



MANGALURU
SMART CITY | *Way to go... Way to Grow...*

CONSTRUCTION OF MULTI-
LEVEL CAR PARK (MLCP)
WITH RETAIL AND
COMMERCIAL FACILITIES AT
HAMPANKATTA AT
MANGALURU

CONCESSION AGREEMENT

January 2018

Nodal Agency
MANGALURU SMART CITY LIMITED
(MSCL)
MCC BUILDING, MG ROAD, LALBAGH
MANGALURU - 575003.
DAKSHINNA KANNADA DISTRICT,
KARNATAKA.
TEL: 0824-2220310
E-MAIL: smartcitymangaluru@gmail.com
WEB: www.mangalorecity.mrc.gov.in

Contents

ARTICLE 1: DEFINITIONS AND INTERPRETATION	4
ARTICLE 2: SCOPE OF THE PROJECT	25
ARTICLE 3: GRANT OF CONCESSION.....	27
ARTICLE 4: CONDITIONS PRECEDENT	33
ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE.....	38
ARTICLE 6: OBLIGATIONS OF THE PROCURING ENTITY	44
ARTICLE 7: REPRESENTATIONS AND WARRANTIES.....	46
ARTICLE 8: DISCLAIMER	49
ARTICLE 9: PERFORMANCE SECURITY.....	51
ARTICLE 10: PROJECT SITE	54
ARTICLE 11: UTILITIES AND TREES	59
ARTICLE 12: CONSTRUCTION OF THE PROJECT	61
ARTICLE 13: MONITORING OF CONSTRUCTION	67
ARTICLE 14: COMPLETION CERTIFICATE	70
ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE	73
ARTICLE 16: CHANGE OF SCOPE	74
ARTICLE 17: RESTRICTIONS ON CERTAIN WORKS.....	77
ARTICLE 18: OPERATION AND MAINTENANCE	79
ARTICLE 19: SAFETY REQUIREMENTS.....	87
ARTICLE 20: NODAL OFFICER	88
ARTICLE 21: SUB CONTRACTS	90
ARTICLE 22: MONITORING OF OPERATION AND MAINTENANCE	91
ARTICLE 23: INDEPENDENT ENGINEER/ PMC & DESIGN CONSULTANT	94
ARTICLE 24: FINANCIAL CLOSE	99
ARTICLE 25: PAYMENTS BETWEEN THE PROCEDURE ENTITY & THE CONCESSIONAIRE	101
ARTICLE 26: COMMERCIAL CHARGES & PARKING CHARGES	103
ARTICLE 27: ESCROW ACCOUNT.....	104
ARTICLE 28: INSURANCE.....	108
ARTICLE 29: ACCOUNTS AND AUDIT	111
ARTICLE 30: FORCE MAJEURE	113
ARTICLE 31: COMPENSATION FOR BREACH OF AGREEMENT.....	120
ARTICLE 32: SUSPENSION OF CONCESSIONAIRE’S RIGHTS.....	122
ARTICLE 33: TERMINATIONS.....	124

ARTICLE 34: DIVESTMENT OF RIGHTS & INTERESTS	132
ARTICLE 35: DEFECTS LIABILITY AFTER TERMINATION	136
ARTICLE 36: ASSIGNMENT AND CHARGES.....	138
ARTICLE 37: CHANGE IN LAW.....	140
ARTICLE 38: LIABILITY AND INDEMNITY.....	142
ARTICLE 39: RIGHTS AND TITLE OVER THE SITE	146
ARTICLE 40: DISPUTE RESOLUTION	148
ARTICLE 41: DISCLOSURE.....	150
ARTICLE 42: REDRESSAL OF PUBLIC GRIEVANCES	151
ARTICLE 43: MISCELLANEOUS	153
SCHEDULE A: PROJECT SITE	160
SCHEDULE B: PROJECT FACILITIES.....	171
SCHEDULE C: PROJECT IMPLEMENTATION	178
SCHEDULE D: APPLICABLE PERMITS.....	179
SCHEDULE E: PAYMENT.....	180
SCHEDULE F: PROJECT SITE LEASE DEED	181
SCHEDULE G: MINIMUM PROJECT REQUIREMENTS.....	190
SCHEDULE H: SPECIFICATIONS AND STANDARDS	191
SCHEDULE I: DRAWINGS.....	199
SCHEDULE J: PROVISIONAL / COMPLETION CERTIFICATE	202
SCHEDULE K: PERFORMANCE AND MAINTENANCE STANDARDS	204
SCHEDULE L: CONSTRUCTION PERFORMANCE SECURITY	227
SCHEDULE M: OPERATION & MAINTENANCE PERFORMANCE SECURITY	230
SCHEDULE N: TERMS OF REFERENCE FOR INDEPENDENT AUDITOR	233
SCHEDULE O: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER.....	235
SCHEDULE P: SUBSTITUTION AGREEMENT	239
SCHEDULE Q: VESTING CERTIFICATE	255
SCHEDULE R: PARENT / HOLDING COMPANY CERTIFICATE.....	257
SCHEDULE S: ESCROW AGREEMENT	261



CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** is entered into on this the _____ day of _____ 2018

BETWEEN

The Mangaluru Smart City Limited (MSCL) established under the, represented by its Managing Director.....and having its principal office at Mangaluru, Karnataka, India (Hereinafter referred to as “**Concessioneing Authority**” or “**MSCL**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **ONE PART**;

AND

M/s _____, a Company incorporated under the Companies Act, 2013 (No. 1 of 2013) and having its registered office at _____ (hereinafter referred to as the “**Concessionaire**” which expression shall, unless the context otherwise require, include its successors/ successors in business and permitted assigns and substitutes) of the **SECOND PART**.

M/s Having its registered office at, duly represented through its Authorized signatory Mr./Ms., its authorized signatory, as authorized vide Board Resolution dated,in its capacity as the Confirming Party to this Agreement (hereinafter referred to as the “**Prospective Tenderer**” which expression shall, unless the context otherwise requires, include its successors) of the **THIRD PART**

OR

The consortium of (i) M/s having its registered Office at, (ii) M/s, having its registered Office at-----and (iii) M/s, having its registered Office at----- -- (hereinafter referred to as the “**Prospective Tenderer**” which expression shall, unless the context otherwise requires, include its successors) duly represented through M/s, the Lead Member of the consortium, through its Authorized signatory

Mr./Ms., in their capacity as the Confirming Party to this Agreement as authorized vide Board Resolution dated of the **THIRD PART**.

(Each of the First and Second parts are hereinafter, as the context may admit or require, be individually referred to as a “**Party**” and collectively as the “**Parties**”.)

WHEREAS:

the Concessioneing Authority has decided to develop **Multi Level Car Parking (MLCP) with Retail and Commercial Development at Hampankatta in Mangaluru**, under Smart Cities Mission through Public Private Participation (PPP)mode on **Design, Build, Finance, Operate and Transfer (DBFOT)** basis (‘the Project’). The Project Site comprises of **8136.48 SqM** (approx. 2.01 acres) of land, which includes the amalgamation of 1.55 acres of vacant plot (of Old Bus Stand) belonging to Mangaluru City Corporation and surrounded by privately owned buildings comprising of 0.46 acres of land.

AND WHEREAS with an objective to seek private sector participation in the development of the aforesaid Project, MSCL undertook, the process of selection of a suitable Concessionaire through competitive bidding process, after issuing a Request for Proposal document (RFP) dated _____ inviting Bids/ Proposals from prospective Bidders to implement the said Project.

AND WHEREAS the Concessionaire, selected through the transparent competitive bidding process, met the Eligibility Criteria {as laid down in the RFP document} and quoted the highest value of the Upfront Premium for the right of Design, Development, Operation, Maintenance and Management of the **Multi-Level Car Parking (MLCP) with Retail and Commercial Facilities** at Hampankatta in Mangaluru. After evaluation of the Proposals so received, MSCL accepted the Proposal of the Concessionaire and issued Notice of Award Ref No. _____ dated _____ to the Concessionaire requiring, inter alia, the execution of this Concession Agreement.

AND WHEREAS the Successful Bidder/ Concessionaire acknowledges and confirm that it has undertaken a due diligence and audit of all aspects of the Project Site and Project including technical and financial viability, legal due diligence and traffic volumes and forecast, and on the basis of its independent satisfaction hereby accepts the Concession and agrees to implement the Project at its own cost and expense in accordance with the terms and conditions of this Concession Agreement.

AND WHEREAS following the issue of the Notice of Award and (i) submission by the Successful Bidder, Deed of Guarantee/s ; (ii) provision of the Construction Performance Security of **Rs 5 Crores (Rupees Five Crores only)** to the Concessioneing Authority or MSCL, within 45 (forty five) days of receipt of the Notice of Award to the Concessionaire, the Concessioneing Authority hereby agrees and grants to the Concessionaire this Concession on the mutually agreed terms and conditions for the Concession Period to (a) plan, design, finance, demolish, develop, construct, commission, operate, maintain and manage the Project on a commercial basis, and (b) at the end of the Concession Period transfer back the Project Site, Multi level Car Parking cum Commercial Complex and the Project Assets (except movable assets), to the Concessioneing Authority or its nominated agency free of cost and free of all encumbrances.

AND WHEREAS the Concessionaire hereby accepts the Concession granted and undertakes to implement the Project in accordance to the provisions of this Concession Agreement.

NOW THEREFORE, in view of the offer, mutual promises and consideration set out herein, the Concessioneing Authority and the Concessionaire (each individually a “**Party**” hereto, and collectively the “**Parties**”) hereby agree to be bound by the provisions of this Concession Agreement.

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

“Additional Facilities” means the secondary facilities, which the Concessionaire may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users, and which are in addition to the Project Facilities, and not situated on the Site;

“Additional Termination Payment” means the amount payable upon termination in respect of specified assets, if any, as further limited by the provisions of Article 33.

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

- a) on or before the COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the project, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Appointed Date and the Reference Date.
- b) from COD and until the 4th anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "Base Adjusted Equity") and the Adjusted Equity revised at the commencement of each month following COD to the extent variation in price index occurring between COD and the Reference date;
- c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three percent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in price index occurring between COD and the Reference Date

“Affected Party” shall have the meaning set forth in Clause 30.1;

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

“Annual Concession Fees” shall have the meaning ascribed to it in Article 25.2 of this Agreement

“Applicable Laws” means all Laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

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

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

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

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

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Prospective Tenderer/Consortium in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Prospective Tenderer/Consortium to the Procuring Entity along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Construction Performance Security;

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

- a) the enactment of any new Indian law;
- b) the repeal, modification or re-enactment of any existing Indian law;
- c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- d) a change in the interpretation or application of any Indian 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 the date of Bid;

or

- e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“**MSCL** ” means the Mangaluru Smart City Limited a Public Limited Company registered under Companies Act, 2013;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding

of the {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below (i) 51% (fifty one per cent) thereof for not less than 5 (years) following the COD and ,(ii) 26% (twenty six per cent) thereof, or such lower proportion (10%) as may be permitted by the Authority during the remaining Concession Period; iii) 26% (twenty six percent) or 5% (five percent) of the Total Project cost thereof, of each of the members of the consortium whose technical & financial capacity was evaluated for the purposes of pre-qualification provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning set forth in Clause 16.1;

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

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

“Competent Authority” means any agency, authority, department, ministry, public or statutory Person of the Government of Karnataka or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession;

“Completion Certificate” shall have the meaning set forth in Clause 14.2; **“Concession”** shall have the meaning set forth in Clause 3.1.1;

“Concession Agreement” means an agreement entered into between a Procuring Entity and Concessionaire (a private sector participant) for and in respect of a Public- Private Partnership;

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

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

“Concessionaire Default” shall have the meaning set forth in Clause 33.1.1;

“Conditions Precedent” means the obligations which the Procuring Entity or the Concessionaire or both maybe required to fulfill prior to the financial closure of the Public Private Partnership (PPP) Project, unless waived in writing by the relevant part in accordance with the term of the Concession Agreement as set forth in Clause 4.1.1

“Consortium” shall have the meaning set forth in Recital (F);

“Consortium Member” means a company specified in Recital (F) as a member of the Consortium;

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

“Construction Works” means all works and things necessary to complete the Project in accordance with this Agreement;

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

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

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

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

“**DBFOT**” or “Design, Build, Finance, Operate and Transfer” shall have the meaning set forth in Recital (D);

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

- a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Procuring Entity Default; and
- c) any Subordinated Debt which is included in the Financial Package and disbursed lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken; provided further that the Debt Due, on or after COD, shall in not case exceed 85% (eighty five percent) of the Total Project Cost.

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

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

“**Dispute**” shall have the meaning set forth in Clause 40.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in Article 40;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 34.1;

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

“Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-I, and shall include ‘as built’ drawings of the Project;

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

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

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

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

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

“Escrow Agreement” shall have the meaning set forth in Clause 27.1.2; **“Escrow Bank”** shall have the meaning set forth in Clause 27.1.1; **“Escrow Default”** shall have the meaning set forth in Article 33.1;

"Fee" means the charge that may be levied on and payable to the Concessionaire for a vehicle using the Multilevel Car Parking Project or a part thereof.

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

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

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

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

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

“First Right of Refusal” is a contractual right that gives the Concessionaire at the end of the Concession Period to extend the term to another Concession Period according to the specified terms. If the Concessionaire declines the Right of Refusal, then the Procuring Entity can proceed to next bidding as specified in Clause 3.2

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 30.1; **“GOI”** or **“Government”** means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from

a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“GoK” or “State Government” means the Government of Karnataka or any of its Department acting on behalf of the Government of Karnataka;

“Government Agency” means GOI, GoK or any state government or governmental, department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body- central, state, or local, having jurisdiction over the Concessionaire, the Project Assets or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Government Instrumentality” means any department, division or sub-division of the Government 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 or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 38;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 38;

“Independent Auditors” means a reputable firm of chartered accountants acting as the independent auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 29.2

“Independent Engineer” shall have the meaning set forth in Clause 23.1;

“Indirect Political Event” shall have the meaning set forth in Clause 30.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 28, and includes all insurances required to

be taken out by the Concessionaire under Clause 28.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“Lead Member” shall have the meaning set forth in Recital (F);

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

“Licensed Premises” shall have the meaning ascribed in Clause 10.2

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

“Maintenance Manual” shall have the meaning ascribed to it in Clause 18.3;

“Maintenance Programme” shall have the meaning ascribed to it in Clause 18.4.1;

“Maintenance Requirements” shall have the meaning set forth in Clause 18.2;

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

“Material Breach” means a breach by either Party of any of its obligations under this Agreement which has / likely to have Material Adverse Effect on this Project and which such Party shall have failed to cure within the Cure Period;

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

“**Non-Political Event**” shall have the meaning set forth in Clause 30.2;

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

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

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

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

“**O&M Inspection Report**” shall have the meaning set forth in Clause 22.2;

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

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 29.2.1;

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

“**Performance Security**” means a financial guarantee in the appropriate form including a security deposit or bank guarantee or both furnished by the Concessionaire to the Procuring Entity for the performance of its obligations under the Concession Agreement as set forth in Clause 9.1;

“**Person**” means any individual, company, corporation, partnership, joint venture, trust, and unincorporated organization, government or Government Agency or any other legal entity;

“**Political Event**” shall have the meaning set forth in Clause 30.4;

“**Premium**” shall have the meaning ascribed to it in Article 25.1 of this Agreement

“**Procuring Entity**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals

“**Procuring Entity Contractor**” means such person or persons as may be authorized in writing by the Procuring Entity to act on its behalf under any of Procuring Entity’s agreements, including this Agreement and shall include any person or persons having authority to exercise

any rights or perform and fulfill any obligations of the Procuring Entity under any of Procuring Entity’s agreements, including this Agreement.

“**Procuring Entity Default**” shall have the meaning set forth in Clause 33.2.1;

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

“**Project**” means, subject to the provisions of this Concession Agreement or in respect of the Scope of project (i) the development, financing, designing, construction, operation and maintenance of the Multi-Level Car Parking cum Commercial Complex, as per the terms and conditions of this Concession Agreement and Schedules hereof, at the Project Site and includes all works, services & equipment relating to or in respect of the scope of the project.:

“**Project Agreements**” means, collectively, this Concession Agreement, the Financing Agreements, EPC Contract, O&M Contract, Tolling contract and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services;

“**Project Assets**” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, drainage works, electrical systems, communication systems, rest areas, relief centers, maintenance depots and administrative offices; (c) Project Facilities situated on the

Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project, but does not include Additional Facilities;

“Project Completion Date” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule C for completion of the Project on or before the Scheduled Completion Date;

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

“Project Implementation Schedule” means the project milestones set forth in Schedule C;

“Project Site” means the Site comprising all Project Assets, and its subsequent development and augmentation in accordance with this Agreement as described in Schedule A

“Prospective Tenderer” shall mean the bidder / firm / consortium that has been successful in the bidding process for the Project and shall include its successor-in-interest and permitted assigns

“Provisional Certificate” shall have the meaning set forth in Clause 14.3;

“Punch List” shall have the meaning ascribed to it in Clause 14.3;

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

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

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

“Right of Way” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for

construction, operation and maintenance of the Project in accordance with this Agreement as set forth in Clause 10.2

“**Safety Consultant**” shall have the meaning set forth in Clause 19.1.2;

“**Safety Fund**” shall have the meaning set forth in Clause 19.2;

“**Safety Requirements**” shall have the meaning set forth in Clause 19.1.1;

“**SBI PLR**” means the prime lending rate per annum for loans with 1 (one) year maturity as fixed from time to time by the State Bank of India, and in the absence of such rate, the average of the prime lending rates for loans with 1 (one) year maturity fixed by the Bank of India and the Bank of Baroda and failing that any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties;

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

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

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

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-H, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Procuring Entity;

“**State**” means the State of Karnataka and “**State Government**” means the government of that State;

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

- a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

- b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

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

"Substitution Agreement" shall have the meaning set forth in Clause 36.3;

"Suspension" shall have the meaning set forth in Clause 32.1;

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local)

on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder as set forth in Article 33;

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

"Termination Payment" means the amount payable by the Procuring Entity to the Concessionaire upon Termination as set forth in Clause 33.3 and 33.4.

"Tests" means the tests set forth in Article 13.3 to determine the completion of the project in accordance with the provisions of this Agreement;

"Total Project Cost" means the lowest of the following:

- a) Total Project Cost as set forth in the Financing Documents.
- b) Actual Capital Cost of the Project upon completion of the Project as certified by Statutory Auditors.
- c) The Total Cost of Project as determined/ verified by Independent Engineer on the basis of drawings, the detailed cost estimate of the Project and the proposal submitted by the Concessionaire and as approved by him with due reference to work executed as per the approved drawings, specifications and proposal.
- d) The Total Cost of Project submitted by Concessionaire as part of its Conditions Precedent.

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

“**User**” means a person who uses or intends to use the Project facility or any part thereof in/on the site;

“**Vesting Certificate**” shall have the meaning set forth in Clause 34.4; and

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

Mangaluru Smart City Limited by:

(Signature)

(Name)

(Designation)

In the presence of:

1.

2.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20.....

Hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, company Secretary / Authorized Officer who has countersigned the same in token thereof:

1.2.Interpretation

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

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

or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

- d) the table of contents, headings or sub-headings in this Concession Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Concession Agreement;
- e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- f) references to “construction” or “building” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
- g) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a calendar day;
- j) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Karnataka are generally open for business;
- k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Concession Agreement;
- m) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Concession Agreement is not a business day, then the period shall run until the end of the next business day

- n) the words importing singular shall include plural and vice versa;
- o) references to any gender shall include the other and the neutral gender;
- p) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- q) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- r) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Procuring Entity hereunder or pursuant hereto in any manner whatsoever;
- t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Concession Agreement from or by any Party or the Independent 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 Independent Engineer, as the case may be, in this behalf and not otherwise;
- u) the Schedules and Recitals to this Concession Agreement form an integral part of this Concession Agreement and will be in full force and effect as though they were expressly set out in the body of this Concession Agreement;
- v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Concession Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Concession

Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Concession Agreement or of the Schedule in which such reference appears;

- w) the damages payable by either Party to the other of them, as set forth in this Concession Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”); and
 - x) Time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2. Unless expressly provided otherwise in this Concession Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Procuring Entity and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Procuring Entity and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4. Any word or expression used in this Concession Agreement shall, unless otherwise defined or construed in this Concession Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3. Measurements and arithmetic conventions

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

1.4. Priority of agreements, clauses and schedules

- 1.4.1. This Concession Agreement, and all other agreements and documents forming part of or referred to in this concession agreement are to be taken as mutually explanatory and,

unless otherwise expressly provided elsewhere in this Concession Agreement, the priority of this Concession 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 Concession Agreement; and
- b) all other agreements and documents forming part hereof or referred to herein; i.e. the Concession Agreement at (a) above shall prevail over the agreements and documents at (b) above

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

- a) between two or more Clauses of this Concession 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 Concession Agreement and the Schedules, the Clauses of this Concession Agreement 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.

ARTICLE 2: SCOPE OF THE PROJECT

2.1.Scope of the Project

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

- a) Plan and design, build, demolish , finance, operate, maintain and transfer the Multi Level Car Parking cum Commercial Complex with modern facilities on the Site set forth in Schedule-A together with provision of Project Facilities as specified in Schedule-B, and in conformity with the Minimum Technical Requirements set forth in Schedule G and Specifications and Standards set forth in Schedule-H;
- b) installation of Plant & Machinery , IT Equipment , Security Equipment, etc given under Request for Proposal (RFP) and as per suggested specifications in Schedule H
- c) operation and maintenance of the Project Multi Level Car Parking cum Commercial Complex at Hampankatta in Mangaluru in accordance with the provisions of this Agreement; and
- d) performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
- e) Taking over of the Vacant Possession of the site to Plan, Design, Finance and establish the facility, including Construction, Marketing, provision of relevant assets, equipment, Clearances/approvals, ancillary services and amenities related development conforming to Building Bye-Laws as per terms & Schedules of this Agreement and an area for use and occupation by Procuring Entity.
- f) Site clearance and cordoning off the site; providing and deputing of Security including Dismantling of existing structures if any, cutting of trees, removal of debris etc.
- g) Incorporating Special Purpose Vehicle (SPV) for implementation of the project, if the Prospective Tenderer is an unincorporated Joint Venture or a Consortium or a partnership firm.
- h) Construction of Project Facility including all internal and external services; providing and installation of fire detection; fire alarm and firefighting system and electrical system.

- i) Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement and to meet the requirements laid down by the Competent Authority.
- j) To recover the investment through appropriate applicable revenue streams as per contractual arrangements/as per permitted revenues over the concession period.
- k) To fulfill the payment obligations to the Procuring Entity as defined in the Concession Agreement.
- l) Demand and collect parking charges, rents for shops of new Commercial Complex, Commercial Charges, User Charges etc, from the Sub-Lessee(s)/ Users, as per the laid down provisions of the Concession Agreement and the Schedules hereof.
- m) Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
- n) Transfer of the Project Site, Commercial Complex, including other developments free from all encumbrances and all assets in working condition at zero cost, to the Concessioning Authority, at the end of the Concession Period.

In addition to the above-stated Scope of Work, the Concessionaire shall adhere to all the terms & conditions set forth in this Concession Agreement and the Schedules hereof.

ARTICLE 3: GRANT OF CONCESSION

3.1.The Concession

- 3.1.1. Subject to and in accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Permits, the Procuring Entity hereby grants to the Concessionaire the concession set forth herein including the exclusive right and authority to construct, operate and maintain the Project (the “Concession”) for a period of 30 (thirty) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:
- 3.1.2. Subject to and in accordance with the provisions of this Concession Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to
- a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - b) Design, Build, Finance, Operate and Transfer the Multi-Level Car Parking cum Commercial Complex by the MSCL at Hampankatta in Mangaluru as per the scope of work as mentioned in Schedule A of this Agreement, further detailed under the Minimum Technical Requirements as mentioned in Schedule G of this Agreement and transfer it to the Procuring Entity on the Transfer Date
 - c) Subject to Clause 3.1.2(d), manage, operate and maintain the Multi-Level Car Parking cum Commercial Complex in the MSCL/MCC land at Hampankatta in Mangaluru and regulate the use thereof by third parties;
 - d) allow and assist the Procuring Entity or Procuring Entity’s Contractor(s) in demanding, collecting and appropriating the annual concession fees from the operation of the proposed development or any part thereof and refusing access and operation of the facility if the yearly due is not paid in time;
 - e) perform and fulfill all of the Concessionaire’s obligations under and in accordance with this Concession Agreement;

- f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Concession Agreement; and
- g) neither assign, transfer or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the MSCL/ MCC land nor transfer, or part possession thereof,
- h) Exercise such other rights as Procuring Entity may determine as being necessary or desirable for the purposes incidental and necessary for implementing the Project;
- i) Obtain all the required Clearances from the Competent Authorities for the Project. Responsibility of taking all necessary approvals of construction, demolition and reconstruction lies with the Concessionaire. Nevertheless, the Procuring Entity without any binding obligation may provide any reasonable assistance upon written request from the Concessionaire

Nothing contained herein, including the act of granting permission to develop the Project Facility at the Site shall vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixtures, fittings etc. installed in the structure of the Project Facility in favor of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project Facility in any manner. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

3.2. Concession Period

- 3.2.1. The Concession Period shall commence from the Appointed Date and shall extend for a period of Thirty (30) years , including construction period of 36 months or the earlier termination of this Agreement in terms hereof and during which the Concessionaire is authorized to implement the Project and to operate the Project Facility in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall include the Construction Period. However on successful completion of initial Concession period, the concession period may be extended for another 30 years on First Right of Refusal.
- 3.2.2. It is hereby acknowledged that if the Procuring Entity decides to again bid for the Project on Public-Private-Partnership (PPP) basis within a period not later than one year from the

date of end of 30 years from the Appointed Date, the Concessionaire shall be given “First Right of Refusal” for another 30 years i.e. the Concessionaire would be allowed to match the Financial Proposal of the preferred bidder at that stage, however the allotment shall be confirm to the norms of the RfP issued then .

- 3.2.3. In order to be granted the “First Right of Refusal”, the Concessionaire has to intimate his interest in writing to the Procuring Entity six months prior to the completion of the Concession Period, in order to become eligible to avail of the privilege of the “First Right of Refusal”.
- 3.2.4. In the event the Concessionaire opts to exercise the “First Right of Refusal” and matches or Improves upon the bid of the highest bidder, the Project shall be awarded to the Concessionaire and the highest bidder whose bid has been matched or improved upon shall have no right for being declared as the Prospective Bidder.
- 3.2.5. However, the terms and conditions of the bidding process as well as those of the bidding documents shall be determined by the Procuring Entity at its sole discretion. It is hereby made clear that:
- a) In the event of the Concession Period being extended by the Procuring Entity beyond the said period in accordance with the provisions of this Agreement, the Concession Period shall include the period/ aggregate period by which the Concession is so extended, and
 - b) In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination;
- 3.2.6. At the end of the Concession Period or sooner termination of this Concession Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site, Project facility and Project Assets attached to the Project shall revert to the Procuring Entity without any obligation to Procuring Entity to pay or adjust any consideration or other payment to the Concessionaire.
- 3.2.7. In case of successful completion/expiry of Concession Period of 30 years from compliance period and Concession Period not extended (First Right of Refusal) by the Procuring Entity or by Concessionaire, the Concessionaire shall transfer and handover the Project Facilities, the Project and the Project Assets to the Procuring Entity or its nominated agency, without claiming any monetary benefit, whatsoever from the Procuring Entity.

3.2.8. In case of successful completion/expiry of Concession Period of 30 years from compliance period and Concession Period extended through First Right of Refusal for another 30 years by the Procuring Entity, the Concessionaire shall transfer and handover the Project Facilities, the Project and the Project Assets to the Procuring Entity or its nominated agency, without claiming any monetary benefit, whatsoever from the Procuring Entity at the end of the extended period of another 30 years.

3.3.Construction Period

3.3.1. The Construction Period for the Project shall be a part of the Concession Period of 30 years and shall be a period of 24 (Twenty Four) months including monsoon (starting from the Appointed Date).

3.3.2. The Concessionaire guarantees that construction milestone set out in Schedule C shall be achieved in accordance with the Project Implementation Schedule and the Project Completion shall be achieved by the Scheduled Project Completion Date.

3.3.3. In the event that the Project Completion is not achieved by the Scheduled Project Completion Date, for any reason other than Force Majeure or reasons attributable to the Procuring Entity or any Competent Authority, the Concessionaire shall, pay to the Procuring Entity, Liquidated Damages for each day of delay beyond the Scheduled Project Completion Date in an amount calculated at the rate of 0.1 % (zero point one per cent) of the Performance Security for each day's delay until the Project Completion is achieved subject to a maximum of 20% (twenty percent) of the Performance Security and maximum period for such extension shall be three months (90 days). Provided that nothing contained in this sub-clause 3.3.1 shall be deemed or construed to authorize any delay by the Concessionaire in achieving construction milestone or the Project Completion.

3.3.4. In the event that Concessionaire does not pay the Liquidated damages to the Procuring Entity, the Procuring Entity shall be entitled to invoke the Construction Performance Security and to terminate this Agreement for a Concessionaire Event of Default in accordance with the provisions of Clause 33.1 hereof. Provided that instead of terminating this Agreement, the Procuring Entity may at its sole option extend the time for achieving Construction Completion on such terms and conditions as it deems fit in its sole discretion. It is clarified that a delay of greater than six (6) months in achieving any construction milestone shall be a Concessionaire Event of Default and the Procuring Entity shall be entitled to terminate this Agreement and to invoke the Construction Performance Security.

3.4.Delay in Construction of the Multi-Level Car Parking cum Commercial Complex.

The Concessionaire shall construct the Multi Level Car Parking cum Commercial Complex in accordance with the Project Completion Schedule as agreed upon mutually at the time of signing of Concession Agreement, subject to the condition that the Multi Level Car Parking cum Commercial Complex construction shall be complete within a time period of 24 months (including monsoon) from such a date. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the MSCL, it shall pay Damages to MSCL in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved;

provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Project Completion Schedule get amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 3.4 shall be refunded by the MSCL to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 3.4 shall be without prejudice to the rights of the MSCL under this Agreement, including the right of Termination thereof.

3.5.Actions in Support of Concession

The Procuring Entity shall assist / provide administrative support to the Concessionaire, as necessary and mutually agreeable, to enable the Concessionaire to achieve Financial Closure. and which do not materially and adversely affect the rights and interests of the Procuring Entity hereunder or impose additional material liabilities;

3.5.1. The Procuring Entity shall provide reasonable support and assistance to the concessionaire on best effort basis in procuring applicable permits & clearances from the competent authorities including GOI for the implementation of the Project; provided the Concessionaire has made the requisite applications, paid the applicable fees and is in compliance with the necessary conditions for the grant of such Clearances;

3.5.2. The Procuring Entity shall grant such permission or exemptions within its powers as may be required for the Concessionaire to enjoy Possession and hold the area of land

comprising the Project Site for implementation of the Project, other than where the failure to enjoy Possession results from a breach by the Concessionaire of the terms of this Agreement or of any Clearance;

- 3.5.3. In order to implement the Project, the Concessionaire shall have the right to subcontract to subcontractors, at its cost and risk, any of the Works without in any way relieving the Concessionaire of its obligations as set out in this Agreement, subject to approval of such contractors by the Procuring agency or PMC provided such Subcontractors are capable of discharging the obligations under this Agreement for and on behalf of the Concessionaire and possess the qualifications, experience and skills for undertaking such Works; provided further that this does not result in the carrying out of the whole or substantially the whole, as determined by the Procuring Entity, of the Works by Subcontractors. The Concessionaire shall ensure that all its obligations pursuant to this Agreement, which are relevant to the scope of work of a Subcontractor, are incorporated in the terms and conditions under which such Subcontractor is retained;
- 3.5.4. The Concessionaire shall supervise, monitor and control the activities of the Subcontractors under their respective Project Contracts as may be necessary and shall be liable and responsible for the acts or defaults of the Subcontractors or their employees and agents as if such acts or defaults were the acts or defaults of the Concessionaire;
- 3.5.5. The Concessionaire shall at the Transfer Date, transfer and handover the Project Facilities, the Project and the Project Assets to the Procuring Entity or its nominated agency in accordance with the provision hereof.

ARTICLE 4: CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in Articles 4,5,6,7,8, 9,10, 24, 27,30,38 and 43 or unless the context otherwise requires the respective rights and obligations of the Parties under this Concession Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “Conditions Precedent”).

Provided however, that a party may grant waiver from satisfaction of any conditions Precedent by the other party in accordance with the provisions of the clauses 4.1.2 or 4.2. As the case may be, and to the extent such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of Clause 4.1.1.

4.1.2. The Concessionaire may, upon providing the Performance Security to the Procuring Entity in accordance with Article 9, at any time after 90 (ninety) days from the date of this Agreement or on an earlier day acceptable to the Procuring Entity, by notice require the Procuring Entity to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Procuring Entity shall be deemed to have been fulfilled when the Procuring Entity shall have:

- a) Obtain the “enter upon permission” for the identified land and allot the earmarked site together with Right of Way to the Site in accordance with the provisions of Clause 10.3.1 to the Concessionaire

4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- a) provided Performance Security to the Procuring Entity;
- b) executed and procured execution of the Escrow Agreement;
- c) executed and procured execution of the Substitution Agreement;
- d) prepared the Concept Design for the development of the Project Facilities in consultation with the Independent Engineer.

- e) obtained approval for the Concept Design, duly certified by the Independent Engineer / PMC within a period of 120 days. The approval for the Concept Plan from the Independent Engineer / PMC shall be from the perspective of ensuring the overall synergy of the Concept Design and Building Facades with the other Projects in the Project Site
- f) registered with the Competent Authority the Project Site Lease Deed (in the form attached hereto in Schedule F and co-terminus with this Agreement)
- g) prepared, finalized and got proof checked by Design Consultant appointed by Concessionaire as per the scope of work stated in Article 23.7 & approved by appointed Independent Engineer, Detailed Design and Drawings including the Architectural Plans, Structural Drawings, Elevations, Section etc, as per the applicable Local Building Byelaws, Norms etc, of the Project Facility for execution of Project;
- h) submitted a detailed description, calculation and estimate of the Total Project Cost to the Procuring Entity for its perusal;
- i) provided the Procuring Entity notarized copies (certified as true by the duly authorized Director of the Concessionaire) of all its constitutional documents and board resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- j) furnished the certified copy of the duly executed shareholders'/ joint venture agreement between the Consortium Members in respect of the Concessionaire and the Project, with appropriate provisions as regards obligations of the Consortium Members with respect to Equity and restrictions on transfer thereof, in terms of this Agreement; and
- k) furnished, if any, the certified copy of this agreement for provisions of technical support, operations or management of the Project during the Operations Period between the Concessionaire and any Consortium Member or any other Person, as the case may be;
- l) procured all the Applicable Permits specified in Schedule D unconditionally or if subject to conditions, then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect

- m) executed the Financing Agreements and delivered to the Procuring Entity 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - n) delivered to the Procuring Entity 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
 - o) delivered to the Procuring Entity from the Consortium Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
 - p) delivered to the Procuring Entity a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
 - q) make suitable arrangements with the stakeholders for the procurement of the raw materials prior to the COD
 - r) Provided that upon request in writing by the Concessionaire, the Procuring Entity may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Procuring Entity may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.
- 4.1.4. Each Party shall make all reasonable endeavor to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5. The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2.Damages for delay by the Procuring Entity

In the event that (i) the Procuring Entity does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof,

and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Procuring Entity shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the Bid security

4.3.Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Procuring Entity, or due to Force Majeure, the Concessionaire shall pay to the Procuring Entity Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the Bid security and upon reaching such maximum , the Procuring Entity, in its sole discretion and subject to the provision of clause 9.2, terminate the Agreement. Provided that in the event of delay by the Procuring Entity in procuring fulfillment of Conditions Precedent specified in clause 4.1.2, no damages shall be due & and payable by the Concessionaire under this clause 4.3 until the date on which the Procuring Entity shall have procured fulfillment of the Conditions Precedent specified in clause 4.1.2.

4.4.Deemed Termination upon delay

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the pt (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this

Agreement shall be deemed to the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority to the extent of an amount calculated as 1% (one per cent) of the Total Project Cost.



ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1.Obligations of the Concessionaire

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of Project Multi Level Car Parking cum Commercial Complex Hampankatta in Mangaluru and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Concession Agreement.
- 5.1.3. Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person
- 5.1.4. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Multi Level Car Parking cum Commercial Complex project;
 - c) perform its payment obligations to the Procuring Entity (as set forth in Article 25) such as , annual concession fees , project development fees and premium
 - d) perform and fulfill its obligations under the Financing Agreements;
 - e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

- f) Make adequate standby/backup arrangements for meeting the power requirements for the operation and maintenance of the project and emergency situations during periods of power shut down and/or failure.
- g) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed, or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this agreement.
- h) ensure and procure that its Contractors comply with all Applicable Permits and
- i) Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- j) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- k) support, cooperate with and facilitate the Procuring Entity in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- l) transfer the project facility in working condition & free from all encumbrances to the Procuring Entity upon Termination of this Agreement, in accordance with the provisions thereof.

5.2.Obligations relating to Project Agreements

- 5.2.1. It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Concession Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2. The Concessionaire shall submit to the Procuring Entity the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Procuring Entity shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Procuring Entity a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no

review and/or observation of the Procuring Entity and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Procuring Entity be liable for the same in any manner whatsoever.

- 5.2.3. The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Procuring Entity if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Procuring Entity, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Procuring Entity. For the avoidance of doubt, the Procuring Entity acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Procuring Entity to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “Covenant”). For the avoidance of doubt, it is expressly agreed that in the event the Procuring Entity does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Procuring Entity and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Procuring Entity an acknowledgment and undertaking, in a form acceptable to the Procuring Entity, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Procuring Entity in the event of Termination or Suspension.
- 5.2.5. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Procuring Entity from national security and public interest perspective, the decision of the Procuring Entity in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Procuring Entity. For the avoidance of doubt, it is expressly agreed that approval of the Procuring Entity hereunder shall be limited to

national security and public interest perspective, and the Procuring Entity shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Procuring Entity shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3.Obligations relating to Change in Ownership

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

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

- i. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
- ii. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

shall constitute a Change in Ownership requiring prior approval of the Procuring Entity from national security and public interest perspective, the decision of the Procuring Entity in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Procuring Entity. For the avoidance of doubt, it is expressly agreed that approval of the Procuring Entity hereunder shall be limited to national security and public interest perspective, and the Procuring Entity shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Procuring Entity shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Concession Agreement.

For the purposes of this Clause 5.3.2

- a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment

thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4. Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Concession Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Concession Agreement.

5.5. Employment of trained personnel

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

5.6. Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Concession Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of

the Procuring Entity, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.7.Branding of the Project

The Project Highway or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes. that it shall not, in any manner, use the name or entity of the Project Highway to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project Highway shall be known, promoted, displayed and advertised by the name of*****.

ARTICLE 6: OBLIGATIONS OF THE PROCURING ENTITY

6.1.Obligations of the Procuring Entity

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

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

- a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, facilitate the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project, by giving necessary support letter;
- b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructural facilities and utilities, including water and electricity at rates and on terms generally available to commercial customers receiving substantially equivalent services;
- c) Facilitate for obtaining approval from the local body and Director of Town and Country Planning (DTCP); and
- d) Facilitate all Applicable Permits relating to environmental protection and conservation of the Site:
- e) assure as far as possible that no barriers are erected or placed in or about the immediate surroundings of the Multi-Level Car Parking cum Commercial Complex at Hampankatta, Mangaluru by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
- f) assist the Concessionaire in seeking police assistance where ever necessary during the course of the Project;

- g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- h) facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Concession Agreement and the Project Agreements.
- j) MSCL agrees and permits the Concessionaire to take legal action or any other action permitted by law against users of the facilities, who do not pay the Parking Fees, any default of any dues and the persons who disturbs the operations of facility and damages the property of Multi Level Car Parking cum Commercial Complex. However, the Concessionaire shall not hold MSCL responsible for any such action.
- k) With effect from the Operations Date, the MSCL shall ban on-street Parking up to a radius of 1km from the location of proposed project during the concession Period, including extension thereof, with the help of the Traffic Department, issue appropriate notifications in this behalf and terminate existing licenses in respect of surface parking, not issue such new licenses or renew the old ones. This is further subjected to the condition that the parking demand in the precincts defined herein does not exceed the parking capacity of the proposed project.
- l) Such restrictions are applicable and binding on the MSCL till the final transfer of the facility in part or full by the Concessionaire.

6.2.Maintenance obligations prior to Appointed Date

- 6.2.1. For the avoidance of doubt, the Procuring Entity shall undertake to protect the land & keep it free from all encumbrances during the Development Period

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Procuring Entity that:

- a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Concession Agreement;
- c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Concession Agreement;
- d) this Concession Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Concession Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- e) the information furnished in the Bid and as updated on or before the date of this Concession Agreement is true and accurate in all respects as on the date of this Concession Agreement;
- f) the execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Concession Agreement;

- h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Concession Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Concession Agreement;
- i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Concession Agreement;
- j) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {Prospective Tenderer/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of the subscribed and paid up equity of the SPV for the term of the concession; and that each of the members of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold at least 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement; during the construction period and five years thereafter and as stated in the definition “Change in Ownership” under Article 1.
- k) {the Prospective Tenderer/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Concession agreement;
- l) {the Prospective Tenderer/ each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Procuring Entity to enter into this Concession Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;
- m) all its rights and interests in the development of Multi Level Car Parking cum Commercial Complex at Hampankatta, Mangaluru shall pass to and vest in the Procuring Entity on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Procuring Entity, and that none of the

Project Assets shall be acquired by it, subject to any agreement under Government Instrumentality which may result in any material adverse effect on the Procuring Entity's ability to perform its obligations under this Concession Agreement;

- n) it has complied with Applicable Laws in all material respects; 7.2 Representations and Warranties of the Procuring Entity

The Procuring Entity represents and warrants to the Concessionaire that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Concession Agreement, exercise its rights and perform its obligations, under this Concession Agreement;
- b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Concession Agreement;
- c) this Concession Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Procuring Entity's ability to perform its obligations under this Concession Agreement;
- e) it has complied with Applicable Laws in all material respects;
- f) it has good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire.

7.2.Disclosure

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

ARTICLE 8: DISCLAIMER

8.1.Disclaimer

- 8.1.1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Procuring Entity or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Procuring Entity makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Procuring Entity in this regard.
- 8.1.2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Procuring Entity shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Procuring Entity to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Procuring Entity contained in Clause 8.1.1 and shall not in any manner shift to the Procuring Entity any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Procuring Entity shall not be liable in any manner for such risks or the consequences thereof.



ARTICLE 9: PERFORMANCE SECURITY

9.1. Construction Performance Security

9.1.1. The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Procuring Entity no later than 90 (ninety) days from the date of this Concession Agreement, an irrevocable and unconditional guarantee from a Bank for a sum of Rs5 Crores (Rupees Five Crores only) “Construction Performance Security”, valid from the date of issue thereof and until Operations Date in favor of Mangaluru Smart City Limited from _____ Bank (a nationalized/scheduled bank), and payable and enforceable in Mangaluru in the form set forth in Schedule L .Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Procuring Entity shall release the Bid Security submitted by the Concessionaire at the time of submitting the RFP.

9.1.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Construction Performance Security is not provided by the Concessionaire within a period of 90 (ninety) days from the date of this Concession Agreement, the Procuring Entity may encash the Bid Security submitted by the Concessionaire at the RFP Stage and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Concession Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2. Operation & Maintenance Performance Security

9.2.1. For securing the due and punctual performance of obligations of the Concessionaire during the Operations Period, the Concessionaire shall deliver to the Procuring Entity, 30 (thirty) days prior to the Scheduled Project Completion Date or Operations Date, whichever is earlier, a Demand Draft / Bank Guarantee of Rs. 5.50 Crores (Rupees Five Crores Fifty Lakhs only) valid from the date of issue thereof until the Transfer Date of the Project, in favor of MSCL from a scheduled/nationalized bank acceptable to the Procuring Entity and enforceable and payable at Mangaluru, in the form set forth in Schedule M (the “Operations and Maintenance Performance Security”).

9.2.2. The Concessionaire’s failure to provide the Operations and Maintenance Performance Security, in accordance with the provisions of this Section 9.2 shall (i) entitle the Procuring Entity to call in and invoke the Construction Performance Security and retain

and appropriate the same and (ii) constitute a Concessionaire Event of Default entitling the Procuring Entity to terminate this Agreement under the provision of Article 33 hereof;

- 9.2.3. The Prospective Tenderer/Concessionaire shall keep the Construction and Operations and Maintenance Performance Security valid at all times during the stipulated period and renew it 30 (thirty) days prior to the expiry of its validity, failure of shall be deemed as an event of default.

9.3.Appropriation of Performance Security

- 9.3.1. In the event of the Prospective Tenderer/Concessionaire being in default of the due, faithful and punctual performance of its obligations under the RFQ cum RFP, the Letter of Award, under Section 3.3 of this Agreement and during the Term of this Agreement, as the case may be, or owing any sums whatsoever to Procuring Entity under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Procuring Entity for or against the Concessionaire under this Agreement or against the Procuring Entity in respect of this Agreement, the Procuring Entity shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Security as damages for such default, dues, demands or claims;
- 9.3.2. The decision of the Procuring Entity as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Prospective Tenderer /Concessionaire. The Prospective Tenderer/Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Procuring Entity under this Agreement is required to be provided in connection with any demand made by the Procuring Entity to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Procuring Entity's written demand as aforesaid;
- 9.3.3. In the event of encashment of the Performance Security by the Procuring Entity, in full or part, the Prospective Tenderer/Concessionaire shall within 30 (thirty) days of receipt of the encashment notice from the Procuring Entity provide a fresh Performance Security or replenish the deficit in the existing Performance Security, as the case may be. The provisions of the Article 9 shall apply mutatis mutandis to such fresh Performance Security. The Prospective Tenderer's/Concessionaire's failure to comply with the

provision shall constitute a Concessionaire Event of Default which shall to terminate this Agreement in accordance with the provisions of Articles 33 hereof;

9.4. Release of Performance Security

- 9.4.1. Subject to the provisions hereof, the Procuring Entity shall promptly return the Construction Performance Security to the Prospective Tenderer/Concessionaire upon Project Completion being achieved, and the Concessionaire furnishing the Operations and Maintenance Performance Security within the stipulated time, provided that there are no outstanding claims of the Procuring Entity on the Prospective Tenderer/Concessionaire;
- 9.4.2. Subject to the provisions hereof, the Procuring Entity shall return the Operations and Maintenance Performance Security to the Concessionaire within thirty days after the end of the Term of this Agreement, provided that the Concessionaire has fulfilled all its obligations under this Agreement, including in respect of smooth transfer of Project Facilities, Project Assets and the Project, and there are no outstanding claims of the Procuring Entity on the Prospective Tenderer/Concessionaire;

ARTICLE 10: PROJECT SITE

10.1. The Site

The site of the Project shall comprise the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Procuring Entity to the Concessionaire as a licensee under and in accordance with this Agreement (the “Site”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for development of the Multi Level Car Parking cum Commercial Complex Hampankatta in Mangaluru as set forth in Schedule-A.

10.2. License, Access and Right of Way

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

10.2.2. In consideration of the Payment to the Procuring Entity, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Procuring Entity, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the “Licensed Premises”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Concession Agreement, and for no other purpose whatsoever.

10.2.3. The license, access and right of way granted by this Concession Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that there is no disturbance to the neighbors and the free movement of people and traffic at all times is maintained during the Construction Period.

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

10.2.5. The Concessionaire hereby irrevocably appoints the Procuring Entity (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Procuring Entity, and the Concessionaire consents to it being registered for this purpose.

10.2.6. It is expressly agreed that:

- i. any archaeological discoveries shall belong to and vest in the, Mangaluru Smart City Limited and the Concessionaire shall promptly report the discovery thereof to MSCL and follow its instructions for safe removal thereof; and
- ii. mining rights do not form part of the license granted to the Concessionaire under this Concession Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the licensed premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

10.3. Procurement of the Site

10.3.1. Pursuant to the notice specified in Clause 4.1.2, the Procuring Entity Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

- 10.3.2. Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Procuring Entity shall have granted vacant access and Right of Way and necessary for the project development, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Procuring Entity shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.
- 10.3.3. On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Procuring Entity and undertake its removal at its cost and expenses.
- 10.3.4. Upon receiving Right of Way, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected Construction Works shall subsist so long as the Procuring Entity continues to pay the Damages specified herein, and upon the Procuring Entity ceasing to pay such Damages after giving 60 (sixty) days' notice thereof to the Concessionaire, the obligation of the Concessionaire to complete such works on such part of the Site shall cease forthwith. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.7.
- 10.3.5. The Concessionaire may procure at its cost and expense and on its own the permitted FAR that may be required by it for Additional Facilities and the Procuring Entity shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of the Procuring Entity to connect any Additional Facility to the existing land parcel belonging to the MSCL at Hampankatta in Mangaluru and such consent shall not be unreasonably withheld.

10.4. Site to be free from Encumbrances

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

10.5. Protection of Site from encroachments

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

10.6. Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the proposed Multi Level Car Parking cum Commercial Complex Project at Hampankatta, Mangaluru and the performance of its obligations under this Agreement.

10.7. Access to the Procuring Entity and Independent Engineer

The license, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Procuring Entity and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8. Geological and Archaeological Finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the Concession/ Lease granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants of things either of particular geological or archaeological interest and that such rights, interest and property on or under the Project Site shall vest in and belong to the Procuring Entity or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workers or any other person from removing or damaging such interest or property and shall inform the Procuring Entity forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Procuring Entity. It is also agreed that the Procuring Entity shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 11: UTILITIES AND TREES

11.1. Existing Utilities

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing project site or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing temporary or permanent utility, and the Procuring Entity shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any such additional utility

11.2. Shifting of obstructing Utilities

11.2.1. The Concessionaire shall, subject to Applicable Laws and with assistance of the Procuring Entity, 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 Multi Level Car Parking cum Commercial Complex Hampankatta in Mangaluru taken up by Mangaluru Smart City Limited . The cost of such shifting shall be borne by the Procuring Entity or by the entity owning such utility, if the Procuring Entity so directs, based on approval of estimated cost of such shifting work by the Procuring Entity and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.2.2. It shall be the responsibility of the Concessionaire to shift the utilities and encumbrances which causes a material Adverse effect on the construction, operation & maintenance of the Project arising due to the change in design proposed by the Concessionaire and prior review by the Independent Engineer. Any time and cost implications arising on this account shall be at the risk and cost of the Concessionaire.

11.3. New Utilities

The Concessionaire shall allow, subject to such conditions as the Procuring Entity may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of

the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project Facility at Hampankatta in Mangaluru, Karnataka land belonging General Manager Mangaluru Smart City Limited in accordance with this Concession Agreement and any damage caused by such use shall be restored forthwith.

11.4. Felling of Trees

The Procuring Entity shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Procuring Entity for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project Facility in Hampankatta in Mangaluru land belonging to the Mangaluru Smart City Limited . The cost of such felling shall be borne by the Procuring Entity, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees.

Further it shall be the responsibility of the Concessionaire to fell & remove the trees which causes a material Adverse effect on the construction, operation & maintenance of the Project arising due to the change in design proposed by the Concessionaire and prior review by the Independent Engineer. In the event of removal of trees thereof, the Concessionaire shall not be entitled for any corresponding extension of time and cost for the completion of works.

For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Procuring Entity and shall be disposed in such manner and subject to such conditions as the Procuring Entity may in its sole discretion deem appropriate.

ARTICLE 12: CONSTRUCTION OF THE PROJECT

12.1. Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- a) submit to the Procuring Entity and the Independent Engineer/ PMC its detailed design drawings, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Implementation Schedule as set forth in Schedule C;
- b) appoint its representative duly authorized to deal with the Procuring Entity in respect of all matters under or arising out of or relating to this Concession Agreement;
- c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Concession Agreement, the Applicable Laws and Applicable Permits; and
- d) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits

12.2. Maintenance during Construction Period

For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation and maintenance of the Proposed Project.

12.3. Drawings

In respect of the Concessionaire's obligations with respect to the Drawings of the Project as set forth in Schedule I, the following shall apply:

- a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;
- b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- d) If the previously mentioned observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specification and Standards, such Drawings shall be revised by the concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Procuring Entity be liable for the same in any manner;
- f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Procuring Entity for review and comments, its Drawings relating to the Project, and the Procuring Entity shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder; and
- g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Procuring Entity and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies & soft copy and in micro film form or in such other medium as may be acceptable to the Procuring Entity, reflecting the Project as actually designed, engineered and constructed,

including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Assets.

12.4. Architectural Design

12.4.1. The Concessionaire shall procure that the construction of project shall at all times conform to that provisions as specified in the Schedule G & Schedule H of this Agreement, subject to compliance of the MLCP.

12.4.2. The Concessionaire shall at all times conform to the architectural parameters, controls, building profiles, facades, dimensions, designs and building materials (the “Architectural Design”) specified in clause 12.4.1 Technical Requirements.

12.4.3. The Concessionaire shall, prior to commencement of construction of the Project, furnish to the Procuring Entity and to the Independent Engineer, its architectural drawings in conformity with the Architectural Design, within 21 (twenty one) days of the receipt of such architectural drawings. The Procuring Entity and or the Independent Engineer shall review the same and convey its observations to the concessionaire with particular reference to their conformity or otherwise with the Architectural Design or the aesthetic quality thereof and their harmony with the Technical Proposal and the conditions of this Agreement. If the aforesaid observations of the Procuring Entity or the Independent Engineer indicate that the architectural drawings are not in conformity with the Architectural Design or require improvement in aesthetic quality or harmony with the environment, the relevant drawings shall be revised by the Concessionaire and resubmitted to the Procuring Entity and the Independent Engineer for review. The Procuring Entity and/or the Independent Engineer shall give their observations, if any, within 7 (seven) days of receipt of the revised architectural drawings.

12.4.4. The Concessionaire shall not be obliged to await the observations of the Procuring Entity on the architectural drawings submitted pursuant hereto beyond the said 21 (twenty one) days period and may begin Construction Works at its own discretion and risk. For the avoidance of doubt, no review and/or observation of the Procuring Entity or the Independent Engineer and/or their failure to review and/or convey their observations on the architectural drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Procuring Entity or the Independent Engineer be liable for the same in any manner.

12.5. Construction of the Minimum Technical Requirement

- 12.5.1. Subject to the provisions of Clauses 12.4 and 12.7 and other relevant provisions of this Agreement, the Concessionaire shall undertake development of MLCP as specified in Schedule G, and in conformity with the Specifications and Standards set forth in Schedule H. Subject to the terms of this Agreement, the 3rd (third) anniversary of execution of this Agreement shall be deemed to be the scheduled date for completion of the MLCP (the “MLCP Completion Date”) and the Concessionaire agrees and undertakes that the construction of the MLCP shall be completed on or before the MLCP Completion Date.
- 12.5.2. In the event that the Concessionaire fails to achieve the MLCP Completion Date by the end of the 2nd anniversary of the execution of this Agreement, unless such failure has occurred due to Force Majeure or for reasons solely & directly attributable to the Procuring Entity, it shall pay Liquidated Damages to the Procuring Entity as specified in Clause 3.3.3.
- 12.5.3. In the event that the construction of MLCP is not completed within 90 (ninety) days from the MLCP Completion Date, unless the delay is on account of reasons solely attribute to the Procuring Entity or due to Force Majeure, the same shall be deemed to be a Concessionaire Default and the Procuring Entity shall be entitled to terminate this Agreement in accordance with provisions hereof.
- 12.5.4. Any development, addition or modified to be MLCP, after MLCP Completion Date, shall be in harmony with the overall architectural design and functioning of the Project and shall be undertaken with the prior approval of the Procuring Entity.

12.6. O&M during the Construction Period

The concessionaire shall, during the construction period, perform the O&M obligation specified in Clause 18.1.1 on a best effort basis, save and except collection of Project Revenues

12.7. Construction of Project

- 12.7.1. The concessionaire shall undertake the construction of MLCP on the project Site in accordance with the provisions of this Agreement, Specification & Standards and applicable Laws.

- 12.7.2. The construction and maintenance of associated infrastructure such as internal roads, electric supply, water supply, sewerage and drains forming part of Project shall be undertaken or cause to be undertaken by the concessionaire at its cost in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice and at all times conform to the applicable Laws & terms of applicable Permits.
- 12.7.3. On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule B in conformity with the Minimum Technical Requirements in Schedule G and Specifications and Standards in Schedule H. Subject to the terms of this Agreement hereunder, the beginning of 3rd year of the Appointed Date shall be deemed to be the scheduled date for completion of the Project (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that construction of the Project shall be completed on or before the Scheduled Completion Date.
- 12.7.4. Provided that the Project Completion Date shall, unless delayed owing to conditions specified under Clause 4.1.3 or Force Majeure or a Concessionaire Event of Default, be achieved within a maximum period of 90 (ninety) days from Scheduled Completion Date.
- 12.7.5. The Concessionaire shall construct the Project in accordance with the terms of this Agreement, Specifications and Standards, Applicable Laws and Applicable Permits.
- 12.8. Costs and taxes
- 12.8.1. All costs, expenses, taxes, cess, fee and charges relating to development of project including MLCP, (other than taxes on property payable by the Procuring Entity) but arising out of any development undertaken by the concessionaries, shall be paid by the Concessionaire in accordance with Applicable Laws.
- 12.8.2. Utilization of Additional Floor Area Ratio (FAR) Coverage & Transfer of Development Rights (TDR).
- 12.8.3. The Floor Area Ratio (FAR) and height of Project Assets shall be restricted to the limits specified by the local authorities under applicable Laws.

12.8.4. The Concessionaire shall have the no right to utilize any additional FAR and Coverage norms that may be amended by the Government from time to time. The Procuring Entity shall restrict/object to the additional construction if not within the permissible limits & as per the drawings approved by the Independent Engineer and shall not compromise the structural stability and aesthetics of the Project that may adversely affect the marketability of the Project. FSI beyond 2.5, which is considered for the purpose of the project, Concessionaire shall have share extra proportionate Upfront Premium and Concession Fee as / shall accrue to Mangaluru Smart City Limited without any rights to the Concessionaire.

ARTICLE 13: MONITORING OF CONSTRUCTION

13.1. Monthly Progress Report

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

13.2. Inspection

During the Construction Period, the Independent Engineer shall 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 Procuring Entity and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3. Tests

13.3.1. For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed by the construction standards (IS) for the works undertaken by the Procuring Entity through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests and to maintain proper record/ register in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. The cost of all test required to be carried out as per IS Standard, shall entirely be borne by the Concessionaire. Also, for the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

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

13.4. Delay during Construction

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the proposed project is not likely to be achieved by the Scheduled Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5. Suspension of unsafe Construction Works

13.5.1. Upon recommendation of the Independent Engineer to this effect, the Procuring Entity may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Procuring Entity, such work threatens the safety of the Users and pedestrians.

13.5.2. The Concessionaire shall, pursuant to the notice under Clause.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Procuring Entity and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Procuring Entity recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Procuring Entity shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the

reasonable opinion of the Procuring Entity, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3. Subject to the provisions of Clause 30.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “Preservation Costs”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Concession Agreement by the Procuring Entity, the Preservation Costs shall be borne by the Procuring Entity.

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

13.6. Video Recording

During the Construction Period, the Concessionaire shall provide to the Procuring Entity for every calendar quarter, a progressive photographs in 02(two)sets and a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Procuring Entity within seven (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 14: COMPLETION CERTIFICATE

14.1. TESTS

14.1.1. At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Procuring Entity who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.

14.1.2. The Independent 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 Independent 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 Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Procuring Entity copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

14.2. Completion Certificate

Upon completion of Construction Works and the issuance of Compliance certificate by Independent Engineer, it shall forthwith issue to the Concessionaire and the Procuring Entity a certificate substantially in the form set forth in Schedule-J (the “Completion Certificate”).

14.3. Provisional Certificate

- 14.3.1. The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (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 Independent Engineer and the Concessionaire (the “Punch List”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Procuring Entity.
- 14.3.2. The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if at least 75% (seventy five per cent) of the total work of the Project has been completed. Provided further no such Provisional Certificate would be issued if the Concessionaire has not commenced the construction on the Site handed over to it within 120 days of the Appointed Date. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.
- 14.4. Completion of Punch List Items
- 14.4.1. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Procuring Entity or due to Force Majeure, the Procuring Entity shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Procuring Entity or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.
- 14.4.2. Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Procuring Entity, shall entitle the Procuring Entity to terminate this Agreement.

14.5. Withholding of Provisional Certificate

14.5.1. If the Independent Engineer determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Procuring Entity and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Procuring Entity is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

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

14.6. Rescheduling of Tests

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

ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE

15.1. Commercial Operation Date (COD)

Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall have to make the Payment Obligations to the Procuring Entity in accordance with the provisions of Article 25.

15.2. Damages for delay

Subject to the provisions of Clause 12.7, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Project completion Date, unless the delay is on account of reasons solely attributable to the Procuring Entity or due to Force Majeure, the Concessionaire shall pay Damages to the Procuring Entity as defined in Clause 3.3.3.

ARTICLE 16: CHANGE OF SCOPE

16.1. Change of Scope

16.1.1. The Concessioneing authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2. If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope, failing which the Change of Scope shall deemed to be not accepted or rejected. But, Concessionaire may reiterate the same if no reasons are given.

16.2. Procedure for Change of Scope

- a) The MSCL shall whenever it desires provision of addition/deletion of works and services referred to in Article 16.1 above, issue to the Concessionaire a notice of Change of Scope (the "Change of Scope Notice") through the Independent Engineer.
- b) Upon receipt of Change of Scope Notice, the Concessionaire shall, within a period of 15 (fifteen) days, provide to the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:
 - i. The impact which the Change of Scope is likely to have on the Project Completion Schedule of MSCL component of work.
 - ii. The options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof

including a detailed breakdown by work classifications. Provided, however, that the costs of providing such information shall be reimbursed to the Concessionaire by MSCL to the extent such costs are certified to be reasonable by the Independent Engineer.

- iii. Upon receipt of information set forth in Clause 16.2 (b), if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “Change of Scope Order”) requiring the Concessionaire to proceed with the performance thereof.
 - iv. Any works or services which are provided under and in accordance with this Article 16 shall form part of the MLCP Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.
- c) The MSCL shall issue the Change of Scope Order within a period of 15 (fifteen) days from the date of recommendation made by the Independent Engineer in Charge in accordance with preceding sub-article (c) above.
 - d) The Change of Scope Order shall be effective and binding upon receipt thereof by the Concessionaire. Notwithstanding a Dispute regarding cost and time for implementation of such order, the Concessionaire shall proceed with the performance of such order promptly following receipt thereof. Any Dispute regarding the adjustment of additional cost due to change of scope recommended by the Independent Engineer shall be resolved in accordance with the Dispute Resolution Procedure.
 - e) All claims by the Concessionaire pursuant to this Article 16.2 shall be supported by such documentation as is reasonably sufficient for Independent Engineer in Charge to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

16.3. Payment for Change of Scope



The Independent Engineer shall review the information provided by the Concessionaire, assess the change in quantities of items of work, verify the analysis of rates if required, determine the additional cost to the Concessionaire as a result of such Change of Scope, add such additional cost to Initial Investment in the Cash flow Projections and determine the extension, if any, to the financial offer or assignment of additional development and lease hold rights to Concessionaire.

ARTICLE 17: RESTRICTIONS ON CERTAIN WORKS

17.1. Restrictions on certain works

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

17.1.2. Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

17.2. Reduction in Scope of the Project

17.2.1. If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved there from, and upon such Payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of the Authority under this Clause 16.5 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

17.2.2. For determining the obligations of the Concessionaire under this Clause 16.5, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply mutatis mutandis, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.



ARTICLE 18: OPERATION AND MAINTENANCE

18.1. O&M obligations of the Concessionaire

18.1.1. During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Proposed Multi Level Car Parking cum Commercial Complex at Hampankatta, Mangaluru site to comply with the provisions of this Concession Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- a) carrying out periodic preventive maintenance of the Project;
- b) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- c) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project;
- d) protection of the environment and provision of equipment and materials therefore;
- e) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- f) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- g) Complying with Safety Requirements in accordance with Article 19.

18.1.2. The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and

orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice. For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at _____ (at the Site to be decided in consultation with the Independent Engineer/PMC before entering into concession agreement).

18.1.3. The Concessionaire shall maintain, in conformity with Good Industry Practice, all other structures situated on the Site but not forming part of the project if any.

18.2. Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements set forth in Schedule-K (the “Performance & Maintenance Standards”).

18.3. Maintenance Manual

18.3.1. No later than 180 (one hundred and eighty) days prior to the Scheduled project commencement Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the “Maintenance Manual”) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Procuring Entity and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 18.3 shall apply, mutatis mutandis, to such revision.

18.3.2. Without prejudice to the provision of Clause 18.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

18.4. Maintenance Program

18.4.1. On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Procuring Entity and the Independent Engineer, its proposed annual programme of

preventive, urgent and other scheduled maintenance (the “Maintenance Programme”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- a) preventive maintenance schedule;
- b) arrangements and procedures for carrying out urgent repairs;
- c) criteria to be adopted for deciding maintenance needs;
- d) intervals and procedures for carrying out inspection of all elements of the Project;
- e) intervals at which the Concessionaire shall carry out periodic maintenance;
- f) arrangements and procedures for carrying out safety related measures; and
- g) intervals for major maintenance works and the scope thereof.

18.4.2. Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

18.4.3. The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 18.4.1 and 18.4.2 shall apply mutatis mutandis to such modifications.

18.5. Damages for breach of maintenance obligations

18.5.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Procuring Entity shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of O&M Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Procuring Entity under this Agreement, including the right of Termination thereof.

18.5.2. The Damages set forth in Clause 18.5.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Procuring Entity may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

18.6. Safety, Breakdowns and Accidents

18.6.1. The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

18.6.2. The Concessionaire's responsibility for rescue operations on the Project shall include safe evacuation of all Users and staff from the affected area as initial responses to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth flow of users.

18.7. De-commissioning due to Emergency

18.7.1. If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and enclosure of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project to Users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and

particulars thereof shall be notified by the Concessionaire to the Procuring Entity without any delay, and the Concessionaire shall diligently carryout and abide by any reasonable directions that the Procuring Entity may give for dealing with such Emergency.

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

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

18.8. Procuring Entity's right to take remedial measures

18.8.1. In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Procuring Entity or the Independent Engineer, as the case may be, the Procuring Entity shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Procuring Entity as Damages. For the avoidance of doubt, the right of the Procuring Entity under this Clause 18.6.1 shall be without prejudice to its rights and remedies provided under Clause 18.5.

18.8.2. The Procuring Entity shall have the right, and the Concessionaire hereby expressly grants to the Procuring Entity the right, to recover the costs and Damages specified in Clause 18.6.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Procuring Entity under this Clause 18.6.2 and debit the same to O&M Expenses.

18.9. Overriding powers of the Procuring Entity

- 18.9.1. If in the reasonable opinion of the Procuring Entity, the Concessionaire is in material breach of its obligations under this Concession Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Procuring Entity may, without prejudice to any of its rights under this Concession Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 18.9.2. In the event that the Concessionaire, upon notice under Clause 18.7.1, fails to rectify or remove any hardship or danger within a reasonable period, the Procuring Entity may exercise overriding powers under this Clause 18.7.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Procuring Entity shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Procuring Entity in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Procuring Entity shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 18.6 along with the Damages specified therein.
- 18.9.3. In the event of a national emergency, civil commotion or any other act specified in Clause 30.3, the Procuring Entity may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Proposed Project at Hampankatta, Mangaluru belonging to the General Manager Mangaluru Smart City Limited or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Procuring Entity shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Procuring Entity. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 30. It is also agreed that the Concessionaire shall comply with such instructions as the Procuring Entity may issue in pursuance of the provisions of this Clause 18.7, and shall provide assistance and cooperation to the Procuring Entity, on a best effort basis, for performance of its obligations hereunder.

18.10. Excuse from performance of obligations

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

- a) an event of Force Majeure;

- b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- c) compliance with a request from the Procuring Entity or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project site open to work/business activity provided they could be operated safely.

18.11. Barriers and diversions

The Procuring Entity shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Project site except for reasons of Emergency, national security, law and order or collection of taxes. The Procuring Entity shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order in the Project site that may cause a material adverse effect on the work flow, to and from the Proposed Project Site.

18.12. Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall be visible to the Users while driving in& around the parking area; provided that this restriction shall not apply to the commercial areas developed on the Project site if the advertising thereon does not, in the opinion of the Authority, distract the Users or violates extent guidelines of the competent authority. All advertising on the Project site shall conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

18.13. Modifications of the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, Maintenance Requirement. Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, if any modification to the Project has a material effect on the safety of Users, the same shall be subject to safety related certification in accordance with Applicable Laws and the procedure. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

18.14. Excuse from performance of Obligations

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

- a) an event of force Majeure
- b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- c) compliance with a request form the Procuring Entity or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project;'
- d) Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project open to Users provided they can be operated safely.

ARTICLE 19: SAFETY REQUIREMENTS

19.1. Safety Requirements

19.1.1. The Concessionaire shall comply with the provisions of this Concession Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project site, and shall comply with the safety requirements set forth in Schedule-K (the “Performance & Maintenance Standards”).

19.1.2. The Concessionaire shall appoint an experienced and qualified firm or organisation (the “Safety Consultant”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

19.2. Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 19. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall, subject to the provisions of Clause 19.3.2, be borne from out of a dedicated safety fund (the “Safety Fund”) to be funded, owned and operated by the Procuring Entity or a substitute thereof.

19.3. Safety Certification during Concession Period

The Concessionaire, shall during the subsistence of the Concession Period, comply to the Safety Requirements for the Project and carry out the periodic testing, mock drills, etc of its safety equipment and maintain the validity of its safety clearance as applicable from the respective statutory agencies.

ARTICLE 20: NODAL OFFICER

20.1. Nodal Officer

The Procuring Entity shall within thirty (30) days of the date of execution of this Agreement nominate a Person who shall have the overall responsibility, to oversee the Project, coordinate with all relevant agencies of the Procuring Entity, approve all development schemes/proposals/plans, prepared as per Specification & Standards, in relevant to the Project and to monitor the implementation of the Project by the Concessionaire for compliance with the provisions of this Concession Agreement (herein the “Nodal Officer”); provided that the Procuring Entity shall not be liable in any manner for such monitoring undertaken by it or the Nodal Officer or his representative and the Concessionaire shall remain liable for performing its obligations, duties and liabilities under this Concession Agreement as well as conformity of all development schemes/ proposals/plans with the Specification & Standards.

Provided further that any failure on the part of the Nodal Officer or his representative in respect of such monitoring shall not amount to any consent or approval by the Procuring Entity of the Concessionaire’s activities and shall not amount to a certification of the compliance, by the Procuring Entity that the Concessionaire has complied with Applicable Law.

20.2. Approval of Plans

20.2.1. The Concessionaire shall as per the terms hereof submit to the Nodal Officer, appointed by the Procuring Entity, the application containing:

- a) Complete layout schemes and plans for the Project Site shown clearly (as required for approval by the local authorities) in conformity with local bye-laws and Master Plan, if any;
- b) The detailed plans, elevations, area statements, designs & specifications of MLCP, Project Assets etc to be constructed on the Project Site shall also conform to the Specification & Standards and provisions as per this Concession Agreement;
- c) A construction phasing plan for the development of the MLCP, Project Assets etc to be constructed on the Project Site and a demolition plan for dismantling the existing structures thereon, if any. Any construction or demolition activity shall only commence after the receipt of approval for the same from the Procuring Entity through its Nodal Officer.

- 20.2.2. All plans/schemes/designs shall be accompanied by a certificate from a reputed professional architect/consultant who shall also approve the structural designs of all MLCP, Project Assets etc to be constructed on the Project Site.
- 20.2.3. The Concessionaire shall, at its own cost and as often as it may be called upon to do so, amend all or any such plans and elevations and, if so required, shall produce the same before the Procuring Entity and shall supply in such details, as may be called for, of plans, elevations and specifications for the approval of such plans by the Procuring Entity.
- 20.2.4. It is expressly clarified that the Concessionaire shall not be permitted to apply for approvals from municipal/local authorities or commence any work in relation to the Project until it has obtained the approval of the Nodal Officer/ the Procuring Entity in accordance with Article 20.2 hereof, and thereafter the Concessionaire shall not be permitted to make any alterations or additions to its approval plans without the prior approval in writing of the Nodal Officer/ the Procuring Entity.
- 20.2.5. No work physically shall commence without prior approval of Nodal Officer/ the Procuring Entity. The work of MLCP, Project Assets etc to be constructed on the Project Site shall not commence until approval of all concerned municipal/local authorities and Nodal Officer/ the Procuring Entity is obtained, except land development, fencing, site clearance, demolition of redundant structures etc. which can be permitted on express request of the Concessionaire.
- 20.2.6. The Concessionaire shall, as its cost and expense, be responsible for obtaining and maintaining all Applicable Permits which are required by Applicable Law to undertake the Project.
- 20.2.7. The Concessionaire shall duly submit a certified copy of all approvals/Applicable Permits received by it to the Procuring Entity.

ARTICLE 21: SUB CONTRACTS

21.1. Sub Contracts

The Concessionaire shall have the right to appoint Sub-Contractors by awarding sub-contracts and entering into agreements for any EPC Contract and/or, O & M Contract for construction, operation and/or management of the MLCP, Project Assets etc to be constructed on the Project Site or any other activity relating to the Project or matters incidental thereto subject to prior approval of sub contracting by Procuring entity or Independent Engineer and the Concessionaire shall share the agreement entered with subcontractors with Procuring entity / Independent engineer for their review.. Notwithstanding any such sub-contract, the Concessionaire shall retain the overall responsibility, obligation and liability in relation to the Project. It is clarified that Concessionaire shall remain liable and responsible for any acts, omissions or defaults of any Contractor for construction and shall identify the Procuring Entity in respect thereof.

ARTICLE 22: MONITORING OF OPERATION AND MAINTENANCE

22.1. Monthly Status Reports

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

22.2. Inspection

The Independent Engineer shall inspect the Project at least once a month. It shall make a report of such inspection (the “O&M Inspection Report”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Procuring Entity and the Concessionaire within 7 (seven) days of such inspection.

22.3. Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. The costs incurred on such tests, shall be borne by the Concessionaire. Any repeat test after rectification works carried out as determined by IE shall also be at the cost of Concessionaire.

22.4. Remedial measures

22.4.1. The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 22.3 and furnish a report in respect thereof to the Independent Engineer and the Procuring Entity within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

22.4.2. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 22.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Procuring Entity shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 4.3.

22.5. Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Procuring Entity and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 22.5, accidents and unusual occurrences on the Project shall include:

- a) death or injury to any person;
- b) damaged or dislodged fixed equipment;
- c) any obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;
- d) disablement of any equipment during operation;

- e) communication failure affecting the operation of Project;
- f) smoke or fire;
- g) flooding of Project; and
- h) such other relevant information as may be required by the Procuring Entity or the Independent Engineer.

ARTICLE 23: INDEPENDENT ENGINEER/ PMC & DESIGN CONSULTANT

23.1. Appointment of Independent Engineer/PMC

The Procuring Entity shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Procuring Entity substantially in accordance with the selection criteria set forth in Schedule-O, to be the independent consultant under this Agreement (the “Independent Engineer”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Procuring Entity may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-O to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

23.2. Duties and functions

23.2.1. The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-O

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

23.3. Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be borne and paid by the Procuring Entity.

23.4. Termination of appointment

23.4.1. The Procuring Entity may, in its discretion, terminate the appointment of the Independent Engineer /PMC at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

23.4.2. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Procuring Entity and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Procuring Entity shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Procuring Entity and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Procuring Entity shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5. Authorized Signatories

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

23.6. Dispute Resolution

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

23.7. Appointment of Design Consultant

The concessionaire shall appoint Design consultant at its own expense for preparation of Architectural, Structural Design and Drawings for the Multi level Parking including foundations, substructure, superstructure, miscellaneous items, temporary works such as staging, cantering, shuttering etc. The appointment of such Design consultant shall be approved by the MSCL.

23.8. Proof Checking byThe designs & drawings prepared by the Design Consultant shall be proof checked from Regarding the applicability of codes/codal provisions, the decision of NIT, Suratkal shall be final and binding to all. It will be the responsibility

of the Concessionaire to submit the Design Calculations and Drawings in the format required by the Proof checking authority. In case of the designs being done through software, the Concessionaire will have to provide a licensed version of the same to the Proof checking authority. The design calculations shall cover all steps and all cases as required by the codes. MSCL will not entertain any claim with regard to inaccuracy of data provided for bid purpose. Proof checking charge of, shall be borne by Concessionaire.

23.9. General Design Obligations

The Concessionaire shall carry out, and be responsible for, the design of work. Design shall be prepared by qualified designers who are Engineer or other professionals who comply with the criteria (if any) stated in the Bidding Data. Unless otherwise stated in the Contract, the Concessionaire shall submit to the Engineer for consent the name and particulars of each proposed designer and design Consultant.

The Concessionaire warrants that he, his design consultant have the experience and capability necessary for the design. The Concessionaire undertakes that the designers shall be available to attend discussions with the Engineer's / PMC Representative at all reasonable times, until the expiry date of the relevant Defects Notification Period.

23.10. Design and Drawings

Design and drawings shall be developed in conformity with the specifications and standards set out in the contract. Such design shall have to meet the approval requirement of the designated authority of State Government and shall be responsible for obtaining final approval from the approving authority.

In the event, the Concessionaire requires any relaxation in design standards due to certain restrictions in any section, the alternative design criteria for such section shall be provided for review of the MSCL's Engineer.

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

- a) by submitting the proof checked Drawings for review to the MSCL's Engineer, the
- b) Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, the Specifications and Standards and the Applicable Laws;

- c) Within 15 (fifteen) days of the receipt of the Drawings, the MSCL's Engineer shall review the same and convey its observations if any to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the MSCL's Engineer on the Drawings submitted pursuant hereto beyond the period of 15 (fifteen) days and may begin or continue Works at its own discretion and risk; Provided, however that in case of a major Structure, the aforesaid period of 15 (fifteen) days may be extended upto 30 (thirty) days;
- d) if the aforesaid observations of the MSCL's Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire in conformity with the provisions of this Agreement and resubmitted to the MSCL's Engineer for review. The MSCL's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings.
- e) no review and/or observation of the MSCL's Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the MSCL's Engineer or the MSCL be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they and the construction works shall be corrected at the Concessionaire's cost, notwithstanding any review;
- f) the Concessionaire shall be responsible for delays in submitting the Drawing as set forth caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in that regard from the MSCL; and
- g) the Concessionaire warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the MSCL against any damage, expense, liability, loss or claim, which the MSCL might incur, sustain or be subject to arising from any breach of the Concessionaire's design responsibility and/or warranty set out in this Clause.

Any cost or delay in construction arising from review by the MSCL's Engineer shall be borne by the Concessionaire.

Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the MSCL and the MSCL's Engineer a complete set of as- built Drawings, in 5 (Five) hard copies and in micro film

form or in such other medium as may be acceptable to the MSCL, reflecting work as actually designed, engineered and constructed.

Concessionaires clearly understand that notwithstanding all the statements above including its responsibility in respect of designs and drawings confirming to the requirements and relevant specifications, being checked and approved by proof checking agency as also having been scrutinized by MSCL it is responsibility of the Concessionaires that the final approval before commencement of execution shall have to be based on the drawings and design cleared and approved by the concerned authority of Government of Karnataka. All Designs and drawings shall be furnished of MSCL in five copies.

23.11. Design Error

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Concessionaire's documents, they and work shall be corrected at the Concessionaire's cost, notwithstanding any consent or approval under this Clause.

23.12. Intellectual property rights

The intellectual property rights in respect of drawings, designs and all that is relevant to the concept of rights shall be vested in MSCL.

ARTICLE 24: FINANCIAL CLOSE

24.1. Financial Close

24.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 30 (thirty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 15 (fifteen) days, subject to payment of Damages to the Procuring Entity in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, or for a further period not exceeding 300 (three hundred) days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Procuring Entity in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

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

24.2. Termination due to failure to achieve Financial Close

24.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 30.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 or the extended period provided there under, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 24.2.1 shall not apply.

24.2.2. Upon Termination under Clause 24.2.1, the Procuring Entity shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the Procuring Entity being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Procuring Entity shall be entitled to encash there from an amount equal to Bid Security.

ARTICLE 25: PAYMENTS BETWEEN THE PROCEDURE ENTITY & THE CONCESSIONAIRE

25.1. Upfront Concession Fee

25.1.1. In consideration of the grant of Concession under this Agreement, the Concession Fee payable by the Concessionaire to the Authority shall be Rs.2 Crores per year during the 1st three years of this Agreement totaling Rs 6 Crores.

25.1.2. The Concession Fee, for each year, shall be paid in advance within 7 (Seven) days of the commencement of the each Accounting Year, for which it is due and payable.

25.2. Annual Concession Fee

25.2.1. In consideration of the lease of the Site and the rights appurtenant thereto in favor of the Concessionaire, the Concessionaire shall, pay Annual Concession Fees in the form of revenue share starting from commercial operation date (COD) or fourth year from the date of signing of Concession Agreement, whichever is earlier and the amount would be as quoted in the Financial Bid. The first Annual Concession Fee shall have a minimum reserve value of Rs.50,00,000 (Rupees Fifty Lakhs Only) with an annual escalation at CAGR of 3%.

25.2.2. The Annual Concession Fees shall be due from the Commercial Operation Date (COD) or starting of fourth year from the date of signing of Concession Agreement, whichever is earlier and accordingly the Concessionaire shall deposit the Annual Concession Fees on the same date every year. The Annual Concession Fees shall be payable within 15 days from the scheduled date.

25.2.3. The Parties hereto acknowledge and agree that the Annual Concession Fee as specified in Clause 25.2.1 (the “Base Annual Concession Fee”) shall be revised annually on April 1; provided, however, that such revision shall not be effected until a period of 6 (six) months has elapsed from the date of the immediately preceding determination of Annual Concession Fee hereunder. for e.g if the concession agreement is signed after 6 months of the financial year (say October 10, 2016) the next revision with 5% CAGR will take place with effect from April 1, 2018 , at the same time for agreement executed on or before 30th September 2016 the revision of ACF with 5% CAGR will be effective from April 1, 2017 .

25.2.4. The Authority hereby acknowledges and agrees that it is not entitled to any revision of Annual Concession Fee except in accordance with the express provisions of this Agreement.

25.3. Delay and default in payment of the Annual Concession Fee.

25.3.1. In the event that (i) the Concessionaire does not fulfill the payment obligation set forth in Clause 25.2.1 and (ii) the delay has not occurred as a result of failure to fulfill the obligations or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such aforementioned payment obligations specified in Clause 25.2.1, subject to a maximum of 20% (twenty percent) of the Performance Security.

ARTICLE 26: COMMERCIAL CHARGES & PARKING CHARGES

26.1. Commercial Charges

The concessionaire shall levy, collect, retain and appropriate commercial Charges from the leaseholder.

26.2. Parking Charges

The concessionaire shall levy, collect and appropriate four wheelers Charges and Two Wheelers Parking charges from the user of parking facility.

ARTICLE 27: ESCROW ACCOUNT

27.1. Escrow Account

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

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

27.2. Deposits into Escrow Account

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

- a) all funds constituting the Financial Package;
- b) all defined revenues and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;

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

27.3. Withdrawals during Concession Period

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

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- d) O&M Expenses and other costs and expenses incurred by the Procuring Entity in accordance with the provisions of this Agreement, and certified by the Procuring Entity as due and payable to it;
- e) Payment due and payable to the Procuring Entity;
- f) monthly proportionate provision of Debt Service due in an Accounting Year;
- g) all payments and Damages certified by the Procuring Entity as due and payable to it by the Concessionaire;
- h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- i) any reserve requirements set forth in the Financing Agreements; and
- j) balance, if any, in accordance with the instructions of the Concessionaire.

27.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 27.3.1, except with the prior written approval of the Procuring Entity.

27.4. Withdrawals upon Termination

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

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- c) outstanding Payment to the Authority;
- d) all payments and Damages certified by the Procuring Entity as due and payable to it by the Concessionaire;
- e) retention and payments relating to the liability for defects and deficiencies set forth in Article 35;
- f) outstanding Debt Service including the balance of Debt Due;
- g) outstanding Subordinated Debt;
- h) incurred or accrued O&M Expenses;
- i) any other payments required to be made under this Agreement; and
- j) balance, if any, in accordance with the instructions of the Concessionaire;

If no appropriations shall be made under Sub-clause (j) of this Clause 34.4.1 until a Vesting Certificate has been issued by the Procuring Entity under the provisions of Article 34.

27.4.2. The provisions of this Article 27 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 27.4.1 have been discharged.



ARTICLE 28: INSURANCE

28.1. Insurance during Concession Period

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

28.1.2. Without prejudice to the provisions contained in Clause 28.1.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- a) Loss, damage or destruction of the Project Assets, including assets handed over by the Procuring Entity to the Concessionaire, at replacement value;
- b) Comprehensive third party liability insurance including injury to or death of personnel of the Procuring Entity or others who may enter the Project.
- c) The Concessionaire's general liability arising out of the Concession;
- d) Liability to third parties for goods or property damage;
- e) Workmen's compensation insurance; and
- f) Any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in terms (i) to (v) above.

28.1.3. Notice to the Procuring Entity

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Procuring Entity, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 28. Within 30 (thirty) days of receipt of such notice, the Procuring Entity may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

28.1.4. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 28 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Procuring Entity, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Procuring Entity.

28.1.5. Remedy for failure to insure

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

28.1.6. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 28 shall include a waiver of any and all rights of subrogation or recovery of the insurers

there under against, inter alia, the Procuring Entity, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

28.1.7. Concessionaire's waiver

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

28.1.8. Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 27.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 29: ACCOUNTS AND AUDIT

29.1. Audited accounts

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

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

29.1.3. On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Procuring Entity, for the preceding Accounting Year, a statement duly audited by its Independent Auditors giving summarized information on (a) O&M expenses including the Payment made to the Procuring Entity (b) Earnings received, and (c) such other information as the Procuring Entity may reasonably require.

29.2. Appointment of Auditors

29.2.1. The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Independent Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “Panel of Chartered Accountants”), such list to be prepared

substantially in accordance with the criteria set forth in Schedule-N. All fees and expenses of the Statutory Independent shall be borne by the Concessionaire.

29.2.2. The Concessionaire may terminate the appointment of its Independent Auditors after a notice of 45 (forty five) days to the Procuring Entity, subject to the replacement Independent Auditors being appointed from the Panel of Chartered Accountants.

29.2.3. Notwithstanding anything to the contrary contained in this Agreement, the Procuring Entity shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “Additional Auditors”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Independent Auditors are required to do, undertake or certify pursuant to this Agreement.

ARTICLE 30: FORCE MAJEURE

30.1. Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 30.2, 30.3 and 30.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

30.2. Non-Political Event

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

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 30.3;
- c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- d) any judgment or order of any court of competent jurisdiction or statutory Procuring Entity made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Procuring Entity;

- e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- f) any event or circumstances of a nature analogous to any of the foregoing.

30.3. Indirect Political Event

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

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- c) any civil commotion, boycott or political agitation which prevents the Affected Party from performing any of its obligations for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- e) any Indirect Political Event that causes a Non-Political Event; or
- f) any event or circumstances of a nature analogous to any of the foregoing.

30.4. Political Event

- a) A Political Event shall mean one or more of the following acts or events by or on
- b) account of any Government Instrumentality:
- c) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 37 and its effect, in financial terms, exceeds the sum specified in Clause 37.1;
- d) compulsory acquisition in national interest or expropriation of any Project
- e) Assets or rights of the Concessionaire or of the Contractors;
- f) unlawful or unauthorized or without jurisdiction revocation of, or refusal to
- g) renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- h) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- i) any event or circumstance of a nature analogous to any of the foregoing.

30.5. Duty to report Force Majeure Event

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

- a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 30 with evidence in support thereof;
- b) the estimated duration and the effect or probable effect which such Force
- c) Majeure Event is having or will have on the Affected Party's performance of its
- d) obligations under this Agreement;
- e) the measures which the Affected Party is taking or proposes to take for
- f) alleviating the impact of such Force Majeure Event; and
- g) any other information relevant to the Affected Party's claim.

30.5.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

30.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 30.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

30.6. Effect of Force Majeure Event on the Concession

- 30.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 30.6.2. At any time after the Appointed Date, if any Force Majeure Event occurs before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists;
- 30.7. Allocation of costs arising out of Force Majeure
- 30.7.1. Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 30.7.2. Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “Force Majeure Costs”) shall be allocated and paid as follows:
- a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Procuring Entity to the Concessionaire; and
 - c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Procuring Entity to the Concessionaire. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

30.7.3. Save and except as expressly provided in this Article 30, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

30.8. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 30, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

30.9. Termination Payment for Force Majeure Event

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

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

- a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then
- b) 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- c) 110% (one hundred and ten per cent) of the Adjusted Equity.

30.9.3. If Termination is on account of a Political Event, the Procuring Entity shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 33.3.2 as if it were an Procuring Entity Default.

30.10. Dispute Resolution

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

30.11. Excuse from performance of obligations

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

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

ARTICLE 31: COMPENSATION FOR BREACH OF AGREEMENT

31.1. Compensation for default by the Concessionaire

Subject to the provisions of Clause 31.5, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Procuring Entity by way of compensation, all direct costs suffered or incurred by the Procuring Entity as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 31.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Procuring Entity.

31.2. Compensation for default by the Procuring Entity

Subject to the provisions of Clause 31.5 in the event of the Procuring Entity being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material default but shall not include debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

31.3. Extension of Concession Period

Subject to the provisions of Clause 31.5, in the event that a material default or breach of this Agreement set forth in Clause 31.2 causes delay in achieving COD, the Procuring Entity shall, in addition to payment of compensation under Clause 31.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed

31.4. Compensation to be in addition

Compensation payable under this Article 31 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

31.5. Mitigation of costs and damage

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

ARTICLE 32: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

32.1. Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Procuring Entity shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Procuring Entity to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Procuring Entity shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

32.2. Procuring Entity to act on behalf of Concessionaire

32.2.1. During the period of Suspension, the Procuring Entity shall, on behalf of the Concessionaire, operate and maintain the Project under and in accordance with this Agreement. The Procuring Entity shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified.

32.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Procuring Entity for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Procuring Entity for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Procuring Entity or any other person authorized by it under Clause 32.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

32.3. Revocation of Suspension

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

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

32.4. Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lenders' Representative there under, the Procuring Entity shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 32.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

32.5. Termination

32.5.1. At any time during the period of Suspension under this Article 32, the Concessionaire may by notice require the Procuring Entity to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 32.4, the Procuring Entity shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 33.

32.5.2. Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 32.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Procuring Entity upon occurrence of a Concessionaire Default.

ARTICLE 33: TERMINATIONS

33.1. Termination for Concessionaire Default

33.1.1. Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “Concessionaire Default”), unless the default has occurred solely as a result of any breach of this Agreement by the Procuring Entity or due to Force Majeure. The defaults referred to herein shall include:

- a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- c) The Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule C and continues to be in default for 120 (one hundred and twenty) days;
- d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Procuring Entity;
- e) Project Completion Date does not occur within the period specified in Clause 12.7;
- f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- h) the Concessionaire has failed to make any payment to the Procuring Entity within the period specified in this Agreement;

- i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Procuring Entity to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Procuring Entity, a Material Adverse Effect;

- s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
- i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - iii. each of the Project Agreements remains in full force and effect;
- t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;
- u) the Concessionaire submits to the Procuring Entity any statement, notice or other document, in written or electronic form, which has a material effect on the Procuring
- v) Entity's rights, obligations or interests and which is false in material particulars;
- w) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
- x) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Procuring Entity.

- 33.1.2. Without prejudice to any other rights or remedies which the Procuring Entity may have under this Agreement, upon occurrence of a Concessionaire Default, the Procuring Entity shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Procuring Entity shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 33.1.3.
- 33.1.3. The Procuring Entity shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 33.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Procuring Entity receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

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

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

33.2. Termination for Procuring Entity Default

- 33.2.1. In the event that any of the defaults specified below shall have occurred, and the Procuring Entity fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Procuring Entity shall be deemed to be in default of this Agreement (the "Procuring Entity Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- a) The Procuring Entity commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- b) the Procuring Entity has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- c) the Procuring Entity repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or

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

33.3. Termination Payment

33.3.1. Upon Termination on account of a Concessionaire Default during the Operation Period, the Concessionaire shall pay to the Procuring Entity, by way of Termination Payment, an amount equal to the discounted value of future earnings of the Procuring Entity, the discounting factor applied being the then SBI PLR +(plus) 3% less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be deducted from the termination payment so assessed. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

33.3.2. Upon Termination on account of an Procuring Entity Default, the Procuring Entity shall pay to the Concessionaire, by way of Termination Payment, an amount equal to the discounted value of future earnings of the revenues proposed as certified by the independent auditor, the discounting factor applied being the then SBI PLR -(minus) 3%:

33.3.3. Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Procuring Entity with the necessary particulars, and in the event of any delay, the Procuring Entity shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it

is expressly agreed that Termination Payment shall constitute full discharge by the Procuring Entity of its payment obligations in respect thereof hereunder.

33.3.4. The Concessionaire expressly agrees that Termination Payment under this Article 33 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

In the above case, if there is lien on the Project by the Lender, the Procuring Entity shall pay to the Concessionaire, within 180 (one hundred and eighty) days from the Transfer Date, either of the following amounts, whichever is lower:

- a) 25% (twenty five percent) of the Depreciated Historical Cost of the capital assets of the Project as at the date of expiry of the Termination Notice Period.

Or

- b) 50% (fifty percent) of the outstanding debt which has directly funded the construction of capital assets of the Project as at the date of expiry of the Termination Notice Period; Subject to deduction of such amounts as may be due and payable by the Concessionaire or the Lenders to the Procuring Entity under this Agreement and the Lender shall have no further claim on the Procuring Entity.

Upon Termination on account of Procuring Entity Default during the Operation Period, the Procuring Entity shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- a) Debt Due;(excluding Overdue of Principal & Interest)
- b) 100% (one hundred percent) of the Adjusted Equity;

Subject to deduction of amounts due to the Procuring Entity Annual Lease Premium and the Bank Guarantee towards Operations & Maintenance Performance Security shall be returned to the Concessionaire, after appropriating the amounts due to the Procuring Entity.

33.4. Certain limitations on Termination Payment

Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provide that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Procuring Entity, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Procuring Entity, Equity shall be deemed to be the product arrived at by subtracting Debt Due from Total Project Cost.

33.5. Other rights and obligations of the Procuring Entity

- a) Upon Termination for any reason whatsoever, the Procuring Entity shall:
- b) be deemed to have taken possession and control of the Project forthwith;
- c) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- d) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- e) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 34.1; and
- f) succeed upon election by the Procuring Entity, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Procuring Entity may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Procuring Entity elects to

succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Procuring Entity shall not in any manner be liable for such sums. It is further agreed that in the event the Procuring Entity elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Procuring Entity for this purpose shall be deducted from the Termination Payment.

33.6. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 33.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 34: DIVESTMENT OF RIGHTS & INTERESTS

34.1. Divestment Requirements

Upon Termination, the Concessionaire shall comply with and conform to the following

Divestment Requirements:

- a) notify to the Procuring Entity forthwith the location and particulars of all Project Assets;
- b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- c) cure all Project Assets, including the 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 Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Procuring Entity 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 Procuring Entity may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Procuring Entity, absolutely unto the Procuring Entity or its nominee; and

- g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Procuring Entity or to its nominee.

34.1.2. Subject to the exercise by the Procuring Entity of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

34.2. Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 31 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 34.

34.3. Cooperation and assistance on transfer of Project

34.3.1. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

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

34.3.3. The Procuring Entity shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 34.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

34.4. Vesting Certificate

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

34.5. Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

34.6. Divestment costs etc.

34.6.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favor of the Procuring Entity upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Procuring Entity.

34.6.2. In the event of any dispute relating to matters covered by and under this Article 34, the Dispute Resolution Procedure shall apply.



ARTICLE 35: DEFECTS LIABILITY AFTER TERMINATION

35.1. Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Procuring Entity in this behalf, the Procuring Entity shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Procuring Entity hereunder shall be reimbursed by the Concessionaire to the Procuring Entity within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Procuring Entity shall be entitled to recover the same from the Escrow Account.

35.2. Retention in Escrow Account

35.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 35.2.3, a sum equal to 5% (five per cent) of the Revenue immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 35.1.

35.2.2. Without prejudice to the provisions of Clause 35.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 35.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

35.2.3. The Concessionaire may, for the performance of its obligations under this Article 35, provide to the Procuring Entity a guarantee from a Bank for a sum equivalent to the amount determined under Clause 35.2.1 or 35.2.2, as the case may be, and for the period specified therein,

substantially in the form set forth in Schedule-M (the “Operation * Performance Guarantee”), to be modified, mutatis mutandis, for this purpose, and the

Procuring Entity shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire’s risk and cost in accordance with the provisions of this Article 35. Upon furnishing of a Performance Guarantee under this Clause 35.2.3, the retention of funds in the Escrow Account in terms of Clause 35.2.1 or 35.2.2, as the case may be, shall be dispensed with.

ARTICLE 36: ASSIGNMENT AND CHARGES

36.1. Restrictions on Assignment and Charges

36.1.1. Subject to Clauses 36.2 and 36.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Procuring Entity, which consent the Procuring Entity shall be entitled to decline without assigning any reason.

36.1.2. Subject to the provisions of Clause 36.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Procuring Entity, which consent the Procuring Entity shall be entitled to decline without assigning any reason.

36.2. Permitted Assignment and Charges

The restraints set forth in Clause 36.1 shall not apply to:

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

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

36.3. Substitution Agreement

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

36.3.2. Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Procuring Entity shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

36.4. Assignment by the Procuring Entity

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

ARTICLE 37: CHANGE IN LAW

37.1. Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the Concessionaire may so notify the Procuring Entity and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Procuring Entity to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Procuring Entity shall pay the amount specified therein; provided that if the Procuring Entity shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 37.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

37.2. Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the Procuring Entity may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Procuring Entity, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Procuring Entity may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within

15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Procuring Entity; provided that if the Concessionaire shall dispute such claim of the Procuring Entity, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 37.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

37.3. Protection of NPV

Pursuant to the provisions of Clauses 37.1 and 37.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

37.4. Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 37 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

37.5. No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Procuring Entity shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.

ARTICLE 38: LIABILITY AND INDEMNITY

38.1. General Indemnity

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

38.1.2. The Procuring Entity will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Procuring Entity in the land comprised in the Site, and/or (ii) breach by the Procuring Entity of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

38.2. Indemnity by the Concessionaire

38.2.1. Without limiting the generality of Clause 38.1, the Concessionaire shall fully indemnify, hold harmless and defend the Procuring Entity and the Procuring Entity Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

38.2.2. Without limiting the generality of the provisions of this Article 38, the Concessionaire shall fully indemnify, hold harmless and defend the Procuring Entity Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Procuring Entity Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Procuring Entity a licence, at no cost to the Procuring Entity, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

38.3. Notice and contest of claims

38.3.1. In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 38 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

38.4. Defense of claims

38.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 38, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

38.4.2. If the Indemnifying Party has exercised its rights under Clause 38.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

38.4.3. If the Indemnifying Party exercises its rights under Clause 38.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
- b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or

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

- d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - i. that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

 - ii. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 38.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

38.5. No Consequential Claims

Notwithstanding anything to the contrary contained in this Article 38, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

38.6. Survival on Termination

The provisions of this Article 38 shall survive Termination.

ARTICLE 39: RIGHTS AND TITLE OVER THE SITE

39.1. Licensee Rights

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

39.2. Access rights of the Procuring Entity and others

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

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

39.3. Property Taxes

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

39.4. Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or



interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

ARTICLE 40: DISPUTE RESOLUTION

40.1. Dispute Resolution

40.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 40.2.

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

40.2. Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Procuring Entity and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 40.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 40.3.

40.3. Arbitration

40.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 40.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 40.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, Mangaluru (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the

Arbitration Act. The venue of such arbitration shall be Mangaluru, and the language of arbitration proceedings shall be English.

40.3.2. There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

40.3.3. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 40 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Procuring Entity agree and undertake to carry out such Award without delay.

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

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

40.4. Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Procuring Entity, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 40.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 41: DISCLOSURE

41.1. Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “Specified Documents”), free of charge, during normal business hours on all working days at the office of General Manager, Mangaluru Smart City Limited and Concessionaire’s Registered Office.

41.2. Disclosure of Documents relating to safety

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

41.3. Withholding of the Disclosure

Notwithstanding the provisions of Clauses 41.1 and 41.2, the Procuring Entity shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the previously mentioned Clauses.

Explanation: The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 41.1 and 41.2, or portions thereof, the disclosure of which the Procuring Entity is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 42: REDRESSAL OF PUBLIC GRIEVANCES

42.1. Complaints Register

42.1.1. The Concessionaire shall maintain a public relations office in the proposed development where it shall keep a register (the “Complaint Register”) open to public access at all times for recording of complaints by any person (the “Complainant”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire so as to bring it to the attention of all Users.

42.1.2. The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

42.1.3. Without prejudice to the provisions of Clauses 42.1.1 and 42.1.2, the Procuring Entity may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

42.2. Redressal of Complaints

42.2.1. The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

42.2.2. Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Procuring Entity and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Procuring Entity may, in its discretion, advise the Concessionaire to take such further action as the Procuring Entity may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Procuring Entity of its decision



thereon, and if the Procuring Entity is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 43: MISCELLANEOUS

43.1. Governing Law and Jurisdiction

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

43.2. Waiver of Immunity

Each Party unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

43.3. Depreciation and Interest

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

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

43.5. Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

43.6. Waiver

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

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

43.6.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other

indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

43.7. Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

43.8. Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

43.9. Survival

43.9.1. Termination shall:

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

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

43.10. Entire Agreement

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

43.11. Severability

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

43.12. No partnership

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

43.13. Third Parties

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

43.14. Successors and Assigns

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

43.15. Notices

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

- a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Procuring Entity; provided that notices or other communications to be given to an address outside Mangaluru may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Procuring Entity;
- b) in the case of the Procuring Entity, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman of the Procuring Entity with a copy delivered to the Procuring Entity Representative or such other person as the Procuring Entity may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Mangaluru it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

43.16. Language

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

43.17. Counterparts

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

**CONCESSION
AGREEMENT
SCHEDULES**

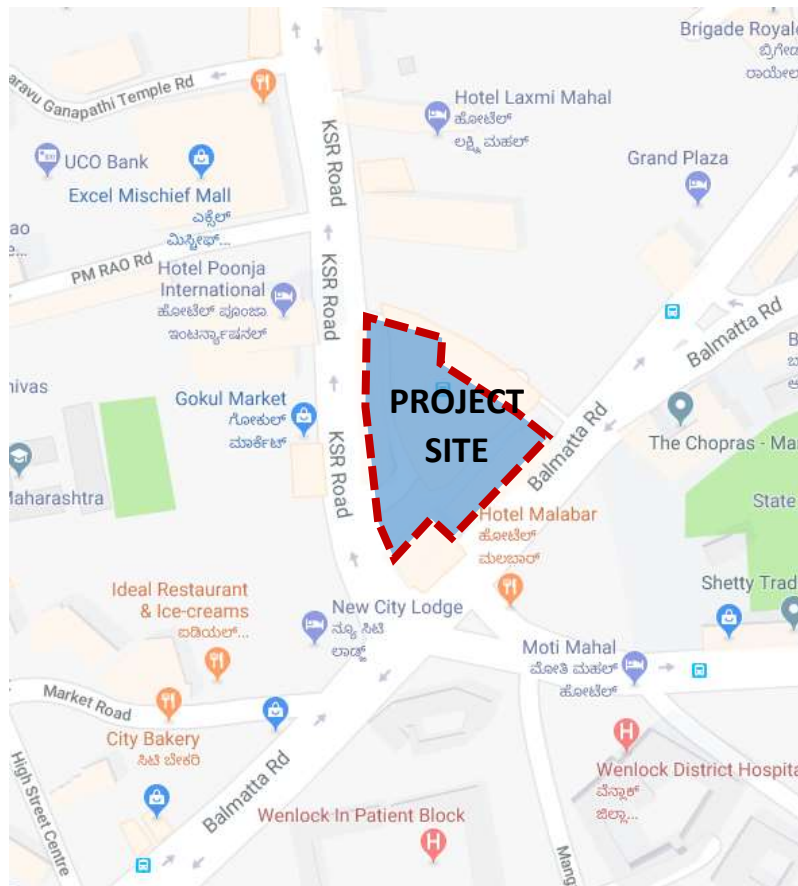
SCHEDULE A: PROJECT SITE

(See Articles – 3.1.2, 3.3.2, 3.4 and 12.1)

- Effective traffic and transport planning is a key requirement for land use planning and development of cities. Emerging Cities like Mangaluru need traffic and transport infrastructure such as roads, junctions, signaling and parking facilities for effective mobility. Availability of proper parking facilities particularly in central business district and commercial areas is a prerequisite for effective traffic and transportation planning. **Multi-Level Car Parking (MLCP)** is a strategic way of increasing the Equivalent Car Space (ECS) at a parking site. Off-street or on-street parking does not enable optimum utilization of the land and leads to a capacity shortage in certain cases. However, a MLCP can accommodate many more vehicles than a land parking lot can depend on the number of floors, development control norms etc.
- Government of Karnataka is also encouraging urban local bodies to implement parking projects through PPP as they can be completely financed by the private developer, do not require grant support for construction as well as operation and maintenance and part of the revenues earned by the developer can be shared with the ULB which brings in additional revenues.
- In among those ULBs, **MANGALURU SMART CITY LIMITED (MSCL)** in order to tackle the deteriorating condition and cope with increased demand for commuters' parking space in the main retail node of the city, intends to develop efficient Multi-level Parking facility through Public Private Partnership (PPP) basis.
- Under the Smart Cities Mission, Mangaluru Smart City Limited has appointed Project Management Consultants for conceptualizing the Project and examining its techno-financial feasibility for implementing the same in Public Private Partnership (PPP) mode. This document is for the purpose of the Development of Multi Level Car Parking (MLCP) Cum Retail Development Project at Hampankatta in Mangaluru, Karnataka.
- Mangaluru is a city located on the western coast of India in the state of Karnataka. It is the chief port in Karnataka and the administrative headquarters of the Dakshina Kannada district. Mangaluru urban agglomeration has a population of 623,841 as per 2011 census. It is the commercial, industrial, educational and healthcare hub in coastal Karnataka. The New Mangalore Port is India's eighth largest port, in terms of cargo handling. It handles 75 per cent of India's coffee exports and the bulk of its cashew nuts. Mangaluru City

Corporation (MCC) is the urban local body responsible for providing civic services in the city, whereas Mangluru Urban Development Authority (MUDA) is the planning and development authority for the metropolitan area.

- The Site is located at **Hampankatta**, which is the main retail hub and Central Business District of Mangaluru city. The project site is easily accessible from all parts of the city and has excellent connectivity from the existing public transport routes. The site is in close proximity to all the important places such as the Central Market, Railway Station, City Centre Mall, Wenlock District Hospital and Town Hall.
- The area of the site is **2.01 Acre**, which includes the amalgamation of 1.55 acres of vacant plot (of Old Bus Stand) belonging to Mangaluru City Corporation and surrounded by privately owned buildings comprising of 0.46acres of land.



- The Site Plan, Site Details and Site Photos are attached below in Exhibit No. 1, Exhibit No. 2 and Exhibit No. 3 respectively.

Exhibit No. 1 - Scanned Copy of Site



The Site of the Project has access from KSR Road on the West side and Balmatta road/ Light House Hill road on its East side.

Exhibit No. 2 Location of Site and Details.

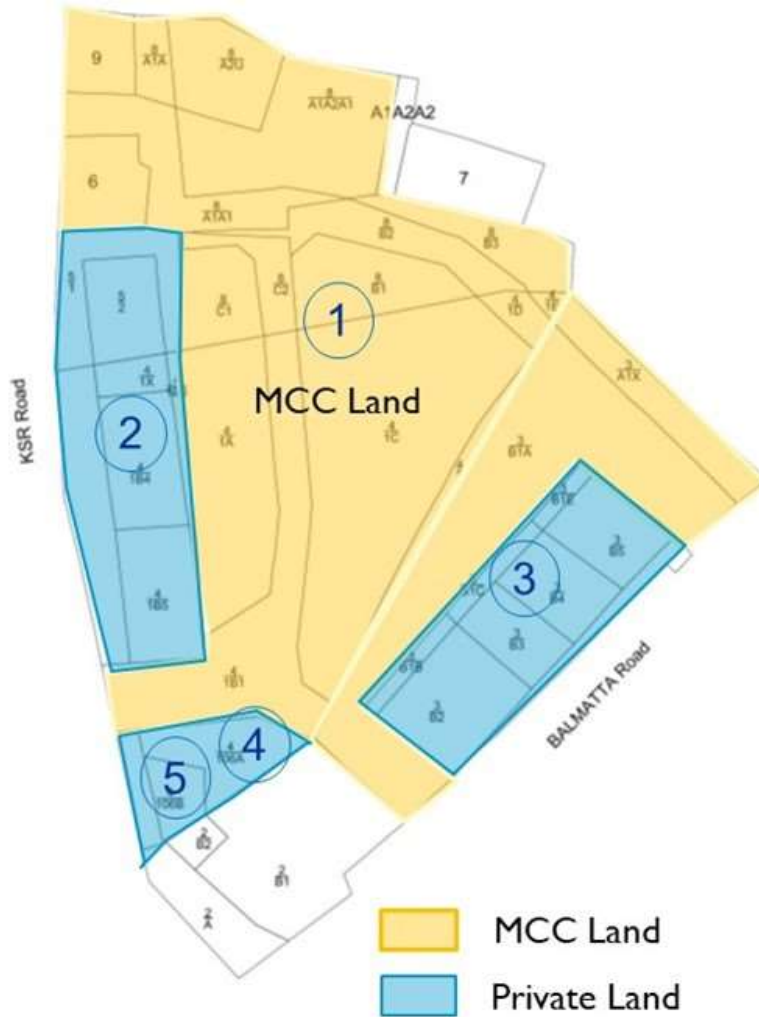


Satellite Image showing the project site.

Site features:

- The vacant plot of Mangaluru City Corporation is used as a municipal parking lot with a maximum capacity of about 110 cars.
- During late evening and night, the vacant site also serves as the informal starting point of inter-city private buses.
- The private buildings on the periphery of the site are all commercial with retail shops on the ground floor.
- The private buildings are at quite old and many of these are in disrepair
- The site is designated for commercial land use

Site Plan showing existing Land parcels:



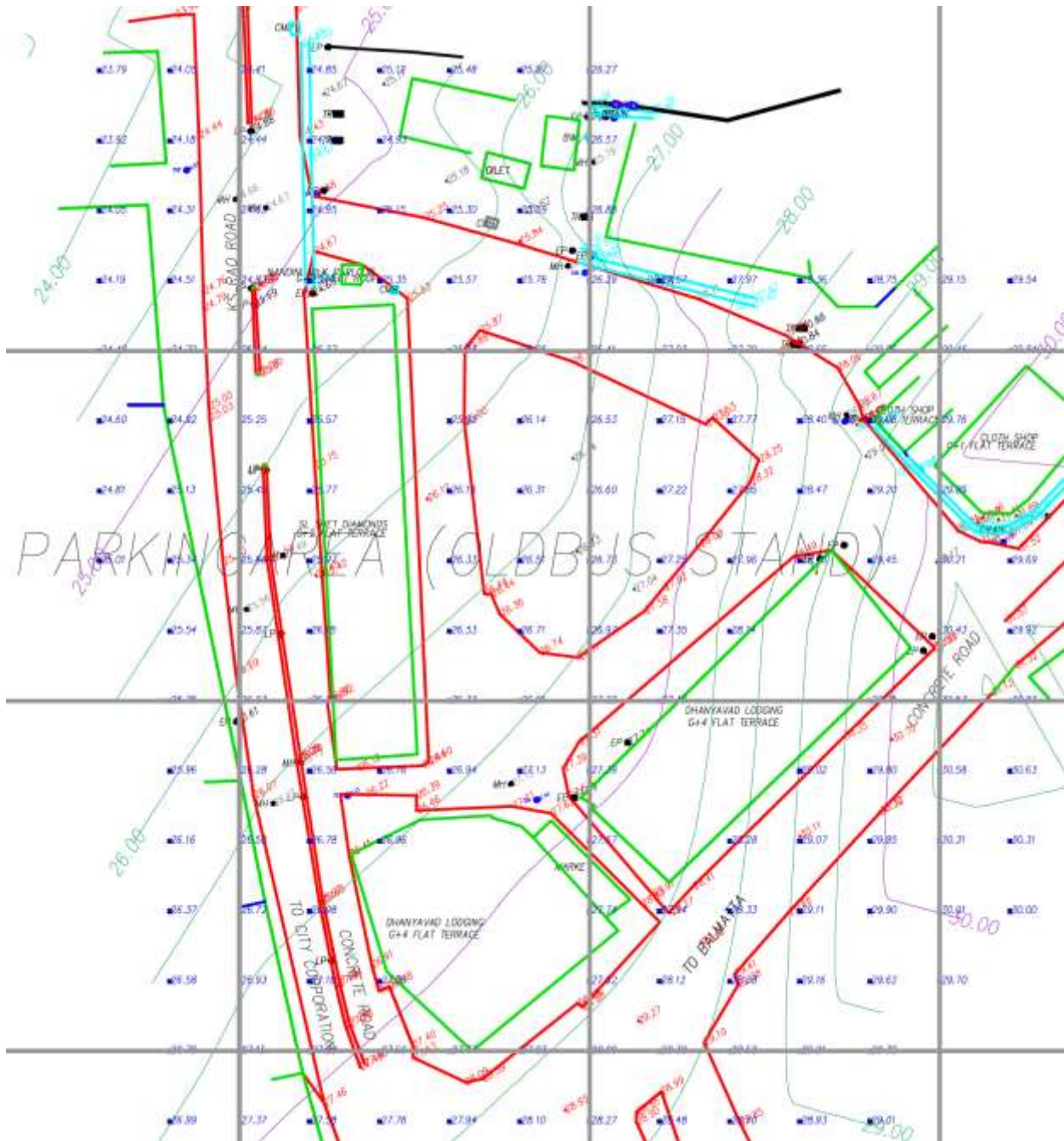
The project site comprises of the following land ownership:

- Vacant plot belonging to MCC: 1.55 acre
- Plot Area of private ownership: 0.46 acre

Existing components of MLCP site:

Sr. No.	Property description	Survey. No.	Plot Area (SqM)	Area (Acre)
1	MCC Land (Old Bus Stand site)	3, 4 and other	6274.4	1.55
2	Diamond House at KSR Road	4, 5 and other	728.64	0.18
3	Diamond Building at Balmatta Road	3 and other	890.56	0.22
4	Baliga building	4/1 B, 6A & other	80.96	0.02
5	Maruthi building	4/1 B, 6A & other	161.92	0.04
	Total		8136.48	2.01

Topographical Survey Drawing of the Site:



Outcome of Topographical Survey:

With reference to the Topo-survey conducted and physical examination by the PMC the following are the site details:

Sr. No.	Particulars	Details
1.	Location of Propose Plot	Latitude- 12° 52' 07.80" N Longitude- 74° 50' 32.64" E
2.	Shape of Plot	Triangular
3.	Area of Plot (as per Survey)	8136.48 Sq Mts.
4.	Existing Roads	<ul style="list-style-type: none"> • KS Rao Road on the West (Existing width 9 m and proposed ROW 30 m) • Balmatta Road/ Light House Hill road on the East (Existing width 12m and proposed ROW 24m)
5.	Entry / Exit to the site	KSR Road on the West side and Balmatta Road/ Light House Hill road on the East side
6.	Surroundings	Highly Commercial with multi-storied hotels and commercial buildings with retail shops on the ground floor
7.	Existing Use of Proposed site	For Pay & Park facility
8.	Visibility:	Good
9.	Land Use:	Commercial
10.	Applicable FSI:	<ul style="list-style-type: none"> • Permissible FSI: 2.5 • Premium FSI: 1.0 • TDR: 0.5 (as per Approach Road width and Zonal Regulations)
11.	Administration:	Mangaluru City Corporation (MCC)
12.	Land Ownership:	<ul style="list-style-type: none"> • Vacant plot belonging to MCC: 1.55 acre • Plot Area of private ownership: 0.46 acre

Exhibit No. 3 Site Pictures:



Aerial view of site



Site access from KSR and Balmatta Road



View of Parking at site



View of Parking at site



Road frontage on KSR Road



Road frontage on Balmatta Road

Existing site condition:

- Presently the site serves as a municipal parking lot with pay-and-park capacity of about 110 cars.
- The buildings on the periphery of the site are at quite old and many of these are in disrepair and deteriorating condition. Only the Diamond House building having the jewelry store is well maintained in good condition. These buildings have shops, commercial establishments and hotel/ guesthouse.
- The retail development found around the site is mostly informal high street retail mainly housing private bus operators' offices, assorted shops and eateries.
- The existing buildings have no front set-back space on the road-side, which would have to be provided for in case of redevelopment or road widening.

Proposed development as per study:

The parking project was analyzed both from commercial and standalone perspective. Considering the demand for car parking along with the commercial development in the locality the site has good potential for developing a Multi-Level car parking and commercial project.

SL No.	Particulars	Proposed Public Parking Capacity*
1.	Number of four wheelers ECS proposed at site	200

**Note: selected Concessionaire can increase the number of Public Parking space as per his approved drawing and viability*

The parking slots for Commercial Space in the project shall be the responsibility of the Concessionaire and the same should be provided by the Concessionaire as per the Applicable Laws/ Zonal Regulations. Under any circumstances, the parking slots for public parking shall not be considered for commercial purpose. There shall not be any exemption of taxes.

Development of the Project

- Mangaluru Smart City Ltd (MSCL) has proposed a Multi-level Car Parking (MLCP) facility in Hampankatta to reduce parking woes in this area.
- The MLCP facility has been proposed at the vacant site of the old bus stand of Mangaluru.
- It is proposed to develop this site as an integrated MLCP with Retail/ Commercial Complex facility through PPP for development, operation and maintenance of the facility
- The project is proposed to be developed on a Design, Build, Finance, Operate and Transfer (DBFOT) format.
- All standard facilities as required for Multi-level car parking with retail development shall be provided by the Concessionaire

Broad Scope of Developer:

- Design, Finance and Construct the
 - 1) **Multi-Level Car Parking Structure:**

Multi-level car parking (MLCP) facility having minimum Public Parking capacity of 200 ECS (Equivalent Car Space) and additional parking space to accommodate the parking requirements for permissible commercial space as per the local building regulations.
 - 2) **Retail/ Commercial Complex:**

The commercial facility may include the following components:

 - Retail shops
 - Showrooms for consumer goods / garments/ electronics, etc.
 - Hotel, Restaurants
 - Cinema/ Multiplex
 - Banks and ATMs
 - Office spaces for commercial organizations
 - 3) **Rehabilitation of existing stakeholders**

The properties of the existing stakeholders (i.e. the owners of the private buildings on the periphery of site) shall be amalgamated along with the property of the MCC and the stakeholders shall be accommodated in the new development as described in Schedule – B of the Concession Agreement.
- Operation and Maintenance of Multi-Level Car Parking Cum Retail / Commercial Facility.



The Concessionaire shall handover the Parking as well as Commercial Structure to MSCL free of cost and all encumbrances at the end of Concession Period.

SCHEDULE B: PROJECT FACILITIES

(See Articles –12.7.3 and Schedule K)

The Concessionaire is required to plan, design, finance, engineer, construct, develop, equip, operate, maintain and manage the Project and derive its commercial benefits for the predetermined Concession Period.

The total area for the development and implementation of the Project is approx. **8136.48 SqM** wherein the Concessionaire shall be given full discretion to plan and design the Multi-Level Car Parking and Retail / Commercial Complex complying with the provisions of this Concession Agreement and conforming to the applicable Building Bye-Laws and regulations/ norms/ standards as per Applicable laws for respective Project Components subject to the approval of Design Approval Committee of MSCL including arranging approval from the Competent Authority.

The main Project Components to be developed at the Project Site are:

1) **Multilevel Car Parking Facility:**

- Multi-level car parking (MLCP) facility having minimum Public Parking capacity of 200 ECS (Equivalent Car Space) and additional parking space to accommodate the parking requirements for permissible commercial space as per the local building regulations.
- The parking slots required for Commercial Space in the project shall be the responsibility of the Concessionaire and the same should be provided by the Concessionaire as per the Applicable Laws. Under any circumstances, the parking slots for public parking shall not be considered for commercial purpose.
- Provision of essential services and facilities which shall include provision of Fire-fighting system, lighting and ventilation, Security System with CCTV surveillance, drinking water facility, toilets, DG sets, etc shall be provided
- The Multi-level Parking shall be planned in accordance with the local Development Control Regulations/ Zonal Regulations applicable to Mangaluru
- The use of standards and specifications for use of material, construction technology and operations shall adhere to the national and international set of specifications and the best practices in the industry

2) **Retail/ Commercial facility:**

The activities and facilities that can be allowed for the Commercial Complex includes:

- Retail shops
- Showrooms for consumer goods / electronics etc.

- Cinema/ Multiplex
- Hotel, Restaurants
- Banks and ATMs
- Office spaces for commercial organizations

3) Rehabilitation of existing stakeholders:

The existing stakeholders (i.e. the owners of the private buildings on the proposed site) shall be accommodated in the new development as specified below:

- The existing stakeholders shall be allotted built-up area in the new building equivalent to the total built-up in their existing buildings
- Shops located facing a particular road shall be given space facing the same road
- Shops located on a particular floor of existing building shall be given space in equivalent floor in the new building

The built-up space for the private stakeholder component, would be handed over by the Concessionaire to the stakeholders after the completion of construction and upon receiving the Occupation Certificate.

Indicative area calculations for the proposed facilities:

FAR/ FSI applicable as per Zonal Regulations for Mangaluru:

Permissible FAR	2.5
Premium FAR	1
Transferable Development Rights (TDR)	0.5
Total FAR potential	4

Note: Above is applicable for Commercial land use plot having area above 4000 SqM and existing access road of 12m width and proposed road width of 24m. Parking areas (Basement and MLCP) are not counted in the FAR.

Estimated Built-up Area required for Rehabilitating existing private stakeholders:

Sr. No.	Property description	Plinth Area (SqM)	BUA Estimated * (SqM)
1	Diamond House at KSR Road	728.64	1457.28
2	Diamond Building, Balmatta Road	890.56	3384.128
3	Baliga building	80.96	80.96
4	Maruthi building	161.92	323.84
	Total	1862.08	5246.21

Note: * The existing Built-up area of private buildings is indicative and the Concessionaire shall survey and finalize the same, before start of the project.

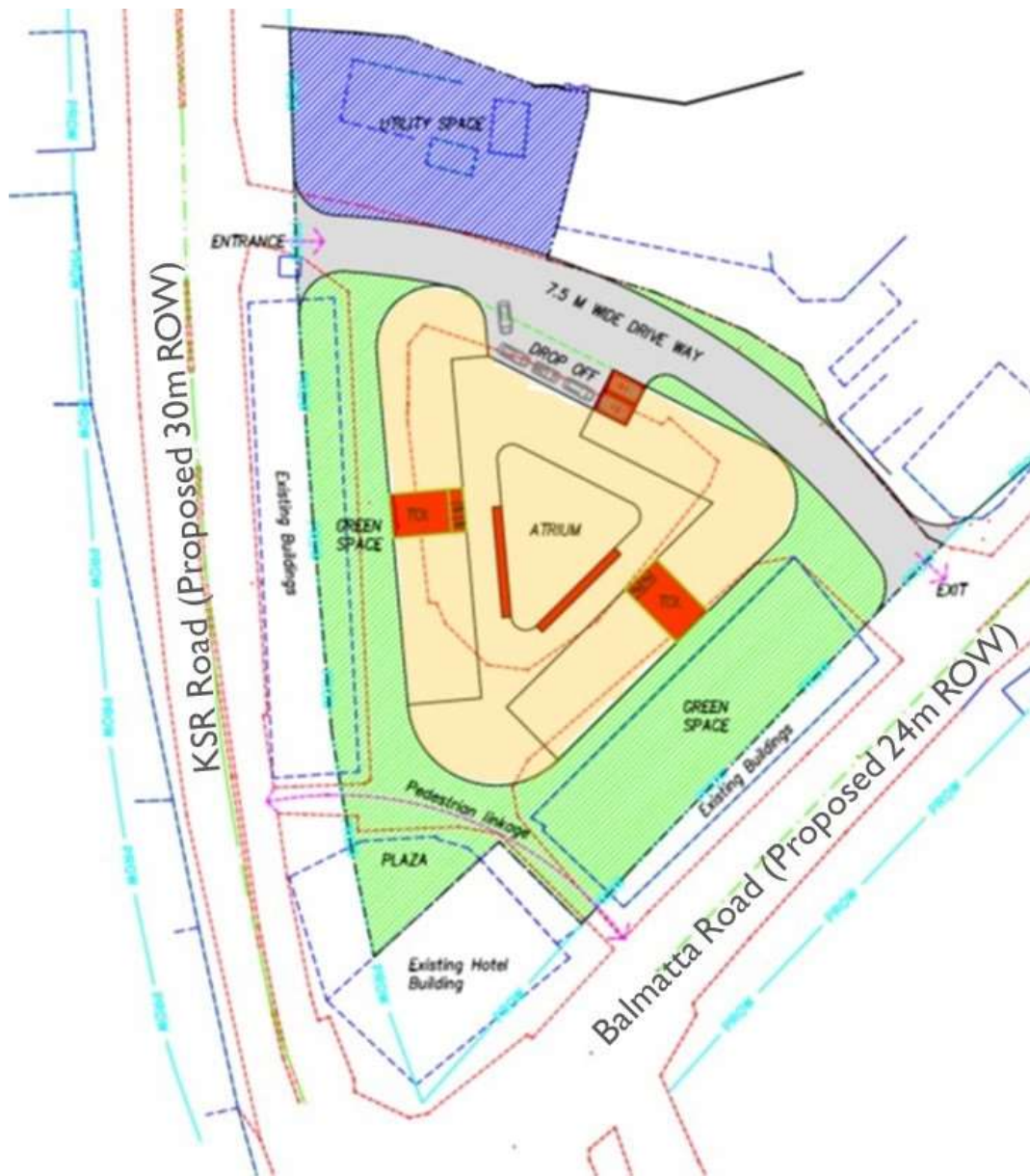
Indicative plot configuration after proposed amalgamation of MCC and private plots:

Plot Configuration	Plot Area (SqM)	Plot Area (SqM)
Plot 1	4535.00	1.12
Plot 2	3601.48	0.89
Total	8136.48	2.01

Note: Plot configuration after amalgamation of plots for proposed development is indicative only. Concessionaire may opt for similar or different configuration as per its own proposal.

Indicative proposed layout of the project after amalgamation of MCC and private plots :

Option A: Single Building

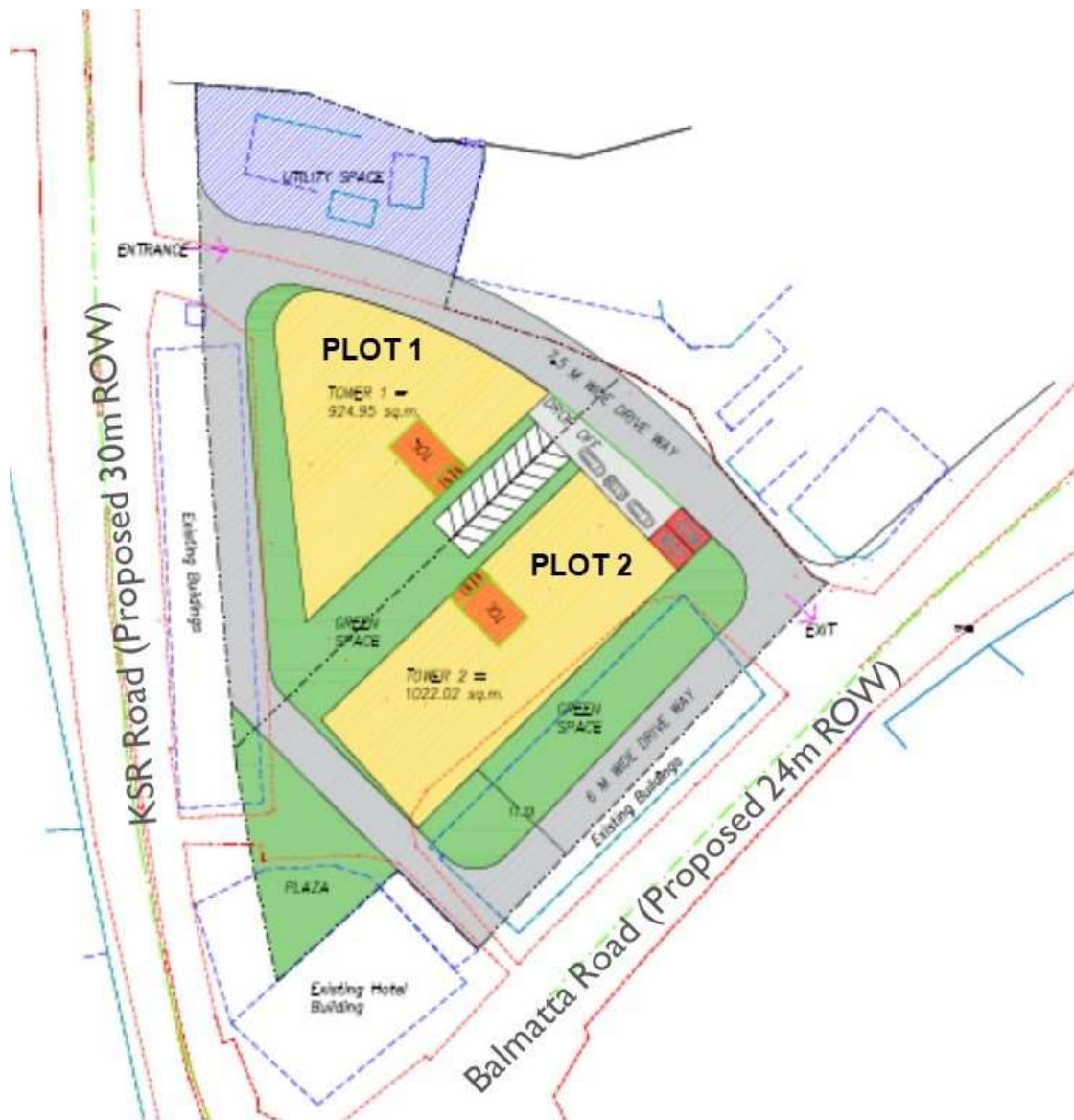


Note:

- The Concept Layout is in accordance with the Zonal Regulations for Mangaluru
- Road widening set-back area is considered as per Mangalore Master Plan 2021 prepared by Mangalore Urban Development Authority (MUDA)
- The proposed building height shall be within the permissible height clearance of 150m for the Hampankatta area as per the Zoning Map of Airport Authority of India (AAI)
- Concessionaire may opt for similar or different configuration as per its own proposal.

Indicative proposed layout of the project after amalgamation of MCC and private plots :

Option B: Two Buildings



Note:

- The Concept Layout is in accordance with the Zonal Regulations for Mangaluru
- Road widening set-back area is considered as per Mangalore Master Plan 2021 prepared by Mangalore Urban Development Authority (MUDA)
- The proposed building height shall be within the permissible height clearance of 150m for the Hampankatta area as per the Zoning Map of Airport Authority of India (AAI)
- Concessionaire may opt for similar or different configuration as per its own proposal.

The Multi-Level Car Parking Cum Commercial Complex shall be planned and designed with efficient floor areas, wide column spans/ spacing , maintaining adequate floor clearance with good circulation area to meet with the requirements as laid in this Concession Agreement and meeting the stipulations of National Building Code and local building bye-laws and regulations in all respects including arranging approval of Competent Authority and subject to the approval of Design Approval Committee at the conceptual and design stage, Independent Engineer during the construction, operation and maintenance stage and the Concessions Authority throughout the Concession Period.

The first step, which the Concessionaire shall be required to adhere, is the submission of Conceptual drawings for all components for approval of Design Approval Committee followed by detailed plans, designs and drawings of the Parking Complex. This shall also include the floor wise plans, cross sections, elevations, working drawings, layout of all type of services to be provided for the development and implementation of the Multi-Level Car Parking Cum Commercial Complex. This shall be followed by arranging approval of Competent Authority under Applicable laws. The Independent Engineer/Design Approval Committee / Concessions Authority shall approve the good for construction drawing for building work, service and facilities. In addition to this, the shall be developed as per the applicable Development Controls. The Concessionaire shall have the right to plan, design and built the Commercial Complex with separate entry, exit and meeting the development controls, building byelaws and norms after seeking approval of the Competent Authority as per Specifications and Standards. The Concessions Authority/ Design Approval Committee shall approve the overall exterior/ façade of the Project.

The Concessionaire shall construct the Complex and related public amenities as stated in the respective Schedules, within a period of 24 (twenty-four) months, from the Date of signing of Concession Agreement and should be ready to use in all respect. The Concessionaire shall have the discretion to complete the construction works of the Project in a phased manner, however with certain limitations.

The Concessionaire shall ensure that the Project is constructed and implemented in accordance with the design approved by the Design Approval Committee, constituted by the Concessions Authority and in conformity to the standard Technical Specifications and Standards approved by MSCL. The scope of work shall include all the building works for multi-level car parking structure, internal plumbing and sanitary services and installation, internal electrical services and installations/fitting, fire detection, fire alarm and fire-fighting system, Electrical Sub-station, Stand-by power system for essential services and security of public, HVAC system in specified areas, mechanical ventilation for toilets and related areas, communication system, public address system, security and automation system complete, boundary wall around the campus with proper lockable gates and check posts complete in

all respects as per Specifications and Standards and as approved by Independent Engineer. It shall also include planning, development, providing and implementing Estate Services i.e. water supply distribution (including development of source, if municipal system is not available), storm water collection and disposal (including ground water re-charge system), sewage collection and disposal, solid waste collection and disposal along-with Municipal Services; campus electrification including arranging service connection (if required) from concern Electricity Department/authorities. Any work or service not specifically mentioned here or covered in this Schedule and other Schedules appended to this Concession Agreement but is complementary, essential and implied to consider the Project complete and to make the Project/ buildings functional and operational shall be deemed to have been included in the obligations of the Concessionaire to be executed as per relevant Specifications, Standards and Good Industry Practice and as per layouts, designs and drawings approved by the Design Approval Committee and the Independent Engineer.

The Concessionaire shall plan and construct adequate parking structure with the proposed car parking capacity of 200 ECS along with Commercial Complex. The Concessionaire can develop additional parking after fulfilling the minimum requirements of parking for the Project as per laid down norms and applicable byelaws. The Concessionaire shall have to plan the two-wheeler parking as underground (basement) parking. However, it is to clarify here that any additional parking, as developed by the Concessionaire, shall be as per applicable byelaws.

The parking slots for Commercial Space in the project shall be the responsibility of the Concessionaire and the same should be provided by the Concessionaire as per the Applicable Laws. Under any circumstances, the parking slots for public parking shall not be considered for commercial purpose. The parking slots for public parking shall not be shown as the parking slots to be statutorily provided by any surrounding commercial, residential, institutional buildings and the public parking slots should be a net additional to the parking facilities to be provided in the area.

All benefits arising out of any future increase at any time during the Concession period, in FSI, which is considered for the purpose of the project, shall accrue to Mangaluru Smart City Development Limited without any rights to the Concessionaire.

It is further clarified herewith that in addition to the above-stated “Scope of Work”, the Concessionaire shall be required to carry out any incidental works and services as required and to comply with all the provisions of the Concession Agreement, for meeting any functional requirements as laid by Concessioneing Authority, the Schedules to the Concession Agreement and the Technical Specifications of the Concession Agreement and as per the requirements of applicable byelaws/ norms etc, while construction, operation and maintenance of the Project.

SCHEDULE C: PROJECT IMPLEMENTATION

(See Articles – 3.3.2, 12.1 and 33.1.1)

The selected Concessionaire is required to meet the project implementation schedule as shown in the table below

Sr. No.	Activities	Schedule
1	Preliminary assessment of client requirement	M1
2	Detailed Data Collection & Conceptual Designs	M1 - M2
3	Planning and Detailed Design	M3
4	Engineering Drawings & Approvals	M3 - M4
5	Construction and testing	M5 - M9
6	Piling and Foundation	M10 - M14
7	Installation	M15 - M36
8	Project Commissioning	M37
	M---> Month	

SCHEDULE D: APPLICABLE PERMITS

(See Article – 4.1.3)

The Concessionaire shall obtain or cause to be obtained the Applicable Permits necessary to commence construction works. The indicative list is given in table below:

Sr. No.	Clearance / Approval	Agency
1	Permission for Land Use	Mangaluru Urban Development Authority (MUDA)
2	Approval of Building Plan under Zonal Regulations of Mangalore (ZR)	Mangaluru Urban Development Authority (MUDA)
3	“Consent to Establish” and “Consent to Operate” under The Water (Prevention and Control of Pollution) Act, 1974 and	Karnataka State Pollution Control Board
4	“Consent to Establish” and the “Consent to Operate” under The Air (Prevention and Control of Pollution) Act, 1981	Karnataka State Pollution Control Board
5	NOC (Height Clearance) regarding proposed building height	Airport Authority of India (AAI)
6	NOC from Fire Department	Karnataka State Fire and Emergency Services Department
7	Approval of building after Construction	Mangaluru Urban Development Authority (MUDA)
8	Sanction of Power	Mangalore Electricity Supply Company Ltd (MESCOM)
9	Water Supply	Mangaluru City Corporation (MCC)
10	Labor / Workmen license	Labor & Employment Dept.
11	Registration of Project under the Real Estate Regulatory Authority (RERA) Act, 2016	Real Estate Regulatory Authority Karnataka

The Concessionaire shall be responsible to obtain all necessary clearances, permits, no objection certificates, consents and approvals and exemptions required to be obtained under Applicable Laws, whether explicitly stated in this document or not, for implementation and operation of this project.

SCHEDULE E: PAYMENT

(To be provided by the Concessionaire)

SCHEDULE F: PROJECT SITE LEASE DEED

(See Articles – 4.1.3)

THIS PROJECT SITE LEASE DEED made on the _____ day of _____ 2018 by and among
BETWEEN

Mangaluru Smart City Limited (hereinafter referred to as the “Procuring Entity” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) incorporated under the Companies Act 2013, having its registered office at _____ (hereinafter referred to as the “Procuring Entity”, which expression shall, unless the context otherwise requires, include its successors and assigns)

And

M/S _____, a Special Purpose Vehicle (SPV) incorporated under the Companies Act, 2013 and having its registered office at _____ (hereinafter referred to as the “Concessionaire”, which expression shall, unless the context otherwise requires, includes its successors and permitted assigns);

WHEREAS

- A. The Procuring Entity has vide the Concession Agreement dated _____ (hereinafter “Concession Agreement”) granted Development Rights to _____ (the Concessionaire or the Lessee herein) to implement the Project at Project Site, involving development, financing, design, construction, operation and maintenance of Project on the Design-Build- Finance-Operate-Transfer Basis (DBFOT) in accordance with the provisions of the Concession Agreement.
- B. Pursuant to and under the Concession Agreement the Lessor is required to vest with the Lessee the land comprising the Project Site and all rights relating thereto for a period coterminous with the Term of the Agreement (as defined in Clause 10.1 of the Concession Agreement) under a valid and binding Project Site Lease Deed for the purpose of implementing the Project.

- C. Being the owner of the Project Site with a good title thereto and having lawful possession thereof, the Lessor is desirous of leasing the Project Site unto the Lessee and vesting unencumbered possession thereof with the Lessee, on the terms and conditions hereinafter contained.

NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:

1. The words and expressions used in this Deed but not defined shall, unless the context otherwise requires, have the meaning as defined/assigned to them respectively in the Concession Agreement.
2. The interpretation Clause 1.2 of the Concession Agreement shall be deemed to be incorporated in this Deed in extenso mutatis mutandis.
3. The following words and expressions shall, except where the context otherwise requires, have the meaning as hereunder:
 - a. "Project Site Lease Deed" or "Deed" means this Project Site Lease Deed;
 - b. "Concession Agreement" shall mean the Concession Agreement dated _____ entered into between the Procuring Entity and Concessionaire;
 - c. "Term of the Agreement" means the period specified under Article 3 of the Concession Agreement;
 - d. "Premises" means all the lands comprising the Project Site, more particularly delineated in Schedule A of this document and demarcated on the site plan attached thereto;
 - e. "Parties" shall mean Lessor and Lessee herein, and where the context admits or requires, the Prospective Bidder ;
 - f. "Procuring Entity" means Mangaluru Smart City Development Limited;
 - g. "Concessionaire" means the Developer/Bidder;

- h. “Annexure” means any of the Annexure, supplements and documents annexed to this Agreement.
- a The Procuring Entity hereby leases the Premises unto the Concessionaire as a “vacant possession” under the terms of this Deed from the ___ day of 2017 (the Appointed Date) for period of Forty Five (45) Years, which period shall be co-terminus with the Term of the Agreement and shall be extended or terminated at a prior date to coincide with the Term of Agreement. The Procuring Entity hereby undertakes that it shall not terminate this Deed, except upon the due and valid termination of the Term of Agreement.
5. In consideration of the Concession Agreement between the Procuring Entity and the Concessionaire , with the Prospective Tenderer, and in consideration of the lease premium herein reserved and the covenants on the part of the Concessionaire, the Procuring Entity hereby leases unto the Concessionaire the Premises without interruption or interference, free from Encumbrances and together with the full and free right and liberty of way and passage, the Easementary Rights and other rights in relation thereto with delivery of vacant possession thereof.
6. In consideration of the Procuring Entity leasing the Project Site to the Concessionaire, the Concessionaire shall,
- i. simultaneously with or prior to the execution of the Project Site Lease Deed, pay to the Mangaluru Smart City Development Limited, the Annual concession fees at the rate of Rs. 5,10,000 per annum for the duration of the Term of the Agreement. The first installment shall be paid with the execution of the Lease Deed and concession agreement and the subsequent Annual Installments of the Annual Lease Premium shall be paid on every anniversary of the date of the execution of the Lease Deed and Concession Agreement in accordance with clause 25.2.1.
7. The Lessor hereby vests the Premises with the Concessionaire along with all Easementary Rights, free from any Encumbrance. Any liability arising out of providing the Premises free of Encumbrances shall be borne solely by the Procuring Entity.
8. The Procuring Entity hereby vests the Premises with the Concessionaire under this Deed for the purpose of implementing the Project, including the design, finance, construction, and operation

and maintenance of the Project Facility thereat in accordance with the terms and conditions of the Concession Agreement.

9. The Concessionaire shall not sub-lease the whole or any part of the land comprising the Project Site, leased to it by Procuring Entity under this Deed, to any person in any form or under any arrangement, device or method, provided that the Concessionaire shall be entitled to:
 - a. enter into Contractual Arrangements, including the sub-leasing, letting, subletting, licensing, franchising or similar arrangements in respect of the built up area, which, however, shall not involve the transfer of the leasehold rights therein or thereof
 - b. appoint Subcontractors for the implementation of the Project at the Premises in accordance with the provisions of the Concession Agreement.
10. The Procuring Entity hereby agrees that for the purpose of raising financial assistance for the Project, the Concessionaire may assign all its rights, title, interest and benefits under the Concession Agreement, limited to the extent of such rights therein, to or in favor of the Lenders in accordance with the provisions of the Concession Agreement, provided that:
 - a. in the event of the termination of the Concession Agreement such assignment shall stand extinguished.
 - b. the Concessionaire shall not have the right and authority to mortgage, encumber or create any security interest whatsoever on the Project Site, the Project Facility or any other built up area thereat or therein, in full or part, in favor of the Lenders or any person in any form, manner, device or method.
11. Upon the occurrence of an Event of Default under the Concession Agreement, the Parties shall in consultation with the Lenders and in accordance with the provisions of the Concession Agreement have the right to replace the Concessionaire by the Substitute Entity for performing the Concessionaire's obligations hereunder. Upon appointment of the Substitute Entity, the Substitute Entity shall be deemed to be the Concessionaire for all the purposes and shall be entitled to all the rights and be bound by all the representations, covenants and obligations of the Concessionaire under this Deed.
12. In the event of termination of the Concession Agreement by efflux of time or otherwise, this Deed shall be terminated and the lease of the Premises and all rights in relation thereto shall be determined, the Concessionaire, the Transferees and Persons claiming through or under it/them shall hand over the vacant possession of the Premises to the Procuring Entity and forthwith vacate the Premises without any demur or delay.

13. The Procuring Entity hereby covenants with the Concessionaire as under:

- a. That it shall not increase the Annual Concession Fees due and payable by the Concessionaire under Clause 6 hereof in accordance with Article 25
- b. That the Annual Concession Fees is paid by the Concessionaire to the Procuring Entity as per Article 25 of the Concession Agreement;
- c. That it shall not interfere with or impede in any manner or otherwise limit, restrict or impose conditions in relation to: (i) the complete, free and full enjoyment of the Premises by the Concessionaire for the purpose of the implementation of the Project and all rights related thereto; (ii) the design, construction, operation and maintenance of the Project Facility; (ii) the implementation of the Project by the Concessionaire ; and (iii) the possession, control and use by the Concessionaire of the Premises, the Project Facility constructed thereon and any other facilities developed in the course of implementation of the Project; provided that the same are in compliance with the terms and conditions of the Concession Agreement and this Deed.
- d. That it shall not terminate this Deed, except upon the due and valid termination of the Concession Agreement in accordance with the terms thereof;
- e. That there are no litigations, claims, demands or any proceedings pending before any authority in respect of acquisition of the Premises or in respect of any other land-dispute, and that the Concessionaire shall have complete, lawful and uninterrupted possession, control and use of the Premises.

14. The Lessee hereby covenants with the Procuring Entity as follows:

- a. That it shall develop, establish, design, construct and operate and maintain the Project Facility/Project at the Premises as per its obligations under and the terms and conditions of the Concession Agreement;
- b. That it shall operate and maintain the Project Facility or cause it to be operated and maintained in accordance with the Concession Agreement;

- c. That it shall observe and perform all terms, covenants, conditions and stipulations of this Deed and the Concession Agreement;
- d. That it shall keep the Premises free from encroachments during the Term of the Agreement and carry out its maintenance and repairs in accordance with the provisions of the Concession Agreement;
- e. That in respect of the Premises it shall pay/cause payment of all municipal rates (other than property tax, the payment of which shall be exempted), levies, taxes, rents, including penalties etc for late payment, at the applicable rates from time to time, to the concerned Competent Authorities/persons and be liable for payments of all rates and charges for the use of utilities and services at the Premises.

15. Each Party hereto represents and warrants that:

- a. It has full power and authority to execute, deliver and perform its obligations under this Deed and to carry out the transactions contemplated hereby;
- b. It has taken all necessary actions to authorize the execution, delivery and performance of this Deed; and
- c. This Deed constitutes its legal, valid and binding obligations that shall be enforceable against it in accordance with the terms hereof.

16. The Parties agree that

- a. The failure of the Concessionaire to perform its obligations under this Deed and any breach of covenants or undertakings given and provided for in this Deed by the

Concessionaire shall amount to a Concessionaire's Event of Default under the Concession Agreement.

- b. Any dispute, controversy or claim arising out of or in relation to this Deed or the interpretation of any of its provisions shall be settled in accordance with the provision of Article 40 of the Concession Agreement.

- c. The stamp duty and registration charges for the execution and registration of this Deed shall be borne by the Lessee in accordance with the provisions of the Applicable Laws.
- d. In case of ambiguities, conflicts or discrepancies between the Concession Agreement and this Deed, the Concession Agreement shall prevail.
- e. All notices under the terms of this Deed shall be sent either by hand, facsimile or courier to the following addresses:

Procuring Entity:

Concessionaire:

17. The Prospective Bidder agrees to and confirms the provisions of this Deed and undertakes that it shall ensure, at its cost and consequence, that the Concessionaire abides by the provisions hereof. The Prospective Bidder is a confirming Party to this Deed.

IN WITNESS WHEREOF, the Parties have executed and delivered this Deed by their duly authorized representative on the date first above written:

SIGNED ON BEHALF OF PROCURING ENTITY Signature : Name: Designation :	SIGNED, SEALED AND DELIVERED Concessionaire by the hand of its authorized representatives Signature : Name: Designation : Pursuant to Resolution dated_____
---	--

	of its Board of Directors
--	---------------------------

Signed, Sealed and Delivered

For and on behalf of the Concessionaire

We agree to be bound by the terms and conditions of this

Deed Signature:

Name:

Designation:

Signature:

Name:

Designation:

In the presence of Witness:

i.

ii.

Concession Agreement for Design, Build, Finance, Operate and
Transfer of Multi level Car Parking (MLCP) at Hampankatta in Mangaluru



Date:

Place:

SCHEDULE G: MINIMUM PROJECT REQUIREMENTS

(See Articles – 2.1, 3.1.2, 3.4, 12.4.1, 12.5.1, 2.7.3)

The expanse of the site is sufficient to develop Multi-Level Car Parking along with the Retail / Commercial Development in view of catering the parking need of **200 four wheelers**.

The parking slots for Commercial Space in the project shall be the responsibility of the Concessionaire and the same should be provided by the Concessionaire as per the Applicable Laws. Under any circumstances, the parking slots for public parking shall not be considered for commercial purpose.

The parking slots for public parking shall not be shown as the parking slots to be statutorily provided by any surrounding commercial, residential, institutional buildings and the public parking slots should be a net additional to the parking facilities to be provided in the area.

SCHEDULE H: SPECIFICATIONS AND STANDARDS

(See Articles – 2.1, 12.4.1, 12.5.1 and 12.7.3)

The following specifications and standards cover only the minimum requirements for the development. The developer shall design, finance, construct, maintain and operate the proposed Multilevel Parking strictly conforming to the relevant Indian Standards and the best Industry practices. Whether the requirements are explicitly stated or not in the RFP documents, the bidders must note that Mangaluru Smart City Ltd (MSCL) envisages a world class facility in all respects and expects a truly international quality and standards from the selected developer as the binding contractual obligation.

The design criteria to be followed for the preparation of design and drawings will be as per the latest standards, codes and recommendations of the Indian Bureau of Standards and National Building Code. The latest in this context means latest with respect to the tender with up to date amendment till the date of receipt/ submission of the bid. If any IS number indicated is superseded by another IS, the later will be applicable. Statutory rules for the particular region are also to be adhered to, which shall include the Zonal Regulations for Mangalore.

1) Design Standards and Specifications:

1.1 Multi-level Car Parking Facility:

- The parking area shall be designed as per the following space planning standard and shall be in conformance with NBC and local Zonal regulations:
 - A) Car Parking slot:
 - Length: 5 M
 - Width: 2.5 M
 - B) Two-wheeler parking slot:
 - Length: 2 M
 - Width: 1.25 M
- The design criteria shall be as per latest standards and codes.
- The design should be considering the standards for Multi-level ramp-based as well as Car Lift
- A modern state of the art parking charge collection system with Ticket Issuing Machine shall be designed. The parking charges shall be collected from the vehicles at the exit point. A mechanized barrier gate/ Boom barrier shall be designed and synchronized with the ticketing system for regulating entry/exit of vehicles into and out of the parking area.
- The Ticketing Station or access system shall be located outside the Entry and Exit Areas on the right side of the inbound traffic. These would be able to dispense a ticket (with printed QR Code) at entry points. At exit point the attendant will have the wireless handheld device to scan the QR Code ticket and to print receipt after receiving payment
- The entry/exit point shall be located away from the traffic junctions and exit locations. The entry/exit of vehicles shall be provided so that it does not hinder pedestrian movements and shall

under no circumstances be from Walkways

- Adequate area for queuing of the inbound and out bound vehicles shall be provided.
- The Entry areas shall be equipped with sensors to ensure the right positioning of the vehicle to be transported as well as determine the presence of oversized vehicles, protruding mirrors or racks, which exceed the size limitations of the system.
- CCTV Cameras shall be installed at entry/ exit points and all floors of the MLCP facility for Security purpose and to record digital photos of the cars entering and exiting the premises. The images are also helpful to locate cars for drivers with a lost ticket and to validate damage claims.
- All Entry and Exit Areas must comply with disability requirements
- Safety barriers, at appropriate locations, shall be provided to effectively manage pedestrian and vehicular traffic.
- Illuminated signage in accordance with National Building Code (NBC)/ Indian Road Congress (IRC) Norms shall be provided at suitable locations within the Parking Facility.

1.2 Civil and Structural Requirements:

The building shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces

- RCC Structures shall be designed as per IS 456 :2000
- Steel Structures shall be designed in accordance with the provision of IS 531-1984 and IS 800:1984. Structural steel shall conform to IS 2062. Tubular section shall conform to IS 4923
- Architectural design norms as per NBC (National Building Code – 2016)
- Structural Design norms as per NBC and BIS (Bureau of Indian Standards)
- Developer is advised to carry out its own tests and investigations related to soil condition, strata, bearing capacity and other characteristics

1.3 Fire Fighting Facilities:

- The developer shall provide the required fire-fighting equipment and facilities conforming to relevant standards and the applicable rules and regulations.
- Fire safety measures as recommended in applicable codes - especially Fire and Life Safety Code from NBC 2016 and BIS shall be implemented.
- Specifically, the fire fighting system shall be adequate to control petroleum fires.
- Construct the Parking Facilities' structure with non-combustible material without a specified fire resistance. In addition, those portions of the facility used for the transport and / or storage shall have a finish of non-absorbent, non-combustible material.
- A 2-hour fire resistance rated separation shall be provided between the Parking Facility and the adjacent space use.
- The facility shall have state-of-the-art Fire Detection systems as per international standards.

1.4 Services and Facilities:

- Adequate underground water storage shall be provided to cater for one day requirement of domestic flushing requirements. An additional separate underground storage shall be provided exclusively for fire-fighting purposes. The design and detailing for the provision of plumbing and sanitary facilities for the parking complex shall be done in accordance with Hand Book of Water Supply & Drainage SP:35 (S&T)-1987 and National Building Code 2016.
- Adequate public convenience and drinking water facility should be provided for the support staff as well as the drivers
- Drainage facilities shall be constructed and designed in such a manner that there is no stagnation of water in the Project Site. The internal drainage system shall be connected to main common drain at an appropriate location in accordance with the existing network
- Worker/ employee amenities shall be provided in accordance with Good Industry Practice

1.5 Light and ventilation:

- Proper ventilation should be provided for all parking floors. A mechanical ventilation must be provided to permit a minimum of 15 air- changes per hour for normal ventilation and 30 air changes per hour in case of fire or distress call
- Adequate lighting system in parking facility area will have to be provided to achieve a minimum lux level of 70 for ramps, parking and pedestrian movement area and a minimum lux level of 100 for stairways, toilets, entrance and exit areas of parking as per relevant building norms
- The Entry Areas for Parking shall be provided with auxiliary emergency lighting system such that in the event of failure in general power supply the auxiliary emergency lighting system is activated immediately.
- Power back-up adequate for 100% of the designed power load of the Parking Facility shall be provided. The generator shall be equipped to have a switch-over mechanism so as to be activated automatically in the event of power failure. The generator shall be installed in a separate sound-proof enclosure.



Access Ramp

Main Road: 5.5M Street:3.5M



Anti-Skid Plate



Traffic Mirror
(installed at the
curved section)



1.6 Sound Emissions / Vibrations:

- The surrounding walls of the Parking Facility shall cover any sound emission of more than 40 dba emanating outside the structure, measured at the boundaries of the Project Site.
- Not only sound but also vibrations resulting from the machinery need to be considered for potential negative impact to the rest of the building and their influence shall be kept to a very minimum

1.7 Information Technology applications:

- The MLCP facility shall have a parking tracking system based on sensors at Entry/ Exit Boom-barriers to keep track of parking occupancy count
- There shall be an LED Display board at entrance of parking lot to display number of available parking spaces
- The Concessionaire shall integrate its IT system with the Smart Parking Mobile App feature in Mangaluru Mobility App and web-based portal application. The recommended features are:
 - display of status of available parking spaces
 - facility of online parking space reservation
 - Booking of monthly pass
 - Online payment system
- The MLCP shall have a Smart Card system comprising RFID based smart pre-paid card for cashless payment and faster entry-exit
- The MLCP facility shall have a Cashless payment system with Integration of payment modes such as e-Wallet, net banking, credit card, debit card, etc. For payment of parking charges
- There shall be an Intelligent parking system to guide driver to the available/ vacant parking slot.
- The MLCP shall have a CCTV camera based Vehicle and License Plate Image Capture with capability to automatically capture details of vehicle license plates at every entry. Image of the license plate should be linked to the details of the corresponding ticket issued in real-time and stored in the database for one month for security purpose
- The required UPS (Uninterrupted Power Supply) will be provided.
- The Control Room shall be furnished with a Graphical User Interface (hereafter referred as “GUP”), which shall show the geometry of the entire System with parking occupancy and all installed machines in real time. The GUI shall be capable of running mechanized without human assistance; it shall have manual and maintenance mode and the capability of System Diagnostic of all critical mechanical, electrical and electronic equipment.

2) Maintenance and Performance Standards:

2.1 General:

During the period of operation, the Developer shall maintain all the Facilities in accordance with performance standards and maintenance requirements, as mentioned below:

- Perform maintenance on a routine and periodic basis.
- Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.
- Establish a maintenance list for planned operation and maintenance. Follow an orderly program so that maximum operational efficiency is attained.

2.2 Diagnostics:

- The MLCP Facility shall have a Control Room for real time / on-line monitoring of the facility which allows for resolution of most errors remotely with a short response time in reaction to any trouble alarms generated by the system.
- The Parking Facility shall be capable of reporting alarms in different classes according to their severity for the System functionality.

2.3 Maintenance Requirements:

Description	Required Level	Facility/ Equipment
Power Supply, Electrical Installations, Electrical Equipment	Standby power arrangements shall be made for project facilities. No loose, open, un-insulated wiring in any of the areas. Switch Boards, Electric meters are enclosed in boxes and access to authorized persons only.	Standby power supply by DG sets shall be ready to be operated and should be available 24 hours
Natural and Mechanical Ventilation and Illumination for parking complex	Shall meet the required Illumination level as specified in the IS Code and NBC. Shall meet the required Ventilation level as specified in the IS Code and NBC.	Any disruption to mechanical ventilation, if provided, shall be rectified within 24 hours. Arrangements for natural ventilation like skylights ventilators, shafts etc shall be cleaned after every 5 days

2.4 Periodic Maintenance Performance Standards:

In order to maintain the quality and operational standards of high quality, the periodic maintenance/ renewal activities are proposed for the Project.

Periodic Maintenance/Renewable activities:

Sr. No.	Periodic Renewal Activities	Time limit for Renewal
1	Repainting of furniture, signage delineators, markings etc.	Minimum once in a year
2	Repainting of Buildings and all other structures.	Minimum once in five years
3	Resurfacing of Pavement	Routine repairs every year and premix carpet every fourth year. In case the pavement is of Rigid type, no periodic renewal would be required except cleaning & filling of joints
4	Mechanical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual
5	Electrical Equipment	Minimum once in a year as per manufacturer's installation, O&M instruction manual

3) O&M Manual:

The Manual will at least contain the following information:

- The full schedule for satisfactory operation
- General Arrangement drawing of the MLCP facility
- Block diagram for the electrical circuit
- Description of the system used for fire fighting. There shall be drawings showing the location of the detectors and nozzles for distribution / spraying of the fire-fighting media.
- Emergency Evacuation Plan and Safety Procedures Manual
- The obligations of the Operator in respect of Maintenance requirements shall include:
 - maintaining site environment so as to cause minimum disturbance to the environment
 - ensure that the facilities are operational and rectification of the defects and deficiencies within the minimum time
 - ensure that the fixed parameters provided in this RFP are abided by at any time during the concession period
- Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency or deterioration in the Project poses danger to the life and property of the users thereof, the Developer shall promptly take all reasonable measures for eliminating or minimizing such danger

4) Activities Prohibited:

4.1 General:

The Bidders must note that the project and facilities to be developed are meant for the indented

activities and bona-fide use only. No use or activity, which is prohibited under the law of the land, shall be allowed.

4.2 Environment Rules and Regulations:

No activities and uses which are prohibited under the Environment (Protection) Act 1986 and Environment (Protection) Rules 1986 and The Karnataka Air (Prevention & Control of Pollution) Rules 1983 to the extent applicable shall be allowed.

SCHEDULE I: DRAWINGS

(See Articles – 1.2.1 and 12.3)

The Concessionaire has to provide the following drawings as listed below:

1. General Layout and construction details such as building, sectional view etc.
2. General Arrangement (GA) drawings of the Machinery required for the Parking structure.
3. Architectural Drawings as per *Annex – I* below
4. Structural Drawings
5. Working Drawings
6. Facilities drawings such as internal roads, maneuvering of vehicles, etc
7. Electric Supply, Water Treatment Plant and Storm Water Drainage
8. Utilities Drawings such as Security Arrangement, Rest Room, etc
9. MEP Drawings
10. Any additional facilities provided by Concessionaire such as rainwater harvesting, solar power, etc.
11. As Built Drawings

Further, the Concessionaire shall prepare the project drawings such that the design of Multi-Level Car Parking system accommodates efficient use of project site and also capacity augmentation in future.

Annex - I

1) Detail area statement:

- a) Floor wise parking area in sq. ft and No. of ECS accommodated in each floor
- b) Commercial floor area in sq. ft
- c) ECS efficiency for Basements and Upper floors
- d) Area under utilities in sq. ft (DG Room, BMS room, security room, control room, panel room and transformer)
- e) Common area statement in sq. ft (Lobby area with lifts and staircases, fire escape staircase, toilets and other common facilities)
- f) Ground coverage in percentage (%)
- g) FAR achieved (FAR excludes the parking floors of MLCP)

2) Design and Drawings:

I) Plans

- Site Plan showing entry and exit, driveway width, setbacks, landscaping, traffic movement plan, etc.
- For Parking Floors: The Plan shall show the No. of ECS in each floor (ECS shall be numbered preferably shown as cars in the plan), vehicular movement pattern, driveway width, Ramp slope, common area provisions, fire exits and various services. On the ground floor, parking for differently abled person shall be marked.
- Commercial Floors - Office modules, circulation plan, commercial area facilities and toilets

II) Elevations and Sections:

- Detailed elevation of at least two sides (Front and sides)
- Min. one cross section through ramp and staircase
- 3D Views of the proposed buildings

III) Service Plans – Indicative Electrical, Plumbing, HVAC and Fire fighting plans/ cross sections. Ventilation plan for basements shall be shown

IV) Design Build Report forming basis of design

3) Schedule of finishes:

- I. Sub Structure (Basement): Proposed finishes, with suitable details.
- II. Superstructure
 - a. Parking Floors
 - b. Commercial Floors
 - c. General lobbies, common façade, external corridor
- III. MEP: List of equipment, instrument, machineries, piping, proposed cabling and other materials etc.
- IV. BMS: Services covered under BMS and areas
- V. Specifications of the elevators used
- VI. Air-conditioning: Ventilators, Air conditioning system proposed in various areas, features and structural provisions wherever required.
- VII. Material used for compliance to GRIHA 3 star ratings.

[**Note:** MSCL and PMC shall approve the drawings submitted by the Concessionaire]



SCHEDULE J: PROVISIONAL / COMPLETION CERTIFICATE

1. I/We (Name of the Independent Engineer), acting as Independent Engineer, for the Project - Development Multi-Level Car Parking Cum Retail/ Commercial Development at Hampankatta, Mangaluru under and in accordance with the Concession Agreement dated(the “Agreement”), for the Project land on Design, Build, Finance, Operate And Transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the tests specified in Article 14 of the Agreement have been undertaken to determine compliance of the Project with the previous of the Agreement.
2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Procuring Entity or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. The remaining incomplete works delayed as a result of reasons attributable to the Concessionaire however shall attract Liquidated Damages as per the provisions of this agreement ,) I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to without commercial operation of the Project, pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project is hereby provisionally ready for entry into commercial operation on this the day of, 20.....

ACCEPTED, SIGNED, SEALED, ACCEPTED, SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

CONCESSIONAIRE by:

INDEPENDENT ENGINEER by:

(Signature)

(Signature)

(Name and Designation)

(Name and Designation)

(Address)

(Address)

COMPLETION CERTIFICATE

1. I,(Name of the Independent Engineer), acting as Independent Engineer, for the Project - Development of Multi-Level Car Parking Cum Retail/ Commercial Development at Hampankatta, Mangaluru under and in accordance with the Concession Build, Finance, Operate and Transfer (DBFOT) basis, through(Name of Concessionaire), hereby certify that the Tests specified in Article 14 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is ready for entry into commercial operation on this the Day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE K: PERFORMANCE AND MAINTENANCE STANDARDS

1. Brief Scope of Work for Construction:

- (a) Taking over of the site on “as is where is” basis; and planning, designing, engineering and developing the Project so as to meet the laid down requirements for the development of a Multi Level Parking Cum Commercial Complex and arranging approval of Competent Authorities.
- (b) Construction of Multi Level Car Parking Cum Commercial Complex with an ECS Capacity of 200 and as per the approved plans, drawings, specifications and standards.
- (c) Construction of Cement Concrete Pavement (Pavement Quality Concrete) for circulation, parking of two wheeler in basement as per IRC (Indian Roads Congress) specifications and standards including pavement markings in hot-applied thermoplastic paint as per approved layout.
- (d) Construction of Multi Level Car Parking Cum Commercial Complex building as per approved plans and specifications with separate entry and exit to the Commercial Complex.
- (e) Providing and installation of all internal and external services in the Complex viz. internal sanitary and plumbing, internal electrical works; analogous addressable fire detection, fire alarm and firefighting system, HVAC and mechanical ventilation system, security system, and other facilities as described in Schedule B for all components of Complex complete as per approved drawings, specifications and standards.
- (f) Procure, installation, testing and commissioning of machinery, equipment, materials and other things required for the providing of the Project Facilities.
- (g) Arrangement of all the material requirements for the project and disposal of all the material wastes and debris.
- (h) Planning, providing and laying of all Estates Services for development of land namely water supply source and distribution; sewerage collection and disposal, storm water collection and disposal; campus electrification; landscaping and horticulture works as per approved designs, drawings, specifications and standards.
- (i) Construction of Gates and gate pillars, check posts as per approved designs and drawings.

- (j) Reporting, accounting and any other works set out in the Concession Agreement.

The various elements of works delineated above shall be carried out as per approved designs, drawings, Specifications, Standards and Good Industry Practices to meet the performance standards.

2. Performance Standards in Construction Phase

During construction phase performance standards to be met shall conform to provisions of relevant BIS Codes, PWD Specifications, National Building Code, the Multi level car parking norms and as approved by Independent Engineer, as outlined in the Concession Agreement. Where any of the standards are silent, Good Industry Practice shall be followed in consultation with Independent Engineer. Requisite safety measures shall be taken to avoid injury to workmen, work as executed, materials, plants, machinery and equipment whether to be incorporated in work or used for construction purposes. Before undertaking any construction process, safety measures being followed shall be got approved from the Independent Engineer.

The materials, equipment, appliances and machinery to be used and installed shall be tested by taking out samples and testing as per relevant Standards including arranging of test certificates from the suppliers and manufactures. The samplings of materials shall be carried out under the supervision of Independent Engineer. The testing of samples, work as executed shall be in the presence of Independent Engineer under intimation to the Concessions Authority who shall have the right to depute its representative to observe the testing and recording of results. The test results shall be submitted by the Concessionaire to the Independent Engineer and Concessions Authority. The Independent Engineer shall submit its observations and comments to the Concessionaire with a copy to the Concessions Authority. The Independent Engineer shall have the authority to ask for any re-test of any materials or works. Wherever required Load Tests shall be conducted on structural elements by the Concessionaire under supervision of the Independent Engineer. In case of piling work for foundation, vertical load tests and lateral load tests shall be conducted as per I.S.2911 (Part IV) towards initial load and routine tests for approval of Load carrying capacity of Pile. All equipment, appliances and machinery to be incorporated in the Project works shall be tested as per manufacture's recommendation in the presence of Independent Engineer (or his representative) and representative of Concessions authority, if deputed before commissioning thereof.

The Concessionaire shall be required to comply with the standard Technical Specifications & standards as approved by MSCL.

3. Performance standards for Operations & Maintenance

The Operation and Maintenance (O&M) of Project premises, facilities and services of the Multi Level Car Parking Cum Commercial Complex shall be carried out to maintain the performance standards, which shall comprise, but shall not be limited to that described below.

The performance levels define the level at which the Project is to be operated & maintained by the Concessionaire throughout the Concession Period. Performance standards are defined for both the operation and maintenance.

The obligation of the Concessionaire with respect to Maintenance requirements shall include the rectification of the defects and deficiencies specified below within the time limit set forth against such deficiency or defect. For maintenance works, a Operations and Maintenance (O&M) Manual shall be framed by the Independent Engineer which shall be strictly followed by the Concessionaire throughout the Concession Period and shall be updated during the Concession Period by the Maintenance Board as per requirements. For any non-compliance with the operation and maintenance obligations, the Concessionaire shall be liable to pay damages as sated hereinafter.

Notwithstanding anything contrary to specified in this Schedule, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Concessionaire shall be entitled to additional time in conformity with good industry practice. However, the Concessionaire shall get prior approval from the Concessioning Authority, for such additional requirement of time.

Notwithstanding anything to the contrary contained in this Schedule, if any defect, deficiency or deterioration in the Project poses danger to the life and property of the Users thereof, the Concessionaire shall promptly take all reasonable measures in consultation with Concessioning Authority for elimination or minimizing such danger.

4. Performance Standard for Operations

The operations management shall include the following operations:

1. Regular Operations

2. Emergency Operations

5. Regular Operations

Regular operations include the following:

- a. Permitting smooth and uninterrupted flow of traffic during normal operating conditions, by maintaining proper turnaround time for the parking of vehicle in order to avoid heavy traffic congestion.
- b. Public movement/circulation management for movement around the Car Parking Structure and within the Commercial Complex during routine operations.
- c. Proper provision for hassle free working of the car parking structure during regular maintenance of the structure and power backup for the smooth running of structure in case of power failure.
- d. Functioning of the public amenities, facilities as provided in the Commercial Complex along with the parking facilities.
- e. Functioning of the various building services and estate services.

The Concessionaire shall adhere to the following Performance Indicators:

Component	Operation	Performance Indicator
Multi Level Car Parking and Two Wheeler basement Area	The Concessionaire has to ensure that the vehicles (both two wheelers and cars) are parked at the Designated parking areas smoothly without any hassle and also ensure ease of entry/exit of vehicles.	The multi-level parking area shall be open to the private vehicles for 24 hours throughout the year. There shall be 24 hours Staffing for parking fee collection.
Security in Car	A closed circuit system shall be	The Project security staff

Component	Operation	Performance Indicator
<p>Parking and Commercial Complex area</p>	<p>strategically installed to keep track of pickpockets, thieves & general surveillance of the Project. Zoom Cameras with 360 Degree revolving angle as well as fix focused telescopic cameras (Minimum 15 no.) shall be installed, apart from manual security, to monitor various activities of the Commercial Complex from a control room.</p>	<p>shall be on duty and all equipment related to security/surveillance of the Project shall be operational, for 24 hours throughout the year. Any malfunctioning of any camera shall be set right within 3 (three) Hours.</p>
<p>Water Supply</p>		<p>Water Supply shall be available for 24 hours at all the desired places like toilets, shops, other commercial facilities, fire fighting tank (if any), drinking water chambers, offices of the Project.</p>
<p>Toilets</p>		<p>To remain operational 24 hours a day throughout the year. Mechanical ventilation system for toilets and related areas shall be functional 24 hours a day throughout the year and any failure shall be</p>

Component	Operation	Performance Indicator
		restored within 2 (two) hours.
Electricity and Lighting		Electricity shall be available for 24 hours.
Standby Generator Sets	Separate Provision for generators should be kept for operation of the Multi-Level Car Parking Structure and Commercial Complex.	Standby generator sets to supply power to the Project must be available at all times in case of disruption or breakdown in power supply.
Telecommunication and Networking Equipment		These shall remain functional throughout to ensure and maintain interconnectivity between the various components of the Project.
Multi Level Car Parking Cum Commercial Complex Operation and Maintenance Office		This shall remain open for 12 hours (8:00 AM – 8:00 PM) a day and throughout the year to ensure the supervisory functioning of the regular operations of the Project

Notwithstanding the Performance Indicators as detailed above, for any other building component, internal and external services, public amenities and facilities not included above, the Performance Indicators shall be as under:

- (i) Functional/ public related utility/services which affects the functioning of Multi Level Car Parking Cum Commercial Complex shall be functional throughout 24 hours a day and throughout the year.**
- (ii) Any major default/ mal-functioning of any utility/ services/ facilities/ amenities for the public which do not affect the functioning of the Commercial Complex shall be set right in period not more than 6 (six) hours.**
- (iii) Any default which relates to the aesthetics of the Commercial Complex shall be set right in period not more than 15 (fifteen) days.**

6. Emergency Operations

The Concessionaire shall be responsible for minimizing discomfort to the users` in the event of accidents/ breakdowns and/or incidents affecting the safety, functionality and use of the Project by providing adequate warnings, informatory signs etc. and by maintaining liaison procedures with emergency services. This is achieved by the provision of the following:

- (a) Declare a state of emergency and inform the Maintenance Board and the Concessioning Authority.
- (b) Remove public from the affected area.
- (c) Co-ordinate with the emergency services and informing them about the situation.
- (d) Reorganize the operations with proper information, sufficient number or warning, regulatory, information signs, displays or temporary change in bus circulation or public circulation.
- (e) Attend to the affected area using manpower, machinery at Concessionaire's disposal.
- (f) Clear the affected site, isolation/ segregation/separation of the affected site/area and arrange for repairs.

- (g) Make a report of the incident to the Maintenance Board, and the Concessioneing Authority indicating details of incident, likely reasons and measures being taken along with time to restore to original condition and use.

The Concessionaire shall evolve a comprehensive recovery plan for the restoration of the breakdown in the operations. The plan must be documented by record keeping procedures. The recovery plan shall include the following components:

- (a) Identify and prioritize essential facility functions for recovery.
- (b) Procedures for repairs / re-building / modifications, if any
- (c) Contingencies for alternate data processing / protection of vital records.
- (d) Identify possible alternative traffic circulation / parking plans.
- (e) Documentation process for after action reports.

Liasioning with the nearby emergency services such as Trauma centers, Hospitals, Police station, Fire Brigade office etc.

7. Performance Standards for Maintenance Routine

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
MULTILEVEL CAR PARKING STRUCTURE			
1	Breakdown in Parking Structure Operations	Minimum 100% standby Generator to be available for every power breakdown for ease of removal of parked car	
2	Major technical breakdown in machinery	Presence of maintenance staff and provision of alternate/manual way to for removal of parked car for smooth removal of car parked	Within 2 days of breakdown
3	Damage to Car while parking or retrieving of vehicle	Adequate markings to be present on park-lift and necessary insurance against such risks	
CIVIL WORKS			
1	Cracks in building, roofs, terraces, walls and water tanks		Cracks shall be repaired within 7 days after their detection
2	Worn out areas, holes in floors, damaged edges and joints of concrete/ cement works	No broken floor tiles in Public Concourse	Shall be repaired within 7 days after their detection, however, period for replacement of flooring tiles shall be 2 days only
3	Boundary Walls		Any damage/ breach to the boundary wall of the Project shall be rectified within three (3) days after their detection.
4	Walls shall be clean without any paint	No stains, splits, weathered	Any stains, splits, weathered paint on the

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
	wearing.	paint to be left exposed	walls of the Project shall be cleaned within 2 days
5	Parking Pavement Surface shall be clean, without debris	Nil	Soil debris, trash and other objects on the surface shall be removed within 2 hours
6	Flooring, skirting, dado finishes should be intact	Maximum 5% per 1000 sqm. area	Any damaged, missing, crack tiles in Flooring, Skirting, Dado finishes shall be repaired, replaced within seven days of detection
7	Distress Cement Concrete Pavement	Cracking/ settlement exceeding 5 mm	The distressed panel to be completely replaced within 30 days including proper filling of Joint Sealant in the all around.
8	Staircases shall be clean and functional	All stair cases must be functional and available to public at all times. In case of repairs, shall be suitably enclosed with proper indications and warning boards.	The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within 3 (three) days after detection.
8	Cracks, spalling / scaling, blistering of plaster and damages to walls or façade	Maximum 5% per 1000 sqm. area	Shall be rectified within 15 days.
9	Damages to painting and finishes	Maximum 5% per 1000 sqm. area	Timely intervention as and when necessary to maintain façade aesthetics.
10	Traffic/directional signs, pavement markings shall	Directional signs must be functional all times.	Any damages/ wearing shall be repaired and

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
	be visible and legible		rectified within three days. The damaged and missing signs shall be replaced within 7 (seven) days.
WATER SUPPLY AND SANITATION			
1.	All drinking water chambers shall be cleaned and functional	A minimum of 95% drinking water chambers shall be functional	These shall be cleaned daily. Water supply shall be maintained for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards. These chambers shall be cleaned after every six hours. Any damaged fixtures or tiles in the water chambers shall be replaced, repaired within seven days of detection.
2.	Water supply pumps, pressure vessels and related components.		Maintained as per manuals furnished by manufacturers/ original installation contractors.
3.	Water valves and conveyance network (pipes).		Do away with leakages within 3 days and blockages within 24 hours. Check the water pressure regularly.
4.	Clean and disinfect underground and overhead tanks.	Ensure that there is no deposition of sediments, organic/ pathogenic growth.	Cleaning of water tanks should be done every month.
5.	Sanitary fittings	A minimum of 95% toilets and urinals shall be	All toilets shall be cleaned, using disinfectants, properly

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
		functional	<p>every 4 hours from 5.00 am to 9.00 pm. Ensure that all sanitary fittings are intact and in running condition. A1</p> <p>leakages from the taps, flush cistern or pipes should be stopped within 24 hours. Ensure that washbasin and sanitary fittings should not get chocked at any point of time.</p> <p>Damaged toilets and urinal pots, washbasins, cisterns, mirrors, taps shall be replaced with the new one of the same specification within seven days of detection. Non-functional toilets, Urinals, bathrooms shall be demarked with suitable signboards.</p>
6	External Drainage System shall be functional free from clogging	Nil	<p>Obstructions must be cleared within two days after detection. Damages must be repaired within seven days after detection by reconstructing to the adequate shape and size. De-silting operations should be done once in a six months time and before monsoons with minor repairs, if needed. During Monsoon, any blocked vent ways shall</p>

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
			<p>be cleaned immediately.</p> <p>All filth or any other offensive matter collected during the cleaning shall be disposed-off properly but in no case allowed to collect/ accumulate in the campus.</p> <p>All gratings and covers should be in place at all times and during regular maintenance operation, these locations should be kept out of bound from users.</p>
7.	Water Logging in common areas (passenger concourse, Commercial Complex, toilets, bathrooms, tap points etc.)		<p>Timely intervention. Nowhere in the common area should any form of water (drinking / washing and sewage) be allowed to be collected at any time.</p> <p>Temporary restoration within four hours and permanent restoration within 24 hours.</p>
8.	Solid Waste	A minimum of 95% Dustbins shall be functional	To prevent any refuse or solid waste from being deposited on or in the premises (other than at the refuse collection points/bins (trash or garbage collector provided for such purpose) and to arrange for its disposal daily to

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
			secondary collection centres or designated disposal site. Closed plastic litter bins of about 30-40 litres capacity would be provided in the Commercial Complex as 'community bins' with handles on the top or on the sides, which would be used by the commuters, visitors and the tenants of the Project. These bins would be located at regular intervals (about 50 meters). The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell in the neighborhood
ELECTRICAL			
1	Power Supply	Nil	Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours.
2	Electrical rooms, electrical equipments in public areas		Inspect daily to ensure that these areas are locked at all times and limited access is available/ provided to authorized persons only.

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
3.	Cables and wires		Inspect every week to see cable and wire connections are insulated, clean and firm/ intact.
4.	Electric Meter		Check all meters once in a month time to ensure that they are functioning and are showing correct readings.
5.	Light fittings, includes fluorescent, incandescent, high and or low-pressure sodium, mercury vapour and normal bulbs.	A minimum of 95% light fittings and fixtures shall be functional	Temporary measures within 4 hours. Permanent restoration within 3 days. Replacement of lamps and allied fixtures should be carried out promptly.
6.	Switchgear, motor control centres and circuit breaker panels		Ensure that all switchgears, motor control centres and circuit breaker panels are in a good condition. Timely intervention with temporary measures within 4 hours, permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Maintenance Board and any faulty equipment should be replaced with the same specification equipment.
7.	Other electrical equipments like switches,	A minimum of 95% of fittings and fixtures shall be	Replace faulty electrical equipment, if required,

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
	receptacles, wiring, conduit, junction boxes, lighting protection equipment etc.	functional	with the same specification within 24 hours after detection.
8.	All Information Signages and Display Boards shall be visible, legible and functional	Maximum 2% number of damaged signages and boards	These shall be cleaned once in a week. Damaged signages and boards shall be replaced, repaired within seven days of their detection
9.	Public Address System	Minimum of 95% of the public address system components should be functional.	Regular inspection and maintenance of public address system to ensure its functionality at all times. In case of any fault, temporary measures should be taken within 4 hours and permanent restoration within 7 days
10.	Earthing System		Regular maintenance of earthing system to ensure earth continuity at all points in the electrical system upto the main distribution board in each module.
11.	Pumps		The Concessionaire shall ensure that there shouldn't be any leaking at mechanical seal. Also check the coupling for alignment and make sure that mounting bolts are secure. Check gauges for proper operation. Also check bearing

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
			<p>temperature/s, whether any undue noise or vibration is observed and readings of pressure, voltage and current.</p> <p>Any defects in pumps should be given priority and temporary restoration should take place within 6 hours and permanent restoration within 3 days.</p>
VENTILATION AND LIGHTING			
1.	Lighting shall be functional		<p>The ventilators, sky-lits etc. serving as source of natural ventilation and other lighting shall be cleaned once in seven days.</p>
2	Natural and Mechanical Ventilation.	Nil	<p>Any disruption to mechanical ventilation, if provided shall be rectified within 24 hours. Sky-lits, ventilators, shafts etc shall be cleaned after every 15 days.</p> <p>Minimize noise level of the ventilation system through regular greasing of parts and machinery and ensure that there is no excessive vibration.</p>

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
CARPENTARY AND RELATED SERVICES			
1.	Seating arrangements shall not be damaged	Maximum 5% number of damaged seats	Any damaged seat shall be repaired, replaced within three days of detection. These shall be cleaned 6 times daily and checked that they are firmly fixed/grouted to the platform with the base.
2.	Other wooden furniture like Cup-boards, office tables, chairs, shelf etc.		Any damaged wooden furniture shall be repaired, replaced within seven days of detection.
3.	Anti-termite treatment		Take proactive action in order to save the wooden furniture and structure from termite attack. Anti-termite treatment shall be undertaken at regular interval (once in a month time).
4.	Maintenance of Doors and Windows		Any loose hinges of the doors and windows should be taken care off immediately after their detection. If window glass are making sound or vibrating in the windy atmosphere then make sure that there should be no gap between the beading and glass and measures to fill up putty

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
			shall be taken within 3 days Any broken glass should be replaced within 3 days
5.	Holes and depression in the wooden structure		Any holes and depression in the wooden structure should be immediately filled with epoxy putty after their detection.
6.	Servicing of rolling shutter		Regular maintenance of rolling shutter to ensure reduction in noise from opening and closing of the shutter. If rolling shutter is not functioning then replace the defective spring or/ gear mechanism within seven days
MISCELLANEOUS			
1.	Telecommunication and Networking Systems shall be functional	Nil	Temporary measures within 8 hours, and permanent restoration within 3 days
2.	Barriers shall be functional	Nil	Any failure in the functioning of the barriers shall be rectified within 6 hours.
3.	Defects in all other utilities like water supply/tap/tap connections/pipe/sewer and drainage pipes/tanks	Nil	Timely intervention with temporary measures within 8 hours, permanent restoration within 7 days, depending

S. No.	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
	& overflow/glasses/window panes/all other building furniture		on nature and intensity of work required.
4.	Complaint Register shall be functional	Nil	Shall be available in the Commercial Complex Supervisor's office at all the times. The Complaint Register shall be produced before the Maintenance Board as and when asked for.
5.	Security		Provide security system and adequate security staff, so as to ensure safety of Project and masses, especially women and children.
6.	Rodents/ Pest Control		Routine disinfections, once in 15 days time, by usage of chemicals of all common areas to maintain hygiene and prevent any air or water borne diseases. Special care should be taken during rainy/monsoon or any other season when the incidence of epidemics are likely and announced.
7.	Fire Detection, Fire Alarm and Fire Fighting System		Shall be functional at all times. Defective detectors shall be replaced within 24 hours.

Notwithstanding the Serviceability Indicators, required Maintenance Level and Permissible Time Limit for repairs /rectification as detailed above, for any other building part/component (building /civil works), internal and external services, passenger amenities and facilities not included above, the permissible time for repairs / rectification shall be as under:

- (i) functional/ users/visitors related utility/services/amenities which affects the safety and serviceability for the public, the response time shall not exceed 6 (six) hours in any case.
- (ii) any major default in the building work, services and /or mal-functioning of any utility/ services/ facilities/ amenities for the public which do not affect the functioning of the Commercial Complex, the response time shall not exceed 3 (three) days in any case.
- (iii) any default/event which relates to the aesthetics of the Commercial Complex shall be set right in period not more than 1 (one) month.

8. MAJOR MAINTENANCE WORK

The Concessionaire shall be responsible at his own cost, for all maintenance and repairs of the Project and all its components including parking structure, building /civil works, pavements, all internal services and installations, all external services, all facilities and amenities as provided and allied works etc.

The above and the other necessary standards shall conform to norms as laid out in relevant BIS codes/National Building Code for functional requirements of building, services and installations, facilities and amenities as provided etc. The performance standards shall match the service standard of comparable International practice for buildings, services, facilities, amenities and allied works etc.

9. MAINTENANCE OF CAR PARKING COMPLEX

The Concessionaire shall be responsible, at his cost, for all maintenance and repair works of the Car Parking Complex including that of services as per provision of relevant BIS codes, National Building Code etc. to meet the functional requirement and to maintain aesthetics of the Parking Complex, and campus as a whole. The Maintenance Board shall have the right to inspect the Complex at any time to observe the extent, level and standards of maintenance. The Concessionaire shall be under obligation to comply with any directions as

may be issued by the Maintenance Board in this regard as his cost and within time period as specified by the Board.

However before taking back the Multi Level Car Parking Cum Commercial Complex, on termination of the Concession Agreement, the Structure shall be inspected by an Independent Engineer (appointed for the purpose by the Concessions Authority) and any engineer 3 (three) months prior to the expiry date and furnish the Inspection Report detailing out the defects, deficiencies in the building, services and facilities for which necessary measures are to be taken by the Concessionaire and copy of the Report shall be submitted to Concessions Authority. The Concessionaire shall undertake and complete the requisite measures 15 days prior to the date of termination of the Concession Agreement to the entire satisfaction of the Independent Engineer (appointed for the purpose by the Concessions Authority) and any engineer. It is to be understood that Buildings to be taken over by Concessions Authority shall be structurally sound and durable, finishing as per acceptable standards, services are fully functional and operational, equipments, appliances and machinery as incorporated in the Complex is in working condition supported with requisite certificate in this regard from original manufactures. The O&M Performance Security shall be returned 6 (six) months after the Termination of the Concession Agreement. The Concessions Authority shall have the right to undertake any necessary measures to bring the building, finishing, services and facilities to desired standards through other agencies and cost thereof shall be reimbursed by the Concessionaire or alternately Concessions Authority shall appropriate the amount from O&M Performance Security.

10. DEVELOPMENT CONTROLS

The Concessionaire shall adhere to the Development Controls as per the Construction Specifications, Building Material, Building requirements, Building services, Safety Specifications shall be as per National Building code, 2005 and Building Regulations shall be as per guidelines of **GDCR, Mangaluru Municipal Corporation.**

The Specifications for the proposed project

- Minimum two Car Lifts for Entry and Exit
- Provision of Lighting on all Parking Floors
- Power Backup Facility in the form of DG sets
- CCTV cameras and Motion detectors inside Entry and Exit areas
- Provisions to air-condition all shops.
- Lift & Large goods elevators.

- Superior quality flooring
- Spacious Toilets in all Commercial floors.
- Fire Detection & Fire fighting System as per norms.
- Special Facilities for Physically Challenged.
- Waste Disposal System
- Usage of Bio-Degradable & Eco friendly Materials.
- Qualified & Trained staff for management.
- Professional Management.

SCHEDULE L: CONSTRUCTION PERFORMANCE SECURITY

(See Articles – 9.1.1)

Bank Guarantee No.:

Dated:

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(Hereinafter referred to as the “Bank”)

Beneficiary of Bank Guarantee:

Mangaluru Smart City Limited

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Construction Period in respect of Concession Agreement (hereinafter referred to as the “Agreement”) to be executed between the Mangaluru Smart City Development Limited (“hereinafter referred to as the “ MSCL”) and _____ (hereinafter referred to as the “Concessionaire”) for the *Development of Multilevel Car Parking Cum Commercial Complex at Hampankatta, Mangaluru - under PPP mode* (hereinafter referred to as the

“Project”), provided however, such context of the Bank Guarantee or reference to the

Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee.

The title of this Guarantee i.e. “Construction Performance Security” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and MSCL and is not dependent upon execution or performance of any Agreement between MSCL and _____ (name of the Concessionaire).

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, we _____, _____ (name and address of the bank), (hereinafter referred to as the “Bank”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the MSCL i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. _____ Crores (Rupees _____ Crores Only), such sum being payable by us to CMMC immediately upon receipt of first written demand from the MSCL.
2. We unconditionally and irrevocably undertake to pay to the MSCL on an immediate basis, upon receipt of first written demand from the MSCL and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the MSCL to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. _____ Crores (Rupees _____ Crores Only).
3. We hereby waive the necessity of the MSCL demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the MSCL that the MSCL shall be the sole and the exclusive judge to determine that whether or not any sum or

sums are due and payable to him by Concessionaire, which are recoverable by the GHB by invocation of this Guarantee.

5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the MSCL.
6. We unconditionally and irrevocably undertake to pay to the MSCL, any amount so demanded not exceeding Rs. _____Crores (Rupees _____ Crores Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the MSCL, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. _____Crores (Rupees _____ Crores Only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the GHB serves upon us a written claim or demand on or before _____

Authorized Signatory For Bank

SCHEDULE M: OPERATION & MAINTENANCE PERFORMANCE SECURITY

(See Articles – 9.2.1)

PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated:

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(Hereinafter referred to as the “Bank”)

Beneficiary of Bank Guarantee:

Mangaluru Smart City Limited

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Construction Period in respect of Concession Agreement (hereinafter referred to as the “Agreement”) to be executed between the Mangaluru Smart City Development Limited (“hereinafter referred to as the “MSCL”) and _____ (hereinafter referred to as the “Concessionaire”) for the *Development of Multilevel Car Parking Cum Commercial Complex at Hampankatta, Mangaluru - under PPP mode* (hereinafter referred to as the

“Project”), provided however, such context of the Bank Guarantee or reference to the

Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee.

The title of this Guarantee i.e. “Construction Performance Security” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and MSCL and is not dependent upon execution or performance of any Agreement between MSCL and _____ (name of the Concessionaire).

Operative part of the Bank Guarantee:

2. At the request of the Concessionaire, we _____, _____ (name and address of the bank), (hereinafter referred to as the “Bank”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the MSCL i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. ____ Crores (Rupees ____ Crores Only), such sum being payable by us to CMMC immediately upon receipt of first written demand from the MSCL.

8. We unconditionally and irrevocably undertake to pay to the MSCL on an immediate basis, upon receipt of first written demand from the MSCL and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the MSCL to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. ____ Crores (Rupees ____ Crores Only).

9. We hereby waive the necessity of the MSCL demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.

10. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the MSCL that the MSCL shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the GHB by invocation of this Guarantee.

11. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the MSCL.
12. We unconditionally and irrevocably undertake to pay to the MSCL, any amount so demanded not exceeding Rs. _____Crores (Rupees _____ Crores Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the MSCL, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
13. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

4. Our liability under this Bank Guarantee shall not exceed Indian Rs. _____Crores (Rupees _____ Crores Only).
5. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____to _____.
6. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the GHB serves upon us a written claim or demand on or before _____

_____Authorized Signatory For Bank

SCHEDULE N: TERMS OF REFERENCE FOR INDEPENDENT AUDITOR

1. An Independent Auditor shall be appointed with the specific prior concurrence of the Procuring Entity and shall not be removed or replaced without the prior approval of the Procuring Entity. The audit of the Project shall be based on the information available to the Procuring Entity. For the purpose of audit, the Procuring Entity shall make available the following documentation and information:
 - a) Data and documents, relating to the Bids, Bid evaluation and the proceedings of the Procuring Entity;
 - b) Concession Agreement;
 - c) Correspondence between Contracting Procuring Entity and the Concessionaire;
 - d) Reports submitted by the Independent Engineers, Project Committee and Coordination Committee, as the case may be;
 - e) All communication and documentation providing for the exception circumstances that relating to post award negotiations and/or contract modifications.
2. The appointment of the Independent Auditor would be for a period of three years initially and could be extendable as mutually agreed between the parties concerned.
3. The Independent Auditor would employ a team of qualified Chartered Accountants/ Cost Accountants/other professions as may be relevant to carry out the assignment besides other support personnel as may be desirable.
4. The scope of work as envisaged will be carried out during two different stages of the project viz. Construction Stage Operation Stage

5. The Independent Auditor would carry out the work specified as scheduled above and would employ qualified and experienced person of the type and nature as desirable to carry out the assignment.
6. The Independent Auditor shall advise the Procuring Entity in the calculation of all financial parameters of the Project including the Total Cost of the Project, Returns and Recovery accounting and shall provide, at the end of each financial year, a certificate confirming the accuracy of all calculation made during the relevant financial year.
7. The Independent Auditor shall audit the accounts of the Concessionaire for the Project on a quarterly basis and during the subsistence of this Agreement. The Independent Auditor shall advise the results of his quarterly audit within one month after the end of the relevant quarter.
8. The Independent Auditor shall verify any claims or documents provided by the Concessionaire to the Procuring Entity relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, in connection with the Project. The claim or document shall be valid and effective only if certified by the Independent Auditors.
9. The Concessionaire will be required to provide all the necessary information as may be required by the Independent Auditor and will provide access to all the records as may be necessary to enable the Independent Auditor to carry out their responsibilities
10. The Independent Auditor shall maintain that the Project Facilities adhere to the Concession Agreement in terms of ensuring fulfillment of conditions precedent, performance assessments, and imposition of penalties for non-performance and reckoning of termination payments.
11. Exercising of its rights as conferred by the Procuring Entity from time to time under this Concession Agreement.
12. Verification of its fulfillment of Obligations by the Concessionaire under this Concession Agreement.

SCHEDULE O: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

The role of the Independent Engineer (IE) shall be performed by the Project Management Consultant (PMC) appointed by MSCL for the Smart City project. The IE shall undertake the following functions:

1. The role and functions of the Independent Engineer shall include the following:
 - a) Review of Drawings and Documents;
 - b) Review, inspection and monitoring of construction works;
 - c) Review, inspection and testing of civil works, plant and machinery;
 - d) Conducting tests on completion of construction and issuing completion / provisional certificate;
 - e) Review, inspection and monitoring of Operation & Maintenance (O&M);
 - f) Determining the costs of any works or services and / or their reasonableness;
 - g) Determining the period or any extension thereof, for performing any duty or obligation; and
 - h) Assisting the parties in resolution of disputes

2. The Independent Engineer's scope of work shall be specified in the Concession Agreement and shall inter-alia include:
 - a) Review, inspection and monitoring of construction works, examination of the designs/drawings and conduct of tests;
 - b) Issue of progress reports and completion certificates during and after completion of the construction period;
 - c) Review and inspection of the operations and maintenance arrangements and monitoring compliance with the performance and maintenance standards, during the operations period;
 - d) Identifying delays and lapses that require action on part of the Procuring Entity for enforcing the agreement terms;

- e) Determining the reasonableness of costs for any works or services, as required under the Concession Agreement;
 - f) Determining the period or extension thereof, for performing any duty or obligations, as required under the Concession Agreement;
 - g) Carrying out such responsibilities as are assigned by the Procuring Entity;
3. The Independent Engineer shall discharge his duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and good industry practice
 4. The Independent Engineer shall review the designs and drawings submitted by the Concessionaire and shall also submit the design review report to the Project Committee.
 5. The Independent Engineer shall certify that the specifications and standards meet the Minimum Technical Requirements as per Schedule G and Minimum Standards & Specifications as per the Schedule H.
 6. In case the Concessionaire desires any substitution, Independent Engineer will ensure that the said substitution is of higher quality than that mentioned in the Minimum Technical Requirement/ Minimum Technical Specification and will certify that the said substitution is of higher specification.
 7. The Independent Engineer shall inspect the project assets in accordance with the exit strategy.
 8. The Independent Engineer shall prepare and submit to the Project Management Facility (PMF) of Procuring Entity 3 (three) copies and Concessionaire 2 (two) copies each of the following reports:
 - a) Design Review Phase: Monthly Progress Report
 - b) Construction Phase: Monthly and Quarterly Inspection Report covering all aspects such as Progress Monitoring, Quality Assurance (QA) / Quality Control (QC) etc.
 - c) Operation and Maintenance Phase:
 - i. Monthly and Quarterly report on existing condition of facility including advise on all aspects of Operation and Maintenance.; and

- ii. Monthly report on audit of the traffic using the Public Private Partnership (PPP) Project at least once a month;
 - d) Various other reports as provided in the Concession Agreement such as Completion Report.
9. Ensure that the Concessionaire submits to the Independent Engineer with due regard to the Project Implementation Schedule and Scheduled Construction Completion Date, its design, engineering and construction time schedule and shall formulate and provide Critical Path Method (CPM)/ Project Evaluation and Review Technique (PERT) charts for the completion of the said activities.
10. Provide supervision to ensure that the Concessionaire carries out with due diligence the Tests in accordance with the Independent Engineer's instructions in this behalf. The Independent Engineer shall monitor the results of the Tests to determine the compliance of the Project with the Specifications and Standards and shall provide to the Maintenance Board of all Test data including detailed Test results.
11. The Independent Engineer shall furnish the results of Tests and Tests Data to the Maintenance Board within the specified period in the Term of Agreement and also promptly report to the Maintenance Board the remedial measures taken by the Concessionaire to cure the defects/deficiencies, if any, indicated in the Test results.
12. Recommend to the Maintenance Board /the suspension of the whole or any part of the Construction Works.
13. Inspect and check the quality and quantity of the materials and their storage in compliance with the Concession Agreement

14. The Independent Engineer shall inspect periodically or at random the records, documents and data etc. of the Concessionaire and verify the samples or take measurements as per the Concession Agreement.
15. Inspect the Project Site during the Construction Period at all reasonable times and upon reasonable notice and the Concessionaire and have access to all parts of the Project Site as per the Agreement.
16. Perform such functions as may be provided in the Agreement or authorized by MSCL during the Construction Period from time to time.
17. To monitor progress of the Works and compliance by the Concessionaire with the PERT charts, CPM and the project milestones set forth in the Project Implementation Schedule
18. To seek explanations from the Concessionaire for delays or non-compliance with the quality control parameters;
19. To notify Procuring Entity of delays and non compliances and the explanations relating thereto provided by the Concessionaire along with the Independent Engineer's suggestions and recommended remedial measures in this behalf.
20. To notify Procuring Entity of delays and non compliances and the explanations relating thereto provided by the Concessionaire along with the Independent Engineer's suggestions and recommended remedial measures in this behalf and duly note the same in the Hindrance Register maintained at the site.
21. Independent Engineer would certify and calculate the liquidated damages payable by the Concessionaire to the Procuring Entity in the event of not completing the project within the Construction period as per the Project Implementation schedule (Schedule C of the Concession Agreement).

SCHEDULE P: SUBSTITUTION AGREEMENT

This Substitution Agreement is entered into on this the _____ day of 20_____.

AMONGST

1. Mangaluru Smart City Limited (hereinafter referred to as the “Concessing Authority” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. [_____ Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at *****, (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. *****[NAME AND PARTICULARS OF Lenders’ Representative] and having its registered office at *****, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Concessing Authority has entered into a Concession Agreement dated ***with the Concessionaire (the “Concession Agreement”) on design, build, finance, operate and transfer basis (DBFOT)/ (Called Project), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Concessing Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Substitute Entity in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its planning, designing, engineering, financing, construction, operation and maintenance, the Concessing Authority has agreed and undertaken to transfer and assign the Concession to a Substitute

Entity in accordance with the terms and conditions set forth in this Agreement and the
Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Substitution agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions

of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Substitute Entity” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior

Lenders, and proposed to the Concessions Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

“Parties” Means the parties to this agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Substitute Entity under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Concessions Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Substitute Entity selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Concessions Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Substitute Entity in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessions Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Concessions Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Substitute Entity, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Concessions Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessions Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Concessions Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Substitute Entity.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Concessions Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Substitute Entity, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Substitute Entity in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Concessions Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one

hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessions Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Concessions Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessions Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Substitute Entity upon such Substitute Entity's assumption of the liabilities and obligations of the Concessionaire towards the Concessions Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Substitute Entity shall be required to fulfill the eligibility criteria that were laid down by the Concessions Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Concessions Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessions Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Substitute Entity, the Lenders' Representative shall request the Concessions Authority to:
- (a) accede to transfer to the Substitute Entity the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;

- (b) endorse and transfer the Concession to the Substitute Entity, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Substitute Entity on the same terms as are contained in this Agreement.

3.4.4 If the Concessions Authority has any objection to the transfer of Concession in favour of the Substitute Entity in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessions Authority, the Substitute Entity shall be deemed to have been accepted. The Concessions Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Substitute Entity; provided that in the event of such objection by the Concessions Authority, the Lenders' Representative may propose another Substitute Entity whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Substitute Entity in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Concessions Authority in selection of the Substitute Entity shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Concessions Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Substitute Entity. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessions Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessions Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Substitute Entity in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Substitute Entity to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Substitute Entity's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Concessions Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessions Authority shall - undertake Termination under and in accordance with the provisions of Article 22 and 23 of the Concession Agreement.

5.2 Termination when no Substitute Entity is selected

In the event that no Substitute Entity acceptable to the Concessions Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Concessions Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

The Concessions Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further

reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Concessions Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Concessions Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessions Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Concessions Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Dispute resolution

Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be referred for Arbitration under Arbitration & Conciliation Act 1996. The place of Arbitration shall be Mangaluru.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Gujrat shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Concessions Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessions Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

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

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.00 (five) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

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

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



SCHEDULE Q: VESTING CERTIFICATE

1. **Mangaluru Smart City Limited (MSCL)** refers to the Concession Agreement dated _____ (the “Agreement”) entered into between the Procuring Entity and _____ (the “Concessionaire”) for Development of Multi Level Car Parking Cum Commercial Complex at Hampankatta in Mangaluru (the “Project”) on Design-Build-Finance-Operate-Transfer (“D.B.F.O.T.”) basis.
2. Procuring Entity hereby certifies the compliance and fulfillment by the Concessionaire of the divestment requirements set forth in sub sections of Clause 34.4 of the Concession Agreement upon the issuance of this Vesting Certificate, Procuring Entity shall be deemed to have acquired all title and interest of the Concessionaire in or about the Project / Project Site, which shall be deemed to have vested unto the Procuring Entity, free from encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained herein above, it shall be a condition of this vesting certificate that nothing contained herein shall be constructed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the divestment requirements and/or relieving the Concessionaire in any manner of the same.

Signed this _____ day of _____ 2017 at Mangaluru, Karnataka AGREED,
ACCEPTED AND SIGNED,

SEALED AND DELIVERED

For and on behalf of

For and on behalf of PROCURING

CONCESSIONAIRE by:

Entity by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

In the presence of:

1.

1.

2.

2.

|

SCHEDULE R: PARENT / HOLDING COMPANY CERTIFICATE

THIS DEED OF GUARANTEE executed at _____ this _____ day of _____ by M/s _____ (mention complete name) a company duly organized and existing under the laws of _____ (insert jurisdiction / country), having its Registered Office at

_____ hereinafter called “the Guarantor” which expression shall, unless excluded by the repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns.

WHEREAS:

Mangaluru Smart City Limited, established under the Companies Act 1956, and having its registered office at _____ (hereinafter referred to as the “Procuring Entity” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns)

M/s _____, a Special Purpose Vehicle incorporated under the Companies Act, 1956 / a Trust Act

/ Society Act and having its registered office at _____, (hereinafter referred to as the “Concessionaire”, which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successor and permitted assigns, is a Subsidiary of the Guarantor, which had in response to the above mentioned RFP document (including its addendums) invited by the MSCL had submitted its Bid / proposal _____ to Mangaluru Smart City Limited (MSCL) (hereinafter called “MSCL”) with one of the condition that the Subsidiary shall arrange a guarantee from its Parent /Holding company, guaranteeing due and satisfactory performance of the work covered under the said RFP document (including its addendums if any) or any change made in may be deemed appropriate by the MSCL at any stage.

A. The Bid / proposal submitted by _____, _____, _____ & _____, to which the Subsidiary is a part of, was accepted by MSCL and this Consortium was declared as the “Prospective Tenderer”. Accordingly, the Guarantor is executing this Deed of

Guarantee towards / in favor of its Subsidiary after the issuance of Notice of Award (NOA) dated _____ by MSCL to the Prospective Tenderer.

- B. The Guarantor represents that they have gone through and understood the requirement of the above said RFP document (including its addendums if any) and are capable of and committed to provide technical, financial, and such other supports as may be required by the Subsidiary for the successful execution of the same.
- C. The Guarantor is executing this Deed of Guarantee in favor of MSCL, wherein the Guarantor and the Subsidiary shall be jointly and severally liable towards the Project and the Guarantor shall also be pledging / providing technical, financial and other such supports as may be necessary to the Subsidiary for the performance of the work relating to the said project as per the RFP document (including its addendums if any) and as per the Concession Agreement contained in the RFP document.
- D. Accordingly, at the request of the Subsidiary and in consideration of and as a requirement for MSCL to enter into agreement(s) with the Subsidiary, the Guarantor hereby agrees to give this guarantee and undertakes as follows:

**Subsidiary shall mean and include – in case of a company or corporation, which is directly or indirectly owned by the Guarantor / Parent / Holding Company, by way of ownership of more than 51%(Fifty One percent) of the voting share of such Subsidiary company. In case of a person (which is not a company or corporation), the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.*

The Guarantor (Parent / Holding Company) unconditionally agrees that in case of nonperformance by the Subsidiary of any of its obligations in any respect, the Guarantor shall, immediately on receipt of notice of demand by MSCL, take up the Project without any demur or objection, in continuation and without loss of time and without any cost to MSCL and duly perform the obligations and responsibilities of the Subsidiary to the satisfaction of MSCL. In case the Guarantor also fails to discharge its obligations herein and is not able to complete the Project satisfactorily; MSCL shall have absolute rights for effecting the execution of the Project from any other person at the risks and costs of the Guarantor. The Guarantor also undertakes to make good any loss that may be caused to MSCL for any non-performance or unsatisfactory performance by the Guarantor or the Subsidiary of any of their obligations.

The Guarantor agrees that the Guarantee herein contained shall remain valid and enforceable till the satisfactory execution and completion of the project (including discharge of Warranty obligations) awarded to the Subsidiary till the completion of the Concession Period (including any extension).

The Guarantor shall be jointly with the Subsidiary, as also severally responsible for the satisfactory execution and performance of the project during the currency of the “Concession Agreement” to be entered amongst the Subsidiary, MSCL.

The liability of the Guarantor, under this Guarantee, shall be limited to the value / scope of Concession Agreement to be entered. In case the Subsidiary is part of any SPV (to be so formed for the Project); the liability of the Guarantor shall be limited to its Subsidiaries proportional share in any such SPV. In no event shall the Guarantor ‘s liability hereunder either in its capacity of Guarantor or as a Concessionaire – should it perform the Contract Agreements in the event of the Subsidiaries non-performance exceed that of the Subsidiary’s liability under the mutually agreed contract awarded to the Subsidiary. This will, however in addition to the forfeiture of the Performance Guarantee furnished by the Subsidiary

The Guarantor represents that this Guarantee has been issued after due observance of the appropriate Laws enforced in India. The Guarantor hereby undertakes that the Guarantor shall obtain and maintain in full force and effect all the governmental and other approvals, permits and consents that are necessary and do all other acts and things necessary or desirable in connection therewith or for the due performance of the Guarantor’s obligations hereunder.

The Guarantor also agrees that this Guarantee shall be governed and construed in accordance with the laws in force in India and subject to the exclusive jurisdiction of the courts of only Gujrat.

The Guarantor hereby declares and represents that this Guarantee has been given without any undue influence or coercion from any person and that the Guarantor has fully understood the implications of the same.

The Guarantor represents and confirms that the Guarantor has the legal capacity, power and authority to issue this Guarantee and that giving of this Guarantee and the performance and observations of the obligations hereunder do not contravene any existing law or any judgment.

The Guarantor represents and confirms that they have submitted and provided to MSCL (with this Deed of Guarantee), a valid Board Resolution duly authorizing the Guarantor to pledge / provide technical, financial, and such other supports as may be necessary for the performance of the work relating to the said Project as per the RFP and Concession Agreement.

For & on behalf of (Parent / Holding Company)

M/S _____

Witness:

1.

2.

SCHEDULE S: ESCROW AGREEMENT

THIS Escrow Agreement is entered into on this the ____ day of 20 ____

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at. (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. _____ name and particulars of Lenders' Representative and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. _____ name and particulars of the Escrow Bank and having its registered office at (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. _____ Mangaluru Smart City Limited, established by the Government of Karnataka, and having its registered offices at _____ (hereinafter referred to as the "Procuring Entity" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns)

WHEREAS:

- (A) The Procuring Entity has entered into a Concession Agreement datedwith the Concessionaire (the "Concession Agreement") for Development of Multilevel Car Parking & commercial complex on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account inter alia, on the terms and conditions stated therein. NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"Concession Agreement" means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Procuring Entity or

the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Procuring Entity, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Procuring Entity, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Procuring Entity, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement

2.3 Establishment & Operation of Escrow account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account

with the (name of Branch) Branch of the Escrow Bank, The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Procuring Entity, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Procuring Entity, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution

Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 DEPOSITS INTO ESCROW

ACCOUNT 3.1 Deposits by the

Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Procuring Entity;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project ; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Procuring Entity

The Procuring Entity agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Procuring Entity to the Concessionaire;
- (b) Revenue Shortfall Loan;
- (c) all Fee collected by the Procuring Entity in exercise of its rights under the Concession Agreement; and
- (d) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Procuring Entity shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW

ACCOUNT 4.1 Withdrawals during Concession

Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Procuring Entity, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Concession Fee due and payable to the Procuring Entity;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) premium due and payable to the Procuring Entity;

- (h) all payments and Damages 'certified by the Procuring Entity as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including repayment of Revenue Shortfall Loan;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1;

provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project.;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Procuring Entity as due and payable to it

by the Concessionaire pursuant to the Concession Agreement, including {Premium,} repayment of Revenue Shortfall, Loan and any claims in connection with or arising out of Termination;

- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement;
and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Procuring Entity.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Procuring Entity may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 36 of the Concession Agreement. Any instructions given by the Procuring Entity to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Procuring Entity hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW

BANK 5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank

that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW

DEFAULT 6.1

Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Procuring Entity or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW

AGREEMENT 7.1 Duration of the Escrow

Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Procuring Entity remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Procuring Entity and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

9 8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain

any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Procuring Entity, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Procuring Entity will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Procuring Entity to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Procuring Entity, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15

(fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, Mangaluru (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Mangaluru and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Mangaluru shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Procuring Entity unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Procuring Entity with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

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

11.7 .2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

1.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto

shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the _____ day of _____ hereunto affixed in the presence of , Director, who has signed these presents in token thereof and Company Secretary I Authorised Officer who has countersigned the same in token thereof

SIGNED, SEALED AND DELIVERED For and on behalf of

SENIOR LENDERS by the

Lenders' Representative:

(Signature) (Name) (Designation) (Address) (Fax No.)

(e-mail address)

<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of ESCROW BANK by</p> <p>(Signature) (Name)</p> <p>(Designation) (Address)</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of Mangaluru Smart City Development Limited</p>
---	---

<p>(Fax No.)</p> <p>(e-mail address)</p>	<p>by:</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p> <p>(Address) (Fax No.)</p> <p>(e-mail address)</p>
<p>In the presence of:</p> <p>1.</p> <p>2.</p>	