

Draft Concession Agreement

Part-2

Selection of Bidder for Implementing Smart City Pan City Projects in Bhopal under PPP on BOOT model



Reference No.: NIT 3

Date: 14/05/2016

Bhopal Smart City Development Co. Ltd, Bhopal
Madhya Pradesh

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THIS CONCESSION AGREEMENT is entered into aton this theday of, 2016

BETWEEN

The CEO, Bhopal Smart City Development Co. Ltd,
Zone 14, near Tatpar petrol pump, BHEL Govindpura, Bhopal, Madhya Pradesh- 462023
in his/her executive capacity (hereinafter referred to as “BSCDCL” or the “Concessioneing Authority” or the “Authority”, which expression shall include its successors and assigns)
of the first part;

AND

M/s. _____ a company incorporated under the Companies Act, 1956, having its registered office at _____ (hereinafter referred to as the "Concessionaire", which expression shall include its permitted successors and assigns).of the second part

AND

M/s. _____ a Company incorporated under _____, having its registered Office at _____ (hereinafter referred to as _____ which expression shall include its permitted successors and assigns).of the third part.

AND

M/s. _____ a company incorporated under _____ having its registered Office at _____ (hereinafter referred to as _____ which expression shall include its permitted successors and assigns).of the fourth part.

AND

M/s. _____ a company incorporated under _____ having its registered Office at _____ (hereinafter referred to as _____ which expression shall include its permitted successors and assigns).of the fifth part.

PREAMBLE

WHEREAS

- A. BSCDCL has conceived and is keen to implement a project envisaging Implementing Smart City Pan City Projects in Bhopal under PPP on BOOT model.
- B. BSCDCL has invited tenders from eligible persons/ firms/ companies/ consortiums for implementing the Project;
- C. In response to the aforesaid invitation for tenders, BSCDCL has received bids from _____ Concessionaires including the Concessionaire for implementing the Project;
- D. BSCDCL, after evaluating the aforesaid bids, accepted the bid submitted by the Concessionaire and issued the Letter of Award (LOA) No: _____ dated _____ to the Concessionaire;
- E. In accordance with the requirements of the said tender/bid submitted by the Concessionaire, BSCDCL has agreed to grant to the Concessionaire the Concession (as hereinafter defined) for the Concession Period, to finance, construct, operate, maintain the Project, pay an agreed Revenue Share to BSCDCL during the Concession Period, and at the end of the Concession Period transfer the implemented infrastructure to BSCDCL, on the terms, conditions and covenants hereinafter set forth in this Agreement.
- F. The Concessionaire hereby accepts the Concession granted and undertakes to implement the Project in terms of this Agreement.
- G. M/S _____ are the promoters / shareholders of the Concessionaire company and have joined as parties to this Agreement as confirming parties for the due performance by the Concessionaire of its obligations under this Agreement.

NOW THEREFORE in lieu of the mutual promises and considerations set out herein, BSCDCL and the Concessionaire (each individually a “Party” and collectively “Parties” hereto) hereby agree to be bound by the provisions of this Agreement.

ARTICLE – 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 meanings hereinafter respectively assigned to them:

"Accounting Year" means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.

"Agreement" means this Agreement including Schedules 'A' through 'J' hereto, and any amendments thereto made in accordance with the provisions of this Agreement.

"Applicable Laws" means all laws, promulgated or brought into force and effect and all Rules and Regulations made and all Notifications and Guidelines issued there under by the Government of India, Government of Madhya Pradesh and BSCDCL, including all judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

"Applicable Permits" means all clearances, permits, authorizations, consents and approvals under or pursuant to Applicable Laws, required to be obtained and maintained by the Concessionaire, in order to implement the Project and to provide the Project Facility in accordance with this Agreement.

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

"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 Variable" means the Revenue Share payable by the Concessionaire to BSCDCL as provided in Article 9.

"Change in Law" means the occurrence of any of the following after the date of this Agreement:

- 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 this Agreement;
- d. a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement; or

e. Any change in the rates of any of the taxes.

"**BSCDCL**" Bhopal Smart City Development Co. Ltd and their Representatives.

"**COD**" means the commercial operations date of the Project which shall be the date on which the Officer-in-Charge has issued the Completion Certificate or the Provisional Certificate upon implementation of all the activities as mentioned in the Scope of Work, fully completed in all respects, as envisaged under the Project and which shall, subject to the provisions of this Agreement, be not later than **One year** from Commencement Date.

"**Commencement Date**" means the date on which the physical possession of the Project Site is delivered by BSCDCL to the Concessionaire, which shall not be later than 21 days from the date of issue of the Letter of Award

"**Completion Certificate**" means the certificate issued by the Officer-in-Charge pursuant to Clause 7.3 (d).

"**Concession**" shall have the meaning ascribed thereto in Clause 2.1.

"**Concession Period**" means the period as applicable specified in Clause 2.2.

"**Concessions Authority**" means M/s. Bhopal Smart City Development Co. Ltd (BSCDCL) and shall include its successors and assigns

"**Concessionaire**" means M/s. _____ and shall include its successors and permitted assigns expressly approved by BSCDCL.

"**Construction Works**" means all works and things necessary to achieve commercial operation of the Project in accordance with this Agreement.

"**Contractor**" means any person with whom the Concessionaire has entered into/ may enter into all or any of the Project Agreements.

"**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.

"**Debt Due**" means the aggregate of the following sums expressed in rupees, outstanding and payable to the Lenders under the Financing Documents:

(i) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the "principal") which is outstanding as on the Termination Date but excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of BSCDCL; and

(ii) all accrued interest, financing fees and charges payable on or in respect of the debt referred

to in sub-clause (i) above up to the date preceding the Termination Date but excluding (a) any interest, fees or charges that had fallen due one year prior to the Termination Date, and (b) penal interest or charges payable under the Financing Documents to the Lenders.

"Dispute" shall have the meaning ascribed thereto in Clause 17.1.

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 17.

"Drawings" means all of the drawings, designs, calculations and documents pertaining to the Project as set forth in Schedule 'F' and shall include "as built" drawings of the Project.

"Emergency" means a condition or situation that is likely to endanger the security of the individualson or about the Project including users thereof or which poses an immediate threat of material damage to any of the Project Assets.

"Officer-in-charge" means the Nodal Officer of BSCDCL of the respective area or any other Person Authorized by BSCDCL.

"Encumbrance" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect on the security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, and physical encumbrances and encroachments on the Project Site.

"Equity" means the sum expressed in Rupees representing the equity share capital of the Concessionaire for meeting equity component of the Total Project Cost.

"Financing Documents" means the documents executed by the Concessionaire in respect of financial assistance (including refinancing) for the Project to be provided by the Lenders by way of loans, advances, subscription to debentures and other debt instruments and guarantees, risk participation, take-out financing or any other form of credit enhancement and shall include loan agreements, guarantee agreements, subscription agreements, notes and any documents providing security for such financial assistance, and includes amendments or modifications made thereto.

"Financial Close" means the date on which the Financing Documents providing for funding by the Lenders have become effective and the Concessionaire has immediate access to such funding under the Financing Documents.

"Force Majeure Event" shall have meaning ascribed thereto in Clause 13.1.

"Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the BSCDCL Act, and rules made there under and would mean good engineering practices in the

design, engineering, construction and project management and which would be expected to result in the performance by the Concessionaire of its obligations and in the operation and maintenance of the Project in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.

"Government Agency" means the Government of India, the Government of Madhya Pradesh, BSCDCL, 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.

"Implementation Period" means the period beginning from the Commencement Date and ending on the COD. The Implementation Period shall be the estimated implementation period plus a reasonable time (up to 2 months) required by the Concessionaire for all pre-implementation activities such as investigation/study, designing, obtaining necessary approvals and arrangement of finance.

"Indirect Political Event" shall have the meaning ascribed thereto in Clause 15.3.

"Lenders" means the financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities, and their successors and assigns, who provide financial assistance to the Concessionaire under any of the Financing Documents.

"Maintenance Manual" shall have the meaning ascribed to it in Clause 7.5.

"Maintenance Programme" shall have the meaning ascribed to it in Clause 7.6.

"Material Adverse Effect" means material adverse effect on (a) the ability of the Concessionaire to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

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

"Minimum Maintenance Requirements" means minimum maintenance requirements for the maintenance of the Project as set forth in Schedule 'H'.

"Non Political Event" shall have the meaning ascribed thereto in Clause 13.2.

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

"O&M Contract" means the Operation and Maintenance Contract that may be entered into between the Concessionaire and the O&M Contractor for O&M of the Project/Project Facility.

"O&M Contractor" means the person or entity with whom the Concessionaire has entered into an O&M Contract for discharging O&M functions for and on behalf of the Concessionaire.

"O&M Expenses" mean the expenses incurred by or on behalf of the Concessionaire, duly certified by its Statutory Auditors for all regularly scheduled and reasonably anticipated O&M functions during Operations Period, including, without limitation (a) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any, (b) cost of materials, supplies, utilities and other services, (c) premium for insurance, (d) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project/Project Facility at its full design capacity, (e) all repair, replacement and maintenance costs of the Project/Project Facility, and (f) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project according to the Specifications and Standards at its full design capacity.

"Operations Period" means the period commencing from COD and ending at the expiry of the Concession Period.

"Parties" means the parties to this Agreement collectively and "Party" shall mean either of the Parties to this Agreement individually.

"Performance Security" means the Performance Security for construction or Performance Security for operation and maintenance as applicable in terms of Article 3.

"Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Government Agency or any other legal entity.

"Political Event" shall have the meaning ascribed thereto in Clause 13.4.

"Project" means the project described in Schedules 'A' and 'B' which the Concessionaire is required to design, engineer, procure, finance, construct, operate, maintain and transfer in accordance with the provisions of this Agreement.

"Project Agreements" means collectively this Agreement, any contract for the design, engineering, procurement and construction of the Project, O&M Contract and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

"Project Assets" means all physical and other assets relating to and forming part of the Project including but not limited to (i) rights over the Project Site in the form of license, or otherwise, (ii) tangible assets such as civil works including foundations, embankments, pavements, drainage works, lighting facilities, sign boards, electrical works for lighting on the Project, telephone and other communication systems, equipment for the Project, and wayside amenities, `

"Project Completion" shall have the meaning ascribed thereto in Clause 7.2.

"Project Completion Schedule" means the progressive Project milestones set forth in Schedule 'C' for the implementation of the Project.

"Project Facility" means collectively the facilities on the Project Site to be constructed, built, installed, erected or provided by the Concessionaire for use of the users by implementing the Project and more specifically set out in Schedule 'B'.

"Provisional Certificate" shall have the meaning ascribed to it in Clause 7.3(e).

"Punch List" shall have the meaning ascribed thereto in Clause 7.3(e).

"Scheduled Project Completion Date" shall have the meaning set forth in Clause 7.2(b).

"Specifications and Standards" means the specifications and standards relating to the quality, capacity and other requirements for the Project as set forth in Schedule 'G' 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 BSCDCL.

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

"Termination" means termination of this Agreement and the Concession hereunder pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement/Concession due to expiry to the Concession Period in the normal course.

"Termination Date" means the date on which the Termination occurs which shall be the date on which Termination Notice has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provisions of this Agreement.

"Termination Notice" means a communication in writing by a Party to the other Party regarding Termination in accordance with the applicable provisions of this Agreement.

"Tests" means the tests to be carried out to determine the Project Completion and its certification by the Officer-in-Charge prior to commencement of commercial operation of the Project.

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

- (a) Actual capital cost of the Project upon completion of the Project as certified by the Statutory Auditors; or
- (b) Total project cost as set forth in Financing Documents.

1.2. Principles of Interpretation

- a. The Article numbers, clause numbers, headings and marginal headings in this Agreement are solely for the purpose of facilitating reference and shall not impact the construction or interpretation of this Agreement.
- b. Words importing Persons or Parties shall include firms, companies, corporations, trusts, associations and any organizations having legal capacity to sue and be sued in their names.
- c. Words importing the singular also include the plural and vice-versa where the context requires.
- d. Words importing one gender also include other gender.
- e. In case of ambiguities or discrepancies in this Agreement, the following shall apply;
 - (i) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
 - (ii) between the Clauses and the Schedules, the Clauses shall prevail;
 - (iii) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
 - (iv) between the dimensions scaled from the drawings and their specific written dimensions, the latter shall prevail;
 - v) Between any value written in numerals and that in words, the latter shall prevail. Any word not specifically defined herein shall have the same meaning as is given in the standard Oxford Dictionary, with reference to the context in which it is used.

1.3. Priority of Documents

The documents referred to in this Agreement and forming part thereof are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Concessioneing Authority shall issue any necessary clarification or instruction to the Concessionaire, and the priority of the documents shall be as follows: -

- (i) This Concession Agreement
- (ii) The Schedules to this Agreement
- (iii) The “Letter of Award”
- (iv) The Bids submitted by the Concessionaire
- (v) The written clarifications issued to the Concessionaires
- (vi) Written addenda to the RFP

ARTICLE – 2: CONCESSION AND PROJECT SITE

2.1. Grant of Concession

- a) Subject to and in accordance with the terms and conditions set forth in this Agreement, BSCDCL hereby grants and authorizes the Concessionaire to investigate, study, finance, construct, operate and maintain the Project Facility and to exercise and/or enjoy the rights to collect revenue from commercial utilization of space allocated as set forth in this Agreement (viz. advertisements etc), collectively known as “the Concession”.
- b) The title of interest, ownership and rights with regard to project implemented by the Concessionaire for BSCDCL along with fixtures/ fittings provided therein shall rest with the Concessionaire until the expiry of the Contract or as per Termination provisions and rights related to the land allotted by the BSCDCL shall vest with the BSCDCL except that these will be operated and maintained by the Concessionaire as agreed in this Agreement.

2.2. Concession Period

The Concession hereby granted is for a period of **Fifteen (15) years** (excluding construction period of 9 months) commencing from the Commencement Date during which the Concessionaire is authorized to implement the Project and to operate the Project Facility in accordance with the provisions hereof.

2.3. Acceptance of the Concession

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

2.4. Project Site

- (a) BSCDCL hereby undertakes to handover to the Concessionaire physical possession of the Project Site as specified in the RFP free from Encumbrance within 15 days from the date of issue of the Letter of Award / Work Order together with the necessary rights of way/way leaves for the purpose of implementing the Project in accordance with this Agreement.
- (b) BSCDCL confirms that upon the Project Site being handed over pursuant to the preceding sub-Clause (a) the Concessionaire shall have the right to enter upon, occupy and use the Project Site and to make at its costs, charges and expenses such development and improvements in the Project Site as may be necessary or appropriate to implement the Project and to provide the Project Facility subject to and in accordance with the provisions of this Agreement.

2.5. Use of the Project Site

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

2.6. Information about the Project Site

The information about the Project Site set out in Schedule 'B' is provided by BSCDCL in good faith and with due regard to the matters for which such information is required by the Concessionaire. BSCDCL agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site, which BSCDCL may now possess or may hereafter come to possess. Subject to this BSCDCL makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site.

2.7. Peaceful Possession

BSCDCL warrants that:

- (a) the Project Site having been acquired through the due process of law belongs to and is vested in BSCDCL, and that BSCDCL has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement;
- (b) the Concessionaire shall have no obligation/liability as to payment of any compensation whatsoever to whomsoever the Project Site or any part thereof had been acquired from and that the same shall be the sole responsibility of BSCDCL; and
- (c) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the Concessionaire is obstructed by any Person / Company claiming any right, title or interest in or over the Project Site or any part thereof BSCDCL shall, if called upon by the Concessionaire, defend the Concessionaire against such claims and proceedings and also keep the Concessionaire indemnified against any direct or consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

2.8. Rights over the Project Site

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

Concessionaire for such loss by increasing the Concession Period suitably.

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

ARTICLE – 3: PERFORMANCE SECURITY

3.1. Performance Security

- a) The Concessionaire shall for due and punctual performance of obligations during the Project Construction, Implementation and O&M Period deliver to BSCDCL, will submit Performance Security as per the RFP.
- b) The Concessionaire shall submit a Performance Security in the form of an irrevocable and unconditional Bank Guarantee, valid for a period of one hundred and twenty (120) days beyond the Expiry Date, from any scheduled bank for an amount equivalent to sum of the following:
 - (i) one – fourth of Annual Revenue Share mentioned in **Schedule K** for corresponding year of the Concession Period,
 - (ii) Fifty percent of the Grant quoted by the Concessionaire in its Bid and committed to be paid by the Authority.

The Concessionaire shall be responsible for submission of the Performance Security fifteen (15) days prior to commencing of a particular year except the first year.

- c) The Performance Security shall be in the same format as detailed in **Schedule L** initially valid for twelve (12) months from the date of its issue.
- d) The Concessionaire shall renew the Performance Security fifteen (15) days before its expiry date as per provisions of Clause 3.1(b) and furnish the same to the Authority, failing which the Authority shall have the right to invoke the Performance Security.
- e) The Concessionaire shall, within ten (10) days of drawl from the Bank Guarantee by the Authority, restore the value of Bank Guarantee to the original amount existing as on the date prior to such drawl, failing which the Authority shall have the right to draw from the amount of Performance Security in full, notwithstanding to any other right as per the Agreement.

ARTICLE – 4: REVENUE

4.1. Collection and Appropriation of Revenue

- a) Subject to the provisions of this Agreement, the Concessionaire shall, during Operations Period be entitled to demand and collect revenue from advertisements, LED Energy Saving, EV Charging, Wi-Fi , Intelligent street pole rentals etc at the Project Site as specified and permitted by BSCDCL.
- b) The Concessionaire shall not collect any revenue until it has received Completion Certificate or the Provisional Certificate from the Officer-in-Charge.
- c) In case any advertisement space remains unutilized, no adjustment in the Bid Variable will be allowed under any circumstances.

4.2. Collection and Appropriation of Revenue from Advertisement at identified locations

- a) Subject to the provisions of this Agreement, the Concessionaire shall during Operations Period be entitled to collect revenue from advertisements, LED Energy Saving, EV Charging, Wi-Fi , intelligent street pole rentals etc as specified in this Agreement.

ARTICLE - 5 OBLIGATIONS AND UNDERTAKINGS

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Parties agree and undertake as under

5.1. General Obligations of the Concessionaire

The Concessionaire shall at its own cost and expense:

- (i) Investigate, study, construct, operate and maintain the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws.
- (ii) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- (iii) Ensure that services of water supply, sewerage, drainage, electricity, telephone etc. in the vicinity, encountered during the period of implementation/ operation/ maintenance are not damaged. In case these are required to be shifted, the same shall be done by the BSCDCL at their cost.
- (iv) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (v) ensure and procure that each Project Agreement contains provisions that would entitle BSCDCL or a nominee of BSCDCL to step into such Agreement at BSCDCL 's discretion, in place and substitution of the Concessionaire in the event of Termination pursuant to the provisions of this Agreement;
- (vi) provide all assistance to the Officer-in-Charge/ BSCDCL Nodal Officer as they may reasonably require for the performance of their duties and services under this Agreement;
- (vii) provide to the Officer-in-Charge/ BSCDCL Nodal Officer, reports on a regular basis during the Implementation Period and the Operations Period in accordance with the provisions of this Agreement; The Concessionaire shall adhere to the provisions of Applicable Laws, by-laws and rules in connection with project implementation and revenue generation. The Concessionaire shall also pay/ ensure payment to BSCDCL of revenue tax, if any, in respect

of the revenue generated in accordance with the provisions of Applicable Laws and the by-laws and rules there under.

- (viii) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
- (ix) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (x) develop, implement and administer a surveillance and safety program for the Project/Project Facility and the users thereof and the Contractors' personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (xi) not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement;
- (xii) be responsible for safety, soundness and durability of the Project Facility including all structures forming part thereof and their compliance with the Specifications and Standards;
- (xiii) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (xiv) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement including but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (xv) Ensure that Project Site and facilities created are not defaced by any kind of writings/ posters

5.2. Obligations of the Concessionaire during Implementation Period

- (a) The Concessionaire shall, before commencement of implementation of the Project;
 - (i) submit to the Nodal Officer with due regard to Project Completion Schedule and Scheduled Project Completion Date, its construction time schedule;
 - (ii) have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project and to liaison with the Nodal Officer and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (iii) undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule and to achieve Project Completion under and in accordance with this Agreement;

- (b) The Concessionaire shall, at all times, afford access to the Project Site, to the authorised representatives of BSCDCL and officer of any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection, to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- (c) The Concessionaire shall apply for and obtain all necessary clearances and/ or approvals for the project implementation.

The Concessionaire shall bear all costs and charges for special or temporary sites required by it in connection with access to the Project Site. The Concessionaire shall obtain at its cost such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

- (d) In case of loss due to theft or damage to the assets created at the project site, the Concessionaire shall be responsible for making good the same immediately at its own cost and shall continue to keep the project sites operational and available for public use, at all times, within the Concession Period.

5.3. Obligations of Member of the Consortium

M/s. _____, the parties of the third part and fourth part respectively to this Agreement hereby agree and undertake that during the entire Concession Period they shall remain responsible to BSCDCL for the due performance by the Concessionaire of all its obligations under this Agreement and for any failure on the part of the Concessionaire BSCDCL shall have the right to take action against all the entire Consortium.

5.4. Obligations of BSCDCL

Following will be the responsibilities of BSCDCL during the execution of project;

Fiber

- (a) Non Exclusive ROW (Right of way) free of cost for laying of fiber will be provided by the BSCDCL within Municipal limits. This right shall be available for the duration of the contract (15 Years).
- (b) The fiber so laid in this ROW can be monetized by the Concessionaire at his discretion and at rates which the Concessionaire deems fit.
- (c) Apart from ROW permissions if any other permission is required for laying of fiber then BSCDCL shall be responsible for obtaining the same from relevant authorities.
- (d) While laying the new fiber if any other fiber is cut laid by utility which is already existing in the place where new fiber is being laid then BSCDCL will liaison with the other party to provide

a window of eight hours for rectification during the laying phase and six hours during the maintenance phase. During this period there will be not be any penalty to the Concessionaire.

- (e) Similarly if any other entity cuts the fiber inadvertently which belonging to Concessionaire. BSCDCL will get the Concessionaire fiber rectified back to normalcy with in a period of 8 hours during implantation phase and six hours in the maintenance phase

Smart Pole

- (f) Exclusive ROW, free of cost, for installation of Smart poles for Telecom Cell sites to be provided by the Authority within Municipal limits to the Concessionaire. This right shall be available for the duration of the contract (15 years) to the Concessionaire.
- (g) BSCDCL will provide new Telecom site location only in the street Smart Poles envisaged as part of this Project. BSCDCL will also issue necessary Government notifications/by-laws to this effect with a period of 6 months from the date of award of contract.
- (h) In the event Authority fails to adhere to issue the necessary Governmental notification/ by-law, BSCDCL shall compensate the Concessionaire by an amount as Indicated in the contract by the Concessionaire
- (i) BSCDCL will ensure that there will not be any overhead cable at the site of Smart Pole as the cables would interfere with the Telecom signals.

Wi-Fi Access point

- (j) Exclusive ROW, free of cost, for provisioning of Wi-Fi Services in 100 Locations to be provided by the BSCDCL with in Municipal limits. This right shall be available for the duration of the contract (15 years)

Advertisement Rights

- (k) BSCDCL shall provide exclusive advertisement rights to the Concessionaire to earn revenue out of advertisements, digital information panel etc. from the equipment being supplied in this project and which form part of this Project. time slot for BSCDCL for information related to citizen services shall be fixed.

Coordination Support

- (l) BSCDCL shall coordinate with other governmental departments if any required for faster implementation of this Project. Such delays shall be excused from Concessionaire performance without any penalty.

Other Support

- (m) BSCDCL shall provide warehousing support in Bhopal.

- (n) BSCDCL will provide uninterrupted electricity free of cost to the Concessionaire for the smart poles, surveillance camera and Wi-Fi access points, cellular base stations, EV charging point, Environmental sensors and any other device which is the part of the RFP. Please note that the purpose of Energy Saving calculations, the electricity consumed for the aforementioned devices shall not be taken in to account.
- (o) In the event of electricity not being made available the same shall not affect the Concessionaire's SLA and not penalty will be imposed.
- (p) Overhead cables if any hindering the intelligent street poles shall be made underground by the BSCDCL

ARTICLE - 6 OFFICER-IN-CHARGE

6.1. Appointment of Officer-in-Charge

As CEO will the Officer-in-Charge to undertake, perform and carry-out the duties, responsibilities, services and activities set forth in Schedule 'D'.

- (a) The Officer-in-Charge shall submit to the BSCDCL reports at least once every month or more frequently as the situation may warrant, on the progress of implementation of the Project. Such reports of the Officer-in-Charge shall include but not be limited to the matters and things set forth in said Schedule 'D'.
- (b) If either party disputes any advice, instruction or decision of the Officer-in-Charge, the same shall be resolved in accordance with the Dispute Resolution Procedure set forth in the Agreement.

ARTICLE – 7: PROJECT IMPLEMENTATION AND OPERATIONS

7.1. Monitoring and Supervision during Implementation

- (a) The Concessionaire shall submit to the Officer-in-Charge, a programme supported with Bar Chart for implementation of activities in a phased manner so as to cause least inconvenience to the public. Most of the implementation work shall be carried out during night hours/ restricted hours (leaving peak traffic time) keeping in view the safety of pedestrian/traffic. The Concessionaire shall give to the Officer-in-Charge, its complete programme for different stages of execution, planning, fabrication, and erection etc. of the Project.

During the Implementation Period, the Concessionaire shall furnish to BSCDCL monthly reports on actual progress of the Implementation Works and furnish any other relevant information as may reasonably be required by BSCDCL.

- (b) For the purposes of determining that the Implementation Works are being undertaken in

accordance with Specifications and Standards and Good Industry Practice and for quality assurance, the Concessionaire shall carry out such Tests at such time and frequency and in such manner as may be required by the Officer-in-Charge or as may be necessary in accordance with Good Industry Practice. The Concessionaire shall with due diligence carry out all such Tests in accordance with the instructions and under the supervision of the Officer-in-Charge. The Concessionaire shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such Test results. The Officer-in-Charge shall furnish the results of such Tests to BSCDCL within seven days thereof and also promptly report to the BSCDCL the remedial measures taken by the Concessionaire to cure the defects/deficiencies if any indicated in the Test results.

If the Officer-in-Charge reasonably determines that the rate of progress of the construction of the Project is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date, it shall so notify the Concessionaire and the BSCDCL. Thereupon, the Concessionaire shall within seven (7) days thereof notify the BSCDCL and the Officer-in-Charge about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

7.2. Project Completion

- (a) The Project shall be deemed to be complete only when the Completion Certificate is issued by the Officer-in-Charge in accordance with the provisions of Clause 7.3(d) (the "Project Completion") or as per para 19.9 (Acceptance Testing).
- (b) The Concessionaire guarantees that the Project Completion shall be achieved in accordance with the provisions of this Agreement on a date not later than Nine (**9**)Months from the Commencement Date ("The Scheduled Project Completion Date"). The schedule submitted by the Concessionaire along with Technical submission is to be adhered to.
- (c) Liquidated Damages (LD) :- If the Project Completion is not achieved by the Scheduled Project Completion Date for any reason other than Force Majeure or reasons attributable to BSCDCL, the Concessionaire shall be liable to pay liquidated damages for delay beyond the Scheduled Project Completion Date, an amount of 0.5% of the undelivered store or part thereof for delay of every week or part thereof, provided that such liquidated damages do not exceed an aggregate of 5% of the undelivered store to BSCDCL Provided further that nothing contained in this sub-clause (c) shall be deemed or construed to authorize any delay in achieving Project Completion. Liquidated damages shall be sole and exclusive remedy by BSCDCL to Concessionaire.
- (d) If the entire works are not completed Nine (9) Months from the date of issue of Letter of Award /Work Order, BSCDCL shall, subject to the provisions of this Agreement relating to excuse from performance of the Concessionaire's obligations hereunder, be entitled to Terminate this Agreement in accordance with the provisions of Clause 14.2.

7.3. Tests

- (a) At least 15 (fifteen) days prior to the likely completion of each phase of the Project, the Concessionaire shall notify the Officer-in-Charge and the BSCDCL the same and shall give notice to them of its intent to conduct Tests. The Concessionaire shall give the Officer-in-Charge and the BSCDCL at least 10 (ten) days prior notice of the actual date on which it intends to commence the Tests and at least 7 (seven) days prior notice of the commencement date of any subsequent Tests.
- (b) All Tests shall be conducted in accordance with the Applicable Laws and Applicable Permits. The Officer-in-Charge shall have the right to suspend or postpone any Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project or any part thereof does not meet the Specifications and Standards. The Officer-in-Charge may designate a representative with suitable qualifications and experience to witness and observe the Tests.
- (c) The Officer-in-Charge shall monitor the results of the Tests to determine the compliance of the Project with the Specifications and Standards and shall provide to the BSCDCL copies of all Test data including detailed Test results.
- (d) Upon the Officer-in-Charge determining the Tests to be successful, it shall forthwith issue to the Concessionaire a certificate (the "Completion Certificate").
- (e) The Officer-in-Charge may at the request of the Concessionaire issue a provisional certificate of completion ("Provisional Certificate") if the Tests are successful and all parts of Project can be legally, safely and reliably opened for commercial operation though certain works or things forming part thereof are not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Officer-in-Charge and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within 30 (Thirty) days of the date of issue of such Provisional Certificate. Upon completion of all Punch List items to the satisfaction of the Officer-in-Charge, it shall issue the Completion Certificate to the Concessionaire with a copy marked to BSCDCL. In the event of the Concessionaire's failure to complete the Punch List items within the said period of 30 (Thirty) days, BSCDCL may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The Concessionaire shall reimburse to BSCDCL on demand the entire costs incurred by BSCDCL in completing the Punch List items.
- (f) If the Officer-in-Charge certifies that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- (g) The Concessionaire shall bear all the expenses relating to Tests under this Agreement.

7.4. Operation and Maintenance

The Concessionaire shall operate and maintain the Project/Project Facility and if required, modify, repair or otherwise make improvements to the Project/ Project Facility to comply with Specifications and Standards, and other requirements set forth in this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. More specifically, the Concessionaire shall be responsible for:

- (i) undertaking daily cleanliness of the Project Facility.
- (ii) ensuring the safety and security of the Project Facility.
- (iii) undertaking maintenance works in accordance with Maintenance Manual and the Maintenance Programme;
- (iv) preventing any encroachments or any unauthorized usage of the Project Facility

7.5. Maintenance Manual

The Concessionaire shall in consultation with the BSCDCL evolve not later than 30 (thirty) days before the Scheduled Project Completion Date, a manual for the regular and preventive maintenance (the "Maintenance Manual"), and shall ensure and procure that at all times during the Operations Period, the Project is maintained in a manner that it complies with the Specifications and Standards. The Concessionaire shall supply, at least one month before the COD, 5 (five) copies of the Maintenance Manual to the BSCDCL.

7.6. Maintenance Programme

- (a) Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire shall provide to BSCDCL, its proposed programme of preventive and other scheduled maintenance of the Project subject to the Minimum Maintenance Requirements set forth in Schedule 'H' necessary to maintain the Project at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:
 - (i) intervals and procedures for the carrying out of inspection of all elements of the Project;
 - (ii) criteria to be adopted for deciding maintenance needs;
 - (iii) preventive maintenance schedule;
 - (iv) intervals at which the Concessionaire shall carry out periodic maintenance; and
 - (v) intervals for major maintenance and the scope thereof.
- (b) Maintenance shall include replacement of equipment, consumables and repairs to equipment, structures and other works, which are part of the Project/Project Facility.

- (c) The Concessionaire shall keep the Project Facility in a clean, tidy and orderly condition free of litter and debris. The Concessionaire shall clean and empty the litterbins into suitable garbage bags and will be collected and removed by the Concerned Agency.

7.7. Emergency De-commissioning

- (a) If BSCDCL, in public interest, is of the opinion that there exists an Emergency or any other situation, which warrants decommissioning and closure of whole or any part of the Project/Project Facility (BS), BSCDCL shall notify to the concessionaire to de-commission and close the whole, or the relevant part of the Project for so long as such Emergency and the consequences thereof warrant. The BSCDCL may issue such directions as it may deem appropriate to the Concessionaire for dealing with such Emergency and the Concessionaire shall abide by the same.
- (b) The Concessionaire shall re-commission the Project/Project Facility or the affected part thereof on receiving the instructions from BSCDCL in this regard. In such a case the cost of relocation of the Smart Poles shall be borne by the BSCDCL at the prevailing Schedule of rates at that time.
- (c) In case the decommissioning or closure is of permanent nature then BSCDCL will allocate alternative sites if available. In case alternative locations are not made available BSCDCL shall pay the depreciated cost of Smart Poles to the Concessionaire. The minimum Revenue Share shall also be adjusted proportionately.

7.8. Rectification of Defects

- (a) Save and except as otherwise expressly provided in this Agreement, if the Project or any part thereof shall suffer any loss or damage during the Concession Period, from any cause whatsoever, the Concessionaire shall, at its cost and expense rectify and remedy such loss or damage in a manner so as to make the Project conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement.
- (b) In the event the Concessionaire does not maintain and/ or repair the Project or part thereof up to and in accordance with the Specifications and Standards and / or in accordance with the Maintenance Programme or the Maintenance Manual or the O&M Inspection Report, as the case may be, and shall have failed to commence remedial works within (7) Seven days of notice in this behalf from BSCDCL, BSCDCL shall, without prejudice to its rights/remedies under this Agreement, including Termination, be entitled to undertake to cause the repair and maintenance of the Project at the risk and cost of the Concessionaire. The Concessionaire shall reimburse to BSCDCL within seven days of demand the costs and expenses incurred by BSCDCL for undertaking such repairs and maintenance.
- (c) If the Concessionaire commences any works for curing any defects or deficiencies in the Project, it shall complete such works expeditiously in accordance with Good Industry

Practice.

- (d) The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available on account of any of the following, for the duration thereof:
- (i) Force Majeure Event;
 - (ii) compliance with a request from BSCDCL or the directions of any Government Agency 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 for use provided they can be safely operated and kept open for users.

7.9. Monitoring and Supervision during Operations

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

ARTICLE – 8: FINANCING ARRANGEMENT

8.1. Financing Arrangement

- (a) The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to finance the Project and to meet its obligations under this Agreement in a timely manner.
- (b) In the event of the Concessionaire employing the funds borrowed from the Lenders to finance the Project, the provisions relating to Lenders including those relating to Financial Close shall apply.
- (c) The Concessionaire shall within 7 days of achieving Financial Close submit to BSCDCL one set of Financing Documents evidencing Financial Close.

8.2. Amendments to Financing Documents

For the avoidance of doubt the Parties agree that no amendment made to the Financing Documents without express consent of BSCDCL shall have the effect of enlarging in any manner, the obligation of BSCDCL in respect of Termination Payment under this Agreement.

ARTICLE- 9: Revenue Share

9.1. Revenue Share

- (i) The Concessionaire shall pay to the Authority a Revenue Share on a quarterly basis for each year of the Concession Period as per annual amounts mentioned in Schedule K.
- (ii) The quarterly amounts payable by the Concessionaire shall be one fourth of the annual amount payable by the Concessionaire.
- (iii) The quarterly amount shall be paid by the Concessionaire within 7 days from last day of last month of a quarter.
- (iv) 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. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 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 invocation of Performance Security and/or Termination thereof.
- (v) Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.
- (vi) The Concessionaire shall pay all duties and taxes in consequence of its obligations under this Concession Agreement, including customs duties, and the Revenue Share shall not be adjusted for such costs.

ARTICLE- 10: GRANT

10.1. The Concessionaire shall be entitled to Grant from the Authority if the Concessionaire had quoted such Grant in the Financial Bid submitted with the Authority during the Bid process.

10.2. Disbursement of Grant

The total Grant quoted by the Concessionaire shall be divided into 4 (Four) equal quarterly payments, each to be disbursed to the Concessionaire during initial 1 (one) year from the date of signing of the Concession Agreement.

10.3. Bank Guarantee for Grant

- (i) In case the Concessionaire had quoted a Grant in the Financial Bid submitted during the bid process with the Authority, the Concessionaire shall furnish to Authority a Bank Guarantee of an amount equivalent to the Grant quoted by the Concessionaire in its Financial Bid, in

the form of an irrevocable and unconditional Bank Guarantee issued by State Bank of India or any of its subsidiaries or a nationalized bank having its branch at Bhopal, in the format given in Schedule M to this Concession Agreement. This Bank Guarantee shall be maintained and valid at all times, for a period equivalent to the Construction Period.

- (ii) The Bank Guarantee so furnished against availing the Grant shall be released to the Concessionaire within 6 months from the date of end of the Construction Period.

ARTICLE- 11: INSURANCES

11.1. Insurance during the Implementation Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Implementation Period such insurances as are necessary, including but not limited to the following:

- (a) Workmen's compensation insurance;
- (b) Third party insurances
- (c) any other insurance that may be necessary to protect the Concessionaire as deemed needed by Concessionaire, its employees and its assets (against loss, damage or destruction, at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) & (b).

11.2. Insurance during the Operations Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period insurance to cover against:

- (a) loss, damage or destruction of the Project Facility, at replacement value;
- (b) the Concessionaire's general liability arising out of the Concession;
- (c) liability to third parties; and
- (d) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

11.3. Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project Facility through Indian insurance companies and if so permitted by the Authority, through foreign insurance companies backed by Indian companies, to the extent that insurances are necessary to be effected through them.

11.4. Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to Authority copies of all

insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

11.5. Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards construction, repair or renovation or restoration of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the financial assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible and in such manner that the Project Facility or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as it was before such damage or destruction, normal wear and tear excepted.

11.6. Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 15 Days' clear notice of cancellation is provided to the Authority in writing.

ARTICLE - 12 CHANGE OF SCOPE

12.1. Change of Scope

The Authority may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition/deletion to the works and services on or about the Project which are beyond the scope of the Project as contemplated by this Agreement ("Change of Scope"), the Concessionaire shall carry out such additions/deletions on such terms and conditions as mutually agreed upon.

ARTICLE - 13 FORCE MAJEURE

13.1. Force Majeure Event

As used in this Agreement, a Force Majeure Event shall mean occurrence in India

of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Clauses 13.2, 13.3 and 13.4 respectively which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, and (iii) has a Material Adverse Effect on the Project.

13.2. Non - Political Event

For purposes of Clause 13.1 hereinabove, a Non - Political Event shall mean one or more of the following acts or events:

- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Project Site or beyond design specifications for the Construction Works) or landslide;
- (ii) radioactive contamination or ionizing radiation;
- (iii) General strikes or boycotts (other than those involving the Concessionaire, its 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 period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 13.3;
- (iv) 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;
- (v) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by Authority;
- (vi) Any event or circumstances of nature analogous to any of the foregoing.

13.3. Indirect Political Event

For purposes of Clause 13.1 hereinabove, an Indirect Political Event shall mean one or more of the following acts or events :

- (i) 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 which prevents collection of revenue by the Concessionaire for a period exceeding a continuous period of 7 (seven) days in an Accounting Year;

- (ii) Industry wide or state wide or India wide strikes or industrial action which prevent collection of revenue by the Concessionaire for a period exceeding a continuous period of 15 (fifteen) days in an Accounting Year; or
- (iii) Any public agitation which prevents collection of revenue by the Concessionaire for a period exceeding a continuous period of 15 (fifteen) days in an Accounting Year.

13.4. Political Event

For purposes of Clause 13.1 hereinabove, a Political Event shall mean one or more of the following acts or events by or on account of Authority, or any other Government Agency:

- (i) Change in Law, only when provisions of Article 17 cannot be applied;
- (ii) Expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Concessionaire or of the Contractors; or
- (iii) Any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent the obtaining of which is condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contactor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consent or permit.

13.5. Effect of Force Majeure Event

Upon occurrence of any Force Majeure Event, the following shall apply:

- (a) There shall be no Termination of this Agreement.
- (b) Where the Force Majeure Event occurs before COD, the dates set forth in the ProjectCompletion Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (c) Where a Force Majeure Event occurs after COD, the Concessionaire shall continue to make all reasonable efforts to operate the Project and/ or to collect revenue, but if it isunable or prevented from doing so, the Concession Period shall, having due regard tothe extent of the impact thereof as determined by

the Authority, be extended by the period for which collection of revenue remains affected on account thereof; and

- (d) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of the Clause 13.6 hereinafter.

13.6. Allocation of costs during subsistence of Force Majeure

Subject to the provisions of Clause 13.5 hereinabove, upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:

- (a) When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;
- (b) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Costs") shall be borne by the Concessionaire to the extent of the Insurance Cover, and to the extent the Force Majeure Costs as duly certified by the Statutory Auditors exceed the Insurance Cover, one half of the same shall be reimbursed by Authority to the Concessionaire within 90 days from the date of receipt of Concessionaire's claim;
- (c) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and certified by the statutory Auditors of the Concessionaire subject to approval of Authority shall be reimbursed by Authority to the Concessionaire within 90 days from the date of receipt of Concessionaire's claim; and
- (d) Authority may at its option reimburse the Force Majeure Costs to the Concessionaire in cash (through adjustment in the Revenue Share) or compensate the Concessionaire for such costs by appropriate extension of the Concession Period, which extension shall also be given effect within the period of 90 days specified in preceding sub-clauses (b) or (c) as the case may be.

For avoidance of doubt, Force Majeure Costs shall not include loss of revenues or any debt repayment obligations but shall include interest payments on such debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event.

13.7. 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 with the Court in Bhopal, provided however 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.

13.8. Liability for other losses, damages etc

Save and except as expressly provided in this Article 13, neither Party hereto 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 to this Article 13.

13.9. Duty to Report

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- (a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material affect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- (b) Any notice pursuant to this Clause 13.9 shall include full particulars of:
 - (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 13 with evidence in support thereof;
 - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
 - (iv) any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party continues to claim to be affected by such ForceMajeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Clause and such other information as the other Party may reasonably request the Affected Party to provide.

13.10. Excuse from performance of obligations

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

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

ARTICLE - 14

EVENTS OF DEFAULT AND TERMINATION

14.1. Event of Default

Event of Default means the Concessionaire Event of Default.

Concessionaire Event of Default

Any of the following events shall constitute an event of default by the Concessionaire ("Concessionaire Events of Default") unless such event has occurred as a result of an Event of Default or a Force Majeure Event;

- (1) The Concessionaire fails to commence the Construction Works within 15 days from the Commencement Date.
- (2) The Concessionaire fails to achieve COD within 1 Year from the Commencement Date.
- (3) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading.
- (4) The Concessionaire creates any Encumbrance on the Project Site/ Project Facility in favour of any Person save and except as otherwise expressly permitted under Schedules.
- (5) The aggregate shareholding of the members of the Concessionaire falls below the minimum prescribed under Clause 18.1 (xi).

- (6) The transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the Concessionaire except where such transfer in the reasonable opinion of Authority does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform its material obligations under the Project Agreements.
- (7) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.
- (8) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction 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 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 technical 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 creditworthiness at least as good as that of the Concessionaire as at the Commencement Date; and
 - (iii) each of the Project Agreements remains in full force and effect.
- (9) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable.
- (10) The Concessionaire suspends or abandons the operations of the Project without the prior consent of Authority, provided that the Concessionaire shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) on account of a breach by Authority of its obligations under this Agreement.
- (11) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.

- (12) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Affect on the Project and such attachment continues for a period exceeding 45 days.
- (13) The Concessionaire has neglected or failed to regularly and properly maintain the Smart Poles in clean and hygienic conditions and to keep the Smart Poles in a state of good repair at its own cost.
- (14) The Concessionaire has delayed any payment that has fallen due under this Agreement and if such delay exceeds 90(ninety) days.
- (15) The Concessionaire is otherwise in Material Breach of this Agreement and wishes to surrender. The surrender will be accepted for complete package of the Smart Poles only and not partly.
- (16) Any breach of terms and conditions of this agreement.

14.2. Termination due to Event of Default

- 14.2.1. In the event that BSCDCL believes that the Concessionaire is in material breach of its obligations under the RFP or the Contract, BSCDCL shall give notice to the Concessionaire and shall give up to 30 days' time to it for curing such breach. In case the breach continues till / after the expiry of such cure period, BSCDCL will have the option to terminate the Agreement. Further, BSCDCL may afford a reasonable opportunity to the Concessionaire to explain the circumstances leading to such a breach and may increase the time limit for curing such breach before terminating the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the breach.

14.3. Termination of this Agreement due to bankruptcy of the Concessionaire

- 14.3.1. BSCDCL may serve written notice on the Concessionaire at any time to terminate this Agreement with immediate effect in the event that the Concessionaire reporting an apprehension of bankruptcy to the BSCDCL or its nominated agencies. No charges to Concessionaire shall be payable in case of termination under this Clause except payment for all charges for Services / Deliverables / Goods provided by it and accepted by BSCDCL till effective date of termination

14.4. Effects of termination

- 14.4.1. In the event BSCDCL terminates this Agreement pursuant to breach by the Concessionaire, Bank Guarantee furnished by it may be forfeited.
- 14.4.2. Upon termination (or prior to expiry/ upon expiry, as the case may be) of this Agreement, the Parties will comply with the Exit Management Schedule/ Plan set out in the RFP (as may be revised from time to time).

- 14.4.3. BSCDCL agrees to pay the Concessionaire for all charges for Services / Deliverables / Goods provided by it and accepted by BSCDCL till effective date of termination.
- 14.4.4. Any and all payments under this clause shall be payable only after the Concessionaire has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of BSCDCL.
- 14.4.5. Any and all payments under this clause shall be payable only after the Concessionaire has complied with and completed the transition and exit management as per the Exit Management Plan to the satisfaction of BSCDCL. In case of expiry of the Agreement, the last due payment shall be payable to the Concessionaire after it has complied with and

Termination for Concessionaire Event of Default

- (1) Without prejudice to any other right or remedy which Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, Authority shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, Authority shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the "**Preliminary Notice**"). In case the underlying breach/default is not cured within a period of 60 (sixty) days from the date of the Preliminary Notice (**Cure Period**) Authority shall be entitled to terminate this Agreement by issuing the Termination Notice. Provided further, that
- (a) if the default is not cured within 30 (thirty) days of the Preliminary Notice, Authority shall be entitled to encash the Performance Security with a notice to the Concessionaire (**Encashment Notice**),
 - (b) if the default is not cured within 30 (thirty) days of the Encashment Notice and a fresh Performance Security is not furnished within the same period in accordance with Clause 3.2, Authority shall subject to the provisions of the Substitution Agreement be entitled to issue the Termination Notice.
- (2) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement:
- (i) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
 - (ii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;

- (iii) If the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by Authority or any Government Agency hereunder the applicable Cure Period shall be extended by the period taken by Authority or the Government Agency to accord the required approval.

14.5. Rights of Authority on Termination

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

- (i) take possession and control of Project Assets forthwith;
- (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Assets/dealing with the Project or any part thereof;
- (iii) step in and succeed upon, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Agreements. Provided any sums claimed by such counter party as being due and owing for the works and services performed or accruing on account of any act, omission or event prior to such date of election, shall and shall always constitute debt between the Concessionaire and such counter party and Authority shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provision of this Clause 14.3.
- (iv) Concessionaire shall not be entitled for any interest on any security/advance/earnest money etc.

14.6. Exit Management

14.6.1. Purpose

- i. This clause sets out the provisions which shall apply on expiry or termination of the Agreement on account of material breach by Concessionaire. In the case of termination of the Agreement due to any illegal activity performed by the selected Concessionaire during/ as part of the activities related to the project, or due to material breach by the Concessionaire of Contract, BSCDCL shall have the right to, at its sole discretion, apply this clause.
- ii. The Parties shall ensure that their respective associated entities, in case of the BSCDCL or its nominated agencies and any nominated agencies in case of the

selected Concessionaire, carry out their respective obligations set out in this Exit Management Clause.

14.6.2. Transfer of Assets

This clause is valid till the date of expiry or notice of termination of the Agreement after which the assets have to be transferred to BSCDCL.

- During this period, the Successful Concessionaire will transfer all the assets in good working condition and as per the specifications of the bidding document including the ones being upgraded to the BSCDCL.
- The Concessionaire, if not already done, shall transfer all the right to use software licenses under the name of BSCDCL during the Exit Management Period. The Concessionaire shall also transfer all the relevant Software Passwords, User Names and Keys. If such a transfer of Assets happens before the expiry of Work Contract Period, Parties shall mutually discuss and agree on the transfer value of the Assets together with the termination and transfer assistance fee.
- The Successful Concessionaire shall be entitled to use the Assets for the duration of the exit management period which shall be three months from the date of expiry or notice of termination of the Agreement.
- For any material breach on the part of Concessionaire during the Project Implementation Phase and Operation & Management Phase, BSCDCL is entitled to provide notice in writing on the selected Concessionaire at any time during the exit management period as detailed here in above requiring the selected Concessionaire to provide the department or its nominated agencies with a complete and up to date list of the Assets within 30 days of such notice.

Upon service of a notice as mentioned in point above, the following provisions shall apply:

- All risk in and title to the Assets to be transferred to BSCDCL on the last day of the exit management period. All expenses incurred during transfer of assets shall be borne by the Successful Concessionaire.
- That on the expiry of this clause, the Successful Concessionaire and any individual assigned for the performance of the services under this clause must hand over all Confidential Information and all other related materials in its possession, including all the software and hardware supplied by selected Concessionaire under this clause to the department.
- As Concessionaire is supposed to provide 10 years ((extendable up to 15 years)) of comprehensive maintenance of all the hardware/Software as detailed in RFP, Concessionaire must ensure that all the items are in working condition with support of OEM related to repair/replacement/availability of spare parts for at least 05 years at the time of exit.

14.6.3. Cooperation and Provision of Information

During the exit management period:

- (i) The Concessionaire shall permit BSCDCL or its nominated agencies access to information reasonably required to classify the current mode of operation related with the provision of the services to enable it to Client assess the existing services being delivered.

- (ii) In the event of there being a termination owing to material breach by Concessionaire, on quick request by BSCDCL or its nominated agencies, the selected Concessionaire shall provide access to and copies of all information held or controlled by it which it has prepared or maintained in accordance with the MSA (Master Service Agreement), the Project Implementation, the Operation and Management SLA and SoW (Scope of Work) relating to any material aspect of the services (whether provided by the selected Concessionaire). BSCDCL or its nominated agencies shall be entitled to copy all such information. Such information shall include details pertaining to the services rendered and other performance data. The selected Concessionaire shall permit BSCDCL or its nominated agencies and/or any entity nominated by BSCDCL to have reasonable access to it employees and facilities as reasonably required to understand the methods of delivery of the services employed by the selected Concessionaire and to support appropriate knowledge transfer.

14.6.4. Confidential Information, Security and Data

- The selected Concessionaire shall be quick on the commencement of the exit management period and supply to BSCDCL the following:
 - Information relating to the present services provided and customer satisfaction surveys.
 - Documentation pertaining to Project related data and confidential information.
 - All current and updated data as is needed for purposes of the BSCDCL or its nominated agencies for transitioning the services either to BSCDCL or the entity nominated by BSCDCL.
 - All other information (including but not limited to documents, records and agreements) relating to the services reasonably compulsory to enable BSCDCL or its nominated agencies, or to the entity nominated by BSCDCL to carry out due diligence in order to transition the provision of the Services to the BSCDCL or its nominated agencies, or to any entity nominated by BSCDCL (as the case may be).

- Before the exit management period expire, the selected Concessionaire shall deliver to BSCDCL or its nominated agencies all new or up-dated materials from the categories set out in point (i) above and shall not keep any copies thereof, except that the selected Concessionaire shall be permitted to keep one copy of such materials for archival purposes only.

- Before the exit management period expire, unless otherwise provided under the MSA, BSCDCL or its nominated agencies shall deliver to the selected Concessionaire all forms of selected Concessionaire confidential Data which is in the possession or control of BSCDCL or its nominated agencies or during the exit management period In any time, the selected Concessionaire shall, subject to applicable laws, restraints and regulations(including in particular those relating to privacy) provide to BSCDCL or its nominated agencies a list of all employees (with job titles) of the selected Concessionaire dedicated to providing the services at the beginning of the exit management period; its users.

14.6.5. Employees

- Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the selected Concessionaire to the department or its nominees, or an entity nominated by BSCDCL applies to any or all of the employees of the selected Concessionaire, then the Parties shall comply with their respective obligations under such Transfer Regulations.
- To the extent that any Transfer Regulation does not apply to any employee of the selected Concessionaire or its nominated agencies or its entity nominated by BSCDCL may make an offer of employment or contract for services to such employee of the selected Concessionaire and the selected Concessionaire shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the BSCDCL or its nominated agencies or any Replacement Concessionaire.

14.6.6. Transfer of Certain Agreements

On request by the BSCDCL or its nominated agencies, the selected Concessionaire shall effect such assignments, transfers, novation, licenses and sub-licenses in favor of BSCDCL or its nominated agencies, or its entity nominated by BSCDCL in relation to any equipment lease, maintenance or service provision agreement between selected Concessionaire and third party lessors, Concessionaires or Concessionaire, and which are related to the services and reasonably necessary for the carrying out of replacement Concessionaire.

14.6.7. Right of Access to Premises

- At any time during the exit management period, where Assets are located at the selected Concessionaire's premises, the selected Concessionaire shall be obliged to give full rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to BSCDCL or its nominated agencies, and/or any entity nominated by BSCDCL in order to inventory the assets or Assets.
- The selected Concessionaire shall also give the BSCDCL or its nominated agencies, or any entity nominated by BSCDCL right of reasonable access to the selected Concessionaire's premises and shall procure the department or its nominated agencies and any entity nominated by BSCDCL rights of access to relevant third party premises during the exit

management period and for such period of time following termination or expiry of the MSA as is reasonably necessary to migrate the services to BSCDCL or its nominated agencies, or a Replacement Concessionaire.

14.6.8. General Obligations of the Selected Concessionaire

- The selected Concessionaire shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to BSCDCL or its nominated agencies or any entity nominated by the BSCDCL and which the selected Concessionaire has in its possession or control at any time during the exit management period.
- For the purposes of this Clause, anything in the possession or control of any selected Concessionaire or associated entity is deemed to be in the possession or control of the selected Concessionaire.
- The selected Concessionaire shall commit adequate resources to comply with its obligations under this Exit Management Clause.

14.6.9. Exit Management Plan

The Successful Concessionaire shall provide the BSCDCL or its nominated agencies with recommended exit management plan ("Exit Management Plan") which shall deal with MSA as a whole and in relation to the Project Implementation, the Operation and Management, SLA and SOWs.

14.6.10. End of Support

While handling over the completely working and functional network and systems, Concessionaire must ensure that OEM of all hardware/software/ equipment are contractually bound to provide support for repair/replacement/availability of its spare parts for further five years (total 10 years at similar rates). Its shall be part of exit plan to submit letter from OEM in this regard.

ARTICLE - 15 CHANGE IN LAW

15.1. Change in Law

This agreement shall be in force and binding on both the parties hereto till the expiry of the concession period and no change in law or other circumstances shall affect the respective rights and obligations of the parties. No claim of whatsoever nature shall be made by one party on the other on account of any such change in law or other circumstances.

ARTICLE - 16 HANDOVER AND DEFECT LIABILITY PERIOD

16.1. Handing Over of the Project Assets

Upon the expiry of the Concession by efflux of time and in the normal course, the Concessionaire shall at the end of the Concession Period, hand over encumbrance free and peaceful possession of the Project Assets in working conditions including Project Site/Facility at no cost to Authority.

16.2. Joint Inspection and Removal of Deficiency

The handing over process shall be initiated at least 6 months before the actual date of expiry of the Concession Period by a joint inspection by the Authority Engineer and the Concessionaire. The Authority Engineer shall, within 15 days of such inspection prepare and furnish to the Concessionaire a list of works/jobs/additions/alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works, within the stipulated time period the Authority shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire and any cost incurred by Authority in this regard shall be reimbursed by the Concessionaire to Authority within 7 days of receipt of demand. For this purpose, Authority shall without prejudice to any other right/remedy available to it, under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by Authority to the Concessionaire to the extent required/ available and to recover deficit amount, if any, from the Concessionaire.

16.3. Recovery of Balance Revenue Share

The share of Authority due in the cumulated revenue receivable of the concessionaire at the end on Concession Period as reflected in the last audited project account shall be recovered by Authority from the performance security and the amount of project bank balance under lien of Authority .The balance remaining un recovered amount, if any shall be paid by the concessionaire to Authority along with the Revenue Share payable for the last quarter.

The share of Authority due shall be calculated at the rate applicable as on the date of respective outstanding invoice.

ARTICLE - 17
DISPUTE RESOLUTION

17.1. Amicable Resolution

- (a) Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non-completion of the Project between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by

the Authority and failing such resolution of the same, in accordance with the procedure set forth in sub-clause (b) below.

- (b) Either Party may require the Dispute to be referred to Authority for amicable settlement. Upon such reference, both the Parties and the Authority shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 17.2 below.

17.2. Arbitration

a) Arbitrators

Any Dispute which is not resolved amicably as provided in Clause 17.1(a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a committee of three arbitrators chosen from a panel of five arbitrators on the list of arbitrators available with Authority. One arbitrator is to be chosen by each Party and the third to be appointed by the two arbitrators chosen by the Parties. If either Party fails to choose its arbitrator, the other Party shall take steps in accordance with Arbitration and Conciliation Act, 1996.

b) Place of Arbitration

The place of arbitration shall be **Bhopal, Madhya Pradesh**.

c) Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d) Procedure

The procedure to be followed within the arbitration, / arbitral tribunal and the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

e) Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceedings or their assets wherever they may be found and that a

judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

f) Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the said Party.

g) Performance during Arbitration

Pending the submission of and/or decision on a Dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE - 18
REPRESENTATIONS, WARRANTIES AND DISCLAIMER

18.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to Authority that:

- (i) it is duly organized, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) it has the financial standing and capacity to undertake the Project;
- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) the execution, delivery and performance of this Agreement will not conflict

with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or of any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- (viii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's 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 or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (ix) 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 Concessionaire which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (x) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (xi) each member of Consortium was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (xii) Upon Termination of this Agreement, under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Assets shall pass to and vest in Authority on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or Authority;
- (xiii) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to Authority or to any Government Concessionaire in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (xiv) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into of this Agreement or for

influencing or attempting to influence any officer or employee of Authority in connection therewith.

18.2. Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, 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 traffic volumes, specifications and Standards, Project Site and all the information provided by Authority, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in (a) above and hereby confirms that Authority shall not be liable for the same in any manner whatsoever to the Concessionaire.

18.3. Representations and Warranties of Authority

Authority represents and warrants to the Concessionaire that:

- (i) Authority has full power and authority to grant the Concession;
- (ii) Authority has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

ARTICLE - 19
MISCELLANEOUS

19.1. Transfer

- a) At the end of Concession period/ termination of Concession Agreement, transfer the project facilities and assets to the Authority at zero cost.
- b) Concessionaire shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses incurred in connection with the transfer of the Project Assets and the Project to the Authority or its nominated agency. These costs can be borne by the Authority as well if the concessionaire is found to deliberately delaying the transfer of assets. The Authority shall recover such costs from concessionaire by adopting the ways

and means available.

- c) Authority or its nominated agency shall at its own cost obtain or effect all clearances and take such other actions as may be necessary for such transfer.

19.2. Assignment and Charges

- (a) Subject to sub-clauses (b) and (c) herein below, this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of Authority, which consent Authority shall be entitled to decline without assigning any reason whatsoever.
- (b) Subject to sub-clause (c) herein below, the Concessionaire shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which Concessionaire is a party except with prior consent in writing of Authority, which consent Authority shall be entitled to decline without assigning any reason whatsoever.
- (c) The restraint set forth in sub-clauses (a) and (b) above shall not apply to liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project

19.3. Liability And Indemnity

General Indemnity

- (i) The Concessionaire shall indemnify, defend and hold Authority harmless against any and all proceedings, actions and, third party claims arising out of a breach by the Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to Authority Event of Default).
 - (ii) Authority will indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of Authority and/or arising out of a breach by Authority, its officers, servants and agents of any obligations of Authority under this Agreement except to the extent that any such claim has arisen due to Concessionaire Event of Default.
- (a) Without limiting the generality of this Clause 19.4 the Concessionaire shall fully indemnify, save harmless and defend Authority including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) failure in payments

of taxes relating to the Concessionaire's Contractors, suppliers and representatives income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, 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.

- (b) Without limiting the generality of the provisions of this Article Clause 19.4, the Concessionaire shall fully indemnify, save harmless and defend the Authority from and against any and all damages which the Authority 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, 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 suspension of the injunction or restraint order. If, in any such suit 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 Authority a license, at no cost to Authority, 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 parts or process, or modify the same so that it becomes non-infringing. Bidder shall indemnify the BSCDCL for any violations of IPRs and Patents for the individual products only arising out of execution and performance under this contract However in case of any violation the maximum penalty on account of above shall be restricted to 100% of the Quarterly revenue realized by the Bidder.
- (c) In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause 19.4 (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) 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 subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.
- (d) Defence of Claims

- (i) 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 its reasonable costs and expenses 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 Clause 19.4, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding and the liabilities, payments and obligations at its expense and through 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 costs and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, 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.
- (ii) If the Indemnifying Party has exercised its rights under Clause 19.4 (d) above, 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).
- (iii) If the Indemnifying Party exercises its rights under Clause 19.4 (d) above, then 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 such Indemnified Party, when and as incurred, unless:
 - (1) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - (2) 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 defence of such action; or
 - (3) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (4) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either

- (a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
- (b) 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 (2), (3) or (4) of Clause 19.4 (d) (iii) shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, 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.

- a. Notwithstanding anything to the contrary contained in the Contract, in no event shall either Party be liable to the other Party for indirect or consequential damages and for the following types of damages, whether or not they are considered as direct or indirect damages: loss of production, loss of use, loss of business, loss of data, loss of access, loss of market share, loss of revenue, loss of savings, and loss of profit, , whether or not the possibility of such damages could have been reasonably foreseen and whether as a result of breach of this Principal Agreement, Warranty or in tort. These limitations shall not apply in case of breach of confidentiality, Bidders breach of the license conditions, or non-payment by Bidder.
- b. Subject to clause (Force Majeure), notwithstanding anything under this Contract and this Contract Bidder shall be liable to BSCDCL or any third party under this Contract for damages up to 100% (One Hundred percent) of the Quarterlyrealised revenue. When calculating the said percentage figure, any taxes, fees or levies, if any, forming part of the revenue as indicated in the Financial Bid shall be excluded.
- c. No action, regardless of form, arising out of any alleged breach of this Contract shall be brought by either Bidder or BSCDCL more than three (3) years after the cause of action has occurred.
- d. BSCDCL or Bidder suffering loss or damages shall take all reasonable measures to mitigate such loss or damage.

19.4. 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 Bhopal, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

19.5. Software licenses

The Bidder shall be responsible for providing right to use software (system

software, application software, device drivers, iOS, etc.) Required, if any, during operation period to BSCDCL. All license software must be in the name of BSCDCL. Such licenses entitle the BSCDCL of Right to Use the Software only. No Source code is required to be provided.

19.6. Waiver

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

19.7. Survival

Termination of this Agreement (a) shall not relieve the Concessionaire or Authority 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.

19.8. Acceptance Test:

Acceptance Test will be conducted in as follows

- The Bidder shall be responsible for preparation and submission of detailed UAT schedules/ procedures/ formats. After acceptance of UAT reports by BSCDCL, the entire infrastructure (including network) would be deemed to have been commissioned.
- For the purpose of Acceptance Testing, Bidder would be required to demonstrate all COTS hardware and software with minimum quantities to carry out the process of acceptance testing for verifying the technical specifications. In case any developmental work is required to be done, the same would be demonstrated over a period of time without hindering the process of

acceptance and payment. Once the acceptance is done for certain type of equipment then mass deployment could be done without the need for acceptance again.

- After the successful UAT the Bidder shall be responsible for obtaining installation and commissioning certificate (sign-off) of the complete network from BSCDCL.
- Entire system at any particular location/control room, if any, not passing the UAT, shall be rectified by the Bidder in a timely manner with a request for re-test by BSCDCL. If any component/system fails the UAT repeatedly, BSCDCL may ask Bidder to remove the device, without any claim for payment to Bidder.
- On successful UAT by BSCDCL of the entire system, the event shall be marked as the “date of commissioning” of the project. However, in case of delay/ non-completion of work by Bidder at any site(s) due to reasons not attributable to the Bidder, BSCDCL shall treat the last day of the successful UAT of the commissioned network (excluding the delayed and non-feasible sites) as the “date of commissioning” of the project.
- Documentation: provide technical documentation with equipment supplied. The technical documentation should include technical manuals and operation manuals.
- BSCDCL reserve the right to inspect equipment's and OFC/IFC, cat-5/cat-6 cables etc. The cost of all such tests shall be borne by the Bidder. Any inspected goods fail for confirm to specification after installation, the BSCDCL may reject them and the Bidder shall have to replace the rejected goods. Sample approval should be obtained before installation for such material.
 - The first step will involve successful installation of all sites. The provisional acceptance of these sites will be defined as partial acceptance.
 - The date on which acceptance certificate is issued shall be deemed to be the date of successful commissioning of the system.
 - Any delay by the Bidder in the acceptance testing shall render the Bidder liable to the imposition of appropriate penalties
 - All goods and services should have approval of TEC (Technical Evaluation Committee) with ISO or other certification, as applicable, to prove the quality standards applicable in India.

- The User acceptance test (UAT) report should confirm with cabling standard under the ISO certification.

19.9. Amendments

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 agreed to by all the Parties hereto and evidenced in writing.

19.10. Notices

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

If to the Authority:.....

.....

.....

If to the Concessionaire:

The Managing Director,

.....

.....

Or such addresses, telex numbers, or facsimile numbers as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

19.11. 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 upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or

otherwise.

19.12. No Partnership

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

19.13. Language

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

19.14. 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 any Party not contained in a binding legal agreement executed by the Parties.

19.15. Counterparts

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

SCHEDULE A - PROJECT SITE

Details provided in the Annexure 11 to the RFP

SCHEDULE B - PROJECT FACILITY

(The facilities to be constructed, built, installed, erected, or provided by the Concessionaire in the Project Sites with brief description & specifications and Scope of Work for the Concessionaire have been mentioned in Annexure 11 of the RFP).

SCHEDULE C - PROJECT COMPLETION SCHEDULE

(The Project Completion Schedule as agreed to with the Concessionaire would need to be set out here).

The ProjectCompletion Schedule submitted by the Concessionaire with the RFP is attached herewith.

Please refer to the Project Schedule submitted in the RFP.

SCHEDULE D - OFFICER-IN-CHARGE'S SERVICES (Implementation Period)

TERMS OF REFERENCE

1. OBJECTIVES

The Officer-in-Charge shall be required to :

- (i) Act independently on behalf of both Authority and the Concessionaire to review and monitor all activities associated with construction, operation, and maintenance to ensure compliance with provisions of the Concession Agreement.
- (ii) Visit, inspect, and report to the MD/Authority on various aspects of the project and carry out all such activities as are provided in the Concession Agreement. Without prejudice to this, the scope of services of the Officer-in-Charge shall be as specified in paras 2 to 4 below.

The Officer-in-Charge shall have no authority to relieve the Concessionaire of any of its duties or to impose additional obligations other than those expressly provided in the Concession Agreement.

2. SCOPE OF SERVICES

2.1. Pre-implementation Period

- (i) Review the Project Report prepared by the Concessionaire.
- (ii) Review the Implementation Schedule submitted by the Concessionaire.
- (iii) Proof checking of designs, calculations and working drawings prepared by the Concessionaire for the construction of various components of the Project Facility in accordance with provisions of the Concession Agreement.
- (iv) Review the adequacy of the geo-technical studies, sub-soil investigations, hydrological investigations and the topographical survey, if any, carried out by the Concessionaire.
- (v) Review the environmental management plan for the Project during Implementation Period and Operations Period.
- (vi) Review the proposed quality assurance and quality control procedures during the Implementation Period and Operations Period.

- (vii) Review the safety measures proposed during Implementation Period and Operations Period

2.2. Implementation Period

- (i) Monitor quality assurance and quality control during Implementation period.
- (ii) Review the material testing results, mix designs and order special tests of materials and/or completed works, and/or order removal and substitution of substandard materials and/or works as required.
- (iii) Ensure that the construction work is carried out in accordance with the Specifications and Standards and Good Industry Practice.
- (iv) Identify delays in completion and recommend to the MD/Authority / Concessionaire the remedial measures to expedite the progress.
- (v) Review “As Built” drawings for each component of the works prepared by the Concessionaire.
- (vi) Review the safety measures provided by the Concessionaire.
- (vii) Supervise and monitor various Completion Tests as provided in the Concession Agreement
- (viii) Issue Provisional Completion Certificate or the Completion Certificate, as the case may be, in accordance with the provisions of the Concession Agreement.
- (ix) Review and approve the Maintenance Manual prepared by the Concessionaire.

2.3. General

- (i) Design a Management Information System (MIS) for monitoring of the Project by Authority.
- (ii) Determine and recommend changes to the Project Completion Schedule, Scheduled
- (iii) Project Completion Date and the Concession Period in accordance with the Concession Agreement.
- (iv) Mediate and assist in resolving disputes between Authority and Concessionaire.

3. INTERACTION WITH THE MD/Authority

The Officer-in-Charge shall interact with the MD/Authority on a regular basis.

4. REPORTING REQUIREMENTS

The Officer-in-Charge shall prepare and submit to the MD/Authority three copies and to the Concessionaire two copies each of the following reports.

Monthly Progress Report

Various other reports as provided in the Concession Agreement such as Completion Report.

5. PERIOD OF SERVICES

The period of services shall be the Implementation Period.

SCHEDULE E –AUTHORITY’S ENGINEER'S SERVICES (Operations Period)
TERMS OF REFERENCE

1. OBJECTIVES

The Authority Engineer shall be required to:

- (i) To review and monitor all activities associated with operation and maintenance to ensure compliance with provisions of the Concession Agreement.
- (ii) Visit, inspect, and report to the MD/Authority on various aspects of the project and carry out such other activities as provided in the Concession Agreement. Without prejudice to this, the scope of services of the Authority Engineer shall be as specified in para 2 to 4.

The Authority Engineer shall have no authority to relieve the Concessionaire of any of their duties or to impose additional obligations other than those expressly provided in the Concession Agreement.

2. SCOPE OF SERVICES

Review work plan and schedules of various operation and maintenance activities.

- (i) Review and ensure compliance with Maintenance Programme, Minimum Maintenance Requirements and the Maintenance Manual.
- (ii) Supervise actions undertaken by Authority's contractor(s) to carry out maintenance obligations of the Concessionaire at the risk and cost of the Concessionaire in the event of his failure to carry out the same.
- (iii) Undertake audit of the traffic using the Project at least once a month.
- (iv) Review and inspect the Project at least once a month during the Operations Period and submit an Inspection Report thereafter to Authority.
- (v) Mediate and assist in resolving disputes between Authority and Concessionaire.

3. REPORTING REQUIREMENTS

The Officer-in-Charge shall prepare and submit to the MD/Authority three copies and to the Concessionaire two copies each of the following reports.

Monthly and Quarterly Inspection Reports

- Monthly reports on audit of advertisement displayed

4. PERIOD OF SERVICES

The period of services shall be the Operations Period.

SCHEDULE F – DRAWINGS

SCHEDULE G - SPECIFICATIONS AND STANDARDS
(Provided in Annexure 11 of the RFP)

**SCHEDULE H - MINIMUM OPERATION & MAINTENANCE
REQUIREMENTS**

(Provided in Annexure 11 of the RFP)

SCHEDULE- I : PARTICULARS OF FINANCIAL ASSISTANCE.

SCHEDULE J - MEMORANDUM OF UNDERSTANDING

(Where the Project is being implemented by a Consortium, the Memorandum of Understanding provided as part of Bid and entered into by them for the purpose of implementing the Project should be appended here as applicable).

SCHEDULE K-REVENUE SHARE

SCHEDULE L–PERFORMANCE SECURITY

Bank Guarantee Format

To,

<insert name address>

Whereas, <name of the supplier and address> (hereinafter called “the Concessionaire”) has undertaken, in pursuance of contract no. <Insert Contract No.> dated. <Date> to provide Implementation services for ‘Selection of Concessionaire for Implementing Smart City Pan City Projects in Bhopal under PPP on BOOT model’ to Bhopal Smart City Development Co. Ltd (hereinafter called “the beneficiary”)

And whereas it has been stipulated by in the said contract that the Concessionaire shall furnish you with a bank guarantee by a recognized bank for the sum specified therein as security for compliance with its obligations in accordance with the contract;

And whereas we, <Name of Bank> a banking company incorporated and having its head /registered office at <Address of Registered Office> and having one of its office at <Address of Local Office> have agreed to give the supplier such a bank guarantee.

Now, therefore, we hereby affirm that we are guarantors and responsible to you, on behalf of the supplier, up to a total of INR <Insert Value> (Rupees <Insert Value in Words> only) and we undertake to pay you, upon your first written demand declaring the supplier to be in default under the contract and without cavil or argument, any sum or sums within the limits of INR <Insert Value> (Rupees <Insert Value in Words> only) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Concessionaire before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract to be performed there under or of any of the contract documents which may be made between you and the Concessionaire shall in any way release us from any liability under this guarantee and we hereby waive notice of any such change, addition or modification.

This Guarantee shall be valid until <Insert Date>)

Notwithstanding anything contained herein:

- I. Our liability under this bank guarantee shall not exceed INR. <Insert Value> (Rupees <Insert Value in Words> only).
- II. This bank guarantee shall be valid up to <Insert Expiry Date>)

- III. It is condition of our liability for payment of the guaranteed amount or any part thereof arising under this bank guarantee that we receive a valid written claim or demand for payment under this bank guarantee on or before <Insert Expiry Date>) failing which our liability under the guarantee will automatically cease.

(Authorized Signatory of the Bank)

Seal:

Date:

SCHEDULE M–GRANT

Bank Guarantee Format

To,

<insert name address>

Whereas, <name of the supplier and address> (hereinafter called “the Concessionaire”) has undertaken, in pursuance of contract no. <Insert Contract No.> dated. <Date> to provide Implementation services for ‘Selection of Concessionaire for Implementing Smart City Pan City Projects in Bhopal under PPP on BOOT model’ to Bhopal Smart City Development Co. Ltd (hereinafter called “the beneficiary”)

And whereas it has been stipulated by in the said contract that the Concessionaire shall furnish you with a bank guarantee by a recognized bank for the sum specified therein as security for compliance with its obligations in accordance with the contract;

And whereas we, <Name of Bank> a banking company incorporated and having its head /registered office at <Address of Registered Office> and having one of its office at <Address of Local Office> have agreed to give the supplier such a bank guarantee.

Now, therefore, we hereby affirm that we are guarantors and responsible to you, on behalf of the supplier, up to a total of INR <Insert Value> (Rupees <Insert Value in Words> only) and we undertake to pay you, upon your first written demand declaring the supplier to be in default under the contract and without cavil or argument, any sum or sums within the limits of INR <Insert Value> (Rupees <Insert Value in Words> only) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Concessionaire before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract to be performed there under or of any of the contract documents which may be made between you and the Concessionaire shall in any way release us from any liability under this guarantee and we hereby waive notice of any such change, addition or modification.

This Guarantee shall be valid until <Insert Date>)

Notwithstanding anything contained herein:

- I. Our liability under this bank guarantee shall not exceed INR. <Insert Value> (Rupees <Insert Value in Words> only).
- II. This bank guarantee shall be valid up to <Insert date for 180 days from date of signing of Agreement Date>)

- III. It is condition of our liability for payment of the guaranteed amount or any part thereof arising under this bank guarantee that we receive a valid written claim or demand for payment under this bank guarantee on or before <Insert date for 180 days from date of signing of Agreement Date>) failing which our liability under the guarantee will automatically cease.

(Authorized Signatory of the Bank)

Seal:

Date: