



REQUEST FOR PROPOSAL

FOR

SELECTION OF AGENCY FOR

**Comprehensive development of Placemaking venues in Pune,
including development of detailed design, engineering, procurement,
erection and construction**

Tender Number: SC10/2016

Dated: 19th December 2016

Issued By

The Chief Executive Officer

PUNE Smart City Development Corporation Limited (PSCDCL)

PMC Building, Near Mangla Theatre, Shivajinagar, Pune-411 005

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Disclaimer

The information contained in this Request for Proposal document (“**RFP**”) whether subsequently provided to the Bidders, (“**Bidder/s**”) verbally or in documentary form by Pune Smart City Development Corporation Limited (henceforth referred to as “**PSCDCL**” in this document) or any of its employees or advisors, is provided to Bidders on the terms and conditions set out in this RFP document and any other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is not an offer or invitation to any party. The purpose of this RFP is to provide the Bidders or any other person with information to prepare their technical proposal and formulate their financial offers (“**Bid**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by PSCDCL in relation to this scope. This RFP document does not purport to contain all the information each Bidder may require. This RFP document may not be appropriate for all persons, and it is not possible for the Chief Executive Officer, PSCDCL and their employees or advisors to consider the objectives, technical expertise and particular needs of each Bidder. The assumptions, assessments, statements and information contained in the Bid documents are made in consideration of the intended objectives of the project, and may not be complete, accurate or adequate. Each Bidder must therefore conduct its own analysis of the information contained in this RFP and seek its own professional advice from appropriate sources.

Information provided in this RFP document to the Bidder is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. PSCDCL accepts no responsibility for the accuracy or otherwise for any interpretation of opinion on law expressed herein.

PSCDCL and their employees and advisors make no representation or warranty and shall incur no liability to any person, including the Bidder under law, statute, rules or regulations or tort, the principles of restitution or unjust enrichment or otherwise for any loss, cost, expense or damage which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, reliability or completeness of the RFP, and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Selection Process.

PSCDCL also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. PSCDCL may in its absolute discretion, but without being under any obligation to do so, can amend or supplement the information in this RFP.

The issue of this RFP document does not imply that PSCDCL is bound to select a Bidder or to appoint the Selected Bidder (as defined hereinafter), for implementation and PSCDCL reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by PSCDCL or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and PSCDCL shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation for submission of the Bid, regardless of the conduct or outcome of the Selection process.

Glossary

Terms	Meaning
BOM	Bill of Material
BEC	Bidders Evaluation Committee
BG	Bank Guarantee
CEO	Chief Executive Officer
DD	Demand Draft
EMD	Earnest Money Deposit as defined in Clause 2.4.6 of the RFP
GoM	Government of Maharashtra
HOD	Head of Department
INR	Indian Rupee
LOA	Letter of Award
LoI	Letter of Intent
NPV	Net Present Value
PBG	Performance Bank Guarantee
PDD	Proposal Due Date
PMC	Pune Municipal Corporation
PoC	Proof of Concept
PQ	Pre-Qualification
PSCDCL	Pune Smart City Development Corporation Limited
PSU	Public Sector Undertaking
RFP	Request for Proposal
Selected Bidder	As defined in Clause 2.5.4 (iii) of the RFP
Submission Date	Date of submission of the Bid as defined in Clause 1.3 of the RFP
TQ	Technical Qualification

The words and expressions beginning with capital letters and defined in this RFP shall, unless the context otherwise requires, have the meaning ascribed thereto herein; and the words with capital letters not defined in this RFP shall have bear the meaning as ascribed to it in Contract or any other Bidding Document.

1 Introduction

1.1 Overview

1.1.1 About Pune

- i. Pune is the seventh-most populous city in India and the second largest in the state of Maharashtra. It is situated 560 meters (1,837 feet) above sea level on the Deccan plateau, on the right bank of the Mutha River. Pune city is the administrative headquarters of Pune district and was once the center of power of the Maratha Empire.
- ii. The city is known for manufacturing and automobiles, as well as government and private sector research institutes for information technology (IT) education, management and training that attract migrants, students, and professionals from India, South East Asia, the Middle East, and Africa.
- iii. Pune is considered as the cultural capital of Maharashtra and is also popularly known as 'Queen of the Deccan'. The city has been marked by various forts and historical places. Pune is also known as 'Oxford of the East' and has one of the oldest universities and colleges in India such as, University of Pune, College of Engineering Pune and Fergusson College.
- iv. As per 2011 census, Pune has a population of more than 9.4 mn and population density of 603 people per sq. km. The decadal population growth rate from 2001 to 2011 was reported at 30.34%.

1.1.2 About Pune Municipal Corporation

- i. The Pune Municipal Corporation (PMC) was established on 15 February 1950. The PMC is in charge of the civic needs and infrastructure of the metropolis. Pune is divided into 15 municipal wards and about 76 electoral wards/ prabhags.
- ii. Since 1950, the Pune Municipal Corporation is administrating the city and serving citizens.
- iii. Pune Municipal Corporation stood second in the Smart Cities Challenge launched by Ministry of Urban Development, Govt. of India. Under Smart City Initiative, PMC is committed to enhancing the livability within the city. PMC intends to transform the idle community public spaces into dynamic platforms that can engage the community across themes of wellness, health, sports, sustainability, entertainment, and skill building

1.1.3 About Pune Smart City Development Corporation Limited (PSCDCL)

- i. The Pune Smart City proposal was selected for priority financing under Smart City Mission by Ministry of Urban Development (MoUD), Government of India. Thereafter, the Pune Municipal Corporation (PMC) has incorporated a Special Purpose Vehicle (SPV) company called PUNE Smart

City Development Corporation Limited (PSCDCL), under the Companies Act 2013, solely for the purpose of implementing the Smart City proposal. PSCDCL will be fully owned by the Government with equal shareholding from the Government of Maharashtra and the Pune Municipal Corporation (PMC).

- ii. The Board of PSCDCL will be chaired by the Chairman, PSCDCL and will have 15 members including elected representatives of PMC, representatives of the state and central government as well as independent directors.
- iii. PSCDCL will receive funding from Government of India and PMC/ the State Government for implementing the smart city projects. Given the wide range of technical and sector specific expertise required to implement the smart city projects, PSCDCL shall be supported by a team of consultants for strategic, technical and project management support.

1.1.4 Introduction to the Project

- i. PSCDCL is proposing comprehensive development of Placemaking initiatives in two sites including development of detailed design, engineering, procurement, erection and construction (the "**Project**"). The details of the sites and the proposed development are provided in the Project Information Memorandum (Appendix 3 of RFP). The Selected Bidder shall be responsible for implementing and operating the Project in accordance with the provisions of the Detailed Design Construction Contract (the "**Contract**") to be entered into between PSCDCL and the Selected Bidder.
- ii. The Contract shall set forth the detailed terms and conditions for the Project. At the end of the Contract Period all the Project Facilities including all Project Facilities developed and assets provided by PSCDCL shall revert back to PSCDCL, free of cost and all encumbrances.
- iii. The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Selected Bidder set forth in the Contract or PSCDCL's right to amend, alter, change, supplement or clarify the scope of work, the Lease to be awarded pursuant to this RFP or the terms thereof contained herein. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by PSCDCL.

1.2 Description of Bidding Process

- i. A two stage process (referred as the Bidding Process) has been adopted for selection of Bidders for the Project. The first stage (the "**EOI Stage**") involved pre-qualification of interested parties / consortia by PMC in accordance with the provisions of the Expression of Interest (the "**EOI**") released on 6th December 2016. At the end of the EOI stage, applicants who have met the pre-

qualification criteria are eligible for participation in this second stage (the “**Bid Stage**”) of the Bidding Process.

- ii. In the Bid Stage, the above mentioned short-listed applicants, (the “**Bidders**”) are being called upon to submit their financial offers (“**Bids**”) along with the supporting information, in accordance with the terms specified in this RFP. This RFP document will only be provided to the Bidders shortlisted through the EOI Stage.
- iii. Bidders are advised to study this RFP document carefully before submitting their proposals in response to the RFP notice. Submission of a proposal in response to this notice shall be deemed to have been done after careful study and examination of this document with full understanding of its terms, conditions and implications. This RFP document is not transferable.
- iv. The selection of Bidders shall be on the basis of a Combined Quality Cum Cost Based Selection as per the procedures prescribed in this RFP. The Bidder achieving the highest combined technical and financial score will be awarded the Project. Generally the Bidder achieving the highest combined technical and financial score shall be the Selected Bidder.

1.3 Schedule of Bidding Process

#	Information	Details
1.	Project Name/ Name of Work	Selection of Agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction
2.	Publication of Request for Proposal	19th December 2016
3.	RFP Reference No.	Tender No: SC10/2016
4.	Pre-Proposal Conference	19th December 2016, 3.30 PM at [Ambedkar Hall, PMC]
5.	Submission Date	26 th December , 2.30 PM
6.	Technical Opening	26 th December , 3.30 PM
7.	Bid validity period	120 days from Submission Date
8.	Contact person and email id	The Chief Executive Officer PUNE Smart City Development Corporation Limited (PSCDCL) Email: punesmartcity@gmail.com
12.	Presentation by Bidders	27th December 2016

13.	Opening of Financial Proposal	To be notified
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2 Instructions to Bidders

2.1 Purpose of Bid Document

- i. The purpose of this RFP is to seek an Implementation Agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction.
- ii. This document provides information to enable the Bidders to understand the broad requirements to submit their 'Bids'.
- iii. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP. The detailed scope of work is provided in **Appendix 3** (Project Information Memorandum containing entire details of the project.) of this RFP.

2.2 General instructions

- i. Bidders are advised to study all instructions, forms, terms, requirements and other information in the Bid Documents carefully. Only the Bidders shortlisted through the EOI Stage shall be eligible to bid for the Project.
- ii. Submission of bid shall be deemed to have been done after careful study and examination of the Bid Document with full understanding of its implications.
- iii. The response to this Bid Document should be full and complete in all respects. Failure to furnish all information required by the Bid Documents or submission of a proposal not substantially responsive to the Bid Documents in every respect will be at the bidder's risk and may result in rejection of its Proposal. Only Bidders shortlisted through the EOI Stage are eligible to bid in response to this RFP. For Bidders which are consortiums, the Lead Bidder of the Consortium shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose technical and financial capacity in terms of credentials and experience was taken into consideration for the purposes of evaluating against the EOI Pre-Qualification eligibility criteria and the Technical Evaluation under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the PSCDCL forthwith along with all relevant particulars about the same and the PSCDCL may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Contract it would, notwithstanding anything to the contrary contained in the Contract, be deemed to be a breach of the Contract, and the same shall be liable to be terminated without the PSCDCL being liable in any

manner whatsoever to the Bidder. In such an event, notwithstanding anything to the contrary contained in the Contract, the PSCDCL shall be entitled to forfeit and appropriate the Earnest money deposit or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the PSCDCL under the RFP and/ or the Contract or otherwise.

2.2.1 Cost of Bidding

- i. The Bidder is responsible for all costs incurred in connection with participation in this process, including, but not limited to, costs incurred to conduct informative and other diligence activities, participation in meetings/discussions/presentations, preparation of proposal, in providing any additional information required by PSCDCL to facilitate the evaluation process, and in negotiating a definitive Contract or all such activities related to the bid process. PSCDCL will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- ii. This Bid Document does not commit PSCDCL to award a contract or to engage in negotiations. Further, no reimbursable cost may be incurred in anticipation of award. All materials submitted by the Bidder shall become the property of PSCDCL and may be returned at its sole discretion.

2.2.2 Site Visit and Verification of Information

- i. Bidders are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit or sending written queries to PSCDCL,.
- ii. Submission of bid shall be deemed to have been done after careful study and examination of the RFP document with full understanding of its implications.
- iii. The response to this RFP should be full and complete in all respects. Failure to furnish all information required by the RFP documents or submission of a proposal not substantially responsive to the RFP documents in every respect will be at the bidder's risk and may result in rejection of the bidder's Proposal.

2.2.3 Confidentiality

- i. The term "Confidential Information" as used herein shall mean all information, materials, designs, drawings, models, documents and data of any kind which the Bidder receives, either directly or indirectly, from the PSCDCL, PMC or from any other Project participant or arising from any previous or contemporaneous involvement with the Client or any person, entity or agency of or affiliated with the PSCDCL, PMC, except for confidential information that:
 - a) is or becomes generally available to the public through no breach of this Article by the Recipient; &

- b) was in the recipient's possession free of any obligation of confidence prior to the time of receipt of it by the Recipient hereunder; &
 - c) is developed by the Recipient independently of any of discloser's Confidential Information; &
 - d) is rightfully obtained by the Recipient from third Parties authorized at that time to make such disclosure without restriction; &
 - e) is identified in writing by the Discloser as no longer proprietary or confidential; or
 - f) is required to be disclosed by law, regulation or Court Order, provided that the recipient gives prompt written notice to the Discloser of such legal & regulatory requirement to disclose so as to allow the Discloser reasonable opportunity to contest such disclosure.
- iv. Unless the PSCDCL otherwise agrees in any particular instance, all Information disclosed, made known, divulged or communicated to, or obtained by, any one or more of the Bidder in relation to the RFP and which is not in the public domain (or which is in the public domain as a consequence of a breach of this clause) must be kept confidential and must not be disclosed to any other person (unless otherwise required by law).
- v. This RFP, and the use of all documents issued by the PSCDCL in relation to it, remain the property of PSCDCL. Information supplied by a Bidder may be marked as "Confidential - Commercial in Confidence".
- vi. PSCDCL reserves the right to use information provided by a Bidder as the PSCDCL deems necessary for the purposes of assessing and evaluating a Bid and negotiating with a Bidder, irrespective of any characterization of confidentiality attached by a Bidder. Where appropriate, the PSCDCL will advise a Bidder prior to releasing material marked "Confidential" to anyone other than those parties reasonably considered necessary by the PSCDCL to assist it to consider and evaluate the RFP and the Bidder.

2.2.4 Verification and Disqualification

- i. PSCDCL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP document and the Bidder shall, when so required by the PSCDCL, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the PSCDCL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the PSCDCL thereunder
- ii. Without prejudice to the generality of Clause 2.4 of the RFP, PSCDCL reserves the right to reject any Proposal if,
 - a) at any time, a material misrepresentation is made or discovered, or

- b) the Bidder does not provide, within the time specified by PSCDCL, the supplemental information sought by PSCDCL for evaluation of the Proposal or the documentation required as per this RFP before execution of the Contract for this Project.
 - c) Misrepresentation/ improper response by the Bidder may lead to the disqualification / rejection of the Bid. If the Bidder is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Bidder gets disqualified / rejected, then PSCDCL reserves the right to consider the next best Bidder, or take any other measure as may be deemed fit in the sole discretion of PSCDCL, including annulment of the Selection Process.
- iv. PSCDCL reserves the right to accept or reject any proposal, and to annul the bidding process and reject all Bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for PSCDCL's action.

2.2.5 Errors, Omissions and Discrepancies

- i. The PSCDCL assumes that the information submitted by the Bidder is correct. Any discrepancies, errors or omissions found by the Bidder in the Bid after the Bid is submitted must be notified in writing to the PSCDCL.
- ii. If Bidder finds any discrepancy, error or omission in the RFP, it must notify the PSCDCL in writing no later than five (5) Business Days prior to the Submission Date.

2.3 Other Conditions

2.3.1 Clarifications

- i. To facilitate evaluation of Bids, PSCDCL may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Proposal. The request for such clarifications or substantiation and the response shall be in writing or by facsimile. No material change in the Bid would be permitted by way of such clarification / substantiation submitted by the Bidder.
- ii. PSCDCL reserves the right not to respond to any question or provide any clarification or consider any amendment(s) suggested by the Bidders, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring PSCDCL to respond to any question or to provide any clarification or consider any amendment suggested by the Bidders
- iii. PSCDCL may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. Verbal clarifications and information given by PSCDCL or its employees or representatives shall not in any way or manner be binding on PSCDCL.

2.3.2 Amendment of RFP

- i. At any time before the deadline for submission of bids, the PSCDCL, may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the RFP Document by an amendment or addendum. All the amendments and addendums made in the document would be communicated to the shortlisted Bidders.
- ii. In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their bids, the PMC may, at its discretion, extend the last date for the receipt of Bids.

2.3.3 Proprietary Data

- i. All documents and other information provided by PSCDCL or submitted by a Bidder to PSCDCL shall remain or become the property of PSCDCL. Bidders are to treat all information as strictly confidential. PSCDCL will not return any Proposal or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the Bidder to PSCDCL in relation to the services shall be the property of PSCDCL.

2.4 Preparation and Submission of Bids

- i. Bidders shall submit their Bids in the formats specified in this RFP. The Bids shall be sealed and marked as follows;
 - a) Technical Proposal Envelope: one (1) hard Copy of the original proposal and envelope containing EMD to be provided in a sealed envelope marked as **“Technical Proposal - Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction”**.
 - b) Financial Proposal Envelope: one (1) hard copy of the Financial Proposal to be provided in a sealed envelope marked as **“Financial Proposal- Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction”**.
 - c) The above two sealed envelopes for the Technical Proposal and Financial Proposal shall be placed in an outer envelope clearly marked as **“RFP- Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction”** bearing the submission address - **“ Office of the Deputy Municipal Commissioner (Special) and Chief Coordinator Smart City, 2nd floor, Pune Municipal Corporation, Shivaji Nagar, Pune- 411005”**.
- ii. Bidders should note the Submission Date, as specified in Clause 1.3, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by

PSCDCL, and that evaluation will be carried out only on the basis of Documents submitted online by the closing time of Submission Date. Bidders may be asked to provide additional material information or documents or technical presentations subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected.

- iii. The Bid documents shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Bid Documents. The Bid Documents must be signed by the authorized signatory (the Authorized Signatory) as detailed below:
 - a) by the proprietor, in case of a proprietary firm; or
 - b) by a partner, in case of a partnership firm and/or a limited liability partnership; or
 - c) by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation; or
 - d) by the authorized representative of the Lead Member, in case of consortium

2.4.1 Language

- i. The Bids prepared by the Bidder and all correspondence and documents relating to the bids exchanged by the Bidder and PSCDCL, shall be written in English language, provided that any printed literature furnished by the Bidder in another language shall be accompanied by an English translation in which case, for purposes of interpretation of the bid, the English translation shall govern.
- ii. If any supporting documents submitted are in any language other than English, translation of the same in English language is to be duly attested by the bidder.

2.4.2 Bid Due Date and Late Bid

- i. Bids should be submitted on the Submission Date at the time prescribed in Clause 1.3 at the address provided in the manner and form as detailed in Clause 2.4.7 of the RFP.
- ii. Bids received by the PSCDCL after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected

2.4.3 Modification and Editing of Bid

- i. A Bidder wishing to withdraw its bid shall notify PSCDCL by e-mail prior to the deadline prescribed for bid submission. A withdrawal notice may also be sent by electronic means such as e-mail, but it must be followed by a signed confirmation copy, postmarked at least one day prior to the Submission Date.
- ii. The notice of withdrawal shall:

- a) Be addressed to PSCDCL at the address named in the bid Data Sheet,
 - b) Bear the Contract name, the <Title> and < bid No.>, and the words “bid Withdrawal Notice.”
- iii. Bid withdrawal notices received after the bid submission deadline shall be ignored, and the submitted bid shall be deemed to be a validly submitted bid.
 - iv. Proposals that are withdrawn in accordance with Clause 2.4.3 (i) and (ii) of the RFP shall be returned unopened to the Bidder.
 - v. No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the specified bid validity period. Withdrawal of a bid during this interval may result in the forfeiture of the Bidder’s EMD.

2.4.4 Rejection of Bids

- i. Notwithstanding anything contained in this RFP, PSCDCL reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore.

2.4.5 Validity of Bids

The Proposal shall be valid for a period of not less than 120 days from the Submission Date.

2.4.6 Earnest money deposit

- i. Bidders shall submit, along with their Bids the Earnest Money Deposit (the “**EMD**”) equal to Rs. 2,50,000 (Rupees Two Lakh Fifty Thousand only) in favor of Chief Executive Officer, Pune Smart City Development Corporation Limited, from Nationalized or Scheduled Banks except Co-operative Banks, payable at Pune . The EMD shall be in the form of a Cheque / Demand Draft, valid for 180 (One hundred and eighty days) from the date of submission.
- ii. In case bid is submitted without EMD as mentioned above then PSCDCL reserves the right to reject the bid without providing opportunity for any further correspondence to the Bidder concerned.
- iii. Unsuccessful Bidder’s EMD will be discharged/ returned as promptly as possible, but not later than 120 days after Signing of the Contract with the Selected Bidder.
- iv. The decision of PSCDCL regarding forfeiture of the EMD and rejection of bid shall be final & shall not be called upon question under any circumstances.
- v. The EMD may be forfeited:

- a) If a Bidder withdraws their bid or increases their quoted prices during the period of bid validity or its extended period, if any; or
- b) In the case of a Selected Bidder, if the Bidder fails to sign the Contract or to furnish Performance Bank Guarantee within specified time
- c) During the bid process, if a Bidder indulges in any such deliberate act as would jeopardize or unnecessarily delay the process of bid evaluation and finalization.
- d) During the bid process, if any information found wrong / manipulated / hidden in the bid.

2.4.7 Correspondence with the Bidder

- i. All communications, including proposal documents should be addressed to:
“Office of the Deputy Municipal Commissioner (Special) and Chief Coordinator Smart City, Pune Smart City Development Corporation Limited, 2nd floor, Pune Municipal Corporation, Shivaji Nagar, Pune- 411005”.
Email: punesmartcity@gmail.com
- ii. All communications including the bid envelopes should contain the following information:
Tender No: SC10/2016
“RFP for Selection of Agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction”

2.5 Evaluation Process

- i. The Bids received by PSCDCL will be scrutinized and evaluated to establish “Responsiveness”. A Bid may be deemed “Non-Responsive” if:
 - It is not received by the Submission Date in the formats and the manner as prescribed in this RFP;
 - It does not include sufficient information for it to be evaluated and / or it is not in the formats specified which materially affect the evaluation process.
 - It is not signed and / or sealed in the manner and to the extent indicated in this RFP
- ii. PSCDCL reserves the right to reject any Bid which is Non-Responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by PSCDCL in respect of such Bid. The Bidder’s Bid must be complete in all respects, conform to all the requirements, terms and conditions and specifications as stipulated in the Bid Document.

- iii. PSCDCL shall appoint a Bid Evaluation Committee (BEC) to scrutinize and evaluate the technical and Financial Proposals received.
- iv. There should be no mention of bid prices in any part of the Bid other than the Financial Proposals.

2.5.1 Procedure for Opening of Technical Bid

- i. PSCDCL shall open the Technical Proposals in public, in the presence of Bidders' designated representatives and anyone who chooses to attend, at the address, and at the date and time specified in Clause 1.3.
- ii. Only bids that are opened and read out at the proposal opening and are accompanied with the EMD as prescribed in this RFP shall be considered further.
- iii. All the bids shall be opened one at a time, reading out: The name of the Bidder and whether there is a modification; the presence of a earnest money deposit; and any other details as PSCDCL may consider appropriate.
- iv. PSCDCL shall prepare a record of the proposal opening that shall include, at a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; and the presence or absence of earnest money deposit. The Bidders' representatives who are present shall be requested to sign the attendance sheet. .

2.5.2 Evaluation of Technical Bid

- i. As part of the Technical Evaluation, Bidders will be required to make a presentation to the Bid Evaluation Committee on their experience and credentials on the date prescribed in Clause 1.3 of this RFP.
- ii. PSCDCL may require written clarifications from the Bidders to clarify ambiguities and uncertainties arising out of the evaluation of the Bid documents (to be stated precisely as it should be in PSCDCL's interest).
- iii. Only those Bids which have a minimum score of **70% marks** in technical evaluation will be considered for opening of their Financial Proposal. However, PSCDCL reserves the right to lower the minimum required marks if none of the Bidders achieves 70% of the total marks. Only the Bids qualifying the technical evaluation will be considered for commercial evaluation.
- iv. The technical evaluation shall be carried out on the basis of the criteria specified in the table below :

	Technical Evaluation Criteria	Technical Evaluation parameter	Weightage	Reference Format in Annexure								
TEC_1	Construction experience Competence - Executing Similar Projects	<p>The Bidder (Lead Bidder in case of Consortium) should have execution experience in executing Similar projects worth at least 1.00 Cr. (Similar stands for Procurement & execution for place making / landscape projects *) The Marks will be allocated based on the number of Similar Projects executed as provided below.</p> <table border="1"> <thead> <tr> <th>Number of Projects</th> <th>Marks</th> </tr> </thead> <tbody> <tr> <td>>5</td> <td>100</td> </tr> <tr> <td>2-5</td> <td>75</td> </tr> <tr> <td>1</td> <td>60</td> </tr> </tbody> </table> <p><i>Maximum Marks: 100</i></p> <p><i>*For purpose of evaluation, Bidders need to indicate landscape / placemaking projects which have been executed. In case landscaping / placemaking components are part of a larger project, Bidders have to provide details of the specific landscaping / placemaking project component and also indicate the project cost associated with such specific landscape / placemaking components.</i></p>	Number of Projects	Marks	>5	100	2-5	75	1	60	20%	Annexure C
Number of Projects	Marks											
>5	100											
2-5	75											
1	60											
TEC_2	Construction experience Competence - Awards	<ul style="list-style-type: none"> Construction Industry Awards recognized at State, National or International level <i>(Attach documentary evidence)</i> 	10%	Annexure D								

	Technical Evaluation Criteria	Technical Evaluation parameter	Weightage	Reference Format in Annexure								
TEC_3	Landscape architecture design experience Competence - Executing Similar Projects	<p>The Bidder should have Landscape design experience in executing Similar projects worth at least 1.00 Cr. (Similar stands for Concept design, Sustainability, Detail Design, Construction drawings of place making / landscape projects *). The Marks will be allocated based on the number of Similar Projects executed as provided below.</p> <table border="1"> <thead> <tr> <th>Number of Projects</th> <th>Marks</th> </tr> </thead> <tbody> <tr> <td>>5</td> <td>100</td> </tr> <tr> <td>2-5</td> <td>75</td> </tr> <tr> <td>1</td> <td>60</td> </tr> </tbody> </table> <p><i>Maximum Marks: 100</i></p> <p><i>*For purpose of evaluation, Bidders need to indicate landscape / placemaking projects for which landscape design has been carried out and projects executed. In case landscaping / placemaking components are part of a larger project, Bidders have to provide details of the specific landscaping / placemaking project component and also indicate the project cost associated with such specific landscape / placemaking components.</i></p>	Number of Projects	Marks	>5	100	2-5	75	1	60	20%	Annexure E
Number of Projects	Marks											
>5	100											
2-5	75											
1	60											
TEC_4	Landscape architecture design experience Competence - Awards	<ul style="list-style-type: none"> • Architecture Industry Awards for Landscape design recognized at State, National or International level • (Attach documentary evidence) 	10%	Annexure F								
TEC_9	Presentation on credentials and approach for Project											

Technical Evaluation Criteria	Technical Evaluation parameter	Weightage	Reference Format in Annexure
	Prequalified bidders will be required to make presentations on highlighting above experience and credentials and proposed approach for executing the Project to an evaluation committee. Weightage will be given to companies that can come up with value engineering and creative ideas	40 %	
TOTAL		100%	

- v. For the Technical Evaluation Bidders are required to submit the self-attested information regarding the projects as per the formats prescribed in this RFP. Once a Bidder has been identified as the Selected Bidder, the following documentation needs to be provide to PSCDCL as proof supporting the self-attested information provided for evaluation under Clause 2.5.2 (iv).
1. Supporting documents for the self certified information provided for the Pre-Qualification Criteria in the EOI need to be provided;
 2. Only projects which have been completed or for which the Bidder has received 80% of total contract payments will be considered for evaluation. The Bidder is required to submit work orders, completion certificates from end clients and other documentation as required to establish the above.
 3. For any Project citations submitted by the Bidder under technical qualifications section, must be awarded under a single work order.
 4. Bidder to submit work order and end client work in-progress / completion certificate as a supporting documents for each Project.
 5. Project citations of only up to one level of sub-contracting will be considered for evaluation.

2.5.3 Opening of Commercial Bid

- i. The Financial Proposals shall not be opened by PSCDCL until the evaluation of the Technical Proposals has been completed.
- ii. PSCDCL will open the Financial Proposals of only Technically Qualified Bidders as per Clause 2.5.2 iii , in the presence of the nodal officer / designated representatives of the Bidder who choose to attend, at the time, date and place, as decided and communicated by PSCDCL.

- iii. Financial Proposals from Bidders who have failed to qualify in evaluation of the technical proposal will not be opened. Only bids that are opened and read out at the proposal opening shall be considered further.
- iv. Bids shall be opened, names of the bidder will be read out and whether there is a modification; and the Bid Price in the Financial Proposal.
- v. PSCDCL shall prepare a record of the bid opening that shall include, at minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, and any other details as PSCDCL may consider appropriate. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders.
- vi. Activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.

2.5.4 Evaluation of Financial Proposals and Selection Method

- i. The Financial Proposals will be evaluated by PSCDCL for completeness and accuracy. The amount stated in the bid, adjusted in accordance with the above mentioned procedure, shall be considered as binding, unless it causes the overall bid price to rise, in which case the bid price shall govern. Omissions, if any, in costing of any item shall not entitle the Bidder to be compensated and the liability to fulfill the obligations as per the Scope of Work within the total quoted Bid Price shall be that of the Bidder.
- ii. PSCDCL will award the Contract to the Bidder based on a Combined Quality Cum Cost Based Selection (CQCCBS) evaluation of technical and financial scores. The selection process will be carried out as follows;
 - a. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights: $S = St \times Tw + Sf \times Fw$;
where S is the combined score, and Tw and Fw are weights assigned to Technical Proposal and Financial Proposal that will be **0.80 : 0.20**.
 - b. The lowest financial proposal (Fm) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be determined using the following formula: $Sf = 100 \times Fm / F$,
- iii. The bidder achieving the highest combined technical and financial score will be identified as the Selected Bidder (the "**Selected Bidder**") for the project.
- iv. PSCDCL may choose to accept the Bid of the Selected Bidder or invite the Selected Bidder for further negotiations or reject any offer.

2.5.5 Contacts during Bid Evaluation

- i. Bids shall be deemed to be under consideration immediately after they are opened and until such time the PSCDCL makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the PSCDCL and/ or their employees/ representatives on matters related to the Bids under consideration.

2.5.6 Process after identification of Selected Bidder

- i. In the event of acceptance of the Selected Bidder, PSCDCL shall notify the Selected Bidder through a Letter of Award (LoA) that the Bid for the Project has been accepted subject to the provisions of Clause 2.5.6 (ii) below.
- ii. The Selected Bidder shall within 15 (fifteen) days of the receipt of the LoA, sign and return the duplicate copy of the LoA in acknowledgement thereof. In the event the duplicate copy of the LoA duly signed by the Selected Bidder is not received by the stipulated date, PSCDCL may, unless it consents to extension of time for submission thereof, appropriate and encash the EMD of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by PSCDCL on account of failure of the Selected Bidder to acknowledge the LoA.
- iii. The Selected Bidder shall also provide within 15 (fifteen) days of the receipt of the LoA, documentary evidence and supporting information for all self-attested documents submitted for pre-qualification and technical qualification rounds documentation as prescribed in Clause 2.5.2 (v). In the event of the Selected Bidder not providing the information by the stipulated date, PSCDCL may, unless it consents to extension of time for submission thereof, appropriate and encash the EMD of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by PSCDCL on account of failure of the Selected Bidder to provide the required information.
- iv. After PSCDCL confirms the receipt of the duplicate copy of the LoA from the Selected Bidder as per sub-Clause (ii) above and after confirming the supporting documents received from the Selected Bidder as per Sub Clause (iii) above, PSCDCL will send the Selected Bidder the Pro forma for Contract, incorporating all clauses/agreements between the parties. Within 15 days of receipt of the Contract format, the Selected Bidder shall sign and date the Contract and return it to PSCDCL.
- v. PSCDCL shall facilitate signing of the contract within the period of 30 days of the notification of award provided all required documentation is received from the Selected Bidder. Upon the Selected Bidder's executing the contract with PSCDCL, it will promptly notify each unsuccessful Bidder and return their EMDs.

3 Fraud and Corrupt Practices

- i. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Contract. Notwithstanding anything to the contrary contained herein, or in the LOA or the Contract, the PSCDCL may reject a Bid, withdraw the LOA, or terminate the Contract, as the case may be, without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the PSCDCL shall be entitled to forfeit and appropriate the Earnest money deposit or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the PSCDCL under the Bidding Documents and/ or the Contract, or otherwise.
- ii. Without prejudice to the rights of the PSCDCL under Clause 3.i herein above and the rights and remedies which the PSCDCL may have under the LOA or the Contract, or otherwise if a Bidder is found by the PSCDCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Contract, such Bidder shall not be eligible to participate in any tender or RFP issued by the PSCDCL during a period of 2 (two) years from the date such Bidder is found by the PSCDCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- iii. For the purposes of this Clause the following terms shall have the meaning hereinafter respectively assigned to them:
 - a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the PSCDCL who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Contract or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the PSCDCL, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process).
 - b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
 - c) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

- d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the PSCDCL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

4 Miscellaneous

4.1 Performance bank guarantee and Security Deposit

- i. The Selected Bidder shall at its own expense, deposit with PSCDCL, within 30 days of the notification of award (done through issuance of the Purchase Order/Letter of Acceptance), an unconditional and irrevocable Performance Bank Guarantee (PBG) from a list of approved banks as per the format given in this Bid Document, payable on demand, for the due performance and fulfilment of the contract by the bidder.
- ii. This Performance Bank Guarantee will be for an amount equivalent to 5 (Five) Percent of Bid Value (Contract Price). All charges whatsoever such as premium, commission, etc. with respect to the Performance Bank Guarantee shall be borne by the bidder. The Performance Bank Guarantee letter format can be found in the Annexure J of this RFP.
- iii. The Performance Bank Guarantee may be discharged/ returned by department upon being satisfied that there has been due performance of the obligations of the Bidder under the contract. However, no interest shall be payable on the Performance Bank Guarantee.
- iv. In addition to the Performance Security an additional Security Deposit for an amount equivalent to 4 (Four) Percent of Bid Value (Contract Price) has to be deposited in cash by the Bidder with PSCDCL.

4.2 PSCDCL rights to terminate the Process

- i. PSCDCL may terminate the RFP process at any time and without assigning any reason. PSCDCL makes no commitments, express or implied, that this process will result in a business transaction with anyone.
- ii. This RFP does not constitute an offer by PSCDCL.
- iii. The bidder's participation in this process may result in PSCDCL selecting the Bidder to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the PSCDCL to execute a contract or to

continue negotiations. PSCDCL may terminate negotiations at any time without assigning any reason.

4.3 Failure to agree with the Terms & Conditions of the Bid Document/ Contract

- i. Failure of the Bidder to agree with the Terms & Conditions of the Bid Document/Contract shall constitute sufficient grounds for the annulment of the award of contract, in which event the contract may be awarded to the next most responsive bidder.

5 Appendix 1: Technical Proposal

5.1 General Instructions on Preparation of the Technical Proposal

- i. Bidders have to submit a structured and organized technical bid as per the format prescribed in the RFP. The document submitted must be searchable and well indexed without any handwritten material.

5.2 Checklist of documents to be submitted in Technical and Financial Proposal

#	Documents required	Submitted (Y / N) if applicable	Documentary Proof (Page No.)
Technical Proposal (to be provided in separate sealed envelope as prescribed in the RFP.			
1.	Annexure A: Letter for Technical Bid		
2.	Annexure B: Summary of Project Experience		
3.	Annexure C: Format for proving project experience related to TEC_1		
4.	Annexure D: Supporting information related to TEC_2		
5.	Annexure E: Format for proving project experience related to TEC_3		
6.	Annexure F: Supporting information related to TEC_4		
7.	Annexure G: Letter of transmittal/confirmation to be provided by the Bidder		
8.	Annexure H: Power of attorney for signing the Bid		
9.	Annexure I: Power of attorney for lead member of consortium		
10.	Annexure J: Performance bank guarantee	<i>Note: This is to be submitted by Selected Bidder as per clause 4.1 of the RFP</i>	
11.	Annexure K: Joint Bidding Agreement in case Bidder is a Consortium		
Financial Proposal (to be provided in separate sealed envelope as prescribed in the RFP.			

#	Documents required	Submitted (Y / N) if applicable	Documentary Proof (Page No.)
12.	Appendix 2: Financial Proposal		
13.	Financial Proposal declaration		

5.3 Annexure A: Letter for Technical Bid.

<<To be printed on each company's letterhead and signed by Authorized signatory>>

Date: dd/mm/yyyy

To
The CEO,
PUNE Smart City Development Corporation Ltd.

Sir/Madam,

We have carefully gone through the Terms & Conditions contained in the RFP Document "Selection of agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction"

We hereby declare that below are the details regarding relevant work that has been taken up by our company and all the consortium members.

I further certify that I am competent officer in my company to make this declaration.

Yours Sincerely,

Signature of Authorized Signatory (with official seal)

Name :
Designation :
Address :
Telephone& Fax :
E-mail address :

5.4 Annexure B: Summary of Project Experience

TEC 1: Construction experience Competence - Executing Similar Projects		
S.No	Project Name	Client and Project Cost in INR Crore
[upto Maximum 20 Nos]	[insert project name]	[insert Client Name Insert Project cost]
TEC 2 : Construction experience Competence - Awards		
S.No	Award	Projects
	[insert details of award]	[Project for which award was won]
TEC 3: Landscape architecture design experience Competence - Executing Similar Projects		
S.No	Project Name	Client and Project Cost in INR Crore
[upto Maximum 20 Nos]	[insert project name]	[insert Client Name Insert Project cost]
TEC 4: Landscape architecture design experience Competence - Awards		
S.No	Award	Projects
	[insert details of award]	[Project for which award was won]

**Note: The details provided in the Annexure B shall match with the project related details provided in the subsequent annexures detailing project experience*

5.5 Annexure C: Format for proving project experience related to TEC_1

Project experience to be provided for Similar Projects worth at least Rs. 1 Crore (Similar stands for procurement & execution for place making / landscape works.). Bidder can provide experience for a maximum of 7 projects.

NOTE: To be filled for Lead Bidder in case of Consortium

Assignment Name and project cost:	Approx. value of the contract (in INR in Crore):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address of Client :	Approx. value of the services provided by your firm under the contract (in INR in Crore):
Name, designation and contact details of Client contact person(s)	
Start Date (Month/Year): Completion Date (Month/Year):	No. of professional staff – months provided by associated Consultants:
Name of Lead Partner:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Name of Associated Consultants, If any:	
Narrative Description of Project: (highlight project capital cost in the narration)	
Description of actual services provided by your staff within the assignment:	

Supporting documentation for the above projects needs to be provided by the selected bidder, subsequent to issue of LOA, as mentioned below:

Contract for the project

Client Certificate giving present status of the project and view of the quality of services by the Bidder

Or

Proof that the project is completed up to 80 percent through copy of invoice or payment received till date

NOTE: Bidders may also provide support material limited to max of 5 pages (per project) covering aspects such as concept, theme, sketches, plan, section, elevation, 3D, photographs for the project listed above.

5.6 Annexure D: Supporting information related to TEC_2

Please provide supporting information such as photographs and other documentation related to awards as prescribed in TEC_2. Supporting should be restricted to maximum of 3 pages.

5.7 Annexure E: Format for proving project experience related to TEC_3

Project experience to be provided for Similar Projects worth at least Rs. 1 Crore (Similar stands for Concept design, Sustainability, Detail Design, Construction drawings of place making / landscape etc.). Bidder can provide experience for a maximum of 7 projects.

Assignment Name and project cost:	Approx. value of the contract (in INR in Crore):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address of Client :	Approx. value of the services provided by your firm under the contract (in INR in Crore):
Name, designation and contact details of Client contact person(s)	
Start Date (Month/Year): Completion Date (Month/Year):	No. of professional staff – months provided by associated Consultants:
Name of Lead Partner:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Name of Associated Consultants, If any:	
Narrative Description of Project: (highlight project capital cost in the narration)	
Description of actual services provided by your staff within the assignment:	

Supporting documentation for the above projects needs to be provided by the selected bidder, subsequent to issue of LOA, as mentioned below:

Contract for the project

Client Certificate giving present status of the project and view of the quality of services by the Bidder

Or

Proof that the project is completed up to 80 percent through copy of invoice or payment received till date

NOTE: Bidders may also provide support material limited to max of 5 pages (per project) covering aspects such as concept, theme, sketches, plan, section, elevation, 3D, photographs for the project listed above.

5.8 Annexure F – Supporting information related to TEC_4

Please provide supporting information such as photographs and other documentation related to awards as prescribed in TEC_4. Supporting should be restricted to maximum of 3 pages.

5.9 Annexure G- Letter of transmittal/confirmation to be provided by the Bidder.

<<To be printed on each company's letterhead and signed by Authorized signatory>>

Date: dd/mm/yyyy

To
The CEO,
PUNE Smart City Development Corporation Ltd.

Sir/Madam,

In response to the Tender Ref. No. _____ dated
_____ for Selection of agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction, as an owner/ partner/ Director of _____, I/We hereby state and submit that I/we have read the RFP and bid documents of the subject work. I/We have also got myself/ourselves acquainted with all conditions of contract / General Conditions of contract / scope of work / mode of measurement / detailed specification for civil and electrical work / list of materials / plans etc i.e. entire bid document of subjected work.

The rates quoted by me/us are after taking into consideration all facts and figures given in the bid document. Therefore I/we shall not claim anything after opening of bid documents on the ground of ignorant of contents of bid documents.

I/we am/are authorized to sign the declaration on behalf of Agency / firm / company etc.

If this declaration is found to be incorrect then without prejudice to any other action that may be taken, my/ our security may be forfeited in full and the tender if any to the extent accepted may be cancelled.

Name of the Bidder :
Authorized Signatory :
Seal of the Organization:
Business Address :
Date :
Place :

5.10 Annexure H- Power of attorney for signing the Bid.

<< To be printed on ... >>

Power of Attorney

Bid No.:

KNOW ALL MEN BY THESE PRESENTS that the undersigned [name], [title] of [name of Company] (hereinafter called "the Company"), is lawfully authorised to represent and act on behalf of the Company, whose registered address is [Company's address], and does hereby appoint [name], [title], of [firm] of ____, whose signature appears below, to be the true and lawful attorney, and authorised the said attorney to sign the bids, conduct negotiations, sign a Contract and execute all the necessary matters related thereto, in the name and on behalf of the Company in connection with the execution, completion of the Contract of the [name of the project] Project,

Bid No. .

OFFICIAL SEAL AND SIGNATURE OF THE COMPANY:

Printed Name of the Legal Representative:

Signature of the Legal Representative:

Printed Name of the Attorney:

In the capacity of:

[Insert title or other appropriate designation]

Signature of the Attorney:

Company's seal:

Printed Name of the Witness:

In the capacity of:

[Insert title or other appropriate designation]

Signature of the Witness:

Address of Witness

Dated on _____ day of _____, _____ [date of signing]

Note: The Bidder should include such Power of Attorney in its bid in original.

5.11 Annexure I- Power of attorney for lead member of consortium.

<< To be printed on ... >>

Whereas the PSCDCL has invited applications from interested parties for the "Request for Proposal for Selection of agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction".

Whereas and (Collectively "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP document) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project and its execution.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our Registered office at
M/s,..... having our Registered office at
M/s,..... having our Registered office at
M/s,..... having our Registered office at

(hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s. having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney"). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the PSCDCL, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Contract Agreement is entered into with the PSCDCL.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this

Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

- 1.
- 2.

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.*

5.12 Annexure J- Performance bank guarantee.

Note: This is to be provided by the Selected Bidder before signing of the Contract for the Project

<< To be printed on Rs. 100/- Stamp Paper >>

IN CONSIDERATION OF Through

PUNE Smart City Development Corporation (PSCDCL) for Selection of agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction, (hereinafter referred to as the "said work") on the terms and conditions of the AGREEMENT dated theday of 2016 executed between PSCDCL on the one part and the Company (Name of the Company) on the other part (hereinafter referred to as "the said AGREEMENT) and on the terms and conditions specified in the Contract, Form of Offer and Form of acceptance of Offer, true and complete copies of the offer submitted by the Company, the said Acceptance of Offer and the said AGREEMENT are annexed hereto.

The Company has agreed to furnish PSCDCL in Guarantee of the Nationalized Bank for the sum of Rs (Agreement in Words and Figures) only which shall be the Security Deposit for the due performance of the terms covenants and conditions of the said AGREEMENT. We..... Bank Registered in India under Act and having one of our Local Head Office at..... do hereby guarantee to PSCDCL in Department.

- i. Due performance and observances by the Company of the terms covenants and conditions on the part of the Company contained in the said AGREEMENT, AND
- ii. Due and punctual payment by the Company to PSCDCL of all sum of money, losses, damages, costs, charges, penalties and expenses that may become due or payable to PSCDCL by or from the Company by reason of or in consequence of any breach, non-performance or default on the part of the Company of the terms covenants and conditions under or in respect of the said AGREEMENT.

AND FOR THE consideration aforesaid, we do hereby undertake to pay to PSCDCL on demand without delay demur the said sum of Rs. (Rupees only) together with interest thereon at the rate prescribed under from the date of demand till payment or such lesser sum, as may be demanded by PSCDCL from us as and by way of indemnity on account of any loss or damage caused to or suffered by PSCDCL by reason of any breach, non-performance or default by the Company of the terms, covenants and conditions contained in the said AGREEMENT or in the due and punctual payment of the moneys payable by the Company to PSCDCL thereunder and notwithstanding any dispute or disputes raised by the Company in any suit or proceeding filed before the Court relating thereto our liability hereunder being absolute and unequivocal and irrevocable AND WE do hereby agree that –

- a) The guarantee herein contained shall remain in full force and effect during the subsistence of the said AGREEMENT and that the same will continue to be enforceable till all the claims of PSCDCL are fully paid under or by virtue of the said AGREEMENT and its claims satisfied or discharged and till PSCDCL certifies that the terms and conditions of the said AGREEMENT have fully and properly carried out by the Company.
- b) We shall not be discharged or released from liability under this Guarantee by reason of
 - a. any change in the Constitution of the Bank or
 - b. any arrangement entered into between PSCDCL and the Company with or without our consent;
 - c. any forbearance or indulgence shown to the Company,
 - d. any variation in the terms, covenants or conditions contained in the said AGREEMENT;
 - e. any time given to the Company, OR
 - f. any other conditions or circumstances under which in a law a surety would be discharged.
- c) Our liability hereunder shall be joint and several with that of the Company as if we were the principal debtors in respect of the said sum of Rs..... (Rupees Only).
- d) We shall not revoke this guarantee during its currency except with the previous consent of PSCDCL in department in writing;
- e) Provided always that notwithstanding anything herein contained our liabilities under this guarantee shall be limited to the sum of Rs..... (Rupees..... only) and shall remain in force until PSCDCL certifies that the terms and conditions of the said AGREEMENT have been fully and properly carried out by the Company.
- f) Bank hereby agrees and covenants that if at any stage default is made in payment of any instalment or any portion thereof due to PSCDCL under the said AGREEMENT or if the Company fails to perform the said AGREEMENT or default shall be made in fulfilling any of the terms and conditions contained in the said AGREEMENT by the Company, the Bank shall pay to PSCDCL demand without any demur, such sum as may be demanded, not exceeding Rs..... (Rupees.....) and that the Bank will indemnify and keep PSCDCL indemnified against all the losses pursuant to the said AGREEMENT and default on the part of the Company. The decision of PSCDCL that the default has been committed by the Company shall be conclusive and final and shall be binding on the Bank/Guarantor. Similarly, the decision of PSCDCL as regards the Agreement due and payable by the Company shall be final and conclusive and binding on the Bank /Guarantor.
- g) PSCDCL shall have the fullest liberty and the Bank hereby gives its consent without any way affecting this guarantee and discharging the Bank/Guarantor from its liability hereunder, to vary or modify the said AGREEMENT or any terms thereof or grant any extension of time or any facility or indulgence to the Company and Guarantee shall not be released by reason of any time facility

or indulgence being given to the Company or any forbearance act or omission on the part of PSCDCL or by any other matter or think whatsoever which under the law, relating to sureties so releasing the guarantor and the Guarantor hereby waives all suretyship and other rights which it might otherwise be entitled to enforce.

- h) That the absence of powers on the part of the Company or PSCDCL to enter into or execute the said AGREEMENT or any irregularity in the exercise of such power or invalidity of the said AGREEMENT for any reason whatsoever shall not affect the liability of the Guarantor/Bank and binding on the bank notwithstanding any abnormality or irregularity,
- i) The Guarantor agrees and declares that for enforcing this Guarantee by..... against it, the Courts at Pune only shall have exclusive jurisdiction and the Guarantor hereby submits to the same

1.....

2.....

Being respectively the Director of the Company, who in token thereof, has hereto set his respective hands in the presence of –

1.....

2.....

5.13 Annexure K- Joint Bidding Agreement in case Bidder is a Consortium

<<To be executed on Stamp paper of appropriate value>>

THIS JOINT BIDDING AGREEMENT is entered into on this the day of.....20...

AMONGST

1. { Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the "First Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. { Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the "Second Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. { Limited, a company incorporated under the Companies Act, 1956 and having its registered office at (hereinafter referred to as the "Third Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. { Limited, a company incorporated under the Companies Act, 1956 and having its registered office at (hereinafter referred to as the "Third Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above mentioned parties of the FIRST, SECOND and THIRD and FOURTH PART are collectively referred to as the "Parties" and each is individually referred to as a "Party"

WHEREAS,

- a) [Pune Smart City Development Corporation Limited, represented by [], having its principal office at [] (hereinafter referred to as the "PSCDCL", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns); has invited bids (the Bids") by its Tender document ___ dated (the "Tender") for pre-qualification and short-listing of Bidders for Selection of agency for setting up network of smart elements in Pune city.
- b) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the Tender document and other bid documents in

respect of the Project, and

- c) It is a necessary condition under the Tender document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the Tender.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the "Consortium") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Contract when all the obligations of the SPV shall become effective;
- b) Party of the Second Part shall be {the _____ Member of the Consortium}
- c) Party of the Third Part shall be {the _____ Member of the Consortium}
- d) Party of the Fourth Part shall be {the _____ Member of the Consortium}

4. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Tender document and the Contract, till such time as the Financial Close for the Project is achieved under and in accordance with the Contract.

5. Shareholding in the SPV

5.1. The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

Third Party:

Fourth Party

5.2. The Parties undertake that a minimum of 34% (thirty four per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times of the date of commercial operation of the Project, be held by the Parties of the First, Second Part whose experience and net worth have been reckoned for the purposes of qualification and short-listing of Bidder for the Project in terms of the Tender.

5.3 The Parties undertake that each of the Parties specified in clause 6.2 above shall maintain at all times hold subscribed and paid up equity share capital of SPV equivalent to at least 10% (ten per cent) of the Total Project Cost.

5.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times.

5.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Contract.

5.6 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV in terms of the Contract.}

6. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favor of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium

Member is annexed to this Agreement, and will not, to the best of its knowledge:

- I. Require any consent or approval not already obtained.
- II. violate any Applicable Law presently in effect and having applicability to it;
- III. violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
- IV. violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- V. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances

or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

7. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Contract, in case the Project is awarded to the Consortium. However, in case the Consortium is either not prequalified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Earnest money deposit by the PMC to the Bidder, as the case maybe.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the PMC.

6 Appendix 2- Financial Proposal

6.1 Financial Proposal format

<<To be printed on each company's letterhead and signed by Authorized signatory>>

Date: dd/mm/yyyy

To
The CEO,
PUNE Smart City Development Corporation Ltd.

Sir/Madam,

I have carefully gone through the Terms & Conditions contained in the RFP Document "Selection of agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction".

I/We hereby quote Rate of (In figure) Rs. _____ lumpsum. (in words)
Rupees _____

lump sum for the "Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction".

I/We also agree to execute the work as per the specifications, terms and conditions of tender.

I/We further declare the format for schedule of payment for services and works completed as under:

#	Description	Mode	Total %
1	Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection, and construction	Lumpsum as per Milestone Payment schedule	Rs.

I further certify that I am competent officer in my company to make this declaration.

Yours Sincerely,

Signature of Authorized Signatory (with official seal)

Name :

Designation :

Address :

Telephone& Fax :

E-mail address :

6.2 Financial proposal declaration

<<To be printed on letter head of Lead Bidder and signed by Authorized signatory of lead bidder>>

Date: dd/mm/yyyy

To

The CEO

PUNE Smart City Development Corporation Limited

Sub : Selection of Service Provider for the Project "**Selection of agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction**"

Ref : Tender No: <No> Dated <DD/MM/YYYY>

Dear Sir/ Madam,

We, the undersigned Bidders, having read and examined in detail all the bidding documents in respect of "**Selection of agency for Comprehensive development of Placemaking venues in Pune, including development of detailed design, engineering, procurement, erection and construction**" do hereby propose to provide services as specified in the Bid Document referred above.

1. PRICE AND VALIDITY

- All the prices mentioned in our Tender are in accordance with the terms as specified in the Tender documents. All the prices and other terms and conditions of this Tender are valid for entire contract duration.
- We hereby confirm that our Tender prices include all taxes. Taxes are quoted separately under relevant sections, as specified in the Bid Document formats.
- We have studied the clause relating to Indian Income Tax and hereby declare that if any income tax, surcharge on Income Tax, Professional and any other corporate Tax is altered under the law, we shall pay the same.

2. DEVIATIONS

We declare that all the services shall be performed strictly in accordance with the Bid Documents and there are no deviations except for those mentioned in Pre-Qualification Envelope, irrespective of whatever has been stated to the contrary anywhere else in our bid.

Further we agree that additional conditions, if any, found in our bid documents, other than those stated in the deviation schedule in Pre-Qualification Envelope, shall not be given effect to.

3. QUALIFYING DATA

We confirm having submitted the information as required by you in your Instruction to Bidders. In case you require any other further information/documentary proof in this regard before evaluation of our Tender, we agree to furnish the same in time to your satisfaction.

4. BID PRICE

We declare that our Bid Price is for the entire scope of the work as specified in the Bid Document. The bid price at which the contract is awarded shall hold good for entire tenure of the contract. These prices are indicated in the subsequent sub-sections of this Section.

5. CONTRACT PERFORMANCE GUARANTEE

We hereby declare that in case the contract is awarded to us, we shall submit the contract Performance Bank Guarantee in the form prescribed in the Bid Document.

We hereby declare that our Tender is made in good faith, without collusion or fraud and the information contained in the Tender is true and correct to the best of our knowledge and belief.

We understand that our Tender is binding on us and that you are not bound to accept a Tender you receive. We confirm that no Technical deviations are attached here with this commercial offer.

Thanking you,
Yours faithfully,

(Signature of the Authorized Signatory)

Name

Designation

Seal.

Date:

Place:

Business Address:

7 Appendix 3- Project Information Memorandum containing entire details of the project.

7.1 Scope of Works

- i. Scope of Work includes study of conceptual design drawings, visit the site, carrying out detailed survey required for detail planning & designing, preparation of shop drawings, preparing detailed layout based on received site survey, working out quantities, working out methodologies to design, site preparation, construction, installation of special items like Totem, Smart Boxes. Getting approvals from respective authorities for various drawings, BOQs, estimation rate analysis prepared as per given guideline from PSCDCL, Execution of all civil, plumbing, sanitary, storm water, rain water, drip irrigation, electrification, fabrication, fabric covering, electronic items if required daily supervision, measurement, billing, follow up with required authorities, consultants for various approvals, billing, execution, making, additions, alterations as required by PSCDCL, Engineer In charge, Main Design consultants/Architects, complete all work as desired and as per standards rules & regulations up to full satisfaction of PSCDCL, handing over site to PSCDCL, making necessary rectifications, remedial measures during defect liability period etc. complete.

- ii. In addition to constructions services the Bidder's services shall include:
 - a. Architecture design
 - b. Interior design
 - c. Landscape architecture design
 - d. Horticulture
 - e. Irrigation, fountain, pool design and controls
 - f. Mechanical Engineering & Plumbing
 - g. Lighting design
 - h. Design for solar panels
 - i. Fire fighting
 - j. FF&E
 - k. Waste water management systems
 - l. Security System
 - m. CCTV any other surveillance system
 - n. Power Management
 - o. Water pumping and supply controls
 - p. Public Address System
 - q. Energy efficient design system
 - r. Site survey
 - s. Quantity survey - Rate analysis
 - t. Cost estimation
 - u. Site supervision
 - v. Procurement and storage management

- w. Testing of materials and works
- x. Signage
- y. etc

The scope above shall include design at the infrastructure level, i.e. designing for all the provisions & support systems required including but not limited to civil works, conduits, sleeves, supports, frames, runners, anchors and spaces for these services for the entire site

7.2 Scope of Works of Contractor broadly consists of following sections-

- 1) Study of Site conditions.
- 2) Detailed Design & Development & Getting Approvals
- 3) Cost Estimations & Getting Approvals
- 4) Site Execution
- 5) Preparation of as Built drawings
- 6) Defect Liability Period.

7.2.1 Study of site conditions

- i. Contractor shall carry out necessary investigation and surveys to develop the knowledge of the site condition as per requirement of PSCDCL.
 - a. Carrying out topographical surveys to access site slopes, undulations on site, Existing Trees, light poles, chamber, adjacent road markings, fixing site boundaries in consultations with respective authorities, to gather all site specific data which is required to start detail planning. Submit carried surveys details to PSCDCL in 2 sets of Hard Copies as well as in Soft copy.
 - b. If required taking of trial pits /trial bores, testing of soils, preparing geo tech reports in desired format of PSCDCL, to PSCDCL in 2 sets of Hard Copies as well as in Soft copy.
 - c. Access availability of quarries and other constructions materials suppliers, labour availability, water and power availability, approaches to the sites etc.
 - d. Contractor shall contact various local Authorities and obtain all the necessary relevant information about the plots especially regarding infrastructure facilities like sewerage, water supply mains electric supply line, their present locations, etc.
 - e. Contractor shall note that the survey plans would be at 1:500 scale

7.2.2 Detailed Design & Development & Getting Approvals

- i. Contractor shall prepare & submit detailed designs, Drawings, Shop Drawings and submit it to PSCDCL and get approval of the same.

- a. Study schematic drawing carefully, discuss specific requirement of PSCDCL in line with schematic drawings. Clear doubts if any during discussions with Engineer-in-Charge & Head Architects/Consultant from PSCDCL.
- b. Study the Development control Rules/Regulations and Development Plans of Local Authority as in force, and also examine all other relevant legislation codes and standards of various authorities as they affect the project and should get himself fully informed.
- c. Preparing detailed layout based on given schematic drawing and site data collected. Detailed Layout presented shall be at 1:500 Scale, while smaller portions of the layout shall be at 1:100 scale and details shall be at 1:50 Scale.
- d. Contractor shall prepare alternatives. While preparing alternative contractor shall keep in mind that all items of works, desired by PSCDCL to be incorporated in all alternatives. PSCDCL may instruct /suggest changes in prepared layouts and Contractor shall do necessary changes and resubmit it in required format to PSCDCL for Approval.
- e. After approval of layout Contractor can work on detailing of various sectors/portions/patches of works as per desired finishes, levels, finishing material charts /tables for various items of Works. Detailed drawings shall include laying pattern, start points, setting out, center line if any, moulding details, joint details, groove joints etc. complete.
- f. Contractor to submit all drawings to PSCDCL mentioned in above Point no (e) for approval. Contractor shall confirm timely approval of all these drawings from PSCDCL.
- g. For Special items like different types of Smart Boxes, Totem, Special Roof Coverings, Green Pocket compound walls, Urban farming, contractor shall finalise the designs, specific requirements, desired digitization to be added in smart box, finishing / digital screens to be installed over smart box/in built screens if required and as instructed to be detailed out so that exact result/effect can be achieved on site.

7.2.3 Cost Estimations & Getting Approvals

- i. Contractor shall prepare & submit detailed Measurement Sheets Estimates, BOQ, Rate Analysis for Non DSR Items and submit it to PSCDCL and get approval of the same.
 - a. After getting approvals for Detailed Drawings & Designs approvals mentioned in clause 9.2.2 of the RFP document, Contractor shall start preparation of BOQ & estimates.
 - b. Estimate shall include all initial works like demolition works if any, site leveling, cleaning, sectioning, bushes removal, carting debris out side, compound wall demolition if any, All such works though not mentioned here, shall be considered in Estimate to complete the work as per approved layout & detail design & drawing.
 - c. Estimate shall also include Excavation, PCC, Foundation for walls/compound walls, fabricated structures, rcc structures, back filling with approved excavated material, out side murum filling, brick/UCR work in sub /Super structure, murum compaction, soling, PCC below Stone /Tile flooring/Paving Blocks. All such works though not mentioned here, shall be considered in Estimate to complete the work as per approved layout & detail design & drawing.

- d. Estimate shall also includes all super structure items, drip irrigation, rain water harvesting, storm water, lawn preparation, kerb stone, Electrification works includes, MSEB approvals, Meter Connections, Wiring, Solar Street lights, LED lights as per approved layout etc. All such works though not mentioned here, shall be considered in Estimate to complete the work as per approved layout & detail design & drawing.
- e. Estimates shall be prepared based on Pune Municipal Corporation DSR 2016-17/ Current available DSR.
- f. For the items which are NON DSR Items rates shall be worked out on following priority;
 - Rates shall be worked on similar types of items in Approved BOQ by PSCDCL.
 - Rates shall be worked based on different items of work available in Pune Municipal Corporation DSR 2016-17/ Current available DSR.
 - Rate Analysis to be submitted to PSCDCL along with all supporting documents like minimum 3 quotations with all technical data. Rate analysis is to be carried out material cost + labour cost + taxes + Overheads @ 15%, which includes Water & Electricity Charges+ Supervision Charges+ Contractors Profit etc, complete.
- g. Contractor shall insure that RA, Specification, Finishing, Aesthetic of Special items like Totem, Different types of Smart Boxes, Urban Green farming, Various types of roof coverings have been clearly get understood and accordingly estimates shall be prepared in consultation with PSCDCL.
- h. All Estimates prepared shall be submitted to PSCDCL for approval in desired format. Contractor shall confirm timely approval of all these drawings from PSCDCL.
- i. PSCDCL may instruct /suggest changes in prepared BOQ if required. Agency shall do necessary changes and resubmit BOQ in required format to PSCDCL for Approval.
- j. After getting approvals for all BOQ's RA's, Estimates, Quotations from PSCDCL this stage can be considered as complete.
- k. The scope of work shall also include design at the infrastructure level, i.e. designing for all the provisions & support systems required including but not limited to civil works, conduits, sleeves, supports, frames, runners, anchors and spaces for these services for the entire campus.

7.2.4 Site Execution

- i. Contractor shall start execution immediately after approval from PSCDCL, All works shall be executed as per approval of Detailed Drawings & Estimates to achieve required result.
 - a. After getting approvals for Estimate approvals mentioned in clause 9.2.3 of the RFP the Contractor shall start the work..
 - b. The Contractor shall obtain all the NOC's like Drainage, Water, Garden, fire fighting (If required) , Road (If Applicable), from the Pune Municipal Corporation with all other relevant certificates from concerned Departments like PWD/MSEDCL etc as applicable.
- c. RCC Work

- All the RCC Work shall be executed as per approved design & drawings by the Structural consultant.
 - All the R.C.C. work shall confirm to I.S. 456 – 2000. The pile foundation work shall also confirm to IS 2911 -1979 (or latest).
 - All reinforced concrete shall be Design mix concrete / RMC shall be used. If mixing is done on site, mixing of cement, fine aggregate, coarse aggregate shall be on weight basis on the basis of Mix Design approved from COEP or from any reputed institute/Agency as desired by Engineer-in-Charge
- d. Electrification/ Fire fighting/ Rain Water Harvesting/Solar panels
- Electrical work shall be got done by Experienced Agencies .
 - Fire fighting arrangement shall be got executed through Licensed Fire Fighting equipment installers approved by CFO/PMC. (If Applicable)
 - Rain Water harvesting shall be got executed as per the detailed drawings approved by PSCDCL.
 - All Solar Street Lighting shall be executed through specialized agency.
- e. Water supply.
- UG tank (if Required) capacity and other requirements as per detailed drawing approved by PSCDCL
 - Separate water meter duly approved by PMC shall be provided for each underground tank.
 - U-PVC, C-PVC pipes of approved appropriate class with suitable solvent joints shall be used.
 - Testing for acceptance of the system as per DSR specifications/PWD Red book.
- f. Sewerage and drains.
- To be provided as per detailed drawings & specifications approved by PSCDCL
 - All hidden joints shall be provided with flash strips.
 - No joints shall be permitted in walls slabs, or columns.
 - Joints with floor/walls and fixtures shall be treated/caulked with suitable solvent.
 - The drainage pipe for sewer below ground shall be RCC/S.W. pipe of required diameter as per detailed drawings & specifications. Inspection chambers & trap shall be as per detailed drawings & specifications.
 - Acceptance Testing - Smoke Test/hydraulic test as per DSR specifications/ PWD Red Book.
- g. Water and Electricity for construction
- The Contractor shall make all necessary arrangement for procuring water and electricity required by him for the execution of the work and for his labour and staff at his own cost and pay deposit and other charges in accord with the rules of the concerned departments (Municipal Council/M.S.E.B. and other concerned Authorities.) The PSCDCL will help the

Contractor to obtain the necessary water/electric connection by the way of recommendation only. All charges required for obtaining and using the water and electricity shall be borne by the Contractor.

- The Contractor shall make his own arrangement for the supply and distribution of water at his own cost. The Contractor has to make additional arrangements such as obtaining required permissions for laying pipe line net work, storage facility etc. at his own Cost.
- The arrangement for ELCB, MCB, and Distribution cable Network and 3 phases Sub Meter shall be made on site by the Contractor at his own cost. But considering the scanty nature of Electrical Supply in Maharashtra, the Contractor is advised to keep a D.G. set of adequate capacity so as to facilitate uninterrupted construction activity despite MSEB failures. The expenditure for diesel & maintenance of the D.G. set as well as the Electrical consumption shall be the responsibility of the Contractor at his cost. Contractor shall conduct this act well in advance in order to avoid any delay in project period.

h. Contractor's representation

The Contractor personally or a responsible qualified person having full authority shall meet the Owner, Project Manager and the Architects at their office, whenever required.

i. Specifications

All work shall be carried out as per standard specifications of Maharashtra P.W.D. and where the specifications for any work/material are not available in Maharashtra P.W.D. then relevant I.S. specifications shall be applicable. However the Particular /Special Specifications approved shall also have to be complied with and will have precedence over the above in case of any variance. The PSCDCL's decision shall be final and binding in this matter. Contractor shall also note that for materials manufacturers they shall refer to approved list of manufacturers and it will assumed that rates quoted by the Contractor are considering the same.

j. Tests

If and when the Architects shall require samples of any materials to be tested, the cost of the such test shall be defrayed by the Contractor. Also, if any structure or part of structure is to be tested, the cost of such tests shall be defrayed by the Contractor.

k. Before Installing specialize items totem, Smart Boxes, Urban Green farms, roof coverings all required shop drawings to be got approved by PSCDCL. Upon approval of these shops drawings only installation of these items can be done on site by Contractor.

l. Upon Completion of all required & necessary works Contractor shall obtain Virtual Completion Certificate from Main Architect /Consultant and date of certificate shall be considered as Date of Completion of Work.

- m. The scope of works shall include design and construction at the infrastructure level, i.e. designing for all the provisions & support systems required including but not limited to civil works, conduits, sleeves, supports, frames, runners, anchors and spaces for these services for the entire campus

7.2.5 Preparation of as Built drawings

- i. After Completion of work Contractor shall prepare and submit As built Drawings and submit in 3 sets of Hard copy and one set of Soft Copy to PSCDCL in desired format. Upon submitting these drawings to PSCDCL final bill shall be processed.

7.3 Schematic Drawings Set

- i. Set of basis schematic drawings for proposed developments at both sites are attached in Volume II of the RFP

8 Appendix 4- Draft Contract to be entered into between the Pune Municipal Corporation and the Selected Bidder.

DETAILED DESIGN AND CONSTRUCTION CONTRACT

BETWEEN

PUNE SMART CITY DEVELOPMENT CORPORATION LIMITED

AND

[•]

DATED [•]

DETAILED DESIGN AND CONSTRUCTION CONTRACT

THIS CONTRACT (the “Contract”) is entered into on this [●] day of [●], 2016 (“Execution Date”)

BY AND BETWEEN

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

AND

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

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

WHEREAS:

- A. The Authority intends to undertake comprehensive development of placemaking venues, including the development of detailed design, engineering, procurement, erection and construction, on certain plots of land indicated in land indicated in Schedule A of this Contract, in Pune, Maharashtra (the “Project”). The Project shall be financed by the Authority, in accordance with the terms and conditions set forth in this Contract.
- B. The Authority had accordingly invited proposals by its Request for Proposals dated [●] (the “Request for Proposals” or “RFP”) prescribing the technical and commercial terms and conditions and invited bids for selection of bidders for detailed design, engineering, procurement, erection and construction on the above referred plots of land. After evaluation of the bids received, the Authority has accepted the bid of the selected Bidder [*please put name of bidder / bidders in case of a consortium*]
- C. The Authority has issued the Letter of Award No. [●] dated [●] (the “LOA”) to the selected bidder at the contract price specified hereinafter, requiring, *inter alia*, the submission of documentary evidence and other supporting information for all self attested documentation submitted by the selected bidder.
- D. The Authority after confirmation of above documentation submitted by the selected bidder, has, *inter alia*, further required the execution of this Contract within 15 days of the date of issue thereof.
- E. The Contractor and the Authority are now desirous of entering into this Contract for the design, engineering, procurement, erection, construction and implementation of the Project in accordance with the terms and conditions set out herein.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set

forth in this Contract, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

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

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction and implementation of the Project during the subsistence of this Contract;

“Authority’s Personnel” means the Authority’s Representative, staff, labour and other employees of the Authority and any other personnel notified to the Contractor, by the Authority or the Authority’s Representative, as Authority’s Personnel;

“Authority’s Representative” means any person or persons authorized in writing by the Authority to act on its behalf under this Contract and take the requisite steps to exercise any rights or perform and fulfill any obligations of the Authority as under this Contract;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1000 crore (Rupees Thousand Crore) or any other bank acceptable to the Authority.

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

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

- (v) introduction of any new or change in the existing rates, of any of the taxes /duties/ cess etc. that have a direct effect on the Project.

“Chief Engineer” shall mean the person appointed / nominated by the Authority to act as the chief engineer under this Contract and perform the duties and functions in accordance with Schedule F hereof.


“Chief Architect / Concept Urban Designer” shall mean the person / firm appointed / nominated by the Authority to act as the chief architect / concept urban designer under this Contract and perform the duties and functions in accordance with the agreement.

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

“Contract Period” shall mean the period commencing from the Execution Date and ending on the transfer date.

“Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature pertaining to the project supplied by the Contractor under this Contract and as described in Sub-Clause 2.2.2 of the contract

“Contractor’s Equipment” means all apparatus, machinery, vehicles, and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes, Plant, Materials and any other things intended to form or forming part of the Works.

“Commencement Date” shall mean the date on which the construction of the Project is commenced and should be no later than .

“Completion Certificate” shall mean the certificate issued by Authority to the Contractor on completion of works for the Project as set forth in Clause 7.5.2 of the contract.

“Construction Completion Date” or **“CCD”** shall have the meaning as ascribed under Clause 7.6 of this Contract.

“Construction Period” shall commence on the Commencement Date and shall be 3 months from the Commencement Date.

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

“Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 5.2 of the contract, who acts on behalf of the Contractor.

“Contract Price” means the agreed amount stated in the contract for the design, execution and completion of the Project and the remedying of any defects, and includes adjustments (if any) in accordance with this Contract.

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

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

“Defect” means any material deficiency in the intended use of the Project and facilities as desired under this Contract which shall exclude the fair wear and tear in the operation period.

“Defects Liability Period” means the period for notifying defects in the Works, which shall be 12 (twelve) months calculated from the date on which the Works is completed as certified under Sub-Clause 7.6 of the contract.

“Development Period” shall mean the period commencing from the Execution Date up to Commencement Date.

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

“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.

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

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 17 of the contract;

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

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as

envisaged under this Contract and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Contract, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient use of the Project;

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

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Clause 13 of the contract and includes all insurances required to be taken out by the Contractor, 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;

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

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

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

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

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

“Performance Security” shall have the meaning set forth in Clause 5.10 of the contract;

“Physical Progress” shall mean the physical construction of the Project completed by the Contractor and shall be measured as per the assessment done by the Chief Engineer in accordance with the provisions of this Contract.

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

“Project” shall mean the design, engineering and construction, of the Project Facilities in accordance with the provisions of this Contract, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Facilities” shall mean all the amenities and facilities as prescribed in Schedule C of this Contract.

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

“Project Management Consultant” means a person, firm or company so appointed by the Authority as per the criteria laid down in Schedule G and shall include any person duly authorized by it, to undertake all such activities as provided under Schedule G hereof.

“Provisional Certificate” shall have the meaning set forth in Clause 7.5.3 of the contract;

“ Punch List” shall have the meaning set forth in in Clause 7.5.3 of the contract;

“Site” shall have the meaning as prescribed in Schedule A of this Contract.

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

“State Government” shall mean Government of Maharashtra.

“Statement” means a statement submitted by the Contractor as part of an application for payment under Clause 6 of the contract.

“Scheduled Project Completion Date” means the date falling [●] months from the Commencement Date.

“Right of Way” means the construction possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction of the Project & Project Facilities in accordance with this Contract;

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

“Taking Over Certificate” shall have the meaning ascribed to it in Clause 7.6.2 of this Contract.

“Termination” means the expiry or termination of this Contract in accordance with Clause 18 of this Contract.

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

“Termination Payments” shall have the meaning ascribed to it under Clause 18.3 of this Contract.

“Tests on Completion” means the tests which are specified in the Schedule K of this Contract to determine completion of the Project and certification by the Chief Engineer.

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

“Total Project Cost” shall mean cost of all scope of works specified in Appendix 4 of the RFP document.

“Time for Completion” means the time for completing the Project, as stated in this Contract, calculated from the Commencement Date.

“Works” means all works including survey and investigation, design, engineering, procurement, construction, Plant, Materials, maintenance, temporary works, and other things necessary to complete the Project Facilities in accordance with this Contract.

1.2. Interpretation

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

- a) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association of persons or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- b) the table of contents, headings or sub-headings in this Contract are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Contract;
- c) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- d) references to “construction” or “building” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
- e) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g) any reference to day shall mean a reference to a calendar day;
- h) Reference to a “business day” shall be construed as reference to a day (other than a Sunday) on which banks in the State of Maharashtra are generally open for business;

- i) Any reference to month shall mean a reference to a calendar month as per the Gregorian Calendar;
- j) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Contract is not a business day, then the period shall run until the end of the next business day;
- k) the words importing singular shall include plural and vice versa;
- l) references to any gender shall include the other and the neutral gender;
- m) “lakh” means a hundred thousand (100,000) and “ crore” means ten million (10,000,000);
- n) “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- o) References to the “ winding-up”, “dissolution”, “ insolvency” or “ reorganization” of a company or corporation, shall be construed so as to include any equivalent or analogous proceedings under the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carried on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- p) save and except as otherwise provided in this Contract, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- q) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Contract from or by any Party or the Chief Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Chief Engineer, as the case may be, in this behalf and not otherwise;
- r) the Schedules and Recitals to this Contract and the Request for Proposals forms an integral part of this Contract and will be in full force and effect as though they were expressly set out in the body of this Contract;
- s) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Contract shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Contract; reference to an Annex shall, subject to anything to the contrary specified

therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears.

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

1.3. **Measurements and arithmetic conventions**

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

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

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

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

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

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

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

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

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

2. SCOPE OF PROJECT

2.1. The scope of Project (the “**Scope of Project**”) shall mean and include, during the Design, Construction and Operation Period:

- (i) construction of the Project on the Site set forth in Schedule A and as specified in Schedule B together with provision of Project Facilities as specified in Schedule C, and in conformity with the Specifications and Standards set forth in Schedule D;
- (ii) procurement of all Applicable Permits prescribed in Schedule E; and
- (iii) performance and fulfillment of all other obligations of the Contractor in accordance with the provisions of this Contract and matters incidental thereto or necessary for the completion of the Project and performance of any or all the obligations of the Contractor under this Contract.

2.2. Drawings and Design

2.2.1. General design obligations

- (i) The Contractor shall be deemed to have scrutinized, prior to the Execution Date, the Project Information Memorandum including design criteria and calculations, if any. The Contractor shall be responsible for developing and providing the detailed designs and drawings for the Works including design criteria and calculations based on the information provided in the Project Information Memorandum .
- (ii) The Authority shall not be responsible for any error, inaccuracy or omission of any kind in the Project Information Memorandum as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Contractor, from the Authority or otherwise, shall not relieve the Contractor from his responsibility for the design and execution of the Works.

- (iii) The Authority shall rely upon the technical expertise of the Contractor for the accuracy and sufficiency of design and drawings for the Project. The Contractor shall carry out its own independent studies of the Project in-house or by appointing external consultants for analyzing the Works and providing its design and drawings. The Contractor shall be responsible for the entire design of the Project.

The Authority authorizes the Contractor to directly deal with the Chief Engineer for submission and approval of all designs / drawings related to the Project. The Authority shall provide all necessary assistance to facilitate speedy approvals. For the avoidance of doubt it is agreed that if the Chief Engineer approves the designs/drawings submitted by the Contractor, it shall be deemed that the same has been approved by the Authority.

- (i) The designs and drawings prepared by the Contractor shall be submitted to the Chief Architect/ Concept Urban designer while BOQ & estimates, Rate Analysis shall be submitted to Chief Engineer appointed by the Authority.

The designs and drawings prepared by the Contractor shall be submitted to the Chief Architect/ Concept Urban designer while BOQ & estimates, Rate Analysis shall be submitted to Chief Engineer appointed by the Authority.

2.2.2. Contractor's Documents

- (i) The Contractor shall submit to the Chief Engineer the detailed designs, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Works and Project Facilities in accordance with the Project Completion Schedule as set forth in Schedule- J.
- (ii) By submitting the above mentioned designs, drawings and other documentation for review to the Chief Engineer, the Contractor 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 Scope of the Project and the Specifications and Standards, Applicable Laws and Good Industry Practice.
- (iii) The Contractor shall be obliged to await the observations of the Chief Engineer on the designs and drawings submitted pursuant hereto and cannot begin or continue Works at its own discretion. Within 15 (fifteen) days of the receipt of the designs and drawings, the Chief Engineer shall review the same and convey observations to the Contractor with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards.
- (iv) If the aforesaid observations of the Chief Engineer indicate that the above referred designs and drawings are not in conformity with the Scope of Project as stipulated under this Contract or the Specifications and Standards, such Drawings shall be revised by the Contractor, and resubmitted to the Chief Engineer for review. The Contractor shall begin or continue Works only after the drawings have been approved by the Chief Engineer in writing.

- (v) No review and/or observation of the Chief Engineer and/or its failure to review and/or convey its observations on any drawings shall relieve the Contractor of its obligations and liabilities under this Contract in any manner.
- (vi) The Contractor shall be responsible for any delay in the completion of the Project caused by reasons of any drawings not being in conformity with the Specifications and Standards mentioned under Schedule D of this Contract.

2.2.3. Contractor's undertaking

The Contractor undertakes that the design, the Contractor's Documents, the execution and the completed Works shall be in accordance with:

- (i) the Applicable Laws in India, and
- (ii) this Contract and all related documents including the Project Information Memorandum, as altered or modified as per this Contract.

Further, the Contractor shall ensure that the Project and all construction on the Sites are durable and shall last for a period as specified under Indian Standards (eg IS456 and other similar standards) .

2.2.4. Technical standards and regulations

The design, the Contractor's Documents, the execution and the completed Works shall comply with the Specifications and Standards, to the extent specified in the Project Information Memorandum, Applicable Laws and this Contract.

If changed or new applicable construction standards come into force in India after the Execution Date, the Contractor shall give notice to the Authority and (if appropriate) submit proposals for compliance. In the event that:

- (i) the Authority determines that compliance is required, and
- (ii) the proposals for compliance constitutes a Change of Scope,

then the Authority shall initiate a process for Change of Scope in accordance with Clause 2.4 of the contract.

2.2.5. As-built documents

The Contractor shall prepare, and keep up-to-date, a complete set of as-built records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed, with cross reference to relevant specifications and data sheets. The as-built documents shall reflect the Works as actually designed, engineered and constructed, including without limitation an as-built survey illustrating the layout of the Works and setback lines, if any, of the buildings and structures forming part of the Project Facilities. These records shall be-kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Three hard copies and one micro-film or any other medium as may be

acceptable to the Authority/ Chief Engineer shall be submitted to the Authority within 15 days from the Contract Completion Date.

In addition to the above, the contractor shall prepare and submit operating manuals, preventive and scheduled maintenance regimes for all services and equipment associated with the Project Facilities. The contractor should compile a detailed area wise and service wise asset register that includes details, specifications, costs, service-life alongwith warranty and service centre details.

It is clarified that the final accounts shall be settled only after the as-built documents, manuals and registers are submitted to the Authority.

2.2.6. Design error

The Contractor shall be responsible for any discrepancies, errors and omissions in the basic engineering, detailed engineering drawings and documents and data or other information submitted by it, irrespective of whether these have been approved, reviewed or otherwise accepted by the Authority / Chief Engineer. If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents or in the Works, the said documents and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Sub-Clause by the Authority.

2.3. **Facilities for differently abled and elderly persons**

The Contractor shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the Project.

2.4. **Change of scope**

2.4.1. Change of scope

(i) The Authority may, notwithstanding anything to the contrary contained in this Contract, require the provision of additional works and services which are not included in the Scope of the Project (the "**Change of Scope**") before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made in accordance with the provisions of this Clause 2.4 of the contract and the costs thereof shall be expended by the Contractor and reimbursed by the Authority in accordance with Clause 2.4.3 of the contract.

(ii) If the Contractor determines at any time that a Change of Scope is necessary for providing safer and improved services to the users of the Project, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate actions therefor in accordance with this Clause 2.4 of the contract or inform the Contractor in writing of its reasons for not accepting such Change of Scope, which decision of the Authority shall be final and binding.

- (iii) Any works or services which are provided under this Clause 2.4 of the contract shall form part of the Project and the provisions of this Contract shall apply *mutatis mutandis* to such works or services.

2.4.2. Procedure for change of scope

- (i) In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- (ii) Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary documentation in support of:
 - A. the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - B. the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates.
- (iii) Upon receipt of information set forth above, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Contractor, and the Parties shall, with assistance of the Chief Engineer, thereupon agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Contractor to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Contractor to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 2.4 of the contract.
- (iv) The Contractor’s quotation of costs for the Change of Scope shall be determined by the following principles;
 - (a) For works where the PMC District Schedule of Rates (DSR) 2016-2017 are available, costs shall be determined on the basis of this DSR.
 - (b) For works not included in the DSR or for which the DSR is not applicable, a detailed rate analysis needs to be submitted for approval to the Chief Engineer, in accordance to standard PMC practices.
- (v) In case of a dispute regarding cost and time for implementation of a Change of Scope Order issued by the Authority, the Contractor shall proceed with the performance of such Change of Scope Order. Pending resolution of such dispute, the Authority will pay to the

Contractor an amount equal to the costs that are certified by the Chief Engineer to be reasonable.

- (vi) For the avoidance of doubt, the Contractor shall be entitled to reject any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 30 % of the Contract Price at any time during the Construction Period.
- (vii) The provisions of this Contract, insofar as they relate to Works and Tests, shall apply mutatis mutandis to the works undertaken by the Contractor under a Change of Scope Order.

2.4.3. Payment for Change of Scope

- (i) The Contractor shall, after commencement of work, present to the Authority bills for payment in respect of the ongoing Works 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 Contractor such amounts as are certified by the Chief Engineer 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 set forth in this Contract.

2.4.4. Reduction in scope of the project

- (i) In the event of the scope of work getting reduced on account of a Force Majeure event or by deletion of any of the work or abandonment of work by committee due to administrative/unforeseen conditions, then the fee payable to the consultants shall stand correspondingly reduced to the extent of work completed by the consultant in full or part with regard to the stages and percentage of payment enumerated in the Milestone payment schedule as assessed by the Engineer-in-charge based on the documents and data submitted by the consultant and the decision of the Engineer-in-charge will be final and conclusive.
- (ii) For the avoidance of doubt, it is agreed that upon the Reduction of Scope and revision of Total Project Cost, all references to Total Project Cost would mean the revised Total Project Cost and all the payments would be calculated as per the revised Total Project Cost.
- (iii) For determining the obligations of the Contractor under this Clause 2.4.4 of the contract, the provisions of Clauses 2.4.1 and 2.4.2 of the contract shall apply mutatis mutandis, and upon issue of Change of Scope Order by the Authority hereunder, the Contractor shall pay forthwith the sum specified therein.

2.4.5. Power of the Authority to undertake works

- (i) In the event the Parties are unable to agree to the proposed Change of Scope Orders issued in accordance with Clause 2.4.2 of the contract, the Authority may after giving notice to the Contractor and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding from amongst bidders who are

determined to be qualified for undertaking the additional work, provided the Contractor shall have the right of matching the first ranked bid in terms of the selection criteria, subject to the payment of 2% (two percent) 75% of the amount received may be transferred to the first ranked bidder whose bid has been matched by the contractor of the bid amount to the Authority, and thereupon securing the award for such works or services. For avoidance of doubt, it is agreed that the Contractor 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 per cent) thereof. It is also agreed that the Contractor shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. The works carried out in accordance with this Clause shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in operation of the Project. The provisions of this Contract, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause.

2.5. **Plant, Material and Workmanship**

2.5.1. Manner of execution

- (i) The Contractor shall carry out the Works:
 - A. in the manner (if any) specified in the Contract,
 - B. in a proper workmanlike and careful manner, in accordance with recognized Good Industry Practice, and
 - C. with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

2.5.2. Samples

The Contractor shall submit samples of Materials to the Authority, for review in accordance with the procedures for Contractor's Documents described in Sub-Clause 2.2.2 of the contract, as specified in the Contract and at the Contractor's cost. Each sample shall be labelled as to origin and intended use in the Works.

2.5.3. Ownership of Plant and Materials

- (i) Each item of Plant and Materials shall, to the extent consistent with Applicable Laws, become the property of the Authority at whichever is the earlier of the following times, free from liens and other encumbrances:
 - A. when it is delivered to the Site;
 - B. when the Contractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 10.9.
- (ii) The Contractor shall be responsible for procuring all the Materials, Goods and other resources required for completing the Works under this Contract. The Contractor shall be responsible for engaging all the labour, skilled or unskilled, as in accordance with Applicable Laws. In the employment of such labour, the Contractor shall comply with and

shall require its sub-contractors and suppliers to comply with all requirements of Applicable Laws and Applicable Permits.

- (iii) The employment of any personnel and/or labour by the Contractor, sub-contractor or supplier in relation to Works shall not constitute employer-employee relationship between the Authority and such personnel and/or labour. Furthermore, any cost/damages/penalties incurred by the Contractor in relation to employment of such labour or due to contravention of any laws by the Contractor, shall be borne by the Contractor alone.

2.6. **Branding**

2.6.1. The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Contractor except as provided herein below or except with the prior written approval of the Chief Engineer. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of [●]. Further, the Contractor shall not make any announcements with respect to the Project without the prior written approval of the Chief Engineer.

2.6.2. The Contractor shall put up a board of the approved design at the designated location on the Site as determined by the Chief Engineer, which shall contain the following information:

- (i) Description of the Project;
- (ii) Name and address of the Authority;
- (iii) Names and addresses of architects and Project Management Consultant in letters not exceeding 50 mm in height; and
- (iv) Name and address of the Contractor.

3. **REPRESENTATIONS AND WARRANTIES**

3.1. **Representations and warranties of the Authority**

The Authority represents and warrants to the Contractor that:

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

3.2. **Representations and warranties of the Contractor**

The Contractor represents and warrants to the Authority that:

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

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

4. OBLIGATIONS OF THE AUTHORITY

4.1. Handover of Clear Sites

4.1.1. The Authority shall give the Contractor right of access and possession of Sites without any Encumbrance prior to or on the Commencement Date,. It is hereby agreed that all costs associated therewith shall be borne by the Authority.

4.1.2. The Authority shall grant to the Contractor, before the Commencement Date, access to the Sites for carrying out surveys, investigations, soil tests and any other activity that the Contractor may deem necessary during the Development Period.

4.1.3. If the Contractor suffers delay as a result of a failure by the Authority to give any such right or possession within such time, the Contractor shall give notice to the Authority to:

- (i) an extension of time for any such delay, if completion is or will be delayed,

4.1.4. After receiving this notice, the Authority shall proceed to make a fair determination to agree or determine these matters.

4.1.5. However, if and to the extent that the Authority failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time.

4.1.6. Additional Land for Change of Scope

- (i) 100% of additional land for Works to be carried out pursuant to a Change of Scope Order, if any, shall be handed over to the Contractor for construction within 15 days of instruction of such Change of Scope Order by the Authority.

- (ii) For the avoidance of doubt,

- A. Change of Scope Order for which additional land is to be acquired, the same shall be issued by the Authority to the Contractor not later than 1 month prior to the Scheduled Project Completion Date with approved extension thereof;

- B. Change of Scope Order instruction for which no additional land is to be acquired the same shall be issued no later than 15 days months prior to the Scheduled Project Completion Date with approved extension thereof.

- (iii) The Contractor shall be entitled for the cost and time for such Change of Scope as approved by Authority.

4.2. Permits, Licenses or Approvals

The Contractor shall be responsible to obtain all Applicable Permits for the purposes of the Project, including but not limited to land, environmental clearance, forest clearance, labour law permits and

registrations or any other statutory clearance required from various departments of Pune Municipal Corporation ,if required, like Building Permission Drainage, Water, Garden , Road, MSEDCL, Firefighting etc. The Authority shall provide reasonable assistance to the Contractor at the request of the Contractor in obtaining the Applicable Permits, if required.

4.3. **Appointment of Chief Engineer**

The Authority shall appoint / nominate an engineer to be the chief engineer for the purposes of this Contract (the “**Chief Engineer**”). The Chief Engineer shall discharge his/her duties and functions substantially in accordance with the terms of reference set forth in Schedule F. The remuneration, cost and expenses of the Chief Engineer shall be paid by the Authority. It is expressly agreed that the decision of the Chief Engineer with respect to matters under this Contract shall be final and binding on the Contractor in all respects.

4.4. **Appointment of Project Management Consultant**

The Authority shall appoint a Project Management Consultant who shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule G. The remuneration, cost and expenses of Project Management Consultants shall be paid by the Contractor.

5. **OBLIGATIONS OF THE CONTRACTOR**

5.1. **General obligations of the Contractor**

- (i) The Contractor shall design, execute and complete the Works in accordance with the Contract, and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in this Contract.
- (ii) The Contractor shall procure and provide the Plant, Materials and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.
- (iii) The Works shall include any work which is necessary to satisfy the Project Information Memorandum, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation of the Works.
- (iv) The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.
- (v) The Contractor shall, whenever required by the Authority, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without obtaining the prior written consent of the Authority and/or Chief Engineer. For the avoidance of doubt, it is agreed between the Parties that the Authority shall respond to the Contractor on any such request for alteration within a period of 7 (seven) days from the date of receipt of such requests for alteration from the Contractor.

- (vi) Prior to commencement of the Works, the Contractor shall submit to the Authority its program for detailed design, construction methodology, quality assurance procedures, and the engineering, procurement and construction time schedule for completion of the Project in accordance with the Programme.
- (vii) Mobilization should be carried out in line with the Programme, which shall include details of mobilization plan and equipment deployment schedule.
- (viii) The Contractor remains responsible for all of its obligations under this Contract, including the Works, regardless of whether a subcontract or supply agreement is made or whether the Contractor relies upon any Subcontractor to any extent. The Contractor's use of Subcontractors for any part of the Works will in no way increase the Contractor's rights or diminish the Contractor's liabilities to the Authority with respect to this Contract, and in all events the Contractor's rights and liabilities hereunder with respect to the Authority will be as though the Contractor had itself performed such portion of the Works. The Contractor will be liable for any delays caused by any Subcontractor as if the Contractor caused such delays.
- (ix) The terms of this Contract shall always be binding upon the Contractor regardless of the existence of any inconsistent terms whatsoever in any agreement between the Contractor and any Subcontractor without regard to the fact that the Authority may/may not have directly and/or indirectly had notice of any such inconsistent term.
- (x) The Contractor must make all payments to all Subcontractors in accordance with the respective agreements between the Contractor and its Subcontractors such that Subcontractors will not be in a position to enforce liens and/or other rights against the Authority. The Contractor shall indemnify the Authority against any losses, claims, damages, costs (or) any disputes relating to its Subcontractors.
- (xi) The Contractor shall also be responsible for completing its part of Works in the areas of interfacing activities of the Authority's other contractors, in a manner that the completion for the Project as a whole is not affected.
- (xii) Co-operation
 - A. The Contractor and the Authority shall co-operate with each other and fulfill their respective obligations, to ensure the performance and completion of the Works throughout the term of this Contract; provided that the Contractor shall be obligated to participate in meetings to be held or attended by the Authority during the performance of the Works or such other meetings as may be organized by the Authority in connection with the Works if such participation is requested by the Authority, provided that all directions and instructions to the Contractor shall be provided by the Authority only. The Authority shall from time to time authorize the Contractor's Representative for carrying out all routine activities, attending meetings with the Authority and/or Chief Engineer, correspondence and liaisons with various Government Instrumentalities including local authorities and other concerned departments such as electricity department, mining department, labour department, revenue department, amongst others as may be required by the

Contractor to fulfill its obligations under this Contract.

- B. The Authority and the Contractor shall regularly and promptly keep each other informed of any developments affecting the Scope of Works. The Parties will cooperate with each other to facilitate the performance of their respective obligations under this Contract and the Contractor shall cooperate with the Authority for performance of its obligations under this Contract.
- (xiii) The Contractor shall ensure that all materials and specifications, design and drawings pertaining to the Works carried out by the Contractor hereunder shall be in accordance with the Specifications and Standards mentioned in Schedule D hereto.

5.2. **Contractor's Representative**

- 5.2.1. The Contractor shall appoint / nominate the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.
- 5.2.2. Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Authority for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.
- 5.2.3. The Contractor shall not, without the prior consent of the Authority, revoke the appointment of the Contractor's Representative or appoint a replacement.
- 5.2.4. The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Authority has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

5.3. **Subcontractors**

- 5.3.1. The sub-contractor/s, if any, shall be the persons engaged by the Contractor for executing the Works ("**Sub-Contractors**") which shall be allocated by the Contractor under a separate Sub-Contract. The Sub-Contract entered into between the Contractor and the Sub-Contractor/s for the execution of the Works as allocated by the Contractor on terms and conditions finalized by the Contractor, shall be termed as the Sub-Contract. Provided that, Contractor agrees that it shall not sub-contract a substantial portion of the Works to such Sub-contractor/s.
- 5.3.2. For this purpose, subcontracting will not include (i) provision of workmen/labour, (ii) direct purchase of materials, (iii) transportation of materials and (iv) hiring of plant and equipment. The Sub-contractor/s or supplier/s shall be appointed under intimation to the Authority if value of the portion of the Works under such Subcontract or supply agreements is equal to or more than 10% (ten percent) of the Contract Price. The Contractor shall indemnify the Authority against any losses, claims, damages, costs from any of the Subcontractors/suppliers engaged by the Contractor.

- 5.3.3. It is agreed by both Parties that the Contractor shall carry out the Works through its own resources or through Sub-Contractors to be finalized by the Contractor based on the technical and financial capabilities of such Sub-Contractors and their past performance in executing similar projects. The overall responsibility of the Works including the design and construction of the entire Project shall however, vest in the Contractor who shall be solely responsible to the Authority.
- 5.3.4. Subject to any requirements under this Contract, the Contractor may subcontract any portion of the Works to Subcontractors, but shall not assign the obligations of the Contractor hereunder or any portion thereof (including any responsibility for the overall management of the Works) to any person. Such subcontracting shall not relieve the Contractor of its obligations and liabilities under this Contract.
- 5.3.5. In no event shall the right of the Contractor to subcontract relieve the Contractor from any of its obligations and responsibilities under the terms of this Contract. The Contractor agrees that it shall be fully responsible to the Authority for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor shall obtain all necessary information from Subcontractors engaged to perform the Works to ensure that the Subcontractors' work conforms to the requirements of this Contract. The Contractor is responsible for and shall check the correctness of any portion of the Works performed by such Subcontractors.

5.4. **Safety procedures**

The Contractor shall:

- (i) comply with all applicable safety regulations as prescribed by the Authority, Applicable Laws and Good Industry Practice and make adequate arrangements during the Construction Period for conforming with the safety requirements specified under Schedule I hereto;
- (ii) be responsible for the safety and security of all persons entitled / authorised to be on the Site, within reasonable limits
- (iii) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction, lighting, guarding and watching of the Works until completion and taking over by the Authority;
- (iv) provide any Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land;
- (v) provide helmets and safety belts, install barriers, fencing gangways, covers, lighting etc. over open trenches, pits, openings in building and such like, and take all other safety measures as may be required under law
- (vi) Contractor shall be responsible for all works related to temporary diversions, including construction and maintenance of the same in the condition prevailing at 7 (seven) days prior to the Commencement Date, during the Construction Period.

5.5. Quality assurance

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Authority shall be entitled to audit any aspect of the system. Details of all procedures and compliance documents shall be submitted to the Authority for information before each design and execution stage is commenced. Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

5.6. Site Data

5.6.1. The Authority shall have made available to the Contractor for his information, prior to the Execution Date, all relevant data in the Authority's possession on subsurface and hydrological conditions at the Site, including environmental aspects. The Authority shall similarly make available to the Contractor all such data which come into the Authority's possession after the Execution Date.

5.6.2. The Contractor shall be responsible for verifying and interpreting all such data. The Authority shall have no responsibility for the accuracy, sufficiency or completeness of such data, except as stated in Clause 2.2.1 of the contract.

5.7. Security of the Site

Unless otherwise stated hereunder:

- (i) The Contractor shall be responsible for keeping unauthorized persons off the Site, and
- (ii) authorized persons shall be limited to the Contractor's Personnel and the Authority's Personnel; and to any other personnel notified to the Contractor, by (or on behalf of) the Authority, as authorized personnel of the Authority's other contractors on the Site.
- (iii) The Contractor shall provide effective protection of the works, all materials to be used upon the works, workmen, and the public. In case of any loss or damage he will be called upon to make good the same at his own expense.

5.8. Contractor's Operations on Site

5.8.1. The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Authority as working areas for undertaking the Works.

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

5.8.3. During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or

surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Works which are no longer required.

5.8.4. Upon the issue of the Taking Over Certificate for the Works, the Contractor shall clear away and remove all Contractors' Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Liability Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

5.9. **Protection of the environment**

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

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

5.9.3. The Contractor shall develop an environmental management plan with the following objectives:

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

5.10. **Performance Security and Security Deposit**

5.10.1. The Contractor shall deposit an amount equivalent to 5% (five percent) of the Contract Price with the Authority towards performance security ("**Performance Security**"). The same shall be in the form of a financial bank guarantee and can be refunded only after successful completion of work.

5.10.2. The Contractor shall also deposit, in addition to Performance Security specified in Sub-Clause 5.10.1 above, refundable interest free security deposit of amount equivalent to 4%

(four percent) of the Contract Price (“**Security Deposit**”) with the Authority. The same shall be deposited in cash and will be refunded by the Authority only after completion of the Contract Period.

6. CONTRACT PRICE AND PAYMENTS

6.1. The Contract price

6.1.1. The Contract Price payable to the Contractor for the Project by the Authority under this Contract shall be INR [●]. The Contract Price shall be adjusted in accordance with the provisions stated in this Contract. The Contract Price as stated in Indian Rupees is inclusive of service tax, value added tax, entry tax, all other taxes, levies, duties, royalties, charges and fees existing at 30 days prior to the date of submission of the RFP.

6.1.2. Unless otherwise stated hereunder:

- (i) payment for the Project shall be made on the basis of the Contract Price, subject to adjustments in accordance with the Contract; and
- (ii) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs, except as stated in Clause 11 of the contract.

6.2. Schedule of Payments

6.2.1. The Contractor shall be entitled for payment during the Contract Period as per the payment milestones given below. Upon receiving a report from the Independent Engineer certifying the achievement of the below mentioned Payment Milestones, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an amount corresponding to percentage mentioned for the completed stage in the Milestone Payment schedule.

6.2.2. For the purposes of this Clause, the Payment Milestones for release of payment during Construction Period shall be as under:

Sl.No.	Description of activities as per scope of work	Stage wise percentages for items.	Aggregate percentages for items
1	Preparation and submission of detailed working drawings for all scopes including submission of detailed estimates including and specifications and approval from PSCDCL representative	10	10
2	Construction works: Paid in 3 equal installments at 33.33%, 66.66% and 100% completion of work		80

	a) 33.33% of site works completed	23.33	
	a) 66.66% of site works completed	23.33	
	a) 100.00% of site works completed	23.34	
3	Submission of as built drawings (5 sets) and completion of Handover requirement	10	90
4	Quarterly inspection during defect liability period		100
	a) 1st inspection & submission of reports	2.5	
	b) 2nd inspection & submission of reports	2.5	
	c) 3rd inspection & submission of reports	2.5	
	d) Final report after completion of defect liability deposit	2.5	

Provided that in case of Change of Scope, the Physical Progress shall be recalculated to account for the changed scope.

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

6.3. TERMS OF PAYMENT:

6.3.1. Subject to the terms of this consultancy service, the mode of payment shall be as under in regard to the accepted lump sum fees of consultancy services payable as per the terms of contract.

6.3.2. **Payment Terms:** The payment will be made through Account Payee cheque or by RTGS / NEFT process. Payment against each activity will be made either on completion of such activity in full or on pro-rata basis as detailed below after deduction of statutory taxes as applicable, at source.

Sl.No.	Description of activities as per scope of work	Stage wise percentages for items.	Aggregate percentages for items
1	Preparation and submission of detailed working drawings for all scopes including submission of detailed estimates including and specifications and approval from PSCDCL representative	10	10
2	Construction works: Paid in 3 equal installments at 33.33%, 66.66% and 100% completion of work		80
	a) 33.33% of site works completed	23.33	
	a) 66.66% of site works completed	23.33	
	a) 100.00% of site works completed	23.33	

3	Submission of as built drawings (5 sets) and completion of Handover requirement	10	90
4	Quarterly inspection during defect liability period		100
	a) 1st inspection & submission of reports	2.5	
	b) 2nd inspection & submission of reports	2.5	
	c) 3rd inspection & submission of reports	2.5	
	d) Final report after completion of defect liability deposit	2.5	

6.3.3. In the event of the scope of work getting reduced by deletion of any of the work or abandonment of work by committee due to administrative/unforeseen conditions, then the fee payable to the consultants shall stand correspondingly reduced to the extent of work completed by the consultant in full or part with regard to the stages and percentage of payment enumerated above as assessed by the Engineer-in-charge based on the documents and data submitted by the consultant and the decision of the Engineer-in-charge will be final and conclusive.

6.4. **Timing of Payments**

6.4.1. The Contractor shall prepare and submit the bills upon successful completion of a stage mentioned in the Milestone payment schedule. The Authority shall pay to the Contractor the amount equivalent to the percentage of the amount which according to the Authority is payable to the Contractor for the Works performed according to the Milestone payment schedule.

6.5. **Application for Final Payment**

6.5.1. Within 15 days after receiving the Completion Certificate, the Contractor shall submit to the Authority a draft final statement with supporting documents showing in detail in a form approved by the Authority:

- (i) the value of all work done in accordance with the Contract, and
- (ii) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

6.5.2. If the Authority disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Authority may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Authority the final statement as agreed. This agreed statement is referred to as the "**Final Statement**". However if, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Authority shall pay the agreed parts of the draft final statement in accordance with Sub-Clause 6.5 of the contract [*Timing of Payments*]. Thereafter, if the dispute is finally resolved under Clause 18 of the contract, the Contractor shall then prepare and submit to the Authority a Final Statement.

6.6. **Final Payment**

In accordance with Sub-Clause 6.5 of the contract, the Authority shall pay to the Contractor the amount which is finally due, less all amounts previously paid by the Authority and any other applicable deductions.

6.7. Sufficiency of the Contract Price

- 6.7.1. The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price.
- 6.7.2. The Contract Price is as stated under this Contract. All payments under this Contract shall be subject to all statutory deductions as agreed by the Parties under this Contract.
- 6.7.3. Unless otherwise stated in the Contract, the Contract Price covers all the Contractor's obligations under the Contract (including those under provisional sums, if any) and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects.
- 6.7.4. The Contractor acknowledges that prior to the execution of this Contract, the Contractor has, after a complete and careful examination, made an independent evaluation of the RFP, Scope of the Works, Specifications and Standards as mentioned under the RFP and this Contract, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder in so far as they relate to the design, engineering, procurement, construction and completion of the Project and Project Facilities except those specifically excluded by Parties in this Contract. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it.
- 6.7.5. The Parties agree that any mistake or error in or relating to any of the matters set forth in Sub-Clause (iv) above of this clause shall not vitiate this Contract, or render it voidable.
- 6.7.6. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Sub-Clause (iv) above of this clause, that Party shall immediately notify the other Party, specifying the mistake or the error; provided however, that a failure on part of the Authority to give any notice pursuant to this shall not prejudice the disclaimer of the Authority contained in sub-clause (iv) above and shall not in any manner shift to the Authority any risks assumed by the Contractor pursuant to this Contract.
- 6.7.7. The Contract Price will not be adjusted except for Price Variations, Change of Scope, Changes in Law or any other provisions as expressly provided elsewhere in this Contract.

7. CONSTRUCTION

7.1. Utilities, associated roads and trees

- 7.1.1. Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Contractor, initiate and undertake at the Contractor's cost, legal proceedings for acquisition of any right of way necessary for such diversion.
- 7.1.2. The Contractor shall, subject to Applicable Laws and with prior permission of the Project Management Consultant and the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Contractor 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. No extra cost shall be paid other than receipts.
- 7.1.3. The Contractor shall take care of all trees located on the Sites. If required, the Contractor shall make necessary protection / put up barriers along the trees. In case the trees are damaged, broken, or fall down during the Construction Period, the Contractor shall be held responsible for the same. In case felling of trees is required to be carried out if such trees cause a Material Adverse Effect on the construction of the Project, the Contractor shall obtain prior approval of the Authority and in case any approvals from a Government Instrumentality are required, the Authority shall assist the Contractor in obtaining the same. For the avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Contractor and any revenues thereof shall be paid to the Authority.

7.2. **Construction of the Project**

7.2.1. Obligations prior to commencement of construction

In addition to its obligations of maintaining the Project during the Development Period, prior to commencement of Works, the Contractor shall:

- (i) submit to the Authority and the Chief Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule J;
- (ii) Appoint / nominate the Contractor's Representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Contract;
- (iii) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Contract, Applicable Laws and Applicable Permits; and

- (iv) Make its own arrangements for quarrying and procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

7.2.2. Construction of the project

- (i) On or after the Commencement Date and approval of the design/ drawings as submitted by the Contractor, the Contractor shall undertake construction of the Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D and the Contractor agrees and undertakes that the Project shall be completed on or before the Scheduled Project Completion Date.
- (ii) The Contractor shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-J. In the event that the Contractor fails to achieve any Project Milestone within a period of 7 days from the date set forth for such Project Milestone in Schedule J, unless such failure has occurred due to a Force Majeure Event or for reasons attributable to the Authority, it shall pay damages to the Authority in a sum calculated at the rate of 0.1 % of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Project Completion Date are extended in accordance with the provisions of this Contract, the dates set forth in Schedule J shall be deemed to be modified accordingly and the provisions of this Contract shall apply as if Schedule J has been amended as above; provided further that in the event CCD is achieved on or before the Scheduled Project Completion Date, the damages paid under this Clause shall be refunded by the Authority to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of damages under this Clause shall be without prejudice to the rights of the Authority under this Contract, including the right of Termination thereof.
- (iii) In the event that the Project is not completed within the timelines mentioned herein and CCD does not occur within 7 days from the Scheduled Project Completion Date, unless the delay is on account of reasons attributable to the Authority or due to a Force Majeure Event, the Authority shall be entitled to terminate this Contract.

7.3. **Monitoring of the construction**

7.3.1. Periodical progress reports

- (i) Unless otherwise stated hereunder, weekly progress reports shall be prepared by the Contractor and submitted to the Authority. Reports shall be submitted weekly, each within 3 (three) days after the last day of the period to which it relates. The Contractor shall provide any other relevant information as requested by the Authority or Chief Engineer from the Authority, as may be intimated by the Authority to the Contractor.
- (ii) Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the Scheduled Project Completion Date stated in the Taking-Over Certificate for the Works.
- (iii) Each report shall include:

- A. charts and detailed descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
- B. photographs showing the progress of Works on the Site;
- C. records of Contractor's Personnel and Contractor's Equipment;
- D. copies of quality assurance documents, test results and certificates of Materials;
- E. list of variations and notices given under Sub-Clause 18.2 of the contract [*Contractor's Claims*];
- F. safety statistics, including details of any hazardous incidents and activities relating to environmental aspects, environmental compliance report and public relations;
- G. comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays; and
- H. such other relevant information as may be required by the Authority and/or the Chief Engineer.

7.3.2. Inspection

- (i) The Authority's Personnel and the Chief Engineer shall at all reasonable times:
 - A. have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
 - B. during production, manufacture and construction (at the Site and, to the extent specified in the Contract, elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.
- (ii) The Contractor shall give the Authority and the Chief Engineer full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility under this Contract.
- (iii) In respect of the work which Authority is entitled to examine, inspect, measure and/or test, the Contractor shall give notice to the Authority whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Authority shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Authority does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Authority, uncover the work and thereafter reinstate and make good, all at the Contractor's cost. If, after uncovering the work, it is found that the works has been executed in accordance with the Contract, the Cost of such uncovering and re-covering shall be to the Authority's account who shall reimburse the same to the Contractor.

- (iv) During the Construction Period, the Chief Engineer may inspect the Project at least once a month and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority within 7 (seven) days of such inspection. The Contractor, upon receipt of such report from the Authority, after reviewing the same, shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report and submit its compliance to the Authority. Such inspection or submission of Inspection Report by the Chief Engineer shall not relieve or absolve the Contractor of its obligations and liabilities in any manner whatsoever.

7.3.3. Tests

- (i) This Sub-Clause shall apply to all tests specified in the Contract during the Construction Period, other than the Tests on Completion.
- (ii) The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Authority, the time and place for the specified testing of any Plant, Materials and other parts of the Works.
- (iii) The Authority may vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this change shall be borne by the Contractor, notwithstanding other provisions of the Contract. However, if the results of such varied or additional tests show that the tested Plant, Materials or workmanship is completely in accordance with the Contract, the cost of carrying out this change shall be borne by the Authority who shall reimburse the same to the Contractor.
- (iv) The Authority shall give the Contractor not less than 24 (twenty four) hours' notice of the Authority's intention to attend the tests. [If the Authority does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Authority, and the tests shall then be deemed to have been made in the Authority's presence.]
- (v) If the Contractor suffers delay from complying with these instructions or as a result of a delay for which the Authority is responsible, the Contractor shall give notice to the Authority and shall be entitled to an extension of time for any such delay, if completion is or will be delayed,
- (vi) After receiving this notice, the Authority shall proceed to agree or determine these matters.
- (vii) The Contractor shall promptly forward to the Authority duly certified reports of the tests. When the specified tests have been passed, the Authority shall, endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Authority has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.3.4. Rejection

In the event that results of any tests conducted under the Sub-Clause 7.3.3 of the contract establish any defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Authority in this behalf. The Authority shall require the Contractor to carry out tests to determine that such remedial measures have brought the Works into compliance with the Project Information Memorandum, and the procedure set forth in Sub-Clause 7.3.3 of the contract shall be repeated until such Works conform to the Project Information Memorandum. For the avoidance of doubt, it is agreed that tests pursuant to Sub-Clause 7.3.3 of the contract shall be undertaken in addition to and independent of the tests that shall be carried out by the Contractor for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Contractor to the Authority forthwith.

7.3.5. Remedial work

- (i) Notwithstanding any previous test or certification, the Authority may instruct the Contractor to:
 - A. remove from the Site and replace any Plant or Materials which is not in accordance with the Specifications and Standards,
 - B. remove and re-execute any other work which is not in accordance with the Scope of Project and Specifications and Standards, and
 - C. execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.
- (ii) If the Contractor fails to comply with any such instruction, the Authority shall be entitled to employ and pay other persons to carry out the Works. Except to the extent that the Contractor would have been entitled to payment for the relevant portion of the Works, the Contractor shall pay to the Authority all costs arising from this failure.

7.3.6. Delays during construction

Without prejudice to the provisions of Clause 7.2.2(ii) of the contract, if the Contractor does not achieve any of the Project Milestones or the Chief Engineer shall have reasonably determined that the rate of progress of Works is such that the Project is not likely to be completed by the Scheduled Project Completion Date, it shall notify the Contractor to this effect, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Chief Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve CCD.

7.3.7. Suspension of unsafe works

- (i) Upon recommendation of the Chief Engineer to this effect, the Authority may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Authority, such work threatens the safety of the users and

pedestrians. Provided, however, that in case of an emergency, the Authority may *suo moto* issue the notice referred to hereinabove. The Contractor shall, pursuant to the notice under this Clause suspend the 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 of the Project. The Contractor may by notice require the Chief Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked.

- (ii) Upon receiving the recommendations of the Chief Engineer, the Authority shall either revoke such suspension or instruct the Contractor 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 7.3.7 of the contract shall be repeated until the suspension hereunder is revoked.
- (iii) All reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the “**Preservation Costs**”) shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Contract by the Authority, the Preservation Costs shall be borne by the Authority.
- (iv) If suspension of Works is for reasons not attributable to the Contractor, the Chief Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Contractor is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Chief Engineer.

7.4. **Video recording**

During the Construction Period, the Contractor shall provide to the Authority for every week, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Works in that [quarter]. The first such video recording shall be provided to the Authority within 7 (seven) days of the Commencement Date and thereafter, no later than 3 (three) days after the close of each week. Such video recording shall be carried out along with the authorized representative of the Authority, as may be appointed by the Authority. Notwithstanding anything to the contrary contained in this document, the Contractor shall also develop a Project specific website which shall be accessible to the public and upload the time stamp pictures of the development of Project each week.

7.5. **Completion certificate**

7.5.1. Tests

- (i) Contractor shall notify the Project Management Consultant and the Chief Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Chief Engineer in consultation with the Contractor, and notified to the Authority who may designate its representative to witness the Tests. The Contractor shall provide such assistance as the Chief Engineer may reasonably require for conducting the Tests.

- (ii) All Tests shall be conducted in accordance with Schedule K at the cost and expense of the Contractor. The Chief Engineer 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 by the Chief Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Chief Engineer shall provide to the Contractor and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Chief Engineer may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

7.5.2. Completion certificate

Upon completion of Works and the Chief Engineer determining the Tests to be successful, it shall forthwith issue to the Contractor and the Authority a certificate substantially in the form set forth in Schedule L (the “**Completion Certificate**”).

7.5.3. Provisional certificate

- (i) Subject to the provisions of sub-Clause 7.5.1(ii) of the contract, the Chief Engineer may, at the request of the Contractor, issue a provisional certificate of completion substantially in the form set forth in Schedule M (the “Provisional Certificate”) if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Chief Engineer and the Contractor (the “Punch List”); provided that the Punch List shall also include the cost of completion for each of the outstanding items.
- (ii) The Parties hereto expressly agree that a Provisional Certificate under this Clause may, upon request of the Contractor to this effect, be issued for operating part of the Project, if the Contractor has completed construction of 100% (Hundred per cent) of the Site made available to the Contractor within 7 days from the Completion Date.
- (iii) All items in the Punch List shall be completed by the Contractor within 15 days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to a Force Majeure Event, the Authority shall be entitled to recover damages from the Contractor to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Chief Engineer. Subject to payment of such damages, the Contractor shall be entitled to a further period not exceeding 30 (thirty) 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 a Force Majeure Event, the completion date thereof shall be determined by the Chief Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of damages, if any, payable for such item under this Clause. Upon completion of all Punch List items, the Chief

Engineer shall issue the Completion Certificate. Failure of the Contractor to complete all the Punch List items within the time set forth in this Clause for any reason, other than conditions constituting a Force Majeure Event or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Contract.

7.5.4. Withholding of provisional or completion certificate

- (i) If the Chief Engineer determines that the Project or any part thereof does not conform to the provisions of this Contract and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Contractor. Upon receipt of such a report from the Chief Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Contractor of the defects and deficiencies in the Project and direct the Chief Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Contractor shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Clause 7.5 of the contract. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- (ii) Notwithstanding anything to the contrary contained herein above, the Authority may, at any time after receiving a report from the Chief Engineer, direct the Chief Engineer to issue a Provisional Certificate, and such direction shall be complied forthwith.

7.5.5. Rescheduling of tests

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

7.6. **Construction Completion Date**

7.6.1. 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 Clause 7.5, and accordingly the construction completion date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "CCD").

8. **Handover Requirements**

8.1. Upon completion of Construction or Termination, the Contractor shall comply with and conform 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;
- (c) cure all Project Assets, structures and equipment, of all defects and deficiencies so that

the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets 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 Contractor represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (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 Contractor in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (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 Contractor in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

8.2. 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 Contractor, 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.

9. STAFF AND LABOUR

9.1. Engagement of Staff and Labour and Wages

- (i) The Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport during the term of this Contract.
- (ii) The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out or Applicable Law, whichever is higher. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

- (iii) The Contractor shall not recruit, or attempt to recruit, staff, Personnel and labour from the Authority.

9.2. **Labour Laws**

- 9.2.1. The Contractor shall comply with all the relevant labour laws applicable to the Contractor, including Applicable Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor shall require his employees to obey all Applicable Laws, including those concerning safety at work.
- 9.2.2. The Contractor shall include in his rates all expenses towards meeting the obligations under the Employees State Insurance Act and the Provident Fund Act. He shall follow all rules and regulations required under the above act as maybe in force from time to time. The Contractor shall cover all his workmen including at the site under the ESI and PF schemes, and directly deposit the requisite amounts with the concerned authorities.
- 9.2.3. All records in connection with the above shall be properly maintained by the Contractor and produced for scrutiny by the Owner whenever called for. The Contractor shall keep the Owner indemnified against all violations of the above acts. If any demand is made by the authorities under the above acts, this will be paid by the Owner and recovered from the Contractor from his pending due / Security Deposit amounts etc.

9.3. **Working hours**

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

9.4. **Facilities for Staff and Labour**

- 9.4.1. The Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel, including as mandated under Applicable Law. The Contractor shall, at his own expense, make provisions for temporary latrines for the Contractor's Personnel, to the satisfaction of the Authority, and keep them clean, disinfected and take all steps to maintain good sanitary conditions during the Construction Period. The location of such sanitary facilities shall be approved by the Authority .

9.5. **Health and Safety**

- 9.5.1. The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the

Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Authority's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

9.5.2. The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Project, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

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

9.6. **Contractor's Personnel**

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

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

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

9.7. **Records of Contractor's Personnel and Equipment**

9.7.1. The Contractor shall submit to the Authority monthly details of Contractor's Personnel and Contractor's Equipment on the Site, in a form approved by the Authority until the Contractor has completed all work which is known to be outstanding at the Contract Completion Date stated in the Taking Over Certificate for the Project. The Contractor shall maintain all such records and file all such returns/filings as mandated under Applicable Laws with respect to the Contractor's Personnel engaged for undertaking the work under this Contract.

9.8. **Disorderly Conduct**

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

9.9. **No Child Labour**

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

10. **COMMENCEMENT, DELAYS AND SUSPENSION**

10.1. **Commencement of works**

10.1.1. The Contractor shall commence execution of the Works as soon as is reasonably practicable on or after the Commencement Date, and shall then proceed with the Works with due expedition and without delay. However, the Contractor may at its discretion commence the design and drawing works prior to the Commencement Date.

10.2. **Time for completion**

10.2.1. The Contractor shall complete the whole of the Works, within the time for Completion for the Works, including:

- (i) achieving the passing of the Tests on Completion, and
- (ii) completing all work which is stated in the Contract as being required for the Works to be considered to be completed for the purposes of taking over under Clause 7.6 of the contract.

10.2.2. The extension of the Construction Period granted by Authority (if any) to the Authority shall be passed on to the Contractor on back to back basis. For the avoidance of doubt, it is expressly agreed that the extension of time (if any) granted by the Authority for the completion of the Works shall be passed on to the Contractor in its entirety. Provided however that, it is expressly agreed between the Parties that the Contractor shall endeavour on a best effort basis to complete the Works within the Construction Period as agreed hereunder.

10.3. **Programme**

10.3.1. The Contractor shall submit a time programme ("**Programme**") to the Authority within 7 (seven) days after the Commencement Date in line with the Project Information Memorandum. The Contractor shall also submit a revised Programme whenever the previous Programme is inconsistent with actual progress or with the Contractor's obligations. Unless otherwise stated in the Contract, each Programme shall include:

- (iii) the order in which the Contractor intends to carry out the Works including the anticipated timing of each major stage of the Works,

- (iv) the periods for reviews under Sub-Clause 2.2.2 of the contract
- (v) the sequence and timing of inspections and tests specified in the Contract, and a supporting report which includes:
 - A. a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works, and
 - B. the approximate number of each class of Contractor's Personnel and of each type of Contractor's Equipment for each major stage.

10.3.2. Unless the Authority, within 15 (fifteen) days after receiving a Programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the Programme, subject to his other obligations under the Contract. The Authority's Personnel, shall be entitled to rely upon the Programme when planning their activities.

10.3.3. The Contractor shall promptly give notice to the Authority of specific probable future events or circumstances which may adversely affect or delay the execution of the Works.

10.3.4. In this event, or if the Authority gives notice to the Contractor that a Programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised Programme to the Authority in accordance with this Sub-Clause.

10.4. **Extension of time for completion**

10.4.1. The Contractor shall be entitled subject to Sub-Clause 19.2 of the contract to an extension of Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

- (i) a Price Variation (unless an adjustment to the Time for Completion has been agreed),
- (ii) a cause of delay giving an entitlement to extension of time under this Contract,
- (iii) any delay, impediment or prevention caused by or attributable to the Authority or the Authority's Personnel at the Site,
- (iv) An instruction of the Authority to suspend the whole or any part of the Works, for reasons not attributable to the Contractor.

10.4.2. Further, Parties agree that in the event of delay in Project Completion beyond 12 (twelve) months from the Commencement Date on account of default or breach of obligations of the Authority/Authority and for reasons not attributable to the Contractor, then the Contractor shall be entitled to reimbursement of all expenses incurred in completing the

Works to achieve Project Completion, which shall be supported by documentary evidence and which have been agreed under this Contract between the Parties.

10.4.3. If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Authority in accordance with Sub-Clause 19.2 of the contract. When determining each extension of time under Sub-Clause 19.2 of the contract, the Authority shall review previous determinations and may increase, but shall not decrease, the total extension of time.

10.4.4. For the avoidance of doubt, it is agreed between the Parties that if the Authority extends the time for Project completion under this Contract due to any delay not attributable to the Contractor, then the Contractor shall be entitled to an equal extension of Time for Completion of the Works in so far as the delay event affects the completion of the Works or the discharge of obligations by the Contractor under this Contract.

10.4.5. If the following conditions apply, namely:

- (i) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (ii) these authorities delay or disrupt the Contractor's work, and
- (iii) the delay or disruption was not reasonably foreseeable by an experienced contractor by the date for submission of the Tender,

then this delay or disruption will be considered as a cause of delay.

10.5. **Rate of progress**

10.5.1. If, at any time:

- (i) actual progress is too slow to complete within the Time for Completion, and/or
- (ii) progress has fallen (or will fall) behind the current Programme,

other than as a result of a cause listed in Sub-Clause 10.4 of the Contract, then the Authority may instruct the Contractor to submit a revised Programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

10.5.2. Unless the Authority notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Authority to incur additional costs, the Contractor shall pay these costs to the Authority, in addition to Liquidated Damages (if any).

10.6. **Liquidated Damages**

- 10.6.1. In case of failure to comply with the Time for Completion for the Works for the reasons solely attributable to the Contractor, the amount of liquidated damages ("**Liquidated Damages**") shall be equal to 0.1% (Zero point one percent) of the Contract Price for each day of delay, with the maximum amount payable by the Contractor as liquidated damages being equal to 10% ("**Maximum LD Amount**"). The levying of the above liquidated damages shall be deferred if Contractor's application for Extension of Time for Completion is pending for decision of the Authority.
- 10.6.2. If the stipulated Project Completion has been extended by the Authority, then the liquidated damages imposed, if any, shall be returned to the Contractor without any interest payment.
- 10.6.3. In the event the total amount of damages payable by the Contractor to the Authority exceeds the Maximum LD Amount, then the Performance Security and Security Deposit paid by the Contractor shall be forfeited by the Authority to the extent of amount payable towards damages over the Maximum LD Amount.
- 10.6.4. The Parties acknowledge that the liquidated damages which are payable under this Sub-Clause are in the nature of liquidated damages and (a) are not a penalty, (b) are fair and reasonable, and (c) represent a reasonable and genuine pre-estimate of the losses that would be incurred by the Authority from such delay.

10.7. **Suspension of work**

- 10.7.1. The Authority may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.
- 10.7.2. The Authority may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of and is solely attributable to the Contractor, the following Sub-Clauses 10.8 ,10.9 and 10.10 of the Contract shall not apply.

10.8. **Consequences of Suspension**

- 10.8.1. If the Contractor suffers delay and/or incurs Cost from complying with the Authority's instructions under Sub-Clause 10.7 of the contract and/or from resuming the work, the Contractor shall give notice to the Authority and shall be entitled subject an extension of time for any such delay, if completion is or will be delayed,
- 10.8.2. After receiving this notice, the Authority shall proceed to make a fair determination to agree or determine these matters.
- 10.8.3. The Contractor shall not be entitled to an extension of time for making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 10.7 of the contract.

10.9. **Payment for plant and materials in event of suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (iii) the work on Plant or delivery of Plant and/or Materials, has been suspended for more than 28 (twenty eight) days, and
- (iv) the Contractor has marked the Plant and/or Materials as the Authority's property in accordance with the Authority's instructions.
- (v) No loss / compensation / damages shall be payable by the PSCDCL to the Contractor / any one if the work stopped by the order of any judicial / Higher Administrative authority.

10.10. **Prolonged suspension**

- 10.10.1. If the suspension under Sub-Clause 10.7 of the contract has continued for more than 60 [sixty] days, the Contractor may request the Authority's permission to proceed. If the Authority does not give permission within 28 (twenty eight) days after being requested to do so, the Contractor may, by giving notice to the Authority, treat the suspension as an omission under Clause 12 of the contract of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may treat the suspension as an event of default by the Authority and terminate the Contract by giving notice of termination under Sub-Clause 18 of the Contract.

10.11. **Resumption of work**

- 10.11.1. After the permission or instruction to proceed is given, the Parties shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

10.12. **Step in Rights of the Authority**

- 10.12.1. Notwithstanding anything to the contrary contained in this Contract, the Contractor acknowledges that time shall be of the essence in respect to the Contractor performing its obligations in completing the Project in accordance with the Programme or agreed schedule or any extension thereof. If, in the course of execution of the Works, the Contractor is delayed in achieving the Project Completion in accordance with the Programme agreed between the Parties, and the delay or non-performance is attributable solely to the Contractor and is not attributable to Authority and if the Authority is of the opinion that such delay cannot be cured, then the Authority shall have the right to step in and perform (itself or through the engagement of third parties) any portion of the Works. Further, the Authority may at its option suspend this Contract with the Contractor and appoint another contractor to complete the remaining Works, in whole or in part; provided that the Contractor shall not be released from its obligations under this Contract until this Contract is terminated.

11. DEFECTS LIABILITY

- 11.1. The Defects Liability Period shall commence on the date the Works have been substantially completed by the Contractor and the Completion Certificate confirming the same has been issued by the Authority. Notwithstanding anything to the contrary contained anywhere in this Contract, it is expressly agreed between the Parties that there shall be no extension of the Defects Liability Period due to any reason whatsoever.
- 11.2. The Contractor shall be responsible for all defects and deficiencies in the Project till the end of the Defects Liability Period, which shall be a period of 12 months after the Completion certificate, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Chief Engineer in the Project during the aforesaid period.
- 11.3. In the event that the Contractor fails to repair or rectify such defect or deficiency within a period of 15 days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Contractor's risk and cost so as to make the Project conform to the Maintenance Requirements.
- 11.4. All costs incurred by the Authority hereunder shall be reimbursed by the Contractor to the Authority within 15 days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Security provided thereunder. For the avoidance of doubt, the provisions of this Clause 11 of the contract shall not apply if Termination occurs prior to Contract Completion Date.

12. PRICE VARIATIONS AND ADJUSTMENTS

- 12.1. If during the Contract Period, there shall be any variation in the Consumer Price Index for industrial workers of Pune as per the Labour Gazette published by the Commissioner of Labour, Government of Maharashtra and/ or in the wholesale price index for all commodities prepared by the Office of Economic Adviser, Ministry of Industry, Government of India, as compared or in the prices of petrol/ oil and lubricants, and major construction material like cement, steel, various types of metal pipes etc, then subject to the other conditions mentioned below, price adjustment on account of (1) labour component; (2) material component excluding cement & steel; (3) petrol, oil and lubricant component; (4) steel component; and (5) cement component, shall be calculated as per the formula provided in Schedule N. Apart from the component mentioned above, there shall be no other adjustment to the Contract Price for any reason whatsoever.

13. INSURANCE

- 13.1. The Contractor shall effect and maintain at its own cost, during the Construction Period and Operation Period such necessary insurances for such maximum sums as may be required under Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Contractor 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 Contractor during the Construction Period. Similarly, all workmen appointed to complete the Contract are required to be insured under workmen's compensation insurance policy.

14. CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS

- 14.1. Any claim or document provided by the Contractor to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its statutory auditors . For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of this Contract, save and except where such certification is expressly provided.

15. CHANGE IN LAW

- 15.1. The Contract Price shall be adjusted to take account of any increase or decrease in cost resulting from a Change in Law which affects the Contractor in the performance of obligations under the Contract.
- 15.2. If the Contractor suffers (or will suffer) delay and / or incurs (or will incur) additional cost as a result of these changes in the Laws or in such interpretations, made after the Execution Date, the Contractor shall give notice to the Authority and shall be entitled to:
- (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 10.4 of the contract, and
 - (ii) payment of any such cost, which shall be added to the Contract Price.
- 15.3. After receiving this notice as specified in Clause 15.2 of the contract, the Authority shall proceed to agree and determine the matter in consultation with the Contractor and reach to an agreement. If agreement is not achieved, the Authority shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- 15.4. If the Contractor suffers an increase in costs due to change in royalty or any Change in Law on direct cost inputs, as a result of these changes made after the Execution Date, the Contractor shall give notice to the Authority and shall be entitled to payment of any such cost, which shall be added to the Contract Price.
- 15.5. If the Contractor benefits from a reduction in costs due to change in royalty or Change in Law on direct cost inputs, as a result of these changes made after the Execution Date, the Contractor shall pay the amount to the Authority as determined by the Authority in accordance with Clause 15.3 of the contract, upon service of a notice by the Authority to the Contractor.
- 15.6. The adjustment of any such cost will be applicable within the period from Commencement Date till the completion of Project along with approved extensions if any beyond which, this Sub-Clause shall not apply.

16. LIABILITY AND INDEMNITY

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

17. FORCE MAJEURE

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

18. TERM AND TERMINATION

18.1. Notice to Correct:

- 18.1.1. If the Contractor fails to carry out any obligation under the Contract, the Authority may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time. If no time is specified, then the cure period shall be equivalent to 30 (thirty) days.

18.2. Termination by Authority

- 18.2.1. The Authority shall be entitled to terminate the Contract if the Contractor:

- (i) fails to deposit Performance Security or Security Deposit with the Authority;
- (ii) fails to comply with a notice under Sub Clause 18.1 of the contract;
- (iii) repudiates or abandons (refusal to perform any of its obligations under the relevant document) the Contract or any other agreements entered into by the Contractor in connection with the requirements under this Contract;
- (iv) without reasonable excuse fails to proceed with the Project in accordance with Clause 9 of the contract;
- (v) subcontracts the whole of the Project or assigns the Contract without the required agreement;
- (vi) becomes bankrupt or insolvent, goes into liquidation, has a receiving or an administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events;
- (vii) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - A. for doing or forbearing to do any action in relation to the Contract; or
 - B. for showing or forbearing to show favour or disfavour to any person in relation to the Contract.or if any of the Contractor's Personnel gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this Sub Clause 18.2.1(vii) . However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.
- (viii) fails to pay any Liquidated Damages under Sub-Clause 10.6 of the contract due and owing to the Authority under this Contract within a period of 45 (forty five) days from the date of receipt by the Contractor of the notice for payment;
- (ix) commits a breach of its obligations under this Contract, save and except those defaults in respect of which cure period has been expressly provided in the Contract and fails to remedy or rectify the same within the period provided in a notice in this behalf from the Authority, other than where such breach is caused by default of the Authority including but not limited to gross negligence or willful misconduct;
- (x) suffers an execution being levied on any of its assets/equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 15 (fifteen) days;

- (xi) represents anything or makes warranties given which are found to be false or misleading;
- (xii) creates any Encumbrance, charges or lien in favour of any person; and
- (xiii)** fails to comply with any final determination, order or award made in connection with the dispute resolution procedure set forth in this Contract provided that the Contractor shall have a period of 30 (thirty) days to rectify such failure, except where such final determination, order or award provides for the payment of an amount of money, to the extent not resulting from a Contractor's breach of obligations or from an act or omission of the Contractor.

18.2.2. In any of these events or circumstances as specified above, the Authority may, upon giving 15 (fifteen) days' Termination Notice to the Contractor, terminate the Contract and expel the Contractor from the Site along with forfeiture of the Performance Security and Security Deposit. However, in the case of Sub-Clause 18.2.1 of the contract (vi) or (vii), the Contractor may by notice terminate the Contract immediately.

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

18.2.4. The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Authority.

18.2.5. After termination, the Authority may complete the Project and/or arrange for any other entities to do so. The Authority and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

18.2.6. The Contractor shall then give a 15 (fifteen) days' notice that the Contractor's Equipments and temporary works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Authority, these items may be sold by the Authority in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

18.3. **Termination Payments**

18.3.1. Upon Termination on account of Contractor's Default, the Authority shall:

- (i) encash and appropriate the Performance Security and security deposit, or in the event the Contractor has failed to replenish or extend the Performance Security, claim the Performance security amount as agreed pre-determined compensation to the Authority for any losses, delays and cost of completing the Works and Maintenance, if any;
- (ii) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment and interest thereon; and

- (iii) pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Completed Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

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

- (i) return the Performance Security and Security Deposit forthwith;
- (ii) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and
- (iii) pay to the Contractor, by way of Termination Payment, an amount equal to:

- a. Valuation of Unpaid Works;

- b. the reasonable cost, as determined by the Authority's

- Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;

- c. the reasonable cost of temporary works, as determined by the Authority's Engineer; and

- d. 10% (ten per cent) of the cost of the Works and Maintenance that are not commenced or not completed,

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

18.4. **Valuation of Unpaid Works**

18.4.1. For the purpose of the above clause, Valuation of Unpaid works shall mean:

- (iv) value of the completed stage of the Works, less payments already made;
- (v) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
- (vi) value of Maintenance, if any, for completed months, less payments already made,

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

- (i) The Contractor expressly agrees that Termination Payment under this Clause 17 of the contract shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Contract for any reason whatsoever and that the

Contractor shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

18.4.3. In the event of termination of the Contract on the happening of any events specified in Sub-Clause 18.2.1 above, the Contractor shall:

- (i) Undertake all steps to mitigate costs, expenses and liabilities of the Authority arising in relation to the Contractor's obligations hereunder;
- (ii) Until termination, discharge its obligations so as to maintain the continuity of the service to the users of the Project;
- (iii) The Site of the Project is handed over to the Authority by the Contractor on the date of termination to enable the Authority to comply with its obligations under the Contract.
- (iv) Provided further that:
 - A. Termination Payment will be payable by the Contractor no later than 60 (sixty) days after the effective date of the termination of this Contract; and
 - B. if the calculation of all or part of such Termination Payment is disputed, the undisputed amounts shall be paid forthwith and the disputed amounts will be resolved in accordance with the dispute resolution mechanism as agreed between the Parties hereunder.

18.4.4. As soon as practicable after a notice of termination under Sub-Clause 18.2.2 of the contract has taken effect, the Authority shall proceed to agree and fairly determine the matter in consultation with the Contractor on the value of the works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

18.4.5. The Authority shall be entitled to terminate the Contract, at any time for the Authority's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 30 (thirty eight) days after the later of the dates on which the Contractor receives this notice or the Contractor returns the Performance Security. The Contractor shall not terminate the Contract under this Sub-Clause in order to execute the Project itself or to arrange another contractor for execution.

18.5. **Termination by Contractor**

18.5.1. The Contractor shall be entitled to terminate the Contract if:

- (i) the Contractor does not receive the amount due within 90 (ninety) days after the expiry of the time stated in Sub-Clause 6.5 of the contract [*Timing of Payments*] within which payment is to be made;

- (ii) the Contractor substantially fails to perform his obligations under the Contract and commits a material breach of its obligations under the Contract for a continuous period of not less than 30 (thirty) days following written notice from the Contractor to the Authority of such material breach;
- (iii) a prolonged suspension affects the whole of the Project as described in Sub-Clause 10.10 of the contract , or
- (iv) The Authority fails to comply with any final determination, order or award made in connection with the dispute resolution procedure set forth in this Contract provided that the Authority shall have a period of 30 (thirty) days to rectify such failure, except where such final determination, order or award provides for the payment of an amount of money, in which case Sub-Clause (i) above will apply in each case, to the extent not resulting from any default of the Contractor or from an act of or omission by the Contractor.

18.5.2. In any of these events or circumstances, the Contractor may, upon giving 30 (thirty) days' Termination Notice to the Authority, terminate the Contract. However, in the case of Sub Clause 18.3.1 of the contract (iii), the Contractor may by notice terminate the Contract immediately.

18.5.3. The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

19. CLAIMS, GOVERNING LAW AND DISPUTE RESOLUTION

19.1. Governing Law

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

19.2. Contractor's Claims

19.2.1. If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of this Contract or otherwise in connection with the Contract, the Contractor shall give notice to the Authority, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 (thirty) days after the Contractor became aware, or should have become aware, of the event or circumstance. If the Contractor fails to give notice of a claim within such period of 30 (thirty) days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Authority shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

19.2.2. The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Authority.

- 19.2.3. Within 30 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Authority and approved by the Contractor, the Authority shall respond with approval, or with disapproval and detailed comments, and/or request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

19.3. **Amicable Settlement**

- 19.3.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Contract (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 19.3 of the contract.
- 19.3.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Contract 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.

19.4. **Conciliation**

- 19.4.1. In the event of any Dispute between the Parties, the same shall be referred to the Chief Engineer in charge within 15 (fifteen) days from its occurrence for mediation of the dispute. If the Contractor is aggrieved by the decision of the Chief Engineer, then the Dispute shall be referred to the [Chairman] of the Authority. Thereafter, the [Chairman] of the Authority and the Chairman of the Board of Directors of the Contractor shall meet for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 19.3 of the contract 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 19.5 of the contract.

19.5. **Arbitration**

- 19.5.1. Any Dispute which is not resolved amicably by conciliation, as provided in Sub-Clause 19.4, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with this Sub-Clause 19.5 of the contract. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be Pune and the language of arbitration proceedings shall be English.
- 19.5.2. There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and

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

- 19.5.3. The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 19 of the contract shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.
- 19.5.4. The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.
- 19.5.5. This Contract and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

20. MISCELLANEOUS

20.1. Entire Contract

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

20.2. Severability

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

20.3. Confidentiality

- 20.3.1. The Authority and Contractor, at all times, keep the terms and conditions of this Contract and all information pertaining thereto confidential and the Parties agree to not disclose any such confidential information to any person or entity except with the prior consent of the other Party or as required under law.
- 20.3.2. Except with the prior written permission of PSCDCL, the Bidder (including all consortiums or partners) and its Personnel shall not disclose such confidential information to any person or entity not expected to know such information by default of being associated with the

project, nor shall the Bidder and its Personnel make public the recommendations formulated in the course of, or as a result of the Project.

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

20.4. **Amendments and waivers**

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

20.5. Relationship of the parties

20.5.1. Nothing contained in this Contract:

- (i) shall create or constitute or be deemed to create or constitute a partnership or agency between or among the Parties or any of them; or
- (ii) constitute any Party as the agent, representative or employee of any other Party, or otherwise entitle any Party to have authority to bind any other Party for any purpose whatsoever.

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

20.6. Waiver

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

20.7. Payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Contract 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..

20.8. Independent rights

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

20.9. **Further assurance**

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

20.10. **Authorization**

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

20.11. **Notices**

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

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

Attention:

Designation:

Address:

Fax Number:

Email:

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

Attention:

Designation:

Address:

Fax Number:

Email:

20.12. Language

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

20.13. Counterparts

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

9 SCHEDULE- A - SITE

A) Site within Aundh- Baner- Balewadi

- ABB_1) S.no 135 Baner- (theme- E learning)
- ABB_3) S.no 141 Baner- (theme- Leisure and Meditation)

10 SCHEDULE- B CONSTRUCTION OF THE PROJECT



11 SCHEDULE- C PROJECT FACILITIES



12 SCHEDULE- D SPECIFICATIONS AND STANDARDS

Kindly refer schedule 3 for specifications and standards

13 SCHEDULE- E APPLICABLE PERMITS



14 SCHEDULE- F CHIEF ENGINEER



15 SCHEDULE- G PROJECT MANAGEMENT CONSULTANT



16 SCHEDULE- H AUTHORITY’S REQUIREMENTS



17 SCHEDULE- I SAFETY REQUIREMENTS



18 SCHEDULE- J PROJECT COMPLETION SCHEDULE AND PROJECT MILESTONES



19 SCHEDULE- K TESTS ON COMPLETION



20 SCHEDULE- L COMPLETION CERTIFICATE



PROJECT NAME _____ PROJECT No. _____

DATE OF PROJECT COMPLETED: _____

The undersigned architect (“Chief Engineer”) supervised construction of the above-named project (“Project”), and, based on that supervision and any further inspection deemed necessary, certifies as follows:

1. The Project was constructed in accordance with the plans and specifications previously approved by the Authority and consistent with the best practices prevailing in the construction industry.
2. The Project, as constructed, complies with all applicable statutes, codes, zoning ordinances and regulations, including, but not limited to, handicapped accessibility standards, as mandated by PMC
3. The Project is complete so that tenants may occupy and the borrower may operate and use the Project for the purposes for which it was intended.

Chief Engineer: _____ Date: _____

By: _____
Name: _____
Title: _____
Registration: _____

The undersigned General Contractor for the Project (“Contractor”) certifies as follows:

1. Contractor’s twelve (12) month construction guarantee commenced on the date noted above that construction was complete.
2. Follow-up inspections will be completed nine (9) months and twelve (12) months after the construction complete date. All follow-up inspections will be attended by the Authority, Contractor, Architect/Chief Architect/Chief Engineer.
3. Contractor has made arrangements for Architect/Chief Architect/Chief Engineer to prepare follow-up inspection reports detailing any construction defects.
4. Contractor will correct all defects identified in the Architect/Chief Architect/Chief Engineer’s follow-up inspection reports.

Contractor _____ Date: _____
:

By: _____
Name: _____
Title: _____

21 SCHEDULE- M PROVISIONAL CERTIFICATE

PROJECT NAME _____ PROJECT No. _____

DATE OF PROJECT COMPLETED: _____

The undersigned architect (“Chief Engineer”) supervised construction of the above-named project (“Project”), and, based on that supervision and any further inspection deemed necessary, certifies as follows:

1. The Project was constructed in accordance with the plans and specifications previously approved by the Authority and consistent with the best practices prevailing in the construction industry.
2. The Project, as constructed, complies with all applicable statutes, codes, zoning ordinances and regulations, including, but not limited to, handicapped accessibility standards, as mandated by PMC
3. The Project is complete **(except for minor punch list items specifically described below, with estimated costs)** so that tenants may occupy and the borrower may operate and use the Project for the purposes for which it was intended.

Chief engineer: _____ Date: _____

By: _____
Name: _____
Title: _____
Registration: _____

The undersigned General Contractor for the Project (“Contractor”) certifies as follows:

1. Contractor’s twelve (12) month construction guarantee commenced on the date noted above that construction was complete.
2. Follow-up inspections will be completed nine (9) months and twelve (12) months after the construction complete date. All follow-up inspections will be attended by the Authority, Contractor, Chief Architect, Concept urban designer, Chief Engineer.
3. Contractor has made arrangements for Authority, Contractor, Chief Architect, Concept urban designer, Chief Engineer. Engineer to prepare follow-up inspection reports detailing any construction defects.
4. Contractor will correct all defects identified in the Authority, Contractor, Chief Architect, Concept urban designer, Chief Engineer’s follow-up inspection reports.

Contractor: _____ Date: _____

By: _____
Name: _____
Title: _____

22 SCHEDULE- N FORMULAE FOR CALCULATING VARIATIONS

PRICE VARIATION CLAUSE :- If during the Operative period of the contract as defined in condition (i) below, there shall be any variation in the Consumer Price Index (New Series) for Industrial Workers for Pune centre as per the labour Gazette published by the Commissioner of Labour, Government of Maharashtra and / or in the wholesale Price Index for all commodities prepared by the Office of Economic Advisor, Ministry of Industry, Government of India, or in the price of Petrol / Oil and Lubricants, and major construction materials like bitumen, cement, steel various types of metal pipes etc. then subject to the other conditions mentioned below, price adjustment on account of

1. Labour component,
2. Material component,
3. Petrol, Oil and Lubricant component
4. Bitumen component
5. HYSD / TMT and mild steel component,
6. Cement component,
7. CI and DI pipes component.

calculated as per the formula hereinafter appearing, shall be made. Apart from this, no other adjustments shall be made to the contract price for any reasons whatsoever. Component percentage as given below are as of the total cost of work put to tender. Total of Labour Material and POL components shall be 100 and other components shall be as per actuals.

1) Labour Component – K1	30.00 %
2) Material Component – K2	60.00 %
3) POL Component – K3	5.00 %
4) Bitumen component -	Nil
5) HYSD / TMT & Mild Steel Component -	2.00 %
6) Cement Component -	3.00 %
7) C.I. & D.I. Pipe Component -	Nil

Note :- If Cement, Steel, Bitumen, C.I. & D.I. Pipes are supplied Schedule 'A', then respective components shall not be considered. Also if particular component is not relevant same shall be deleted.

1) Formula for the labour component :-

$$V1 = 0.85 P \times [K1/100 \times (L1-L0)/L0]$$

Where = Amount of Price Variation in Rupees to be allowed for Labour Component.

P = Cost of work done during the quarter under consideration minus the cost of cement, HYSD / TMT and Mild Steel, Bitumen, C.I. & D.I. Pipes calculated at the basic star rates as applicable for the tender consumed during the quarter under consideration (These star rates shall be specified here). Basic star rate, cement Rs.300 per bag i.e.6000 per M.T. & TMT steel Fe 500 Rs. 40500/- per M.T.

K1 = Percentage of Labour Component as indicated above.

L0 = Basic Consumer Price Index for Pune centre shall be average consumer price index for the quarter preceding the month in which the last date prescribed for receipt of tender falls.

L1=Average consumer price index for Pune centre for the quarter under consideration.

2) Formula for Materials component :

$$V1 = 0.85 P \times [K2/100 \times (M1-M0)/M0]$$

V2 = Amount of Price Variation in Rupees to be allowed for Materials Component.

P = Same as worked out for labour component.

K2 = Percentage of Material Component as indicated above.

M0 = Basic Wholesale Price Index shall be average wholesale price index for the quarter preceding the month in which to the last date prescribed for receipt of tender falls.

m1 = Average Wholesale Price Index during quarter under consideration.

3) Formula for Petrol, Oil and Lubricant component :

$$V3 = 0.85 P \times [K3/100 \times (P1-P0)/P0]$$

Where

V3 = Amount of Price Variation in Rupees to be allowed for POL component.

P = Same as worked out for labour component.

K3 = Percentage of Petrol, oil and lubricant component.

P0 = Average Price of HSD at Mumbai during the quarter preceding the month in which the last date prescribed for receipt of tender falls.

P1 = Average Price of H.S.D. at Mumbai during the quarter under consideration.

4) Formula for Bitumen component :

$$V4 = QB (B1-BO)$$

V4 = Amount of price variation in Rupees to be allowed for Bitumen component.

QB = Quantity of Bitumen (Grade) in metric tonnes used in the permanent works and approved enabling works during the quarter under consideration.

B1 = Current average ex-refinery price per metric tonne of Bitumen (Grade) under consideration including taxes (Octroi, excise, sales tax) during the quarter under consideration.

B0 = Basic rate of Bitumen in rupees per metric tonne as considered for working out value of P or average ex-refinery price in rupees per metric tonne including taxes (Octroi, excise, sales tax) of Bitumen for the grade of Bitumen under consideration prevailing quarter preceding the month in which the last date prescribed for receipt of tender, falls, whichever is higher.

5) Formula for HYSD and Steel Component:

$$V5 = So (SL1 - SLo) \times T$$

Where,

V 5 = Amount of price variation in Rupees to be allowed for HYSD / TMT / Mild Steel Component.

So = Basic rate of HYSD /TMT/ Mild Steel in Rupees per metric tonne as considered for working out value of P

SL1 = Average steel index as per RBI Bulletin during the quarter under consideration.

SLo = Average of steel index as per RBI Bulletin for the quarter preceding the month in which the last date prescribed for receipt of tender falls.

T = Tonnage of Steel used in the permanent woks for the quarter under consideration.

6) Formula for Cement Component :

$$V6 = Co (CL1 - CLo) / CLo \times T$$

Where,

V6 = Amount of price escalation in Rupees to be allowed for cement component.

Co = Basic rate of cement in Rupees per metric tonne as considered for working out value of P.

CL1 = Average cement index published in the RBP Bulletin for the quarter under consideration.

CLo = Average of cement index published in the RBP Bulletin for the quarter preceding the month in which to the last date prescribed for receipt of tender falls.

T = Tonnage of Cement used in the permanent woks for the quarter under consideration.

7) Formula for C.I. / D.I. Pipe Component :

$$V7 = Qd (D1 - Do) \times T$$

Where,

V7 = Amount of price escalation in Rupees to be allowed for C.I. / D.I. Pipe components.

Do = Pig Iron Basic price in Rupees per tonne as considered for working out value of P.

D1 = Average Pig Iron price in Rupees per tonne during the quarter under consideration.
(Published by I ISCO).

Qd = Tonnage of C.I. / D.I. Pipe used in the woks during the quarter under consideration.

The following conditions shall prevail :

- (i) The Operative period of the contract shall mean the period commencing from the date of work order issued to the contractor and ending on the date which the time allowed for the completion of works specified in the contract work expires, taking into consideration the extension of time if any, for completion of the work granted by the Engineer under the relevant clause of the conditions of contract in cases other than those where such extension is necessitated on account of default of the

Contractor. The decision of the Engineer as regards the Operative period of the contract shall be final and binding on the contractor. Where any compensation for liquidated damages is levied on the contractor on account of delay in completion or inadequate progress under the relevant contract provisions, the price adjustment amount for the balance of work from the date of levy of such compensation shall be worked out by pegging the indices L1, M1, C1, P1, B1, SI1 and CI1 to the levels corresponding to the date from which such compensation is levied.

(ii) This price variation clause shall be applicable to all contracts in B-1 / B-2 and C form but shall not apply to piece works. The price variation shall be determined during each quarter as per formula given above in this clause.

(iii) The price variation under this clause shall not be payable for the extra items required to be executed during the completion of the work and also on the excess quantities of items payable under the provisions of clause 38/37 of the contract form B1/B2 respectively, since the rates payable for extra items or the extra quantities under clause 38/37 are to be fixed as per the current DSR or as mutually agreed, to yearly revision till completion of such work. In other words, when the completion/ execution of extra items as well as extra quantities under clause 38/37 of the contract form B1/B2 extends beyond the operative date of the DSR, then rates payable for the same beyond the date shall be revised with reference to the current DSR prevalent at that time on year to year basis or revised in accordance with mutual agreement thereon, as provided for in the contract whichever is less.

(iv) This clause is operative both ways, i.e. if the price variation as calculated above is on the plus side, payment on account of the price variation shall be allowed to the Contractor and if it is on the negative side, the Government shall be entitled to recover the same from the contractor and the amount shall be deductible from any amounts due and payable under the contract.

(v) To the extent that full compensation for any rise or fall in costs to the contractor is not entirely covered by the provision of this or other clauses in the contract, the unit rate and prices included in the contract shall be deemed to include amount to cover the contingency of such other actual rise or fall in costs.

23 SCHEDULE- O MAINTENANCE REQUIREMENTS

