

GREATER HYDERABAD MUNICIPAL CORPORATION

DRAFT CONCESSION AGREEMENT

FOR

**CONSTRUCTION, OPERATION AND MAINTENANCE OF BUS SHELTERS WITH HIGH
QUALITY AMENITIES IN SELECT LOCATIONS WITHIN GHMC AREA ON DESIGN
BUILD FINANCE OPERATE & TRANSFER (DBFOT) BASIS**

{PACKAGE I and/or PACKAGE II and/or PACKAGE III and/or PACKAGE IV}

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CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the *** day of ***, 20**

BETWEEN

1. GREATER HYDERABAD MUNICIPAL CORPORATION (GHMC), represented by its -----
----- and having its principal offices at -----, HYDERABAD (hereinafter referred to as the "AUTHORITY" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of ONE PART; AND
2. -----, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at -----
-----, (hereinafter refer 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 SECOND PART;

WHEREAS:

- A. GREATER HYDERABAD MUNICIPAL CORPORATION, with a view to build bus shelters with high quality amenities (the "Project") under Public Private Partnership (PPP) framework by engaging private entity on Design, Build, Finance, Operate & Transfer (the "DBFOT") basis, has decided to carry out the bidding process for selection of the Concessionaire to whom the Project may be awarded in accordance with the terms and conditions to be set forth in a Concession Agreement to be entered into. The objective of the Project is to build bus shelters with high quality amenities at the identified locations as provided in Schedule A of this Agreement to enhance the service to the Users.
- B. The Authority had accordingly invited proposals by its Request for Proposals dated **** (the "Request for Proposals" or "RFP") for shortlisting of bidders for construction, operation and maintenance of the above referred Project on DBFOT basis and had shortlisted certain bidders including, inter alia, the selected bidder comprising -----
-----.
- C. The Authority had prescribed the technical and commercial terms and conditions, and invited bids meeting the eligibility and qualification criteria as set forth in the Request for Proposals for the above referred Project in GHMC limits on DBFOT basis for undertaking the Project.
- D. After evaluation of the bids received, the Authority had accepted the bid of the ----- (selected bidder) and issued its Letter of Award No. *** dated *** (hereinafter called the "LOA") to the -----{selected bidder} requiring, inter alia, the execution of this Concession Agreement within 30 (thirty) days of the date of issue thereof.
- E. {the selected bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act, 2013, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder under the LOA,} including

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the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.

F. {By its letter dated ---- the Concessionaire has also joined in the said request of the selected bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder for the purposes hereof and has delivered to the Authority a legal opinion with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof}.

G. The Authority has {agreed to the said request of the selected bidder and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for development of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 36) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation

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

- a. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b. references to laws of India/State of Telangana or Indian/State of Telangana law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Telangana/India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c. references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether

- or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
 - e. the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
 - f. references to "construction" or "build" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;
 - g. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
 - h. any reference to day shall mean a reference to a calendar day;
 - i. references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Hyderabad are generally open for business;
 - j. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - k. references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
 - l. 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;
 - m. "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
 - n. "foot" means thirty point four eight (30.48) centimeters with hundred (100) centimeters equal to one (1) metre.
 - o. "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - p. references to the "winding-up", "dissolution", "insolvency", or "re-organization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or

corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

- q. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - r. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;
 - s. the Schedules and Recitals to this Agreement and the Request for Proposals ("RFP") form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - t. references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
 - u. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages").
- 1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Project In-charge shall be provided free of cost and in three copies, and if the Authority and/or the Project In-charge is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.
- 1.3. Priority of Agreements and errors/discrepancies**
- 1.3.1. This agreement, and all other agreements and documents forming part of 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 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;

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

1.3.2. Subject to provisions of Clause 1.3.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a. between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b. between the Clauses of this agreement and the Schedules, the Clauses shall prevail;
- c. between any two Schedules, the Schedule relevant to the issue shall prevail; and
- d. between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2: SCOPE OF THE PROJECT

2.1. Scope of the Project

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

- a. construction of the Project at the locations set forth in Schedule A {Package 1 and/or Package 2 and/or Package 3 and/or Package 4} with Project Facilities as specified in Schedule B and in conformity with the Specifications and Standards set forth in Schedule C, including demolition of certain bus shelters as mentioned in Schedule A and constructing new ones thereat;
- b. operate and maintain the Project in accordance with the provisions of this Agreement; and
- c. perform and fulfill all other obligations in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3: GRANT OF CONCESSION

3.1. The Concession

3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein for 15 (fifteen) years including Construction Period of

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180 (one hundred and eighty) days including the exclusive right, license and authority to construct, operate and maintain the Project (the "Concession"), and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

- 3.1.2. Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- a. access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - b. finance and construct the Project;
 - c. manage, operate and maintain the Project and regulate the use thereof by third parties;
 - d. demand, collect and appropriate User Charges, advertisement revenue, rental charges for providing the available space of the bus shelters and/or providing any other services thereof;
 - e. perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement;
 - f. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - g. neither assign, transfer or sublet or create any lien or Encumbrance on this agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this agreement or the Substitution Agreement.

ARTICLE 4: CONDITIONS PRECEDENT

4.1. Conditions Precedent

- 4.1.1. Save and except as expressly provided in this Article 4 and in other Articles 5, 6, 7, 8, 9, 10, 18, 24, 32 and 35, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "Conditions Precedent").
- 4.1.2. The Concessionaire, upon providing the Performance Security to the Authority in accordance with Article 9, by notice require the Authority to satisfy the Condition Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days. The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- a. handed over to the Concessionaire the Site in accordance with the provisions of Clause 10.3.1;

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- 4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire within a period of 120 (one hundred twenty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire has:
- a. provided Performance Security to the Authority in accordance with Article 9. For the avoidance of doubt, the Concessionaire is required to provide the Performance Security within 30 (thirty) days of signing of this Agreement;
 - b. executed and procured execution of the Substitution Agreement;
 - c. procured all Permits as applicable to the Project and such Permits shall be in full force and effect;
 - d. executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - e. delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS excel version or any substitute thereof, which is acceptable to the Senior Lenders; and
 - f. delivered to the Authority confirmation of the correctness of the representations and warranties set forth in Sub-clauses (j), (k) and (l) of Clause 7.1 of this Agreement;

The Concessionaire on fulfilment of the above Conditions Precedent, shall notify the Authority the particulars thereof.

4.2. Damages for delay by the Authority

In the event that the Concessionaire has fulfilled its Conditions Precedent and (i) the Authority does not procure fulfilment of its Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (ten percent) of the Performance Security, and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

4.3. Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions

Precedent, subject to a maximum of 10% (ten per cent) of the Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement.

4.4. Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied shall be the Appointed Date which shall be the date of commencement of Concession Period. The Authority shall convey by way of a letter for Appointed Date and thereupon the Concessionaire can commence construction of work on the Project.

4.5. Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before 240 (two hundred and forty) days of this Agreement or the extended period in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it. Provided, however, that in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1. Obligations of the Concessionaire

- 5.1.1. Subject to and on the terms and conditions of the Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required in this regard) in the performance of its obligations under the Agreement.
- 5.1.3. The Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4. It shall establish a suitable quality control mechanism to ensure compliance with the requirements of the Specifications and Standards in accordance with the provisions of the Agreement (the "Quality Assurance Plan" or "QAP").

- 5.1.5. The Concessionaire can enter into a contract with any firm / company for construction and/or for O & M of the Project. However, the Concessionaire is responsible to the Authority for the performance of its obligations as per the terms of the Agreement.
- 5.1.6. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a. to keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - b. procure, as required, the appropriate property rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - c. perform and fulfill its obligations under the Financing Agreements;
 - d. ensure and procure that its contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - e. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of the Agreement;
 - f. ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions;
 - g. ensure that no labor below the age of eighteen years is employed on the work by the Concessionaire or its contractors;
 - h. have to take sole responsibility on account of liability of any damage or loss in case of a death or injury to any personnel engaged in the Project and the Authority shall not, in any manner be a party to or responsible for such damages or losses;
 - i. be solely responsible for all associated expenses such as statutory dues such as Income Tax, VAT, GST, service tax, excise duties, payment to employees' benefit funds, etc., arising out of the Agreement and the Authority shall not be liable for the same under any circumstances; and
 - j. transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions of this Agreement.

5.2. Obligations relating to Project Agreements

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

- 5.2.2. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority and / or Lenders Representative to step into such Agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). Further, it is clarified that in case both the Authority and Lenders' Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality.
- 5.2.3. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements; and procure and deliver to the Authority an acknowledgement and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.3. Obligations relating to Change in Ownership

The Concessionaire shall not undertake or permit any Change in Ownership, except with prior written approval from the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

5.4. Branding of the Project

The Project shall be known, promoted, displayed and advertised in the name of Greater Hyderabad Municipal Corporation (GHMC). The Authority will provide the design, the specifications and the promotional slogan & logo at a later date. The Concessionaire shall not in any manner, use the name or entity of the Project to brand in any manner to advertise or display its own identity or its shareholders, business interests; save and except as may be necessary in the normal course of business and non-violative of the interests of the Authority and as permitted by the Authority.

5.5. Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

CONSTRUCTION, OPERATION AND MAINTENANCE OF BUS SHELTERS WITH HIGH QUALITY AMENITIES IN SELECT LOCATIONS WITHIN GHMC AREA ON DESIGN BUILD FINANCE OPERATE & TRANSFER (DBFOT) BASIS

6.1. Obligations of the Authority

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

- a. support, cooperate and facilitate the Concessionaire in construction and operation of the Project in accordance with the provisions of this Agreement;
- b. shall support, cooperate and facilitate with the Concessionaire in procuring Applicable Permits and Approvals and their renewals, if any, from various Government Authorities and utilities;
- c. procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of emergency, national security or law and order;
- d. assist the Concessionaire in procuring Police assistance for ensuring safety of the Project Facilities, removal of trespassers and security to the Project Assets; and
- e. not do or omit to do any act, deed or thing which may in any manner is violating of any of the provisions of this Agreement.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES**7.1. Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Authority that:

- a. 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 and to carry out the transactions contemplated hereby;
- b. 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;
- c. {the selected bidder and its} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with the terms of this Agreement;
- d. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

- e. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;
- f. the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- i. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder }, together with {its} Associate, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; of Equity, for a period of 2 (two) years from the date of COD of the Project, along with its Associates.

Provided further that any such request made under this Clause 7.1(j) and / or Article 35, at the opinion of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders.

- k. {the selected bidder} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- l. all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

- m. all information provided by the {selected bidder} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- n. 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.

7.2. Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
- c. it shall procure good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire.

7.3. Disclosure

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

ARTICLE 8: DISCLAIMER

8.1. Disclaimer

- 8.1.1. The Concessionaire acknowledges that prior to the execution of the Agreement, the Concessionaire has carefully examined and made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, local conditions, and such other information as provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of risks, challenges and hazards as are likely to arise or may be faced by it during the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

- 8.1.2. The Concessionaire acknowledges and hereby accepts the risks of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, { / its} Associates or any person claiming through or under any of them.
- 8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate the Agreement, or render it voidable.
- 8.1.4. Except as otherwise provided in the Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9: PERFORMANCE SECURITY

9.1. Performance Security

- 9.1.1. The Concessionaire shall for the performance of its obligations hereunder, provide the Authority no later than 30 (thirty) days from the date of signing of Agreement, an irrevocable and unconditional guarantee from a Bank acceptable to the Authority for a sum equivalent to Rs. ---- (Rupees ----- only) {Rs. fifty lakh per Package} and in the form set forth in Schedule E (the "Performance Security"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

Additional Bank Guarantee: In addition to the Performance Security, the Concessionaire shall provide the Authority no later than 30 (thirty) days from the date of signing of Agreement, an additional irrevocable and unconditional guarantee from a bank acceptable to the Authority for its Premium payment obligations for a sum equivalent to Rs. ----(Rupees -----only) {annual Premium amount quoted by the Successful Bidder per Package}. Such Additional Bank Guarantee shall be initially provided for 3 (three) years and to be renewed at least once month prior to its expiry date.

- 9.1.2. Notwithstanding anything contrary contained in the Agreement, in the event Performance Security / Additional Bank Guarantee is not provided by the Concessionaire within a period of 30 (thirty) days from the date of signing of the Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and there upon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of the Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the parties.

9.2. Appropriation of Performance Security

Upon occurrence of a Concessionaire Default, or failure to meet any Conditions Precedent, the Authority shall, without prejudice to its other rights and remedies in the

Agreement or in law, be entitled to encash and appropriate from the Performance Security / Additional Bank Guarantee, as the case may be, the amounts due to it as Damages for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security / Additional Bank Guarantee, as the case may be, the Concessionaire shall, within 20 (twenty) days thereof, replenish in case of partial appropriation, to the original level of the Performance Security/ Additional Bank Guarantee, and in case of appropriation of entire Performance Security / Additional Bank Guarantee provide a fresh Performance Security / Additional Bank Guarantee, as the case may be, failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 27.

9.3. Release of Performance Security

The Performance Security shall remain in force and effect for a period of 6 (six) months from COD; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement, till such time the breach is cured. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10: ACCESS TO SERVICE AREA

10.1. The Site

The Site of the Project shall comprise the real estate described in Schedule A {Package1 and/or Package 2 and/or Package 3 and/or Package 4} in respect of which the right is provided and granted by the Authority as a licensee under and in accordance with the Agreement (the "Site"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Project as set forth in Schedule A {Package1 and/or Package 2 and/or Package 3 and/or Package 4}.

10.2. License and access to the Site

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

10.2.2. In consideration of the Project, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of all the land (along with any constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule A {Package 1 and/or Package 2 and/or Package 3 and/or Package 4} hereto (the "Licensed Premises"), on

an "as is where is" basis, free of any Encumbrances, to operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

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

10.2.4. It is expressly agreed that:

- a. geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement, any archaeological discoveries shall belong to and vest in the Authority or the concerned Government instrumentality and the Concessionaire shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof; and
- b. mining rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

10.3. Procurement of the Site

10.3.1. Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, structures, road works and any other immovable property attached to the Site. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For avoidance of doubt, it is agreed that valid license and with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2. Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access to the

Site, such that the Appendix shall not include more than 30% (thirty per cent) of the number of bus shelters' required and necessary land for construction, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

- 10.3.3. On and after signing the memorandum and until the Transfer Date, the Concessionaire shall maintain a vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4. The Authority shall make best efforts to procure and grant to the Concessionaire in respect of all land included in the Appendix, no later than 90 (ninety) days from the Appointed Date. The Authority shall endeavor to procure the land at the same locations as detailed in Schedule A of this Agreement, and if not, land shall be provided at alternate location(s). In the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the Authority shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs.100 (rupees one hundred) per day per bus shelter, commencing from the 91st (ninety first) day of the Appointed Date and until such land is procured.
- 10.3.5. Upon receiving the land in respect of any land included in the Appendix, the Concessionaire shall complete the construction works thereon within a reasonable period to be determined by the Authority in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay of handing over of land. For the avoidance of doubt, it is expressly agreed that construction works at all bus shelters for which land is provided within 90 (ninety) days of Appointed Date shall be completed before the Project Completion Date.

10.4. Site to be free from Encumbrances

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

ARTICLE 11: UTILITIES AND ASSOCIATED ROADS

11.1. Existing utilities and roads

CONSTRUCTION, OPERATION AND MAINTENANCE OF BUS SHELTERS WITH HIGH QUALITY AMENITIES IN SELECT LOCATIONS WITHIN GHMC AREA ON DESIGN BUILD FINANCE OPERATE & TRANSFER (DBFOT) BASIS

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

11.2. Shifting of obstructing utilities

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

11.3. New utilities and roads

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

ARTICLE 12: CONSTRUCTION OF THE PROJECT

12.1. Obligations prior to commencement of construction works

Prior to commencement of Project works, the Concessionaire shall:

- a. submit to the Authority and its Representative if any, its work plan, detailed proposed layout of each of the bus shelters along with their designs, drawings, construction methodology, procurement, quality assurance procedures and the construction time schedule for completion of the Project;
- b. submit construction drawings, including foundation drawings and supported by necessary workings on cost and quantity estimates based on the latest version of the standard specifications as on the date of signing of the Concession Agreement;
- c. submit a bar chart and a detailed Project evaluation and review technique (PERT) chart;

- d. appoint its representative duly authorized to deal with the Authority in respect of all matters or arising out of or relating to this Agreement;
- e. make its own arrangements for procurement of materials/equipment/tools, software programs, etc., needed for the Project development; and
- f. submit its proposed 'Quality Assurance Plan' which shall include the following:
 - I. organization structure, duties and responsibilities of concerned staff, operating procedures, inspection methodology and Documentation;
 - II. quality control mechanism including sampling and testing of works executed, the list of Project Acceptance Tests and their interpretation of results, test frequencies, acceptance criteria, testing facilities and tie up if any, recording, reporting, interpretation of test results, checklist for the activities, standard formats for testing and calibration; and shall take approval of the Authority; and
 - III. internal quality audit system.
- g. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of work on the Project under and in accordance with this Agreement.

12.2. Design and Drawings

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

- a. The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence, as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Authority for review;
- b. By submitting the Drawings for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Specifications and Standards;
- c. Within 15 (fifteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Concessionaire regarding their conformity or otherwise with the Scope of work and the Specifications and Standards;
- d. No review and/or observation of the Authority or his Representative, and/or its failure to review and/or convey observations on any drawings / design shall relieve the Concessionaire of its obligations and liabilities under the Agreement in any manner nor shall the Authority or his Representative be liable for the same in any manner; and

- e. Any change in the basic design and structure of the Project is subject to approval of the same by the Authority. The Authority shall permit the changes if it is satisfied that the changes are going to benefit the Project.

12.3. Construction of the Project

- 12.3.1. On or after the Appointed Date, the Concessionaire shall undertake construction of the Project at the locations set forth in Schedule A {Package 1 and/or Package 2 and/or Package 3 and/or Package 4} along with the Project Facilities as specified in Schedule B and in conformity with the Specifications and Standards set forth in Schedule C. The 180th (one hundred eightieth) day from the Appointed Date shall be the Scheduled Project Completion Date and the Concessionaire shall agree and undertake to complete the Project on or before the Scheduled Project Completion Date;
- 12.3.2. In the event the Project is not completed within 180 (one hundred and eighty) days from the Scheduled Project Completion Date, unless the delay is due to the reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate the Agreement;
- 12.3.3. Any supplies and services which might not have been specifically mentioned in this Agreement but are necessary for the design, supply, install & commission the Project, shall be procured; and
- 12.3.4. Within 30 (thirty) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and its Representative if any, a complete set of as-built Drawings, in 2 (two) hard copies and in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the bus shelters and setback lines, if any, of the structures forming part of Project Facilities.

12.4. Monitoring of construction

- 12.4.1. During construction of the Project, the Concessionaire shall furnish monthly progress reports to the Authority or his Representative on the progress of construction works, and shall also give such other relevant information as may be required by the Authority or his Representative. The Concessionaire should also include planning for procurement of material and reflect the same in the program chart so that there is no delay in completion of the Project. The monthly progress reports shall be submitted no later than 7 (seven) days after the close of each month;
- 12.4.2. Samples of all products to be used shall be submitted to the Authority / his Representative when so directed. Any damage during construction, to any part of the work, for any reasons, due to rain, storm, or neglect of Concessionaire, shall be rectified by the Concessionaire, in an approved manner;
- 12.4.3. During the Construction Period, the Authority's Project In-charge or his representative shall inspect the Project once in a fortnight and make a report of such inspection the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications & Standards. It shall send a report within 7 days of such inspection to

the Concessionaire and upon receipt thereof, the Concessionaire shall rectify and remedy the defects and the deficiencies, if any, stated in the Inspection Report. However, such inspections or the submission of Inspection Report by Project In-Charge or his representative shall not relieve or absolve the Concessionaire of its obligations and liabilities, as per the provisions of the Agreement, in any manner whatsoever;

- 12.4.4. All equipment/software programs/applications covered under the Project shall be subjected to inspection / testing by Project In-charge or his representative on completion & commissioning; and
- 12.4.5. If the Project In-Charge of the Authority has reasonably determined that the rate of progress of works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Project-in-Charge in reasonable detail about the steps it proposes to take to expedite the progress and the period within which it shall achieve COD.

12.5. Suspension of unsafe construction works

- 12.5.1. The Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the construction works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and the passersby. Provided, however, that in case of an emergency, the Authority may suo moto issue the notice referred to hereinabove.
- 12.5.2. The Concessionaire shall, pursuant to the notice under Clause 12.5.1, suspend the construction works or any part thereof for such time and in such manner, as may be specified by the Authority, and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Project In-Charge to inspect such remedial measures forthwith and after the inspection, the Project In-Charge 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 12.4 shall be repeated until the suspension hereunder is revoked.
- 12.5.3. Subject to the provisions of Clause 24.6, all reasonable costs incurred for maintaining and protecting the construction works or part thereof during the period of suspension (the "Preservation Costs"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 12.5.4. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Project in-Charge shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall extend such Project Completion Schedule dates. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

ARTICLE 13: COMPLETION CERTIFICATE**13.1. Tests**

- 13.1.1. At least 15 (fifteen) days prior to the likely completion of the Project, the Concessionaire shall notify Project In-Charge on likely completion and its intent to subject the works to Tests. The Tests shall be conducted in presence of Concessionaire's representative to witness the Tests. The Concessionaire shall provide such assistance as the Project In-Charge or his representative may require for conducting the Tests.
- 13.1.2. The Project In-charge shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined in any of the Tests that the performance of the system or any part thereof does not meet the Specifications and Standards, the Authority has the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. For the avoidance of doubt, it is expressly agreed that the Concessionaire may have to carry out additional Tests, if required, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.
- 13.1.3. After placement of all systems, components and equipment as described in the design submitted by the Concessionaire, it shall be tested to prove satisfactory performance and /or fulfillment of functional requirements. It shall not show any sign of defect at individual equipment level and also for the system as a whole.

13.2. Completion Certificate

Upon completion of works and the Project In-Charge determining the tests to be successful, it shall forthwith issue a certificate about the Project completion (the "Completion Certificate"). The Project shall be deemed to be complete when the Completion Certificate is issued.

13.3. Provisional Certificate

The Project In-Charge may, at the request of the Concessionaire, issue a provisional certificate of completion (the "Provisional Certificate"), subject to Clause 10.3.5 of this Agreement, if the Tests are successful and the Project can be safely and reliably placed in commercial operation for at least 70% (seventy per cent) of the number of bus shelters in the Project, though certain works or things forming part of the other bus shelters are outstanding and not yet complete due to delay in handing over of land by the Authority. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding works in the bus shelters where works are pending, signed jointly by the Project In-Charge and the Concessionaire (the "Punch List").

13.4. Completion of Punch List items

- 13.4.1. The Authority shall be entitled to recover Damages from the Concessionaire for the delay, other than for reasons solely attributable to the Authority or due to Force

Majeure, to be calculated and paid for each day of delay until all Punch List items are completed, at 0.1% (zero point one per cent) of the Performance Security. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Project In-Charge in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 13.4.1.

13.4.2. Upon completion of all Punch List items, the Project In-Charge shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 13.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

13.5. Withholding of Provisional Certificate

13.5.1. If the Project In-Charge determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send to the Concessionaire and withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 13. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

ARTICLE 14: ENTRY INTO COMMERCIAL SERVICE

14.1. Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 13, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "COD"). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to generate advertisement revenue, generate revenue on the facilities provided to the Users, collect rent on the space made available for commercial outlets and any other revenue in accordance with the provisions of this Agreement.

14.2. Damages for delay

Subject to the provisions of 12.3, if COD does not occur prior to the 30th (thirtieth) day after the Scheduled Project Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 15: CHANGE OF SCOPE**15.1. Change of Scope**

15.1.1. The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of Project as contemplated by this Agreement ("Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 15 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 15.3.

It is agreed between the Parties that the Authority shall not issue Change of Scope Order if the cumulative costs of all the Change of Scope Orders issued by the Authority exceed 10% of the Total Capital Cost during Concession Period.

15.1.2. Any time during the Operation Period, if shifting of bus shelter(s) is necessitated due to road widening, construction of flyovers and such other similar circumstances; the Concessionaire shall take up the reinstatement of the bus shelter(s) at a place as provided by the Authority and as instructed by it. In this regard, the Concessionaire shall by notice in writing provide the detailed costs involved in shifting of the bus shelter(s). The Authority within 15 days of receipt of such notice, shall, either accept such Change of Scope as it is or with any modifications, and initiate proceedings in accordance with the provisions of this Article 15. The costs shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 15.3.

15.2. Procedure for Change of Scope

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

15.2.2. Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is required along with documentation in support of:

- a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labor costs; all costs incidental in providing such information to the extent approved by the Project In-Charge shall be reimbursed.

The Authority shall convey to the Concessionaire its preferred option, and the Parties shall thereupon agree to the time and costs for implementation of the same.

15.3. Payments for Change of Scope

Within 7 days of issuing the Change of Scope Order, the Authority shall make an advance payment of 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Project In-charge. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or

completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Project In-charge as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

15.4. Power of the Authority to undertake works

15.4.1. Notwithstanding anything to the contrary contained in Clauses 15.2 and 15.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, shall award such works or services to any person based on open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof.

15.4.2. The works undertaken in accordance with this Clause 15.4 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in services to the Users. The provisions of this Agreement, insofar as they relate to construction works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 15.4.

15.5. Reduction in Scope of the Project

If the Concessionaire is unable to complete any Construction Works on account of Force Majeure or for reasons attributable to the Authority, the Authority, in its discretion, reduce the Scope of the Project.

It is agreed between the Parties that the Authority shall not issue such Change of Scope Order (reduction in Scope) if the number of bus shelters to be developed by the Concessionaire gets reduced to less than 80% of the number of bus shelters envisaged to be developed by the Concessionaire as per the Agreement

ARTICLE 16: OPERATION AND MAINTENANCE

16.1. O & M obligations of the Concessionaire

16.1.1. During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the O & M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and confirm to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- a. procuring and ensuring safe, smooth and uninterpreted use of the Project, including prevention of loss or damage thereto, during normal operating conditions;
- b. cleaning of the bus shelters including the toilets, if any, therein with water at least

- once a day and maintaining the bus shelter clean and free of debris and garbage;
- c. uninterrupted power supply to ensure proper lighting of the bus shelter, power for advertisement display boards and for electrical and electronic equipment /appliances;
 - d. provide and maintain litter-bins and safe disposal of the collected solid waste in accordance with GHMC waste handling rules;
 - e. ensuring functioning of User amenities and providing security personnel for handling emergency situations;
 - f. ensuring functioning of Passenger Information System, communication system, wi-fi and the other gadgets as provided as per the provisions of this Agreement;
 - g. implementing a safety & security plan in consultation and in coordination with the Authority;
 - h. carrying out required repairs and maintenance of all the civil, electrical, mechanical, hardware, systems, furniture, solar panels, if any, and any other accessories at periodic intervals at its own cost;
 - i. preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
 - j. preventing, with the assistance of concerned law enforcement agencies, any encroachments on to the Project;
 - k. operation and maintenance of all Project Facilities, control and administrative systems necessary for efficient operation of the Project and for providing safe, smooth and uninterrupted use of the Project;
 - l. to maintain sufficient stock of the consumables required for smooth and efficient operations;
 - m. maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
 - n. comply with Safety Requirements in accordance with Article 17;
- 16.1.2. The quality of drinking water that is made available at the bus shelters must conform to BIS 10500:2012 standards or its updated version in force from time to time and the same shall be maintained at the point of delivery (water dispensing) to the Users. All legal and any other liability that may arise due to poor water quality and/or any contaminated drinks/food that is served at the bus shelters, shall be the onus of the Concessionaire.
- 16.1.3. The maintenance of toilets at the bus shelters shall conform to service level standards prescribed by GHMC or its updated version from time to time for public toilets in the city.

- 16.1.4. The advertisement, display or hoarding at the bus shelters does not, in the opinion of the Authority, distract the road users while driving and shall comply with the extant advertisement policy of GHMC. All the advertisements at the bus shelters shall also confirm to Good Industry Practice. For avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.
- 16.1.5. The Concessionaire to provide space not exceeding 10% (ten cent) within the bus shelter to the Authority for advertisement, if it so desires, any information for the benefit of the general public and in case of variable messages that are being displayed inside the bus shelter, a time slot not exceeding 5% (five per cent) every hour shall be allotted to the Authority for its benefit;
- 16.1.6. The Concessionaire shall in consultation with the Authority evolve a maintenance manual (the "Maintenance Manual") for the regular operation plan and maintenance of the Project in conformity with the provisions of this Agreement and Good Industry Practice. The Maintenance Manual shall be submitted to the Authority not later than 30 (thirty) days prior to Project achieving COD. The Maintenance Manual shall be revised and updated once in 3 (three) years. It should show detailed operation procedures including a list of do's & don'ts.

16.2. Service Levels

- 16.2.1. The performance in service delivery shall be monitored by the Authority and same shall be monitored vis-à-vis the Concessionaire's Service Level Requirements as detailed in Schedule D of this Agreement. The Authority may appoint a third party for monitoring of the performance of the Concessionaire, if so desired; and
- 16.2.2. In the event that the Concessionaire fails to repair or rectify any defect or deficiency in service in adhering to minimum Service Levels; it shall be deemed to be in breach of the Agreement and the Authority shall be entitled to recover Damages, to be calculated as per the formula as set forth in Schedule D of this Agreement.

Recovery of such Damages shall be without prejudice to the rights of the Authority under the Agreement, including the right of Termination thereof. The Damages shall not be recovered if the breach(ies) are on account of Force Majeure.

- 16.2.3. Concessionaire will use ICT based monitoring tool developed by GHMC and upload information.

16.3. Authority's right to take remedial measures

- 16.3.1. In the event the Concessionaire does not maintain and/or repair any defect or deficiency or any part thereof in conformity with the O & M Requirements, or the Maintenance Manual, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Project 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.

16.4. Monitoring of Operations and Maintenance

16.4.1. During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Project In-charge a monthly report stating in reasonable detail the condition of the Project Assets and the Project Facilities, machinery/systems including its compliance or otherwise with the O&M Requirements and the Maintenance Manual, and shall promptly give such other relevant information as may be required by the Project In-charge.

16.4.2. The Project In-Charge shall inspect the Project at least once a quarter. It shall make a report of such inspection (the "O & M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the O & M Requirements, Maintenance Manual and Safety Requirements, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection.

ARTICLE 17: SAFETY REQUIREMENTS

17.1. Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users, especially the women. In this regard, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment at the bus shelters in consultation with the Authority.

17.2. Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in consultation with the Authority. Such expenses shall be as approved and funded by the Authority.

ARTICLE 18: FINANCIAL CLOSE

18.1. Financial close

18.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve financial close within 120 (one hundred and twenty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to payment of Damages to the Authority specified in Clause 4.3, provided that the Damages specified herein shall be payable every 15 (fifteen) days in advance; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.

18.1.2. The concessionaire shall upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

18.2. Termination due to failure to achieve Financial Close

18.2.1. Notwithstanding anything to the contrary contained In this agreement, but subject to Clause 24.5.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 18.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have being waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have being terminated by mutual agreement of the Parties.

18.2.2. Upon Termination under Clause 18.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination return the Bid Security forthwith along with the Damages due and payable under clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 19: PREMIUM

19.1. Premium

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority for each year of the Concession Period, a premium (the "Premium") in the form of an additional Concession Fee, as set forth in Clause 20.2.1, and in the manner set forth in Clause 20.4.

ARTICLE 20: CONCESSION FEE

20.1. Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority every year by way of a concession fee (the "Concession Fee") a sum of Rs.1 (rupees one) per annum and the Premium specified in Clause 20.2.

20.2. Additional Concession Fee

20.2.1. "Without prejudice to the provisions of Clause 20.1, the Concessionaire agrees to pay to the Authority, 3 (three) months from the COD, a Premium in the form of an additional Concession Fee equal to Rs. ----- (rupees ----- only) {in case the selected bidder is the same for more than one Package, the Premium quoted by the

Bidder for such Packages shall be added up} as due to the Authority during that year, due and payable for the period remaining in that year; and for each subsequent year of the Concession Period, the Premium shall be increased by 5% (five per cent) as compared to the immediately preceding year. For the avoidance of doubt, the Premium for all subsequent years shall be determined by increasing the amount of Premium by 5% as compared to the immediately preceding year.

In case, any of the real estate forming part of the Site is not handed for development of one or more bus shelters, the Concessionaire will be allowed to pay the Premium prorata to the number of bus shelters constructed on the real estate handed over by the Authority.

For avoidance of doubt it is clarified that the term 'Premium' as referred in para above shall be as applicable for one financial year. The Premium amount shall be payable on monthly basis. In accordance with and in compliance with the terms of this Agreement, if payment of such 'Premium' is due and payable only for part of such financial year, then pro-rata payments at 1/12th of such Premium shall be payable for each month of such part financial year for which such Premium payments is due as payable. For the purpose of assessing the amount due for payment on such payment of Premium, part of a month shall be deemed to be a full month. In such circumstances, the subsequent year as referred to in para above for the purpose of 5% annual escalation, shall fall to commence on 1st of April of the immediately succeeding financial year".

20.2.2. The Premium payable under Clause 20.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

20.2.3. The Parties hereto acknowledge and agree that the Premium payable under the Clause 20.2.1 shall be over and above any extant advertisement Tax, as applicable, including its revision, if any, from time to time. For the avoidance of doubt, the Concessionaire is not required to pay any ground rent Tax / permission fee, that may be applicable in the GHMC area, for using GHMC lands.

20.3. Payment of Concession Fee

The Concession Fee payable under the provision of this Article 20 shall be due and payable in monthly instalments, within 7 (seven) days of the close of each month.

In case, any of the real estate forming part of the Site is not handed for development of one or more bus shelters, the Authority shall pay the Premium prorata to the number of bus shelters constructed on the real estate handed over by the Authority.

ARTICLE 21: USER CHARGES

21.1. Collection and appropriation of Charges

21.1.1. Subject to and in accordance with this Agreement, Applicable Laws and Good Industry Practice; on and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate revenue:

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- a. for the services provided to the Users;
- b. for renting out the space for commercial use;
- c. from commercial advertisements, both electronic (variable messages) and non-electronic (non-variable messages); and
- d. on selling of products including drinking water and beverages at the bus shelters.

For avoidance of doubt, the revenue is divided into: 1). revenue on Regulated Services; and 2). revenue on Non-regulated Services. The Charges on the Regulated Services shall be as per the provisions of this Agreement only and for all Non-regulated Services, the Concessionaire is free to fix the Charges and/or as negotiated by the Concessionaire with the third parties. The Regulated Services are provision of drinking water, toilets and the wi-fi facility;

- 21.1.2. The Charges for drawing water from dispensing units installed at the bus shelters shall be a maximum of Rs.2 (rupees two) per liter. The minimum quantity of water to be dispensed shall be 250 (two hundred fifty) ml; and for ease of payment and collection, such Charges shall be rounded off to the nearest 1 (one) rupee, for draw of water of quantity less than a liter or for drawing water for more than a liter not in multiples of (1) one liter. For the sake of clarity and by way of illustration, if the quantity of water drawn is 2 ¼ liters (two and a quarter liters) the applicable Charges shall be Rs. 5 (rupees five). For the convenience of Users, the Concessionaire shall keep paper cups/glasses for drawl of water;
- 21.1.3. The Charges for toilets shall be a maximum of Rs. 2 (rupees two) per usage;
- 21.1.4. The Charges for use of wi-fi facility shall not be more than Rs.100 (rupees hundred) per month or if the User desires to use the facility for less than 15 (fifteen) days in a month, the applicable Charges shall not be more than Rs.50 (rupees fifty). For the avoidance of doubt, by paying Rs.100 (rupees hundred) per month or Rs.50 (rupees fifty) for less than 15 (fifteen) days in a month usage, as the case may be, the User is entitled to use wi-fi facility in any of the bus shelters operated by the Concessionaire;
- 21.1.5. The Concessionaire may determine and collect Charges at such lower rates for the above Regulated Services as mentioned in the Clauses 21.1.2, 21.1.3 and 21.1.4, as it may, by public notice to the Users, specify in respect of all or any of the services or Users;

21.2. Revision of User Charges

- 21.2.1. The Parties hereto acknowledge and agree that the Charges on Regulated Services shall be revised once in every 3 (three) years on 1st of April. The applicable User Charges shall be revised by an increase of 25% (twenty five per cent) at the time of each revision and for ease of payment and collection, such revised Charges shall be rounded off to the nearest 1 (one) rupee.
- 21.2.2. The Concessionaire shall, at the time of each revision, inform the Authority of the revised Charges for Regulated Services and the detailed calculations thereof. Such

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information shall be communicated at least 30 days prior to the applicable revision date of Charges under and in accordance with the provisions of this Agreement. The Authority shall review the rates submitted by the Concessionaire and accord its approval of the revision in User Charges.

21.3. Display of User Charges

21.3.1. The User Charges for Regulated Services, shall be prominently displayed at a conspicuous place at the bus shelters.

21.3.2. For all the Regulated Services, the Concessionaire shall not revise, display or collect any amounts in excess of the Charges payable as per the provisions of this Agreement. In the event that any excess amounts are collected by or on behalf of the Concessionaire, the Authority can issue a notice to the Concessionaire for refund of such excess amounts to the Authority along with Damages equal to 25% thereof.

21.4. Verification of User Charges

The Authority may, in order to satisfy itself that the Concessionaire is collecting its Charges on the Regulated Services as per the provisions of this Agreement only, depute its Representatives to the offices/bus shelters of the Concessionaire, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Charges collected.

ARTICLE 22: INSURANCE

22.1. Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the "Insurance Cover"). 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 Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a coinsured. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

22.2. Notice to Authority

Not later than 30 (thirty) days prior to commencement of the Concession Period, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 22. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference

or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

22.3. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 22 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

22.4. Remedy for failure to insure

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

22.5. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 22 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

22.6. Concessionaire's waiver

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

22.7. Application of insurance proceeds

The proceeds from all insurance claims, except life and injury: shall be paid to the Concessionaire and it shall apply such proceeds for any necessary repair,

reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

22.8. Compliance with conditions of insurance policies

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

ARTICLE 23: ACCOUNTS AND AUDIT

23.1. Audited accounts

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

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

ARTICLE 24: FORCE MAJEURE

24.1. Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India which affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

24.2. Non-Political Event

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

- a. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b. any civil commotion, political agitation, riot, State-wide strikes or riot for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year; and
- c. any event or circumstances of a nature analogous to any of the foregoing.

24.3. Political Event

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

- a. Change in Law, if as a result of Change in Law, the Concessionaire suffers an increase in costs and/or reduction in net after tax return or other financial burden, the aggregate financial effect of which exceeds {Rs. 1 (rupees one) crore for Package I and/or Rs.1.2 (rupees one point two) crore for Package II} in any Accounting Year;
- b. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors; or
- c. any event or circumstance of a nature analogous to any one of the foregoing.

24.4. Duty to report Force Majeure Event

- 24.4.1. Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith.
- 24.4.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 24.4.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with weekly reports containing information as required by Clause 24.4.1, and such other information as the other Party may reasonably request the Affected Party to provide.

24.5. Effect of Force Majeure Event on the Concession

24.5.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 18.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- a. before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- b. after COD, whereupon the Concessionaire is unable to collect Charges despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of User Charges on account thereof.

24.6. Allocation of costs arising out of Force Majeure

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

24.6.2. Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

- a. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
- b. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on Debt Due, any increase in the cost of construction and O&M Expenses.

24.6.3. Save and except as expressly provided in this Article 24, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

24.7. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 24, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith;

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

24.8. Termination Payment for Force Majeure Event

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

24.8.2. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 26.3.2 as if it were an Authority Default.

24.9. Dispute resolution

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

24.10. Excuse from performance of obligations

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

- a. the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b. the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- c. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 25: COMPENSATION FOR BREACH OF AGREEMENT

25.1. Compensation for default by the Concessionaire

Subject to the provisions of Clause 25.4, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by

necessary particulars thereof; provided that no compensation shall be payable under this Clause 25.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or any consequential losses incurred by the Authority.

25.2. Compensation for default by the Authority

Subject to the provisions of Clause 25.4, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

25.3. Compensation to be in addition

Compensation payable under this Article 25 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

25.4. Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 26: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

26.1. Suspension upon Concessionaire Default

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

26.2. Authority to act on behalf of Concessionaire

- 26.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all User Charges and revenues under and in accordance with this Agreement. The Authority shall be entitled to recover the amount for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses that may be specified elsewhere in this Agreement.

26.2.2. During the period of Suspension hereunder, all assets and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 26.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

26.3. Revocation of Suspension

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

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

26.4. Substitution of Concessionaire

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

26.5. Termination

26.5.1. At any time during the period of Suspension under this Article 26, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subjective to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 26.4, the Authority shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 27.

26.5.2. Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder, the Concession Agreement shall, upon expiry of the

aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 27: TERMINATION

27.1. Termination for Concessionaire Default

27.1.1. Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 30 (thirty) days, the Concessionaire shall be deemed to be in default of this Agreement (a "Concessionaire Default"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- a. the Performance Security / Additional Bank Guarantee has been encashed, as the case may be, and appropriated by the Authority in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security / Additional Bank Guarantee, as the case may be, within a Cure Period of 21 (twenty one) days;
- b. subsequent to replenishment or furnishing of fresh Performance Security / Additional Bank Guarantee, as the case may be, in accordance with Clause 9.2, the Concessionaire fails to cure the Concessionaire Default, for which whole or part of the Performance Security / Additional Bank Guarantee, as the case may be, was appropriated, within a cure period of 45 (forty five) days;
- c. the Concessionaire abandons or manifests intention to abandon the construction or the operation of the Project without the prior written consent of the Authority;
- d. COD does not occur within the period specified in Clause 12.3.2;
- e. the Punch List items have not been completed within the period set forth in Clause 13.4.1;
- f. the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- g. the Concessionaire has failed to make any payment to the Authority within the Period specified in this Agreement;
- h. upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

- i. a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- j. the Concessionaire creates any Encumbrance in breach of this Agreement;
- k. the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- l. a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- m. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- n. an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- o. the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- p. the Concessionaire has been, or in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- q. a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - iii. each of the Project Agreements remains in full force and effect;

- r. any representation and warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
 - s. the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
 - t. the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- 27.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subjective to the provisions of Clause 27.1.3.
- 27.1.3. The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 27.1.2 to inform the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

Provided, the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice, referred to above and restore all the rights of the Concessionaire.

27.2. Termination for Authority Default

- 27.2.1. In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 60 (sixty) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:
- a. the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

- b. the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- c. the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

27.3. Termination Payment

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

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

- a) Debt Due; and
- b) 120% (one hundred and twenty per cent) of the Adjusted Equity.

27.3.3. Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars.

27.3.4. The Concessionaire expressly agrees the Termination Payment under this Article 27 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

27.4. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- a. be deemed to have taken possession and control of the Project forthwith;

- b. take possession and control of all materials, stores, implements, equipment, systems used or being used in the development of the Project;
- c. be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the office or any part of the Project; and
- d. require the Concessionaire to comply with the Divestment Requirements set forth in Clause 28.1.

27.5. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 27.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money Damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 28: DIVESTMENT OF RIGHTS AND INTEREST

28.1. Divestment Requirements

28.1.1. Upon Termination, the Concessionaire shall comply with and confirm to the following Divestment Requirements:

- a. notify to the Authority forthwith the location and particulars of all Project Assets;
- b. deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- c. cure all defects and deficiencies in the Project Assets so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all the Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- d. deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance including all programs and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;
- e. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

- f. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturer's warranties in respect of any product or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
 - g. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.
- 28.1.2. Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

28.2. Vesting Certificate

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

28.3. Divestment Costs

- 28.3.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project 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.
- 28.3.2. In the event of any Dispute relating to matters covered by and under this Article 28, the Dispute Resolution Procedure shall apply.

ARTICLE 29: ASSIGNMENT AND CHARGES

29.1. Restrictions on assignment and charges

- 29.1.1. Subject to Clauses 29.2 and 29.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the

Authority, which consent the Authority shall be entitled to decline without assigning any reason.

- 29.1.2. Subject to the provisions of Clause 29.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

29.2. Permitted assignment and charges

The restraints set forth in Clause 29.1 shall not apply to:

- a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- b. mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- c. assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- d. liens or encumbrances required by any Applicable Law.

29.3. Substitution Agreement

- 29.3.1. The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule G.
- 29.3.2. Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 90 (ninety) days to the Concessionaire for curing such breach.

29.4. Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 30 (thirty) days' notice to the Concessionaire, assign any of its rights and benefits and/or obligations under this Agreement; to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 30: LIABILITY AND INDEMNITY

30.1. General indemnity

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

30.2. Indemnity by the Concessionaire

30.2.1. Without limiting the generality of Clause 30.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a. failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- b. payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- c. non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

30.2.2. Without limiting the generality of the provisions of this Article 30, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project.

30.3. Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 30 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

30.4. No consequential claims

Notwithstanding anything to the contrary contained in this Article 30, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

30.5. Survival on Termination

The provisions of this Article 30 shall survive Termination.

ARTICLE 31: RIGHTS AND TITLE OVER THE SITE**31.1. Licensee rights**

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

31.2. Access rights of the Authority and others

- 31.2.1. The Concessionaire shall allow free access to the Site at all times for the Representatives and the Project In-Charge, and for the persons duly authorized by the Authority to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- 31.2.2. The Concessionaire shall, for the purpose of operation and maintenance of any utility specified in Article 11, allow free access to the Site at all times for the authorized persons of the controlling body of such utility.

31.3. Property taxes

The Concessionaire shall not be liable to pay any property taxes for the Site. However, the Concessionaire shall be required to pay, at its own cost, all applicable existing and future taxes/ charges/ fees/ levies including service tax, stamp duty, registration charges and any other charges payable/ leviable in respect of the said Project.

31.4. Restriction on sub-letting

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

ARTICLE 32: DISPUTE RESOLUTION**32.1. Dispute resolution**

32.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 32.2.

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

32.2. Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Commissioner, Greater Hyderabad Municipal Corporation and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 32.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 32.3.

32.3. Arbitration

32.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 32.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 32.3.2. Such arbitration shall be held in accordance with the rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Hyderabad and the language of arbitration proceedings shall be English;

32.3.2. There shall be an Arbitral Tribunal of 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;

- 32.3.3. The parties, shall select their respective arbitrators within 30 days from the date of commencement of the arbitration proceedings and in case any single party fails to do so then the other party's arbitrator becomes the sole arbitrator;
- 32.3.4. The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 32 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;
- 32.3.5. 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; and

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

ARTICLE 33: DISCLOSURE

33.1. Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of the Concession Agreement, the Maintenance Manual, the O & M requirements and the Safety Requirements (hereinafter collectively referred to as the "Specified Documents") free of charge, during normal business hours on all working days at the Concessionaire's Registered/Corporate Office. The Concessionaire shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

33.2. Disclosure of Documents relating to safety

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

Notwithstanding the above provisions of Clauses 33.2 and 33.3, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the afore said clauses.

Explanation: The expression Protected Documents shall mean such of the Specified Documents or documents referred in Clause 33.1 and 33.2, or portion thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 34: REDRESSAL OF PUBLIC GRIEVANCES

CONSTRUCTION, OPERATION AND MAINTENANCE OF BUS SHELTERS WITH HIGH QUALITY AMENITIES IN SELECT LOCATIONS WITHIN GHMC AREA ON DESIGN BUILD FINANCE OPERATE & TRANSFER (DBFOT) BASIS

34.1. Complaints Box

- 34.1.1. The Concessionaire shall maintain a public relations office at its Registered/Corporate Office and keep a box (the "Complaint Box") in all the bus shelters open to public access at all times for lodging of complaints, if any (the "Complaint");
- 34.1.2. In addition to the provisions of Clause 34.1.1, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and responses thereto.

34.2. Redressal of complaints

- 34.1.1. The Concessionaire shall attend to Public complaints promptly and reasonable action has to be taken for redressal of each of the complaints. It shall have to maintain a register wherein all the complaints are noted for the action taken on the same, time taken for closing of the complaint and such other information that the Authority may advise the Concessionaire to incorporate in the register.
- 34.1.2. Within seven days of the close of each month, the Concessionaire shall have to send the Authority the complaint file in electronic form (at the authorized email address). Upon perusal of the complaint file, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance.

ARTICLE 35: MISCELLANEOUS**35.1. Governing law and jurisdiction**

The Agreement shall be governed by the laws of India, including but not limited to laws of Government of Telangana and Greater Hyderabad Municipal Corporation extant rules and regulations in force and as amended from time to time; and the Courts in Hyderabad under the jurisdiction of Telangana shall have exclusive jurisdiction in all matters under the Agreement.

35.2. Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

35.3. Delayed Payments

- 35.3.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless and otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay at the rate of 12% (twelve per cent), and recovery thereof shall be without

prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

35.4. Waiver

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

- a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- c. shall not affect the validity or enforceability of this Agreement in a manner.

35.5. Liability for review of Documents and Drawings

Express extent expressly provided in this Agreement:

- a. no review, comment or approval by the Authority or its Representative of any Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- b. the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

35.6. Survival

35.2.1. Termination shall:

- a. not relieve the Concessionaire of any obligations hereunder which expressly or by implication survive Termination hereof; and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

35.2.2. All obligations surviving Termination shall only survive for a period of 1 (one) year following the date of such Termination.

35.7. Entire Agreement

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

35.8. Severability

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

35.9. No partnership

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

35.10. Third Parties

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

35.11. Successors and Assigns

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

35.12. Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be deemed to have been delivered when in normal course of post it ought

to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in case of facsimile or email, it shall be deemed to have been delivered on the working day following the date of its delivery.

35.13. Language

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

35.14. Counterparts

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

ARTICLE 36: DEFINITIONS

36.1. Definitions

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

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

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

- a. on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the month of Appointed Date and the month of Reference Date;
- b. from COD and until the 2nd (second) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
- c. after the 2nd (second) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.5% (zero point five per cent) thereof at the commencement of each month following the 2nd (second) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

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

“Affected Party” shall have the meaning set forth in Clause 24.1

“Agreement” or “Concession Agreement” means this Agreement, its Recitals and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.

“Appendix” shall have the meaning set forth in Clause 10.3.1;

“Applicable Laws” means all laws brought into force and effect by Telangana State Government or the Government of India (GOI) including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this RFP document and the exercise, performance and discharge of respective rights and obligations of the parties hereunder, as may be in force and effect during the subsistence of this RFP document and the subsequent contract to be signed by the successful bidder with Greater Hyderabad Municipal Corporation at the end of bidding process;

“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 construction, operations and maintenance of the Project during the subsistence of the Concession Agreement;

“Appointed Date” means the date on which every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

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

“Associate” or “Affiliate” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power of direct the management and policies of such person, whether by operation of law or by contract or otherwise);

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

“Authority Default” shall have the meaning set forth in Clause 27.2.1;

“Authority Indemnified Persons” shall have the meaning set forth in Clause 30.1;

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

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore);

"Bid" means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposals in accordance with the provisions thereof;

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

“COD” or “Commercial Operation Date” shall have the meaning as set forth in Clause 14.1;

“Change in Law” means occurrence of any of the following after the date of Bid:

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

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter, provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be), in the proportion of the equity holding of {the selected bidder} to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership.

“Change of Scope” shall have the meaning set forth in Clause 15.1;

“Charges” means the payment made by the Users/third parties for availing the services or for purchase of drinking water, any goods/products or by way of a rent for the space provided for advertisements or for any other commercial purpose;

“Company” means the company acting as the Concessionaire under this Agreement;

“Completion Certificate” shall have the meaning as set forth in Clause 13.2;

“Concession” shall have the meaning as set forth in Clause 3.1.1;

“Concessionaire” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“Concession Fee” shall have the meaning set forth in Clause 20.1;

“Concession Period” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“Concessionaire Default” shall have the meaning as set forth in Clause 27.1.1;

“Conditions Precedent” shall have the meaning as set forth in Clause 4.1.1;

“Construction Period” means the period beginning from the Appointed Date and ending on COD;

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

“Cure Period” means the period specified in the Agreement for curing any breach or default of any provision of the 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 as specified in such notice;
- b. not relieve any Party from liability to pay Damages or compensation under the provisions of the Agreement; and
- c. not in any way be extended by any period of Suspension under this Agreement;

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

“DBFOT” or “Design, Build, Operate, Maintain & Transfer” shall have the meaning set forth in Recital (A);

“Damages” shall have the meaning set forth in Sub-clause (m) of Clause 1.2.1;

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

- a. the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “Principal”) but excluding any part of the principal that had fallen due for repayment six months prior to the Transfer Date;
- b. all accrued interest, financing fees and the charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due six months prior to the Transfer Date and (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender; and
- c. any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion on the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

“Development Period” means the period from the date of this Agreement until the Appointed Date”.

“Dispute” shall have the meaning set forth in Clause 32.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 32;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 28.1;

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

“Drawings” means drawings, tracings or prints thereof, calculations and documents pertaining to the Project and shall include ‘as built’ drawings of the Project.

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter

alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

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

“Equity” means the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning set forth in Schedule G;

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

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

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

“Force Majeure” or Force Majeure Event” shall have the meaning ascribed to it in Clause 23.1;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator encouraged 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 the Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government” means the Government of Telangana;

“Government Instrumentality” means any department, division, or sub-division of the State Government or the GOI and includes any commission, board, authority, agency or any other local authority 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 the Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 30;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 30;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Clause 22, and includes all insurances required to be taken out by the Concessionaire under Clause 22.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“LOA” or “Letter of Award” means the letter of award referred to in Recital (D);

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

“Maintenance Manual” shall have the meaning ascribed to it in Clause 16.1.4;

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

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

“Non-Regulated Services” for the purpose of this Agreement, means the services which are not regulated by the Authority and as such the User Charges are as fixed by the Concessionaire or as negotiated by the Concessionaire with the third parties from time to time;

“Non-Political Event” shall have the meaning set forth in Clause 24.2;

“O & M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance and provision of services and facilities, and collection of Charges in accordance with the provisions of this Agreement;

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

“O & M Inspection Report” shall have the meaning as set forth in Clause 16.4.2;

“Operation Period” means the operation and maintenance period commencing from COD and ending on the Transfer Date;

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

“Performance Security” shall have the meaning set forth in Clause 9.1;

“Political Event” shall have the meaning as set forth in Clause 24.3;

“Project” means the construction, operation and maintenance of the bus shelters in accordance with the provisions of the Agreement; and includes all works, services, systems, software and supporting infrastructure relating to or in respect of the Scope of the Project;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O & M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services or for collecting Charges involving a consideration of upto Rs.1 (one) crore;

“Project Acceptance Tests” means the standard tests as proposed by the Concessionaire as part of Quality Assurance Plan and as accepted by the Authority for monitoring of construction and for determining the completion of the Project by the Authority;

“Project Assets” means all physical and other assets relating to and forming part of the Site including a). rights over the Site in the form of license or otherwise; b). tangible assets such as civil works and equipment including electrical systems, communication systems, maintenance depots, and administrative offices; c). Project Facilities; d). all rights of the Concessionaire under the Project Agreements, e). financial assets, such as receivables, security deposits, etc; f). insurance proceeds and g). Applicable Permits and authorizations relating to or in respect of the Project;

“Project Completion Date” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 13;

“Project Facilities” means all the amenities and facilities created on the Site, as described in Schedule B;

“Provisional Certificate” shall have the meaning as set forth in Clause 13.3;

“Punch List” shall have the meaning ascribed to it in Clause 13.3;

“Rs. or “Rupees” means the lawful currency of the Republic of India;

“Reference Exchange Rate” means the daily representative exchange rates published by the International Monetary Fund for the relevant date;

“Regulated Services” for the purpose of this Agreement, means the services which are regulated by the Authority and as such the User Charges for such services are as fixed by the Authority from time to time;

“Request for Proposals” or “RFP” shall have the meaning set forth in Recital (B);

“Safety Requirements” shall have the meaning set forth in Clause 17.1.1;

“Scope of the Project” shall have the meaning set forth in Clause 2.1;

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

“Service Level Requirements” shall have the meaning as set forth in Schedule D;

“Site” shall have the meaning set forth in Clause 10.1;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project indicative of which is as set forth in Schedule C, and any modifications thereof or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by the Authority;

“State” means the State of Telangana;

“Subordinated Debt” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- a. the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lender; and
- b. all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 12% (twelve per cent) in case of loans expressed in Indian Rupees; and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter-Bank Offered Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 6 (six) months prior to the Transfer Date.

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’ shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Substitution Agreement” shall have the meaning set forth in Clause 29.3.1;

“Suspension” shall have the meaning set forth in Clause 26.1;

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

“Termination” means the expiry or termination of this Agreement and the Contract hereunder;

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

“Termination Payment” means the amount payable by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 30 (thirty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing the Termination Payment, and it is further agreed that in the event such

disaggregation is not notified to the Authority, Equity shall be deemed to be the product arrived at by subtracting Debt Due from Total Project Cost;

“Total Project Cost” means the lowest of;

- a) The capital cost of the Project, as set forth in the Financial Package; and
- b) The actual capital cost upon completion of the Project.

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

“User” means a person who uses the Project or any part thereof in accordance with the provisions of this Agreement and Applicable Laws;

“Vesting Certificate” shall have the meaning as set forth in Clause 28.2.

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
THE AUTHORITY OF [***] by:

For and on behalf of
CONCESSIONAIRE by:

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

In the presence of:

1.

2.