of the Concessionaire.

“Sub-contractor” shall mean any person or persons to whom a part of the O&M has been sub-contracted by the Concessionaire and the permitted legal successors in title to such person, but not any assignee to such person;

“Termination” means the expiry or termination of this Agreement in accordance with Clause 19 of this Agreement.

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement.

“Termination Payments” shall have the meaning ascribed to it under Clause 19.3 of this Agreement.

Transfer Date means the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice:

“Works” means all works including procurement, rectification, construction, Plant, Materials, maintenance, temporary works, and other things necessary to undertake O&M of the Project in accordance with this Agreement.

1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires:

- a) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association of persons or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- b) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- c) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;

- d) references to “construction” or “building” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
- e) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g) any reference to day shall mean a reference to a calendar day;
- h) Reference to a “business day” shall be construed as reference to a day (other than a Sunday) on which banks in the State of Maharashtra are generally open for business;
- i) Any reference to month shall mean a reference to a calendar month as per the Gregorian Calendar;
- j) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- k) the words importing singular shall include plural and vice versa;
- l) references to any gender shall include the other and the neutral gender;
- m) “lakh” means a hundred thousand (100,000) and “ crore” means ten million (10,000,000);
- n) “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- o) References to the “winding-up”, “dissolution”, “insolvency” or “reorganization” of a company or corporation, shall be construed so as to include any equivalent or analogous proceedings under the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carried on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- p) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (p) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- q) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Engineer-in-charge shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Engineer-in-charge, as the case may be, in this behalf and not otherwise;
- r) the Schedules and Recitals to this Agreement and the Request for Proposals forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- s) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears.

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

1.3. **Measurements and arithmetic conventions**

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

1.4. **Priority of Agreement, clauses and schedules**

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

- (a) This Agreement ; and
 - (b) all other agreements and documents forming part hereof or referred to herein;
- i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

1.5. Joint and several liability {*Clause applicable in case of a consortium*}

1.5.1. If the Concessionaire has formed a consortium of two or more persons for implementing the Project;

- (a) These persons shall without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Authority for the performance of the Agreement; and
- (b) The Concessionaire shall ensure that no change in the composition of the Consortium is effected without the prior consent of the Authority;

1.5.2. Without prejudice to the joint and several liability of all the members of the Consortium, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Concessionaire. The Concessionaire shall ensure that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement, and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Authority shall have the right to release payments solely to the Lead Member and shall not be in manner be responsible or liable for the inter se allocation of payments among members of the Consortium.

2. CONCESSION AND PROJECT SITE

2.1. Grant of Concession

2.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants and authorizes the Concessionaire to operate and maintain the Project Facility and to exercise and/or enjoy the rights to generate revenue from utilization of space allocated as set forth in this Agreement (viz. events, advertisements, etc.).

2.1.2. The title of interest, ownership and rights with regard to operation, maintenance and management of Project for the Authority along with Project Facilities and fixtures/ fittings provided therein shall rest with the Authority except that these will be operated and maintained by the Concessionaire as agreed in this Agreement.

2.2. Concession Period

2.2.1. The Concession hereby granted is for a period of Three (3) years commencing from the COD during which the Concessionaire is authorized to operate, maintain and manage the Project / Project Facility in accordance with the provisions hereof.

2.3. Acceptance of the Concession

2.3.1. The Concessionaire hereby accepts the Concession and agrees and undertakes to operate, maintain and manage the Project/ Project Facility, and to perform/discharge all of its obligations in accordance with the terms and conditions set forth in this Agreement.

2.4. Project Site

2.4.1. The Authority hereby undertakes to handover to the Concessionaire physical possession of the Project Site as specified in Schedule A, free from Encumbrance within 15 days from the date of COD together with the necessary rights of way/way leaves for the purpose of operating, maintaining and managing the Project/Project Facilities in accordance with this Agreement.

2.4.2. The Authority confirms that upon the Project Site being handed over pursuant to the preceding sub-Clause 2.4.1, the Concessionaire shall have the right to enter upon, occupy and use the Project Site and to make at its costs, charges and expenses such development and improvements in the Project Site as may be necessary or appropriate to operate, maintain and manage the Project / Project Facility subject to and in accordance with the provisions of this Agreement.

2.5. Use of the Project Site

2.5.1. The Concessionaire shall not without prior written consent or approval of the Authority use the Project Site for any purpose other than for the purposes of the Project/ the Project Facility and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Authority.

2.6. Rights over the Project Site

2.6.1. The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement. The Concessionaire shall allow access to, and use of the Project Site/ Project Facility for the authorities/agencies laying telecommunication lines, electric lines or such other public purposes as the Authority may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 30 days at a stretch at any location and that the Authority undertakes to ensure that the Project Facility is restored at the cost and expenses of the Authority as per the Specifications and Standards.

2.6.2. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement provided however that nothing contained herein shall be construed or interpreted as restriction on the right of the Concessionaire to appoint any sub-contractor for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project/ Project Facility.

3. OPERATION AND MAINTENANCE

3.1. Operation and Maintenance

3.1.1. The Concessionaire shall, during the Concession Period, operate, maintain and manage the Project/Project Facility and if required, modify, repair or otherwise make improvements to the Project/ Project Facility to comply with Specifications and

Standards, and other requirements set forth in this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.

3.1.2. Without prejudice to the provisions of this Agreement, the Concessionaire shall be responsible for:

- (i) Undertaking operations, maintenance and management of the Project/Project Facilities as per the Minimum Maintenance Requirements set forth in Schedule C;
- (ii) perform the specific duties set forth in this Agreement if they are not otherwise required by the Specifications and Standards set forth in Schedule D
- (iii) Procurement of all Applicable Permits prescribed in Schedule E; and
- (iv) Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all the obligations of the Concessionaire under this Agreement.
- (v) Undertaking O&M in accordance with Maintenance Manual and the Maintenance Programme;
- (vi) Preventing any encroachments or any unauthorized usage of the Project Facility.

3.1.3. Save and except as otherwise expressly provided in the Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Maintenance from any cause attributable to the Concessionaire, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of the Agreement.

3.2. Maintenance Manual

3.2.1. The Concessionaire shall in consultation with the Authority evolve not later than 30 (thirty) days after COD, a manual for the regular and preventive maintenance, including Minimum Maintenance Requirements set out at Schedule C (the "Maintenance Manual"), and shall ensure and procure that at all times during the Concession Period, the Project is maintained in a manner that it complies with the Specifications and Standards. The Concessionaire shall supply, within 1 (one) month after execution of the Agreement, 5 (five) copies of the Maintenance Manual to the Authority.

3.2.2. The Concessionaire shall from time to time, in consultation with the Authority, update and improvise the Maintenance Manual to include such other maintenance requirement, which it or the Authority deems fit to include in the Maintenance Manual to enable the Concessionaire to effectively and efficiently operate and manage the Project.

3.3. Maintenance Programme

3.3.1. Not later than 10 (ten) days before the beginning of each Accounting Year, the Concessionaire shall provide to the Authority, its proposed programme of preventive and other scheduled maintenance of the Project, taking into consideration the Minimum Maintenance Requirements and Maintenance Manual (as updated from time

to time), necessary to maintain the Project at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:

- (i) intervals and procedures for the carrying out of inspection of all elements of the Project;
- (ii) criteria to be adopted for deciding maintenance needs;
- (iii) preventive maintenance schedule;
- (iv) intervals at which the Concessionaire shall carry out periodic maintenance; and
- (v) intervals for major maintenance and the scope thereof.

3.3.2. Maintenance shall include replacement of equipment, consumables and repairs to equipment, structures and other Works, which are part of the Project/Project Facility.

3.3.3. The Concessionaire shall be responsible for procuring all the Materials, Goods and other resources required for O&M under this Agreement.

3.3.4. The Concessionaire shall keep the Project Facility in a clean, tidy and orderly condition free of litter and debris. The Concessionaire shall clean and empty the litterbins into suitable garbage bags and will be collected and removed by the concerned Government Instrumentality.

3.4. Emergency De-commissioning

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

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

3.4.3. Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

3.4.4. In case the decommissioning or closure is of permanent nature then the Authority will allocate alternative sites if available. In case alternative locations are not made available, either Party shall be entitled to terminate this Agreement in accordance with Clause 19.

3.5. Rectification of Defects

- 3.5.1. Save and except as otherwise expressly provided in this Agreement, if the Project/Project Facility or any part thereof shall suffer any loss or damage during the Concession Period, from any cause whatsoever, the Concessionaire shall, at its cost and expense rectify and remedy such loss or damage in a manner so as to make the Project conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement.
- 3.5.2. In the event the Concessionaire does not maintain and/ or repair the Project/Project Facility or part thereof up to and in accordance with the Specifications and Standards and / or in accordance with the Maintenance Programme or the Maintenance Manual or the Inspection Report, as the case may be, and shall have failed to commence remedial work within 10 (ten) days of notice in this behalf from the Authority, the Authority shall, without prejudice to its rights/remedies under this Agreement, including Termination, be entitled to undertake to cause the repair and maintenance of the Project at the risk and cost of the Concessionaire. The Concessionaire shall be liable to pay such Damages to the extent set forth in Clause 3.8.1 for undertaking such repairs and maintenance.
- 3.5.3. If the Concessionaire commences any O&M for curing any Defects or deficiencies in the Project/Project Facility, it shall complete such O&M expeditiously in accordance with Good Industry Practice.
- 3.5.4. For determining that the Project conforms to the Maintenance Requirements, the Engineer-in-Charge shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Engineer-in-Charge and furnish the results of such tests forthwith to the Engineer-in-Charge.
- 3.5.5. The Concessionaire shall procure and provide the Plant, Materials and Concessionaire's Documents specified in the Agreement, and all Concessionaire's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for remedying the Defects.

3.6. Monitoring and Supervision

- 3.6.1. The Concessionaire shall undertake periodic inspection of the Project in accordance with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and shall submit reports of such inspection ("Maintenance Reports") to the Authority.

3.7. Project closure

- 3.7.1. Save and except as provided in Clause 6.5, the Concessionaire shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Programme, except with the prior written approval of the Engineer-in-charge. Such approval shall be sought by the Concessionaire through a written request to be made to the Engineer-in-charge, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Engineer-in-charge shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Program and a copy of such permission shall be sent to the Authority.

3.8. Damages for breach of O&M obligations

3.8.1. In the event that the Concessionaire fails to repair or rectify any Defect or deficiency within the period specified in Clause 3.5.2, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid at 120% (One Hundred Twenty per cent) of the cost of such repair or rectification as estimated by the Engineer-in-charge in accordance with this Agreement. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

3.8.2. The Damages set forth in Clause 3.8.1 may be assessed and specified forthwith by the Engineer-in-charge; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

3.9. Authority's right to take remedial measures

3.9.1. In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Manual or Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the Inspection Report or a notice in this behalf from the Authority or the Engineer-in-charge, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 3.9.1 shall be without prejudice to its rights and remedies provided under Clause 3.8.1.

3.9.2. The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 3.9.1 directly from the Security Deposit as if such costs and Damages were expenses for O&M, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 3.9.2 and debit the same to expenses for O&M.

3.10. Overriding powers of the Authority

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

3.10.2. In the event that the Concessionaire, upon notice under Clause 3.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 3.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it

for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 3.8.1 along with the Damages specified therein.

3.10.3. In the event of a national emergency, civil commotion or any other act specified in Clause 18.1, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Clause 19. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 3.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

3.11. Branding & Advertising

3.11.1. The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire except as provided in this Agreement.

3.11.2. The Concessionaire shall be entitled to undertake or permit any form of commercial advertising, display or hoarding at the designated places on the Site and shall provide the rights of advertisements on Site as it may deem fit, subject to adherence to Advertising Policy set forth in **Schedule H** of this Agreement. Any revenue generated from such advertising shall accrue to the Concessionaire.

4. REPRESENTATIONS AND WARRANTIES

4.1. Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein;
- (ii) It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (iii) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (iv) It has a good and valid right to the Sites, and has the requisite authority to grant a right under this Agreement in respect thereto to the Concessionaire.

4.2. Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (i) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement;
- (ii) It has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (iii) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof;
- (iv) The information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (v) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its constitutional documents including memorandum and articles of association [or those of any member of the Consortium, as applicable] or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (vi) There are no actions, suits, proceedings, or investigations pending or threatened in writing against it before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may impair its ability to perform its obligations or result in a Material Adverse Effect under this Agreement;
- (vii) It has complied with Applicable Laws in all respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (viii) All its rights and interests in the Project shall pass to and vest in the Authority on expiry of the Concession Period, free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority;
- (ix) No representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (x) No sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (xi) All information provided by the Concessionaire in response to the Request for Proposals or otherwise, is true, accurate and fair in all respects; and

- (xii) All undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

5. OBLIGATIONS OF THE AUTHORITY

5.1. Handover of Clear Sites

5.1.1. The Authority shall give the Concessionaire right of access and possession of Sites without any Encumbrance prior to or on the COD. It is hereby agreed that all costs associated therewith shall be borne by the Authority.

5.1.2. The Authority shall grant to the Concessionaire, before the COD, access to the Sites for carrying out surveys, investigations, tests and any other activity that the Concessionaire may deem necessary during the Concession Period.

5.2. Permits, Licenses or Approvals

The Concessionaire shall be responsible to obtain all Applicable Permits for the purposes of the Project, including but not limited to land, environmental clearance, labour law permits and registrations or any other statutory clearance required from various departments of Pune Municipal Corporation ,if required, The Authority shall provide reasonable assistance to the Concessionaire at the request of the Concessionaire in obtaining the Applicable Permits, if required.

5.3. Appointment of Engineer-in-charge

The Authority shall appoint / nominate an engineer to be the engineer for the purposes of this Agreement (the "**Engineer-in-charge**"). The remuneration, cost and expenses of the Engineer-in-charge shall be paid by the Authority. It is expressly agreed that the decision of the Engineer-in-charge with respect to matters under this Agreement shall be final and binding on the Concessionaire in all respects.

6. OBLIGATIONS OF THE CONTRACTOR

6.1. General obligations of the Concessionaire

6.1.1. During the Concession Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the Concessionaire and if required, modify, repair or otherwise make improvements to the Project, including but not limited to -

- (a) Procuring and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions;
- (b) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- (c) Ensure that services of water supply, sewerage, drainage, electricity, telephone etc. in the vicinity, encountered during the period of operation/ maintenance are not damaged.

- (d) Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, clearances, licenses, registration, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project including but not limited to PAN/TAN/VAT/Service Tax/PTEC etc., as applicable;
- (e) Not place or create nor permit any Concessionaire or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project or Project Facilities, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement;
- (f) Be responsible for safety, soundness and durability of the Project Facility including all structures forming part thereof and their compliance with the Specifications and Standards;
- (g) Ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (h) Operate and maintain the Project at all times during the Concession Period in conformity with this Agreement including but not limited to the Specifications and Standards, Applicable Laws, Applicable Permits, the Maintenance Programme and Good Industry Practice;
- (i) Ensure that Project Site and facilities created are not defaced by any kind of writings/ posters
- (j) Minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the City;
- (k) Carrying out periodic preventive maintenance of the Project;
- (l) Undertaking major maintenance such as resurfacing, repairs to structures, and repairs and refurbishment of system and equipment;
- (m) Preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- (n) Preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized entry to the Project;
- (o) Protection of the environment and provision of equipment and materials therefor;
- (p) Operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing safe, smooth and uninterrupted use of the Project;
- (k) Maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and

- (l) Complying with Safety Requirements in accordance with Clause 6.8 of the Agreement.
 - (m) Maintain accounts, which should be certified and audited by Statutory Auditor on annual basis.
- 6.1.2. The Concessionaire shall maintain, in conformity with Good Industry Practice, all Project Facilities.
- 6.1.3. The Concessionaire shall be responsible for the adequacy, stability and safety of all Site operations.
- 6.1.4. The Concessionaire shall ensure that all Materials and specifications pertaining to the O&M carried out by the Concessionaire hereunder shall be in accordance with the Specifications and Standards mentioned in Schedule D hereto.
- 6.1.5. Mobilization should be carried out in line with the Maintenance Programme, which shall include details of mobilization plan and equipment deployment schedule.
- 6.1.6. The Concessionaire remains responsible for all of its obligations under this Agreement, regardless of whether a subcontract or supply agreement is made or whether the Concessionaire relies upon any Subcontractor to any extent. The Concessionaire's use of subcontractors for any part of the O&M will in no way increase the Concessionaire's rights or diminish the Concessionaire's liabilities to the Authority with respect to this Agreement, and in all events the Concessionaire's rights and liabilities hereunder with respect to the Authority will be as though the Concessionaire had itself performed such portion of the Works. The Concessionaire will be liable for any delays caused by any Subcontractor as if the Concessionaire caused such delays.
- 6.1.7. The terms of this Agreement shall always be binding upon the Concessionaire regardless of the existence of any inconsistent terms whatsoever in any agreement between the Concessionaire and any subcontractor without regard to the fact that the Authority may/may not have directly and/or indirectly had notice of any such inconsistent term.
- 6.1.8. The Concessionaire must make all payments to all subcontractors in accordance with the respective agreements between the Concessionaire and its subcontractors such that subcontractors will not be in a position to enforce liens and/or other rights against the Authority. The Concessionaire shall indemnify the Authority against any losses, claims, damages, costs (or) any disputes relating to its subcontractors.

6.2. **Co-operation**

- 6.2.1. The Concessionaire and the Authority shall co-operate with each other and fulfill their respective obligations, to ensure the performance and completion of the Works throughout the term of this Agreement; provided that the Concessionaire shall be obligated to participate in meetings to be held or attended by the Authority during the performance of the Works or such other meetings as may be organized by the Authority in connection with the Works if such participation is requested by the Authority, provided that all directions and instructions to the Concessionaire shall be provided by the Authority only. The Authority shall from time to time authorize the Concessionaire's Representative for carrying out all routine activities, attending meetings with the Authority and/or Engineer-in-charge, correspondence and liaising with various

Government Instrumentalities including local authorities and other concerned departments such as electricity department, mining department, labour department, revenue department, amongst others as may be required by the Concessionaire to fulfill its obligations under this Agreement.

6.2.2. The Authority and the Concessionaire shall regularly and promptly keep each other informed of any developments affecting the Works. The Parties will cooperate with each other to facilitate the performance of their respective obligations under this Agreement and the Concessionaire shall cooperate with the Authority for performance of its obligations under this Agreement.

6.3. Plant, Material and Workmanship

6.3.1. The Concessionaire shall carry out the O&M:

- (i) in the manner (if any) specified in the Agreement,
- (ii) in a proper workmanlike and careful manner, in accordance with recognized Good Industry Practice, and
- (iii) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Agreement.

6.4. Concessionaire's undertaking

6.4.1. The Concessionaire hereby undertakes and acknowledges that:

- (i) The Concessionaire shall be deemed to have scrutinized, prior to the Execution Date, the Project Information Memorandum including design, drawings, criteria and calculations, if any. The Concessionaire shall be responsible for operating, maintaining and managing the Project Site based on the information provided in the Project Information Memorandum.
- (ii) The Authority shall not be responsible for any error, inaccuracy or omission of any kind in the Project Information Memorandum as originally included in the Agreement and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Concessionaire, from the Authority or otherwise, shall not relieve the Concessionaire from his responsibility for the O&M.
- (iii) The Concessionaire shall carry out its own independent studies of the Project in-house or by appointing external consultants for analyzing the scope and undertaking the O&M.
- (iv) All property and assets belonging to the Authority shall remain the property of the Authority and shall be used by the Concessionaire only for provision of the O&M. The Concessionaire shall not remove any Authority owned asset from its location without the prior written consent of the Authority.
- (v) Unless otherwise agreed in writing by both Parties, the Concessionaire shall notify the Authority within thirty (30) days of receipt where any asset of the Authority is not in good condition when received by the Concessionaire.

- (vi) The Concessionaire undertakes to ensure the safe custody and due return of all the Authority assets, at the same level of repair that the assets were received with consideration of fair wear and tear or deterioration caused by the Authority, on termination or expiry of this Agreement.
- (vii) The Concessionaire shall not create, nor shall the Concessionaire permit any third party or, to the extent within the Concessionaire's control, any third party to create a lien on any of Authority's assets for any sum due whatsoever and the Concessionaire shall take all reasonable steps to ensure that the title of Authority and the exclusion of any such lien are brought to the notice of any third party and any such third party dealing with any of the Authority assets.
- (viii) No alteration to the buildings, building fabric, building service or any assets is permitted without prior written approval of the Authority.

6.5. Excuse from performance of obligations

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

- (i) An event of Force Majeure;
- (ii) Measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (iii) Compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project:

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

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

6.6. Concessionaire's Representative

6.6.1. The Concessionaire shall appoint / nominate the Concessionaire's Representative and shall give him all authority necessary to act on the Concessionaire's behalf under the Agreement.

6.6.2. Unless the Concessionaire's Representative is named in the Agreement, the Concessionaire shall, prior to the COD, submit to the Authority for consent the name and particulars of the person the Concessionaire proposes to appoint as Concessionaire's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Concessionaire's Representative, the Concessionaire shall similarly submit the name and particulars of another suitable person for such appointment.

6.6.3. The Concessionaire shall not, without the prior consent of the Authority, revoke the appointment of the Concessionaire's Representative or appoint a replacement.

6.6.4. The Concessionaire's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Authority has received prior notice signed by the Concessionaire's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

6.7. Subcontractors

6.7.1. The sub-contractor/s, if any, shall be the persons engaged by the Concessionaire for executing the Works ("**Sub-Contractors**") which shall be allocated by the Concessionaire under a separate Sub-Contract. The Sub-Contract entered into between the Concessionaire and the Sub-Concessionaire/s for the execution of the O&M as allocated by the Concessionaire on terms and conditions finalized by the Concessionaire, shall be termed as the Sub-Contract. Provided that, Concessionaire agrees that it shall not sub-contract a substantial portion of the O&M to such Sub-contractor/s.

6.7.2. It is agreed by both Parties that the Concessionaire shall carry out the O&M through its own resources or through Sub-Contractors to be finalized by the Concessionaire based on the technical and financial capabilities of such Sub-Contractors and their past performance in executing similar projects. The overall responsibility of the O&M of the entire Project shall however, vest in the Concessionaire who shall be solely responsible to the Authority. The Concessionaire shall indemnify the Authority against any losses, claims, damages, costs from any of the Subcontractors/suppliers engaged by the Concessionaire.

6.7.3. Subject to any requirements under this Agreement, the Concessionaire may subcontract any portion of the O&M to Subcontractors, but shall not assign the obligations of the Concessionaire hereunder or any portion thereof (including any responsibility for the overall management of the O&M) to any person. Such subcontracting shall not relieve the Concessionaire of its obligations and liabilities under this Agreement.

6.7.4. The Concessionaire agrees that it shall be fully responsible to the Authority for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by the Concessionaire. The Concessionaire shall obtain all necessary information from Subcontractors engaged to perform the O&M to ensure that the Subcontractors' work conforms to the requirements of this Agreement. The Concessionaire is responsible for and shall check the correctness of any portion of the Works performed by such Subcontractors.

6.7.5. The Concessionaire has to adhere to the operation and maintenance policies and procedures, as directed by the Authority, for managing and operating the Project. This includes (but not limited to) approach related to manpower, resources, vendor management, security, customer service, repair and maintenance and other primary functions, training programs to staff, user manuals, technical manuals, financial management, risk management, life/safety management, employee management and administrative policies and procedures. It also includes the key elements of a management plan for this Project to include considerations for cost containment/expense reduction, revenue enhancement (including non-operating revenue sources), customer service improvement, enhanced economic impact generation to the key this project operational characteristics.

- 6.7.6. The Concessionaire shall hire a capable and qualified personnel responsible for:
- liaising with Government Instrumentality, the Authority and any other government authorities.
 - daily management and upkeep of the Site.
 - ensuring that continuous outreach campaigns connect citizens in the neighborhood with the events and activities in the Site.
- 6.7.7. The Concessionaire shall provide for all the assets, infrastructure and manpower required for provision, operation, maintenance and management of the Site and the Project.
- 6.7.8. The Concessionaire or its authorised agents /servants shall not without the written consent of the Authority interfere with, injure, destroy or render useless any work executed or any material or things placed in, under or upon any land or building by the Authority.
- 6.7.9. The Concessionaire shall take all measures to prevent the breeding or entry of mosquitoes.
- 6.7.10. The Concessionaire or its agents /servants shall not abuse the water sources and drainage facility in the Site so as to create a nuisance or in sanitary situation prejudicial to the public health.
- 6.7.11. The Concessionaire will ensure clearance of all the rubbish and the waste generated at their location outlet and ensure safe and quick disposal of all such material.
- 6.7.12. The Concessionaire shall ensure that there is no smoking and consumption of liquor permitted with the Site.
- 6.7.13. The Concessionaire shall ensure that there are no additions, alterations or structural changes in the Site shall be permissible.
- 6.7.14. The Concessionaire shall make adequate provisions for safety and protection from fire of the Site and property therein.

6.8. Safety procedures

- 6.8.1. The Concessionaire shall:
- (i) Comply with all applicable safety regulations as prescribed by the Authority, Applicable Laws and Good Industry Practice and make adequate arrangements during the Concession Period for conforming with the safety requirements specified under this Agreement;
 - (ii) Be responsible for the safety and security of all persons entitled / authorised to be on the Site, within reasonable limits
 - (iii) Provide gloves, safety shoes, , install barriers, fencing gangways, covers, lighting etc. over open trenches, pits, openings in building and such like, and take all other safety measures as may be required under law

6.9. Quality assurance

The Concessionaire shall institute a quality assurance system to demonstrate compliance with the requirements of the Agreement. The system shall be in accordance with the details stated in the Agreement. The Authority shall be entitled to audit any aspect of the system. Compliance with the quality assurance system shall not relieve the Concessionaire of any of his duties, obligations or responsibilities under the Agreement.

6.10. Concessionaire's Operations on Site

6.10.1. The Concessionaire shall confine his operations to the Site, and to any additional areas which may be obtained by the Concessionaire and agreed by the Authority as working areas for undertaking the O&M.

6.10.2. The Concessionaire shall take all necessary precautions to keep Concessionaire's Equipment and Concessionaire's Personnel within the Site and these additional areas, and to keep them off adjacent land.

6.10.3. During the execution of the O&M, the Concessionaire shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Concessionaire's Equipment or surplus materials. The Concessionaire shall clear away and remove from the Site any wreckage, rubbish and Works which are no longer required.

6.11. Protection of the environment

6.11.1. The Concessionaire shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations while undertaking the Works.

6.11.2. The Concessionaire shall ensure that emissions, surface discharges and effluent from the Concessionaire's activities shall not exceed the values indicated in the Project Information Memorandum, and shall not exceed the values prescribed by Applicable Laws.

6.11.3. The Concessionaire shall develop an environmental management plan with the following objectives:

- (i) The Concessionaire shall endeavor to cause minimum impact to the environment;
- (ii) The Concessionaire shall, in all operations, economize on natural resources and energy;
- (iii) The O&M shall be carried out considering the importance of human health and safety;
- (iv) All legal requirements and regulations related to the environment shall be complied with;
- (v) The Concessionaire shall train, inform and stimulate its staff towards involvement, participation and responsibility in environmental matters;
- (vi) The Concessionaire shall make sure that high environmental standards are implemented by subcontractors, business partners and suppliers; and

- (vii) The measures for the protection of the environment.

7. HANDOVER REQUIREMENTS

- 7.1. On the Transfer Date, the Concessionaire shall hand over free from Encumbrances and actual or constructive possession of the Project and Project Facilities in working conditions including Project Site/Facility at no cost to Authority.
- 7.2. The Concessionaire shall comply with all other requirements as may be prescribed or required under Applicable Laws for completing the handover and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.
- 7.3. The Engineer-in-charge shall, 45 (forty-five) days prior to Transfer Date, verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Minimum Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Minimum Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Clause 3.1 shall apply, mutatis mutandis, in relation to curing of Defects or deficiencies under this Clause 3.5.
- 7.4. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site. The Concessionaire shall further provide such reasonable advice and assistance as the Authority may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 7.5. The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any Encumbrance all or any part of the Concessionaire's Equipment used in connection with the O&M and is reasonably required in connection with O&M of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.
- 7.6. The Concessionaire shall bear and pay all costs incidental to handover of all of the rights, title and interest of the Concessionaire in the Project Facilities in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such Divestment shall be borne by the Authority.
- 7.7. In the event of any Dispute relating to matters covered by and under this Clause 7, the Dispute Resolution Procedure shall apply.

8. PERFORMANCE SECURITY AND SECURITY DEPOSIT

- 8.1. The Concessionaire shall deposit an amount equivalent to 5% (five percent) of the total Concession Fee or Rs. [-----], whichever is higher, with the Authority for the due performance and fulfilment of the Agreement by the Concessionaire ("Performance Security"). The same shall be in the form of a financial bank guarantee and can be refunded only after expiry of the Concession Period or Termination, subject to deductions in accordance with the Agreement. All charges whatsoever such as premium, commission, etc. with respect to the Performance Security shall be borne by the bidder.

8.2. The Concessionaire shall also deposit, in addition to Performance Security specified in Sub-Clause 8.1 above, refundable interest free security deposit of amount equivalent to 4% (four percent) of the total Concession Fee ("Security Deposit") with the Authority. The same shall be deposited in cash and will be refunded by the Authority only after expiry of the Concession Period or Termination in accordance with this Agreement.

9. CONCESSION FEE

9.1. Concession Fee

9.1.1. The Concessionaire shall pay to the Authority, a concession fee on quarterly basis for each year of the Concession Period as per amounts mentioned in Schedule G ("**Concession Fee**"). The Concession Fee is inclusive of service tax, value added tax, entry tax, all other taxes, levies, duties, royalties, charges and fees existing at the time of payment of the Concession Fee.

9.1.2. The quarterly amounts payable by the Concessionaire shall be one fourth of the annual amount payable by the Concessionaire for the respective year.

9.1.3. The quarterly amount shall be paid by the Concessionaire within 7 days from last day of last month of a quarter.

9.1.4. The Concessionaire agrees that payments due under the provisions of this Agreement shall be made within the period set forth therein. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 2% (two per cent) above the State Bank of India's Prime Lending Rate, and recovery thereof shall be without prejudice to the rights of the Authority under this Agreement including invocation of Performance Security and/or Termination thereof.

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

9.1.6. The Concessionaire shall pay all duties and taxes in consequence of its obligations under this Concession Agreement, including excise and customs duties and the Concession Fee shall not be adjusted for any of these costs

9.1.7. Payment to Authority shall be through Account Payee cheque or by RTGS / NEFT process to the Authority's bank account

9.2. Sufficiency of the Concession Fee

9.2.1. The Concessionaire shall be deemed to have satisfied himself as to the correctness and sufficiency of the Concession Fee.

9.2.2. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the RFP, Works, Specifications and Standards as mentioned under the RFP and this Agreement, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder in so far as they relate to the design, engineering, procurement,

construction and completion of the Project and Project Facilities except those specifically excluded by Parties in this Agreement. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it.

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

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

9.2.5. The Concession Fee will not be adjusted under any circumstances.

10. INSPECTION & VIDEO RECORDING

- (i) During the Concession Period, the Engineer-in-charge may inspect the Project at least once a month and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the Defects or deficiencies, if any, with particular reference to the scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority within 10 (ten) days of such inspection. The Concessionaire, upon receipt of such report from the Authority, after reviewing the same, shall rectify and remedy the Defects or deficiencies, if any, stated in the Inspection Report and submit its compliance to the Authority. Such inspection or submission of Inspection Report by the Engineer-in-charge shall not relieve or absolve the Concessionaire of its obligations and liabilities in any manner whatsoever.
- (ii) During the Concession Period, the Concessionaire shall provide to the Authority for every quarter, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering events and special activities in that [quarter]. Notwithstanding anything to the contrary contained in this document, the Concessionaire shall also develop a Project specific website which shall be accessible to the public and upload the time stamp pictures of the activities and events held on site each week.

11. SUSPENSION OF UNSAFE WORKS

- (i) Upon recommendation of the Engineer-in-charge to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the O&M if, in the reasonable opinion of the Authority, such Work threatens the safety of the users and pedestrians. Provided, however, that in case of an emergency, the Authority may suo moto issue the notice referred to hereinabove. The Concessionaire shall, pursuant to the notice under this Clause suspend the O&M or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended Works and the users of the Project. The Concessionaire may by notice require the Engineer-in-charge to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked.

- (ii) Upon receiving the recommendations of the Engineer-in-charge, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 11 of the Agreement shall be repeated until the suspension hereunder is revoked.
- (iii) All reasonable costs incurred for maintaining and protecting the Project/Project Facilities or part thereof during the period of suspension (the "Preservation Costs") shall be borne by the Concessionaire;

12. STAFF AND LABOUR

12.1. Engagement of Staff and Labour and Wages

- (i) The Concessionaire shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport during the term of this Agreement.
- (ii) The Concessionaire shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the Work is carried out or Applicable Law, whichever is higher. If no established rates or conditions are applicable, the Concessionaire shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Concessionaire.
- (iii) The Concessionaire shall not recruit, or attempt to recruit, staff, Personnel and labour from the Authority.
- (iv) The employment of any personnel and/or labour by the Concessionaire, sub-contractor or supplier in relation to the O&M shall not constitute employer-employee relationship between the Authority and such personnel and/or labour. Furthermore, any cost/damages/penalties incurred by the Concessionaire in relation to employment of such labour or due to contravention of any laws by the Concessionaire, shall be borne by the Concessionaire alone.

12.2. Labour Laws

- 12.2.1. The Concessionaire shall comply with all the relevant labour laws applicable to the Concessionaire, including Applicable Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Concessionaire shall require his employees to obey all Applicable Laws, including those concerning safety at Work.
- 12.2.2. The Concessionaire shall follow all rules and regulations required under the Employees State Insurance Act and the Provident Fund Act as maybe in force from time to time. The Concessionaire shall cover all his workmen including at the site under the ESI and PF schemes, and directly deposit the requisite amounts with the concerned authorities.
- 12.2.3. All records in connection with the above shall be properly maintained by the Concessionaire and produced for scrutiny to the Authority whenever called for. The Concessionaire shall keep the Authority indemnified against all violations of the above acts. If any demand is made by the authorities under the above acts, this will be paid

by the Authority and recovered from the Concessionaire from its Performance Security / Security Deposit amounts etc.

12.3. Working hours

12.3.1. The Concessionaire shall have the option to work continuously by day and by night and on locally recognized holidays, days of rest, provided that the Concessionaire makes suitable arrangements for the same. However, the Concessionaire shall ensure that all applicable permissions and approvals from the relevant Governmental / quasi-governmental authorities are duly taken by the Concessionaire. Further, the Concessionaire shall also ensure that its Concessionaire's Personnel engaged for the Project are paid overtime charges in accordance with Applicable Laws.

12.4. Health and Safety

12.4.1. The Concessionaire shall at all times take all reasonable precautions to maintain the health and safety of the Concessionaire's Personnel and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

12.4.2. The Concessionaire shall send, to the Authority, details of any accident as soon as practicable after its occurrence. The Concessionaire shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Authority may reasonably require.

12.5. Concessionaire's Personnel

12.5.1. The Concessionaire's Personnel shall be appropriately licensed, registered, qualified, skilled and experienced in their respective trades or occupations. The Authority may require the Concessionaire to remove (or cause to be removed) any person employed on the Site, including the Concessionaire's Representative if applicable, who:

- (i) persists in any misconduct or lack of care, diligence or workmanship;
- (ii) carries out duties incompetently or negligently;
- (iii) fails to conform with any provisions of the Agreement; or
- (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

12.5.2. If appropriate, the Agreement or shall then appoint (or cause to be appointed) a suitable replacement person.

12.6. Records of Concessionaire's Personnel and Equipment

12.6.1. The Concessionaire shall submit to the Authority monthly details of Concessionaire's Personnel and Concessionaire's Equipment on the Site, in a form approved by the Authority. The Concessionaire shall maintain all such records and file all such returns/filings as mandated under Applicable Laws with respect to the Concessionaire's Personnel engaged for undertaking the Works under this Agreement.

12.7. Disorderly Conduct

12.7.1. The Concessionaire shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Concessionaire's Personnel, and to preserve peace and protection of persons and property on and near the Site.

12.8. No Child Labour

12.8.1. The Concessionaire shall, at no time, recruit any child labour and shall be in full compliance with the Child Labour (Prohibition and Regulation) Act, 1986, as amended from time to time and all related Laws.

13. COMMENCEMENT OF O&M

13.1. The O&M of the Project shall enter into commercial service on COD whereupon the Authority shall be entitled to demand and collect Concession Fee in accordance with the provisions of this Agreement.

14. INSURANCE

14.1. The Concessionaire shall effect and maintain at its own cost, during the Concession Period such necessary insurances for such maximum sums as may be required under Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. Similarly, all workmen appointed to complete the Agreement are required to be insured under workmen's compensation insurance policy.

15. CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS

15.1. Any financial report, revenue statement or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors . For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided.

16. CHANGE IN LAW

16.1. This agreement shall be in force and binding on both the parties hereto till the expiry of the Concession Period and no Change in Law or other circumstances shall affect the respective rights and obligations of the parties. No claim of whatsoever nature shall be made by the Concessionaire on the Authority on account of any such Change in Law or other circumstances.

17. LIABILITY AND INDEMNITY

17.1. The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any Defect or deficiency in the provision of services by the Agreement to the Authority, or from any negligence of the Concessionaire under contract or tort or on any other

ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

18. FORCE MAJEURE

- 18.1. Neither party shall be liable to the other for any loss or damage occurred by or arising out of acts of god, such as unprecedented flood, volcanic eruption, earthquake or other convulsion or nature and other acts, general strikes, riots, political events, invasion, the act of foreign countries, hostilities or war like operations before or after declaration of war, rebellion, military or usurped power which prevent performance of the Agreement and which could not have been foreseen or avoided by a prudent person ("**Force Majeure Event**"). However, in case of an occurrence of a Force Majeure Event, suitable extension of Time for Completion of the Project shall be granted to the Concessionaire.
- 18.2. If a Force Majeure Event subsists for a period of 60 (ninety) days or more within a continuous period of 120 (one hundred and eighty) days, the Authority may in its sole discretion terminate this Agreement by giving 15 (fifteen) days Termination Notice in writing to the other Party without being liable in any manner whatsoever.
- 18.3. The Authority hereby undertakes to provide adequate public and police protection to the Concessionaire and its workmen on the Site upon happening of Force Majeure Events such as riots, strikes and other acts of a similar nature.

19. TERMINATION

19.1. Notice to Correct:

19.1.1. If the Concessionaire fails to carry out any obligation under the Agreement, the Authority may by notice require the Concessionaire to make good the failure and to remedy it within a specified reasonable time. If no time is specified, then the Cure Period shall be equivalent to 30 (thirty) days.

19.2. Termination by Authority

19.2.1. The Authority shall be entitled to terminate the Agreement if the Concessionaire:

- (i) fails to deposit Performance Security or Security Deposit with the Authority;
- (ii) fails to comply with a notice under Sub Clause 19.1 of the Agreement;
- (iii) repudiates or abandons (refusal to perform any of its obligations under the relevant document) the Agreement or any other agreements entered into by the Concessionaire in connection with the requirements under this Agreement;
- (iv) without reasonable excuse fails to undertake O&M in accordance with Clause 3 of the Agreement;
- (v) subcontracts the whole of the Project or assigns the Agreement without the required agreement;
- (vi) becomes bankrupt or insolvent, goes into liquidation, has a receiving or an administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his

creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events;

- (vii) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - A. for doing or forbearing to do any action in relation to the Agreement; or
 - B. for showing or forbearing to show favour or disfavour to any person in relation to the Agreement.

or if any of the Concessionaire's Personnel gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this Sub Clause 19.2.1(vii). However, lawful inducements and rewards to Concessionaire's Personnel shall not entitle termination.

- (viii) commits a breach of its obligations under this Agreement, save and except those defaults in respect of which Cure Period has been expressly provided in the Agreement and fails to remedy or rectify the same within the period provided in a notice in this behalf from the Authority, other than where such breach is caused by default of the Authority including but not limited to gross negligence or willful misconduct;
- (ix) represents anything or makes warranties given which are found to be false or misleading;
- (x) creates any Encumbrance, charges or lien in favour of any person; and
- (xi) fails to comply with any final determination, order or award made in connection with the dispute resolution procedure set forth in this Agreement provided that the Concessionaire shall have a period of 30 (thirty) days to rectify such failure, except where such final determination, order or award provides for the payment of an amount of money, to the extent not resulting from a Concessionaire's breach of obligations or from an act or omission of the Concessionaire.

19.2.2. In any of these events or circumstances as specified above, the Authority may, upon giving 15 (fifteen) days' Termination Notice to the Concessionaire, terminate the Agreement and expel the Concessionaire from the Site along with forfeiture of the Performance Security and Security Deposit. However, in the case of Sub-Clause 19.2.1 of the Agreement (vi) or (vii) or (ix) or (x), the Concessionaire may by notice terminate the Agreement immediately.

19.2.3. The Authority's election to terminate the Agreement shall not prejudice any other rights of the Authority, under the Agreement or otherwise.

19.3. Termination Payments

19.3.1. Upon Termination on account of Concessionaire's Default, the Authority shall:

- (i) encash and appropriate the Performance Security and Security Deposit, or in the event the Concessionaire has failed to replenish or extend the Performance Security, claim the Performance Security amount as agreed pre-

determined compensation to the Authority for any losses, delays and cost of O&M, if any;

- (ii) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding payment and interest thereon; and

19.3.2. Upon Termination on account of an Authority Default, the Authority shall:

- (i) Return the Performance Security and Security Deposit forthwith; and
- (ii) Encash and appropriate the bank guarantee, if any, for and in respect of the outstanding payment;

and adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

19.4. **Termination by Concessionaire**

19.4.1. The Concessionaire shall be entitled to terminate the Agreement if:

- (i) the Authority substantially fails to perform his obligations under the Agreement and commits a material breach of its obligations under the Agreement for a continuous period of not less than 30 (thirty) days following written notice from the Concessionaire to the Authority of such material breach; or
- (ii) The Authority fails to comply with any final determination, order or award made in connection with the dispute resolution procedure set forth in this Agreement provided that the Authority shall have a period of 30 (thirty) days to rectify such failure, except where such final determination, order or award provides for the payment of an amount of money, in which case Sub-Clause (i) above will apply in each case, to the extent not resulting from any default of the Concessionaire or from an act of or omission by the Concessionaire.

19.4.2. In any of these events or circumstances, the Concessionaire may, upon giving 30 (thirty) days' Termination Notice to the Authority, terminate the Agreement. However, in the case of Sub Clause 19.3.1 of the Agreement (iii), the Concessionaire may by notice terminate the Agreement immediately.

19.4.3. The Concessionaire's election to terminate the Agreement shall not prejudice any other rights of the Concessionaire, under the Agreement or otherwise.

19.5. **Rights of Authority on Termination**

19.5.1. Upon Termination of this Agreement for reason of Default whatsoever, Authority shall have the power and authority to

- (i) take possession and control of Project and Project Facilities forthwith;
- (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site / dealing with the Project or Project Facilities any part thereof;

(iii) step in and succeed upon, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under the Agreement as Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Agreements. Provided any sums claimed by such counter party as being due and owing for the Works and services performed or accruing on account of any act, omission or event prior to such date of election, shall and shall always constitute debt between the Concessionaire and such counter party and Authority shall in no way or manner be liable or responsible for such sums.

(iv) The Concessionaire shall not be entitled for any interest on any Security Deposit /Earnest Money Deposit, etc.

20. GOVERNING LAW AND DISPUTE RESOLUTION

20.1. Governing Law

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

20.2. Amicable Settlement

20.2.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 20.2 of the Agreement.

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

20.3. Conciliation

20.3.1. In the event of any Dispute between the Parties, the same shall be referred to the Engineer-in-charge in charge within 15 (fifteen) days from its occurrence for mediation of the dispute. If the Concessionaire is aggrieved by the decision of the Engineer-in-charge, then the Dispute shall be referred to the [Chairman] of the Authority. Thereafter, the [Chairman] of the Authority and the Chairman of the Board of Directors of the Concessionaire shall meet for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 20.2 of the Agreement or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 20.4 of the Agreement.

20.4. Arbitration

- 20.4.1. Any Dispute which is not resolved amicably by conciliation, as provided in Sub-Clause 20.3, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with this Sub-Clause 20.4 of the Agreement. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be Pune and the language of arbitration proceedings shall be English.
- 20.4.2. There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 20.4.3. The arbitral tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Clause 20 of the Agreement shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 20.4.4. The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 20.4.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

21. MISCELLANEOUS

21.1. Entire Agreement

This Agreement sets forth the entire agreement and understanding among the Parties in connection with the matters set out herein and it supersedes all prior negotiations, agreements and understandings of all the Parties to this Agreement.

21.2. Severability

In the event any provision of this Agreement becomes void or unenforceable, it shall not affect the validity of this Agreement as a whole. In the event any provision of this Agreement conflicts with the instructions issued by the Authority, the provisions of this Agreement shall prevail, however, the Parties shall make their best efforts to renegotiate (if possible) the conflicting provision in a way that, while being consistent with the aforesaid instructions, would still reflect the Parties' intention expressed herein.

21.3. Confidentiality

21.3.1. The Authority and Concessionaire, at all times, keep the terms and conditions of this Agreement and all information pertaining thereto confidential and the Parties agree to not disclose any such confidential information to any person or entity except with the prior consent of the other Party or as required under law.

21.3.2. Except with the prior written permission of the Authority, the Concessionaire (including all consortiums or partners) and its Personnel shall not disclose such confidential information to any person or entity not expected to know such information by default of being associated with the Project, nor shall the Concessionaire and its Personnel make public the recommendations formulated in the course of, or as a result of the Project.

- 21.3.3. The Concessionaire shall not divulge any Confidential Information communicated to or acquired or created by it in the course of carrying out the O&M, the Project or this Agreement whether in relation to the Project or to the Recipient, the Authority or any agency or entity thereof or person affiliated therewith. No such information shall be used by the Concessionaire on any other project without the prior written approval of the Authority.
- 21.3.4. The Concessionaire may disclose such of the Confidential Information to those of its employees, agents, sub-consultants, representatives and sub-contractors to whom disclosure is required for the Concessionaire's performance of its services hereunder but only after each such employee, agent, representative and sub-contractor has properly assumed confidentiality obligations identical in principle with those herein.
- 21.3.5. The Concessionaire further agrees that it will not, directly or indirectly, for any reason whatsoever, use the name of the Authority (or persons or organisations related to or associated with the Authority or any person, entity or agency thereof or affiliated therewith) or such information or documents for public relations, media or sales purposes or any other purpose not directly related to the performance of the O&M under this Agreement and shall not make reference to the Project without the prior written consent of the Authority having in each case been obtained.
- 21.3.6. The Concessionaire acknowledges that a breach of any of the obligations or provisions contained herein could cause the Authority to suffer loss which may not be adequately compensated for by monetary damages and that the Authority may, in addition to any other remedy or relief, enforce the performance of the Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual or special damage and notwithstanding that in any particular case damages may be readily quantifiable, and the Concessionaire must not plead sufficiency of damages as a defence in the proceeding for such injunctive relief. Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this Clause, but shall be in addition to all other remedies available at law or equity to the damaged Party.
- 21.3.7. The Concessionaire agrees that the confidentiality covenants contained herein shall survive the termination, discharge or other determination of this Agreement and extend in perpetuity following the date of such termination, discharge or other determination.
- 21.3.8. Subject to the aforesaid provisions of this Clause, the Concessionaire may include photographs of the Project in its marketing materials if the photographs and marketing materials have been pre-approved in writing by the Authority.

21.4. Amendments and waivers

No waiver, amendment or other modification of this Agreement shall be effective unless in writing and signed by all Parties.

21.5. Relationship of the parties

Nothing contained in this Agreement:

- (i) shall create or constitute or be deemed to create or constitute a partnership or agency between or among the Parties or any of them; or

- (ii) constitute any Party as the agent, representative or employee of any other Party, or otherwise entitle any Party to have authority to bind any other Party for any purpose whatsoever.

Save as otherwise expressly provided in this Agreement, any liability of hereunder the Parties shall be several and not joint or collective and each Party shall be responsible only for its individual obligations hereunder.

21.6. Waiver

No waiver shall be valid unless given in writing by the Party or Parties from whom such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by any of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

21.7. Payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars.

21.8. Independent rights

Each of the rights of the Parties hereto under this Agreement are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of the Party, whether under this Agreement or otherwise.

21.9. Further assurance

Each Party shall from time to time and at its own cost do, execute and deliver or procure to be done, executed and delivered all such further acts, documents and things required by, and in a form satisfactory to, the other Parties to give full effect to this Agreement and its rights, powers and remedies under this Agreement.

21.10. Authorization

The persons signing this Agreement on behalf of the Parties hereto represent and covenant that they have the authority to sign and execute this document on behalf of the Party for whom they are signing.

21.11. Notices

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

- (i) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or

to such other person as the Concessionaire may from time to time designate by notice to the Authority;

Attention:

Designation:

Address:

Fax Number:

Email:

- (ii) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire;

Attention: The Chief Executive Officer

Designation: Nil

Address: Pune Smart City Development Corporation Limited,
Second Floor, Pune Municipal Corporation,
PMC Building, Near Mangla Theatre,
Shivaji Nagar, Pune – 411 005

Fax Number:

Email: punesmartcity@gmail.com

21.12. **Language**

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

21.13. **Counterparts**

This Agreement may be executed in any number of separate counterparts (including by facsimile or other electronic means) and all such signed counterparts will together constitute one and the same agreement. To evidence its execution of an original counterpart of this Agreement, a Party may transmit a copy of its original signature on the execution page hereof to the other Party by facsimile or other means of recorded electronic transmission and such transmission with an acknowledgement receipt shall constitute delivery of an executed copy of this Agreement to the receiving Party by the transmitting Party.

SCHEDULE- A

SITE

(Provided in Appendix 2 of the RFP)

SCHEDULE- B

PROJECT FACILITIES

(Provided in Appendix 2 of the RFP)

SCHEDULE- C

MINIMUM MAINTENANCE REQUIREMENTS

(Provided in Clause 2.6 of the RFP read with Appendix 9 of RFP)

SCHEDULE- D

SPECIFICATIONS AND STANDARDS

(Provided in Annexure 11 of the RFP)

SCHEDULE- E
APPLICABLE PERMITS

[To be added]

SCHEDULE- F

PROJECT INFORMATION MEMORANDUM

(Provided in Annexure 1 of the RFP)

SCHEDULE G
CONCESSION FEE

[to be added]

SCHEDULE G
ADVERTISING POLICY

[to be added]