

# Engagement of Agency for Design, Build, Operate, Finance & Transfer Public Bike Sharing System in Chandigarh on PPP Mode

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REQUEST FOR PROPOSAL

(INSTRUCTION TO BIDDER, DRAFT CONCESSION AGREEMENT & SCHEDULES)

31-12-2018

VOLUME I



Chandigarh Smart City Limited

Second Floor, New Bridge Building no 2, Near TDI Mall, Sector 17 A, Chandigarh – 160017



## Tender Notice

### Chandigarh Smart City Limited

#### e- TENDER NOTICE

Chandigarh Smart City Limited (CSCL) invites e-tenders (online tenders) on behalf of Chief Executive Officer, Chandigarh Smart City Limited from the eligible, reputed and established agencies/ individuals/ company (ies)/ firm for Public Bike Sharing System in Chandigarh, on PUBLIC PRIVATE PARTNERSHIP (PPP) MODE.

The detailed terms and conditions of this tender can be obtained from Govt. website <http://etenders.chd.nic.in/nicgep>. Prospective bidders should download the complete tender documents only from the website **<http://etenders.chd.nic.in/nicgep>** upto the last date of submission i.e. **22<sup>nd</sup> January 2019**. Addendum/ Corrigendum if any, to the tender documents shall be uploaded on the aforementioned website only. Hence, the bidders shall visit the same regularly. Bidders are requested to go through the complete bid documents, criteria and scope of work in particular, before submission of online bid.

Chief Executive Officer  
Chandigarh Smart City Limited  
Second Floor, New Bridge Building no 2,  
Near TDI Mall, Sector 17 A,  
Chandigarh- 160017  
Email id: [smartcity.chd@nic.in](mailto:smartcity.chd@nic.in)

## Definitions

**Agreement**

"Agreement" shall mean the Draft Concession Agreement given in Part 2 of this RFP document.

**Associates**

As defined in clause 2.3.20.

**Authority**

"Authority" shall mean the "Chandigarh Smart City Limited" or "CSCL".

**Bank**

"Bank" shall mean any State Bank of India (SBI), Nationalized Bank and any Indian Scheduled Commercial Bank.

**Bid**

"Bid" means the proposals submitted by the Bidder(s) in response to this RFP in accordance with the provisions hereof, including technical proposal and financial proposal, along with all other documents forming part and in support thereof.

**Bidder(s)**

"Bidder(s)" shall mean Bidding Company or Bidding Consortium that has submitted a Proposal in response to this RFP Document.

**Bid Document**

"Bid Document" shall mean this Request for Proposal document or any other document issued by Chandigarh Smart City Limited as part of the Bid Process.

**Bid Process**

"Bid Process" shall mean various activities taken up by Chandigarh Smart City Limited leading up to the selection of the Successful Bidder.

**Bidding Company**

"Bidding Company" shall mean a corporate entity (Public or Private Limited) registered under the Companies Act, 1956/ 2013 or equivalent International law satisfying the basic eligibility criteria of bidding laid down herein.

**Bid Evaluation Committee (BEC)**

"Bid Evaluation Committee (BEC)" means the committee duly constituted by Chandigarh Smart City Limited to evaluate the Proposals.

**Bid/ Proposal**

"Bid/ Proposal" shall mean together Folder A, Folder B and Folder C as defined in Clause 1.2 as submitted by the Bidders in response to this RFP Document.

**Bid Security**

"Bid Security" shall have the meaning as referred in Clause 2.23 of this document.

**Bid Validity Period**

"Bid Validity Period" shall mean the period stipulated in Clause 2.20 of this RFP Document, for which the Proposal submitted is valid.

**Bid Value**

"Bid Value" shall mean the amount offered by the Bidder in the Financial Proposal payable to Chandigarh Smart City Limited for the purpose of developing the Project at the Project Site.

**Bike**

"Bike" means a bicycle that meets the Specifications described in this RFP and is to be procured, maintained, and operated as part of the Bike Sharing System by the Concessionaire in accordance with the terms of this RFP.

**Bike Sharing System or System**

"Bike Sharing System" or "System" means a public transport system consisting of a network of bikes and stations in which a user can check out a Bike at any station using a Mobile App/Personalised Card and return the Bike to any other station in which information is tracked in real-time using an information technology system. It refers to the hardware, software, and premises associated with this RFP for Chandigarh that is being implemented by CSCL in various phases, unless otherwise specified.

**Chief Executive Officer (CEO)**

"Chief Executive Officer or CEO" shall mean the Chief Executive Officer (CEO) of Chandigarh Smart City Limited, Chandigarh.

**Consortium**

"Consortium" shall mean Group of companies that have jointly submitted the Proposal for the Project.

**Consortium Member**

Each entity in the Bidding Consortium shall be referred to as a "Consortium Member".

**Chandigarh Smart City Limited (CSCL)**

"Chandigarh Smart City Limited or CSCL" means the company established under the Companies Act 1956/2013 to implement projects identified in Smart City Mission of Ministry of Urban Development for Chandigarh

**Financial Bid / Financial Proposal**

"Financial Bid / Financial Proposal" shall mean the information submitted as per E-Bid format i.e. Financial Proposal of this document and is part of the Bid/Proposal.

**Good Industry Practice**

Good Industry Practice shall mean practices, methods, techniques and standards as changed from time to time that are generally accepted for use in the infrastructure, construction and real estate industry or any other good industry practice which is relevant to the said project.

**Lead Member / Lead Consortium Member (LM/ LCM)**

In case of a Bidding Consortium, the “Lead Member (LM)/ Lead Consortium Member (LCM)” shall be that Consortium Member vested with the prime responsibility of developing the Project and holding not less than 51% stake in the Consortium.

**Project**

“Project” shall mean Engagement of Agency for Design, Build, Operate, Finance & Transfer Public Bike Sharing System in Chandigarh on PPP Mode in accordance with the provisions of the this RFP.

**Proposal**

“Proposal” shall mean as referred in Clause 2.14 of this Document.

**Proposal Due Date**

“Proposal Due Date” shall have the same meaning as referred to in Clause 1.2.11 of this Document.

**Responsiveness / Non-responsive**

“Responsiveness / Non-responsive” shall mean as referred in Clause 3.3 of this document.

**Request for Proposal (RFP)**

“Request for Proposal” shall mean this document inviting the submission of “Proposal” to Engagement of Agency for Design, Build, Operate, Finance & Transfer Public Bike Sharing System in Chandigarh on PPP Mode.

**Selection Process**

“Selection Process” shall have the same meaning as the 'Bid Process'.

THE WORDS AND EXPRESSIONS BEGINNING WITH CAPITAL LETTERS AND DEFINED IN THIS DOCUMENT SHALL, UNLESS REPUGNANT TO THE CONTEXT, HAVE THE MEANING ASCRIBED THERETO HEREIN.

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## Disclaimer

The information contained in this Request for Proposal document (the "RFP") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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

# 1. Introduction

## 1.1 Background

### 1.1.1. Project Background & Introduction

Chandigarh as a Smart City, has a vision for encouraging public safety and security for the people of the city which is essential to achieve the goal of making the city liveable with a safe transportation system. According to the Smart City Proposal Report of Chandigarh, the goal is to introduce low carbon mobility options along with the promotion of last-mile connectivity (through e-rickshaws, Public Bike Sharing programs), elderly & handicap friendly streets, more walkable and cycle friendly streets.

### 1.1.2. Need for the Project

There are three key objectives of this project that are enlisted below:

- I. The primary objective is to encourage last mile connectivity thereby promoting low carbon mobility along with efficient and effective public transit system.
- II. The secondary objective is to promote non-motorized transport by creating a public bicycle scheme in order to avoid motorized transport for short trips.
- III. The final objective is to make the entire city sustainable and upholding a healthy life of the citizens.

### 1.1.3. The Site Location

The Public Bike Sharing Scheme in Chandigarh will be implemented for the entire city boundary of Chandigarh having a total area of 114 sq. km. 617 bicycle docking stations have been identified covering the entire city on the basis of primary surveys. The Maps of the identified Cycle Docking Stations has been placed as schedules of volume III of this RFP.

### 1.1.4. The Project

The Capital and Operational Cost of the project has to be borne by the Concessionaire. Capital costs includes total cost of the system—including stations, docks, bikes, redistribution equipment, the control centre, and other equipment.

Operation and maintenance shall include the cost of operation, daily maintenance, repairing, spare parts, consumables and other expenses to be borne by the Concessionaire assigned the project including the marketing expenses to fulfil the service level standards under this RFP.

### 1.1.5. Facilities Proposed to be Incorporated by the Successful Bidder in the Project

The Successful Bidder has to provide efficient PBS system including but not limited to following:

- Bicycles
- Parking Stations with Docks/ Locking posts
- Central Control System
- Infrastructure for bicycle Redistribution
- Depots/ Workshops
- User Registration Infrastructure
- Fare Collection System
- User Information System
- Advertisement Space
- Mobile App

### 1.1.6. The Contour of the Project

The Successful Bidder shall operate PBS system having minimum 5000 bicycles and 617 Docking Stations in the city as per the conditions laid out in this RFP. The assessment of actual costs, however, will have to be made by the Bidders. Complete PBS system must be in place within 12 months from the Appointed Date and operated and maintained thereafter by the Successful Bidder as defined in Concession Agreement. The Selected Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate as such prior to execution of the agreement (the "Concessionaire"), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of an agreement for a period of 11 (Eleven) years (the "Concession Agreement") to be entered into between the Selected Bidder/Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

### 1.1.7. Implementation Period

The PBS system is proposed to be completed by the Bidder within a period of 12 months from the Appointed Date.

### 1.1.8. Development Mode

The Project is proposed to be developed on Design, Build, Finance, Operate and Transfer Basis (**DBFOT**).

### 1.1.9. Annual Concession Fee

In lieu of the development and operational rights of the site, the Successful Bidder shall provide an Annual Concession Fee to the Authority.

### 1.1.10. Advertisement / Hoarding Charges

During the implementation period, the Bidder is not allowed to put /display any kind of advertisement/ hoarding at bicycle and proposed bicycle docking stations. The Successful Bidder shall be allowed to display advertisement and collect advertisement revenue only after successfully achieving COD for the project.

### 1.1.11. Tie-Up

The Successful Bidder shall ensure operation and maintenance of the PBS system as per the minimum industry standards prescribed in agreement and guidelines issued by the Authority and the Government time to time. The Successful Bidder may have tie-up for advertisements and other support but not the operations of bicycles.

### 1.1.12. Conformation with Bye Laws

Bidders shall ensure that the design of entire Project facility conforms to the provisions of concerned development authorities, Bye-laws, requirements of all statutory/regulatory bodies in respect of fire hazard, lighting requirement, safety, security, evacuation, alarm etc. during disaster. The Project shall conform with the norms of the National Disaster Management Authority for the seismic zone in which the Project falls.

### 1.1.13. Statutory Charges

The Successful Bidder shall pay all statutory charges to the concerned authority. It is to mention here that no advertisement fee shall be charged separately on account of displaying advertisement as this project has been exempted from the purview of the Chandigarh Advertisement Control Order 1954.

### 1.1.14. Project Approvals

Bidder will be responsible to obtain all approvals from statutory & regulatory authorities in respect of Plan of the Project and/or its facilities to be constructed by it.

### 1.1.15. Scope of Work

The Project envisages the following scope of work:

- a. Implementation of PBS system with minimum required facilities listed in Schedule of Draft Concession Agreement and Clause 1.1.5 at the proposed Site location.
- b. Pay in advance the **Annual Concession Fee** in the manner as described in Clause 1.1.9.

### 1.1.16. Annual Taxes, Fee, Rates & Duties

The Bidder shall bear / pay all applicable taxes, fees, rates and duties in relation to the Project at all time during and after the construction.

## 1.2. Brief Description of the Bidding Process

- 1.2.1. The Authority Invites Request for Proposal (RFP) from interested parties to participate in the Bid Process. The Bid Proposal of only competent Bidders, who satisfy the eligibility criteria prescribed in the document and furnish the details as per terms and conditions stated in this document, shall be opened for the purpose of selecting the Successful Bidder for the Project. The bid process is single Stage three folders Quality Cum Cost Based Selection Process. The weightage given to the technical and financial score will be 70% and 30% respectively. The contract will be awarded to the bidder scoring maximum marks after technical and financial valuations as per qualifying criteria. The submission of Bids by interested parties in response to the Bid Document would be required to be in three folders as indicated below on e-procurement website:

**Folder A: Document Fee & Bid Security**

**Folder B: Technical Proposal (Part 1 & Part 2)**

**Folder C: Financial Proposal as per Prescribed Data**

- 1.2.2. The Bid shall be valid for a period of not less than 180 days from the date specified in Clause 1.2.11 for submission of bids (the "Bid Due Date").
- 1.2.3. The Bidding Documents include the draft Concession Agreement for the Project. The aforesaid documents and any addenda issued subsequent to this RFP Document, or modified RFP documents but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.4. A Bidder is required to deposit, along with its Bid, a Bid Security equivalent to Rs. 20 lakhs (Rupees Twenty lakhs only) refundable not later than 60 (Sixty) days from the bid due date, except in the case of the selected bidder whose Bids Security shall be retained till it has provided a Performance Security under the Concession Agreement, The Bidders will have to provide Bid Security in the form of a demand draft or RTGS acceptable to the Authority, and in such event, the validity period of the demand draft, shall not be less than 90 (ninety) days from the Bid Due Date for the purposes of encashment thereof by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5. Generally, the Successful Bidder shall be the bidder with highest total score. The Authority may, in its discretion, invite fresh Bids from all Bidders or annul the Bidding Process, in case bidder with highest score withdraws or is not selected for any reason.
- 1.2.6. Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.
- 1.2.7. In first stage, Folder A will be opened and checked for document fee and bid security. If found in order, each bid will be first evaluated for minimum eligibility as per clause 2.2.3 part 1. Only qualified bids from part 1 will be considered for detailed technical evaluation in part 2. In stage

three, commercial bids for qualified bidders in stage two will be opened. Subject to Clause 2.19, the Project will be awarded to the Bidder scoring highest score.

**1.2.8.** The Concessionaire will be entitled to levy and charge User Charges from users of the Project, as prescribed in the RFP document.

**1.2.9.** Further, other details of the process and the terms thereof are spelt out in this RFP.

**1.2.10.** Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.14.5 below. The envelopes/ communication shall clearly bear the following identification/ title: "Queries/Request for Additional Information: RFP for Engagement of Agency for Design, Build, Operate, Finance & Transfer Public Bike Sharing System in Chandigarh on PPP Mode".

**1.2.11.** Schedule of Bidding Process:

The Authority shall endeavour to adhere to the following schedule:

<b>Event Description</b>	<b>Date</b>
<b>1</b> Start Date for Online purchase of E-Tender Document	31 <sup>st</sup> December 2018 from 03:00 PM
<b>2</b> Last date for receiving queries	14 <sup>th</sup> January 2019 at 03:00 PM
<b>3</b> Pre-Bid meeting	15 <sup>th</sup> January 2019 at 11:00 AM
<b>4</b> Bid Due Date	22 <sup>nd</sup> January 2019 at 03:00 PM
<b>5</b> Opening of Technical Proposal	22 <sup>nd</sup> January 2019 at 04:00 PM
<b>6</b> Presentation by Bidders	To be informed later
<b>7</b> Opening of Financial Proposal	To be informed later to the TECHNICALLY QUALIFIED bidders
<b>8</b> Letter of Award (LoA)	To be informed later
<b>9</b> Signing of Concession Agreement	Within 45 days of issue of LoA

## 2. Selection Process and Instructions to Bidders

### A. *General*

#### 2.1. Scope of Proposal

- 2.1.1.** The Authority wishes to receive Proposals from experienced and capable Bidders in respect of the Project.
- 2.1.2.** The Financial Proposals of only those Bidders shall be opened who qualify the technical eligibility criteria as laid down herein.
- 2.1.3.** Qualification will be based on the assessment of Technical and Financial capability of the Bidders in commissioning, operating and maintaining the Project Facilities.

#### 2.2. Eligible Bidders

- 2.2.1.** For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:
  - a.** The Bidder may be a single entity or a group of entities (the "Consortium"), joining together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
  - b.** A Bidder may be a natural person, private entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.2 below.
- 2.2.2.** Where the Bidder is a single entity or a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956/ 2013 (the "SPV"), to execute the Concession Agreement and implement the Project. In case of single bidder, he will hold not less equity share holding of at least 51% (fifty-one per cent) of the paid up and subscribed equity of the SPV during the concession period and in case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
  - a.** Number of members in a consortium shall not exceed 3 (three);
  - b.** Subject to the provisions of clause (a) above, the Proposal should contain the information required for each member of the Consortium;
  - c.** Members of the Consortium shall nominate one member as the lead member (the "Lead Member"), who shall have an equity share holding of at least 51% (fifty-one per cent) of the paid up and subscribed equity of the SPV during the concession period. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix IV, signed by all the other members of the Consortium;
  - d.** All other members of the Consortium, whose experience will be evaluated for the purposes of this RFP, shall legally and beneficially hold not less than 20 % (twenty per cent) of the paid up & subscribed equity share capital of the Concessionaire till a period of 5 (five) years from the Project Construction Completion Date.
  - e.** The Proposal should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;

- f. An individual Bidder cannot at the same time be member of any other Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for qualification;
- g. The members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- h. Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix VI (the "Jt. Bidding Agreement"), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Proposal, shall, inter alia:
  - i. Convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
  - ii. Clearly outline the proposed roles and responsibilities, if any, of each member;
  - iii. Commit the minimum equity stake to be held by each member;
  - iv. Commit that each of the members except lead member, whose experience will be evaluated for the purposes of this RFP, shall subscribe for 20% (twenty per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 5 (five) years from the Project Construction Completion Date, hold equity share capital not less than 20% (twenty per cent) of the subscribed and paid up equity share capital of the SPV;
  - v. Members of the Consortium undertake that they shall collectively hold at least 100% (hundred per cent) of the subscribed and paid up equity of the SPV at all times until the fifth anniversary of the Project Construction Completion Date; and
  - vi. Lead member shall at least maintain 51% (fifty-one per cent) of the paid up and subscribed equity of the SPV during the concession period.
  - vii. Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project in accordance with the Concession Agreement; and
- i. Except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

### 2.2.3. Minimum Eligibility Criteria

To be eligible for pre-qualification and short-listing, the Bidders shall have to satisfy the following conditions of eligibility:

#### Part 1

- a. **Technical Capacity:** For demonstrating technical capacity and experience (the "Technical Capacity"),  
The Bidder shall have developed and operated at least 48,000 bicycle months for continuous period of 12 months over the past 7 (seven) years preceding the Bid Due Date.

#### Eligible Projects:

1. Projects completed during the last seven years preceding the Bid Due Date shall only be considered.

2. In case of Consortium, the consortium as a whole shall qualify the Technical Capacity stated above.

**Bicycle Month – Illustration:**

For a Firm, Bicycle month will be calculated as per illustration given below:

Project A			
	No. of Months of Operations During the Year	No. of Bicycles operation during the proposed Period	Bicycle Months at the end of Period
<b>Project 1</b>	12	500	6000
<b>Project 2</b>	6	1500	9000
<b>Project 3</b>	10	2000	20000
<b>Total Bicycle Months for Project A</b>			<b>35000</b>

Note: Bidders are not required to calculate bicycle month. Each has to provide information as per Annex II of Annexure 1.

**b. Financial Capacity:**

- 1. Turnover:** The Bidder shall have an average annual turnover of at least Rs. 11.5 crore (Rupees Eleven Crores Fifty-Five Only) in last 3 Financial Year (2015 - 16, 2016 – 17, 2017-18) from PBS system.
- 2. Net Worth:** The Bidder shall have a minimum Net Worth of Rs. 5.75 crore (Rupees Five Crores Seventy-Five Lakhs Only) at the end of last financial year i.e. 2017-18.

**c. Make in India**

- The Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion has issued Public Procurement (Preference to Make in India), Order 2017 vide its Notifications No P-45021/2/2017-B.E.II dated 15.06.2018 and No P-45021/2/2017-B.E.II dated 28.05.2018 to encourage Make in India and to promote manufacturing and production of goods and services in India. Provisions of the above Order and modifications made from time to time thereof are applicable to this tender. The Minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be as per the provisions of the above Order. The guidelines mentioned in the abovementioned Order should be strictly adhered to by the bidder. The Copy of letter no – K- 14012/101(17)/2018-SC-III-A dated 3<sup>rd</sup> Oct 2018 issued by Govt. of India, Ministry of Housing and Urban Affairs regarding subject cited as ' *Promoting Made in India bicycles for Public Bike Sharing Projects under Smart City Mission* ' along with the copy of the Public Procurement (Preference to Make in India), Order 2017 issued by the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion vide its Notifications No P-45021/2/2017-B.E.II dated 28.05.2018 (Revision of Order dated 15<sup>th</sup> June 2017) is enclosed as Appendix - IX .
- The Bidder participating in the tendering process at the time of tender, bidding or solicitation shall submit an undertaking in their company's letterhead (self-certification) mentioning that the item offered meets the minimum local content and shall give the details of the location(s) at which the local value addition is made (as per Appendix - X).
- The Bidder participating in the RFP has to submit an undertaking (as per Appendix - X) mentioning that the domestic value addition in Bill of Material is \_\_\_% for its quoted items and the conditions as mentioned are to be strictly adhered to as per notification issued by Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion.

- 2.2.4.** In case of Consortium, the Lead Member shall have to demonstrate 100% (one hundred percent) of the Financial Capacity stated above. In case of a Consortium, the combined technical capability of those Members, who have and shall continue to have an equity share of at least

20% (twenty per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 5 (five) years from the Project Construction Completion Date, hold equity share capital not less than 20% (twenty per cent) of the subscribed and paid up equity of the SPV.

**2.2.5.** The Bidders shall enclose with its letter comprising the bid, to be submitted as per the format at Appendix I, complete with its Annexes, the following:

- i. Certificate(s) from its statutory auditors<sup>1</sup> or the concerned client(s) stating the number of bicycles deployed in each year in a project commissioned during the past 7 (seven) years in respect of the projects specified in paragraph 2.2.3 (a) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the minimum 26% equity share for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- ii. certificate(s) from its statutory auditors specifying the average annual turnover of the Bidder (for FY 2015-16, FY 2016-17, FY 2017-18) and net worth at the end of last financial year (FY 2017-18).

## Part 2

**2.2.6.** The bidders qualifying in part 1 will be further evaluated as given below as part of QCBS Criteria<sup>2</sup>:

S. No.	Parameter	Description	Break up of Score	Marks
1.	Bicycle	Aspects of the Bike Design that result in improvements for the users. Examples of such aspects include, but are not limited to: Lightweight Bikes Embedded GPS Devices etc.	<ul style="list-style-type: none"> <li>▪ Design of bike- 5 marks               <ul style="list-style-type: none"> <li>○ Lightweight/ braking system- 5 marks</li> </ul> </li> <li>▪ Locking system/ theft proof measures- 5 marks</li> <li>▪ GPRS device, etc.- 5 marks</li> </ul>	20
2.	Station	Aspects of the Station Design that result in improvements for the user, the concessionaire or CSCL Simple attractive design of the station	<ul style="list-style-type: none"> <li>▪ Station Design Architecture/vandalism proof/ robust outdoor material- 5 marks</li> <li>▪ Innovative solutions- 5 marks</li> <li>▪ Use of minimum space-5 Marks</li> </ul>	15
3.	Docks	Should be fully automatic and compatible with the main server at Central Control Room	<ul style="list-style-type: none"> <li>▪ Design/ material- 2.5 marks</li> <li>▪ Use of technology- 2.5 mark</li> </ul>	5
4.	ITS Strategy	Aspect of the ITS system enable to integrate with other new modes of transport. Reporting structure which aids in planning for expansion. Reporting structure which helps CSCL to	<ul style="list-style-type: none"> <li>▪ Proposed IT system above minimum technical specifications – 5 marks</li> <li>▪ Plan for integration with other modes of transport- 5 marks</li> </ul>	15

<sup>1</sup> In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.5 (ii). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP

<sup>2</sup> Bidder will be evaluated on the basis of documentary evidences in form of proposed Approach, Methodology and implementation plan etc. as part of technical proposal part 2.

S. No.	Parameter	Description	Break up of Score	Marks
		monitor service level benchmarks with no manual inspection	<ul style="list-style-type: none"> <li>▪ Expansion plan- 5 marks</li> </ul>	
5.	Awareness and User Generation Campaign	The methodology for awareness and user generation including: Innovative methods used for generation of user interest and the target groups for each Campaign The rationale for choosing the methods chosen The detailed plan along with timelines for the campaign	<ul style="list-style-type: none"> <li>▪ Plan for promoting PBS, IEC activities, out of the box strategy – 2.5 marks</li> <li>▪ Timeline for awareness plan- 2.5 marks</li> <li>▪ Creative utilisation of advertisement space-2.5 marks</li> <li>▪ Branding-2.5 marks</li> </ul>	10
6.	Operation Plan	Aspects of the Operations and HR plan which is over and above the minimum specifications. Efficient plan on redistribution of Bikes. Use of environment friendly vehicles for Bike distribution	<ul style="list-style-type: none"> <li>▪ Operational plan, optimal utilisation - 2.5 marks</li> <li>▪ Redistribution vehicle and redistribution plan - 2.5 marks</li> </ul>	5
7.	Prior Experience	Any experience in PBS planning, development and operation in last 7 years preceding bid due date.	Experience of total <ul style="list-style-type: none"> <li>▪ 60000 or above bicycle month and above - 10 marks</li> <li>▪ 48000 bicycle month - 5 marks</li> <li>▪ In between- linear interpolation</li> </ul>	10
8.	Make in India	Bicycles made in India		5
9.	Turn Over	Average Annual Turn Over in Last Three 3 Financial Years (FY 2015-16, FY 2016-17, FY 2017-*18) for Sole Bidder or Lead Bidder in case of Consortium	Average Annual Turn Over <ul style="list-style-type: none"> <li>▪ Rs. 20 Cr. &amp; Above – 15 Marks</li> <li>▪ Rs. 10 Cr. – 10 Marks</li> <li>▪ In between – Linear Interpolation</li> </ul>	15

### 2.3.General Terms of Bidding

- 2.3.1.** A Bidder is eligible to submit only one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.3.2.** Notwithstanding anything to the contrary contained in the RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.3.3.** The Financial Proposal shall be furnished as per the E-Bid format available on E-Tendering website i.e. <http://etenders.chd.nic.in/nicgep>.
- 2.3.4.** The Financial Proposal shall be the Annual Concession Fee (exclusive of GST if applicable thereon, which shall be paid extra) to be quoted by the Bidder. Annual Concession Fee shall be payable by the Concessionaire to the Authority, as per the terms and conditions of the RFP and the provisions of the Concession Agreement.
- 2.3.5.** The Bidder shall deposit a Bid Security equivalent to Rs.20 lakhs (Rupees Twenty lakhs only) in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security as a Demand draft or Bank Transfer through RTGS.

- 2.3.6.** The validity period of the Demand Draft shall not be less than 90 days from the Bid Due Date, which shall be extended by the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not later than 60 (Sixty) days from the Bid Due Date except in the case of selected bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement.
- 2.3.7.** The Bidder should submit a Power of Attorney as per the format at Appendix III, authorising the signatory of the Bid to commit the Bidder.
- 2.3.8.** In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix IV.
- 2.3.9.** Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.3.10.** The Proposal and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.3.11.** The Bidding Documents including the RFP and all attached documents are and shall remain the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.
- 2.3.12.** A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder's proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:
- i.** such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 1% of its paid up and subscribed capital; or
  - ii.** a constituent of such Bidder is also a constituent of another Bidder; or
  - iii.** such Bidder receives or has received any direct or indirect subsidy from another Bidder, or has provided any such subsidy to any other Bidder; or
  - iv.** such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
  - v.** such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Bid of either or each of the other Bidder; or
  - vi.** such Bidder has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- 2.3.13.** A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the

event any such adviser is engaged by the Successful Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Successful Bidder or Concessionaire for the same.

- 2.3.14.** The RFP is not transferable.
- 2.3.15.** Any award of Concession pursuant to the RFP shall be subject to the terms of Bidding Documents.
- 2.3.16.** Deleted
- 2.3.17.** Any entity, or any entity controlled by it, which has been barred by the Central/ State Government from participating in any project (BOT or otherwise) would not be eligible to submit a Proposal, either individually or as member of a Consortium if the bar subsists as on the date of Proposal. The bidders shall have to furnish an affidavit duly attested by Notary Public/ First Class Magistrate, issued after the date of publication of tender as per appendix v.
- 2.3.18.** A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder, Consortium Member or Associate.
- 2.3.19.** In computing the Technical Capacity and Financial Capacity of the Bidder/ Consortium Members under Clauses 2.2.3 to 2.2.6, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder. In case the experience shown is that of bidder's associates, then the following additional documents are required:
- a. Certificate signed by statutory auditor of the bidder certifying that the entity whose experience is shown is associate of concerned company as per the definition.
  - b. Shareholding pattern of bidding entity as per audit report.
  - c. The bidder has to submit format attached in Appendix VII & VIII
- 2.3.20.** For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "**Associate**"). As used in this definition, the expression "**control**" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.
- 2.3.21.** Deleted

## 2.4. Change in Composition of the Consortium

- 2.4.1.** Change in the composition of a Consortium will not be permitted by the Authority during the Bidding process.

## 2.5. Change in Ownership

- 2.5.1.** By submitting the Bid, the Bidder acknowledges and undertakes that the Lead Member shall continue to hold minimum 51% of the equity during the entire concession period and each of the other Consortium Members whose eligibility have been evaluated shall continue to hold at least 20% (twenty per cent) of the equity of the Concessionaire until the fifth anniversary of the Project Construction Completion Date is achieved under and in accordance with the provisions of the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.5.1 shall apply only when the Bidder is a Consortium.
- 2.5.2.** By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity is being taken into consideration for the purposes of evaluation of eligibility conditions under and in accordance with the RFP, the Bidder shall inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Successful Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to appointed date of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

## 2.6. Cost of Bidding

- 2.6.1.** The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## 2.7. Site Visit and Verification of Information

- 2.7.1.** Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.
- 2.7.2.** It shall be deemed that by submitting a Bid, the Bidder has:
- a.** made a complete and careful examination of the Bidding Documents;
  - b.** received all relevant information requested from the Authority;
  - c.** acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.7.1 above;



for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

- 2.8.5.** The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure of the Authority to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

## *B. Documents*

### 2.9. Contents of the RFP

- 2.9.1.** This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Bids	
<b>Section 1</b>	Introduction
<b>Section 2</b>	Selection Process and Instructions to Bidders
<b>Section 3</b>	Evaluation of Bids
<b>Section 4</b>	Fraud and Corrupt Practices
<b>Section 5</b>	Pre-Bid Conference
<b>Section 6</b>	Miscellaneous

#### **Appendices**

- I.** Letter Comprising the Bid
- II.** Financial Proposal
- III.** Power of Attorney for signing of Proposal
- IV.** Power of Attorney for Lead Member of Consortium
- V.** Non – Debarring Affidavit
- VI.** Joint Bidding Agreement

- 2.9.2.** The draft Concession Agreement to be provided by the Authority as part of the Bid Documents shall be deemed to be part of this RFP.

### 2.10. Clarifications

- 2.10.1.** Bidders requiring any clarification on the RFP may notify the Authority in writing and by e-mail in accordance with Clause 1.2.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.2.11. The responses will be uploaded in the website <http://etenders.chd.nic.in/nicgep>.
- 2.10.2.** The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.10.3.** The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

### 2.11. Amendment / Modification of RFP

- 2.11.1.** At any time prior to the deadline for submission of Bids, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

2.11.2. Any Addendum/Modification thus issued will be uploaded in the website <http://etenders.chd.nic.in/nicgep>.

2.11.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

### C. *Preparation and Submission of Bids*

#### 2.12. Language

2.12.1. The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Proposal may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

#### 2.13. Format and Signing of Bid

2.13.1. The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.

2.13.2. The Bid shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink and the same shall be uploaded on e-tendering website. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid and the same shall be uploaded on e-tendering website.

2.13.3. The Bid shall contain page numbers.

#### 2.14. Submission of Bids

2.14.1. The Bidder shall prepare both technical and Financial Proposal in the format specified at Appendix of this RFP and upload on <http://etenders.chd.nic.in/nicgep>.

2.14.2. The documents of Technical Proposal shall have as prescribed hereunder -

##### **a. Folder A: Document Fee & Bid Security**

- i. Document fee Rs. 25,000/- (Rupees Twenty-Five Thousands only) in the form of crossed Bank Demand Draft in favour of **Chandigarh Smart City Limited** payable at **Chandigarh** or by Bank Transfer through RTGS in the A/c of CSCL. The Scanned copy of Demand Draft or proof of bank transfer of requisite amount of Bid document shall be submitted online. The Original Demand Draft shall be submitted at the office of CSCL i.e. Second Floor, New Bridge Building no 2, Near TDI Mall, Sector 17 A, Chandigarh on the date of opening of Technical Bid.
- ii. Bid Security Rs.20 lakhs (Rupees Twenty lakhs only) in the form of crossed Bank Demand Draft in favour of **Chandigarh Smart City Limited** payable at **Chandigarh**. The Scanned copy of Demand Draft or proof of bank transfer of requisite amount of Bid Security shall be submitted online. The Original Demand Draft shall be submitted at the office of CSCL i.e. Second Floor, Building no 2, Near TDI Mall, Sector 17 A, Chandigarh on the date of opening of Technical Bid.

##### **b. Folder B: Technical Proposal**

- i. Letter comprising the Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents.

- ii. Approach, Methodology & Implementation Plan as per clause 2.2.6;
- iii. Power of Attorney for signing of Bid in the prescribed format (Appendix III);
- iv. If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix IV);
- v. Non-Debaring Affidavit in the prescribed format (Appendix V);
- vi. Certified copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix VI;
- vii. Certified copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- viii. Certified copies of Bidder's duly audited balance sheet and profit and loss account for the preceding three years; and
- ix. A copy of the RFP document along with addendum, if any, with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause 2.14.2 (b) (ii) hereinabove.

### **c. Folder C: Financial Proposal**

- i. Financial Bid as per E-Bid format available on e – tender website only.

Proposal should contain information and details about each Member of the Consortium, wherever required as per the RFP.

**2.14.3.** Deleted.

**2.14.4.** All the documents specified in Clauses 2.14.1, and 2.14.2 shall be uploaded on the e-procurement website <http://etenders.chd.nic.in/nicgep>.

**2.14.5.** All communication shall be addressed to:

**The Chief Executive Officer**

Chandigarh Smart City Limited

Second Floor, New Bridge Building no 2, Near TDI Mall, Sector 17 A, Chandigarh – 160017

E-Mail: smartcity.chd@nic.in

**2.14.6.** Deleted.

**2.14.7.** Bids submitted by hard copy, fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

## **2.15. Bid Due Date**

**2.15.1.** Bids should be uploaded on or before the specified time on Bid Due Date on the e-procurement portal.

**2.15.2.** The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Bidders.

## **2.16. Late Bids**

**2.16.1.** Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## **2.17. Contents of the Bid**

**2.17.1.** The Bid shall be furnished in the form of - Technical Proposal and Financial Proposal. The contents of Technical Proposal shall be as mentioned in Clause 2.14.2 Financial Proposal shall be as per the E-Bid format available on E-Tendering website i.e. <http://etenders.chd.nic.in/nicgep> and shall consist of Annual Concession Fee to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Annual Concession Fee offered by

him, to undertake the Project in accordance with the RFP and the provisions of the Concession Agreement.

- 2.17.2. The Project will be awarded to the Bidder scoring highest marks in Total Score.
- 2.17.3. The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 2.17.4. The proposed Concession Agreement shall be deemed to be part of the Bid.

## 2.18. Modifications/ Substitution/ Withdrawal of Bids

- 2.18.1. The Bidder may modify, substitute or withdraw its Bid after submission prior to Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.18.2. Deleted.
- 2.18.3. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

## 2.19. Rejection of Bids

- 2.19.1. The Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for the Authority to accept any Bid or to give any reasons for their decision.
- 2.19.2. The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

## 2.20. Validity of Bids

- 2.20.1. The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids shall be extended for a specified additional period at the request of the Authority. A bidder agreeing to the request will not be allowed to modify his proposal, but would be required to extend the validity of his bid security for the period of extension. The bid validity period of the successful bidder shall be extended till the date of execution of Concession Agreement.

## 2.21. Confidentiality

- 2.21.1. Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority.

## 2.22. Correspondence with the Bidder

- 2.22.1. The Authority shall not entertain any correspondence from any Bidder in relation to acceptance or rejection of any Bid.

### D. Bid Security

## 2.23. Bid Security

- 2.23.1. The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.3.5 and 2.3.6 hereinabove in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour

of **Chandigarh Smart City Limited** and payable at **Chandigarh** (the "Demand Draft") or by Bank Transfer through RTGS in the A/c of CSCL (A/c No.: 50100074016350; A/c Name: Chandigarh Smart City LTD; Bank Name & Address: HDFC Bank, SCO 78-79, Sec 8C, Chandigarh (UT) Chandigarh-160018 ; IFSC: HDFC0000107). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

- 2.23.2.** Any Bid not accompanied by the Bid Security shall be rejected by the Authority as non-responsive.
- 2.23.3.** Save as provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, not later than 60 (Sixty) days from the bid due date on acceptance of the Bid of the Successful Bidder or when the Bidding process is cancelled by the Authority.
- 2.23.4.** The Successful Bidder's Bid Security will be returned, without any interest, upon the Bidder signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Successful Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.23.5.** The Authority shall be entitled to forfeit and appropriate the Bid Security as mutually agreed compensation / damages to the Authority in any of the events specified in Clause 2.23.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.23.6.** The Bid Security shall be forfeited and appropriated by the Authority as mutually agreed compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise, under the following conditions:
  - I.** If a Bidder submits a non-responsive Bid;
  - II.** If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
  - III.** If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
  - IV.** In the case of Successful Bidder, if it fails within the specified time limit -
    - a. to sign the Concession Agreement and/or
    - b. to furnish the Performance Security within the period prescribed therefore in the LoA/ Concession Agreement; or
  - V.** In case the Successful Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

## 3. Evaluation of Bids

### 3.1. Opening and Evaluation of Bids

- 3.1.1.** The Authority shall open the Technical Proposals on the Bid Due Date, at the place specified in Clause 2.14.5 and in the presence of the Bidders who choose to attend.
- 3.1.2.** The Authority shall open Financial Proposals of only those Bidders who meet the eligibility criteria specified in Clause 2.2.3, 2.2.4 and 2.2.5 at such date and time as intimated by the Authority.
- 3.1.3.** The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.4.** To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

### 3.2. Evaluation of Technical Proposal

- 3.2.1.** The bidder's competence and capacity shall be evaluated on the basis of following parameters:
  - a.** Technical Capacity & Financial Capacity Part 1;
  - b.** Technical Capacity Part 2 (Only qualified bidders on the basis of Part 1)

### 3.3. Tests of Responsiveness

- 3.3.1.** Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
  - a.** Technical Proposal is received as specified in Clause 2.14.2;
  - b.** Financial Proposal is received as per the E-Bid format available on E-Tendering website;
  - c.** it is received by the Bid Due Date including any extension thereof;
  - d.** it is signed and marked as stipulated in Clauses 2.13 and 2.14;
  - e.** it is accompanied by the Bid Security as specified in Clause 2.3.5 & 2.23;
  - f.** it is accompanied by the Power(s) of Attorney as specified in Clauses 2.3.7 and 2.3.8, as the case may be;
  - g.** it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
  - h.** it does not contain any condition or qualification; and

### 3.4. Details of Experience

- 3.4.1.** The Bidder must furnish the details of Eligible Experience for the last 7 (seven) years immediately preceding the Bid Due Date.
- 3.4.2.** The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex ii of Appendix I.
- 3.4.3.** The Bidder must furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex iv of Appendix I.

### 3.5. Financial Information for Purposes of Evaluation

- 3.5.1.** The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.

**3.5.2.** In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.

**3.5.3.** The Bidder must establish the average annual turnover and minimum Net Worth specified in Clause 2.2.3, and provide details as per format at Annex iii of Appendix I.

**3.5.3.1. Evaluation of Financial Bids**

Commercial Bids of all evaluated bidders from part 2 bid evaluation process will be opened. The highest financial proposal should be given a financial score of 100 percent. The financial scores of other proposals should be determined proportionately. Financial Score of financial Bid is calculated on the basis of the formula given below:

Financial Score of ACF quoted in Financial Bid =  $\frac{\text{Offer Bid}}{\text{Highest Bid}} \times 100$

Highest Bid - Highest ACF offer of the Technically Qualified Bidders

Offer Bid - Offer of the bidder being evaluated

### 3.6. Technical Capacity for Purposes of Evaluation

**3.6.1.** The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

**3.6.2.** Eligible Experience in respect of each category shall be measured only for Eligible Projects.

**3.6.3.** Deleted.

**3.6.4.** Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

**3.6.5.** The entity claiming experience shall, during the last 7 (seven) years preceding the Bid Due Date, have (i) paid for development of the project (excluding the cost of land), and/or (ii) collected and appropriated the revenues from the project.

### 3.7. Shortlisting of Bidders

**3.7.1.** After the Technical evaluation, the evaluation committee will evaluate each of the Technically Qualified bidders' response on the basis of technical and commercial parameter. The weightage of the technical and commercial parameter will be in ratio of 70:30 respectively.

**3.7.2.** For calculation of the combined Technical and Price Score of all bidders, following formula will be used:

Total Score = (Technical Score x 0.7) + (Financial Score of ACF quoted in Financial Bid x 0.3)

### 3.8. Selection of Bidder

**3.8.1.** The Bidder whose proposal secures the highest combined score shall be declared as the Successful Bidder (the "Successful Bidder")

**3.8.2.** In the event that two or more Bidders obtain the same highest score in the final ranking (the "Tie Bidders"), the Authority shall identify the proposal with the highest technical score will be ranked first.

**3.8.3.** In the event that the selected Bidder withdraws or is disqualified for any reason in the first instance, the Authority may go for fresh bidding process.

**3.8.4.** Deleted.

- 3.8.5.** After selection, a Letter of Award (the "LOA") shall be issued by the Authority to the Successful Bidder and the Successful Bidder shall, within 7 (seven) days of the issue of the LOA, sign and return the LOA in acknowledgement thereof. In the event the LOA duly signed by the Successful Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Successful Bidder to acknowledge the LOA.
- 3.8.6.** Deleted.
- 3.8.7.** After acknowledgement of the LOA as aforesaid by the Successful Bidder, it shall execute the Concession Agreement within the period prescribed period in Clause 1.2.11. The Successful Bidder shall not be entitled to seek any deviation in the Concession Agreement.
- 3.8.8.** The Successful Bidder shall have submitted the Performance Security in form of irrevocable and unconditional Bank Guarantee for a sum equivalent to Rs. 1.25 Cr (Rupees One Crore and Twenty-Five Lakhs only). to be renewed after every 3 years during the concession period.

### 3.9. Contacts During Bid Evaluation

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

## 4. Fraud and Corrupt Practices

- 4.1.** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without the Authority being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 4.2.** Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3.** For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- a. "corrupt practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
  - b. "fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

- c. **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d. **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 5. Pre-Bid Conference

- 5.1. Pre-Bid conference of the Bidders shall be convened on \_\_\_\_\_, 2018 at \_\_\_\_ hours in the office of Second Floor, New Bridge Building no 2, Near TDI Mall, Sector 17 A, Chandigarh – 160017. A maximum of Three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2. During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## 6. Miscellaneous

- 6.1.** The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Chandigarh shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2.** The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a.** Suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - b.** Consult with any Bidder in order to receive clarification or further information;
  - c.** retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
  - d.** Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3.** It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

## Annexure 1: Scope of Work

As per Schedule A of Draft Concession Agreement

## Appendix I. Letter Comprising the Bid

Dated:

To,

**The Chief Executive Officer,**

Chandigarh Smart City Limited,

Second Floor, New Bridge Building no 2, Near TDI Mall, Sector 17 A, Chandigarh – 160017

**Sub: Proposal for Project - Engagement of Agency for Design, Build, Operate, Finance & Transfer Public Bike Sharing System in Chandigarh on PPP Mode**

Dear Sir / Madam,

1. With reference to the RFP document dated .....,<sup>3</sup> I/we, having examined the RFP document and understood its contents, hereby submit my/our Proposal for the aforesaid project. The Proposal is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Proposal and the documents accompanying such Proposal of the Bidders, and we certify that all information provided in the Proposal and in Appendix I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Proposal statement.
5. I/ We acknowledge the right of the Authority to reject our Proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:
  - a. I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Authority.
  - b. I/ We do not have any conflict of interest in accordance with Clauses 2.3.12 and 2.3.13 of the RFP document; and
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Proposal that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.19.2 of the RFP document.

<sup>3</sup> All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Technical & Financial criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a bid for the project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or have not any adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP; we shall intimate the Authority of the same immediately.
15. The Statement of Legal Capacity as per format provided at Annex v in Appendix I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of proposal and the power of attorney for Lead Member of consortium, as per format provided at Appendix III and IV respectively of the RFP, are also enclosed.
16. I/ We understand that the Successful Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956 / 2013, or shall incorporate as such prior to execution of the Concession Agreement.
17. I/ We hereby confirm that we [are in compliance of/ shall comply with] the O&M requirements specified in this RFP document.
18. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
20. I/ We certify that in terms of the RFP, my/our average annual turnover for last three financial year is Rs. .... (Rupees In words) and Net worth at the end of last financial year is Rs. .... (Rupees In words).
21. {We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement in accordance with the Concession Agreement.}<sup>4</sup>
22. I/ We agree and understand that the bid is subject to the provisions of the bidding documents. In no case, I/We shall have any claim or Right of whatsoever nature, if the project/ concession is not awarded to me/ us or our bid is not opened or rejected.

In witness thereof, I/ we submit this proposal under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

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<sup>4</sup> Omit if the Bidder is not a Consortium

Place: Name and seal of the Bidder/ Lead Member

Note: Paragraphs in parenthesis may be omitted, if not applicable, or modified as necessary.

## Annex i. Details of Bidder

1. Name:  
Country of incorporation:  
Address of the Corporate headquarters and its branch office(s), if any, in India:  
Date of incorporation and /or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:  
Name:  
Designation:  
Company:  
Address:  
Telephone Number:  
E-Mail Address:  
Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:  
Name  
Designation:  
Address:  
Phone Number:  
Fax Number:
5. In case of a Consortium:  
The information above (1-4) should be provided for all the Members of the Consortium.  
A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.2(h) should be attached to the Proposal.

Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of the Member	Role {Refer Clause 2.2.2(e)} <sup>5</sup>	Percentage of equity in the Consortium {Refer Clauses 2.2.2 (a), (d) & (h)}
1.			
2.			
3.			

The following information shall also be provided for each Member of the Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Proposal		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non- performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary)

<sup>5</sup> All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder.

Annex ii. Technical Capacity of the Bidder<sup>@</sup>

Bidder Type <sup>#</sup>	Project no <sup>**</sup>	Experience		
		Number of Cycles Deployed in a PBS Project	Operation & Maintenance Period	Year of Implementation
(1)	(2)	(3)	(4)	(5)
Single Entity Bidder	a			
	b			
	c			
	d			
Lead Member	1a			
	1b			
	1c			
	1d			
Consortium Member 2	2a			
	2b			
	2c			
	2d			
Consortium Member 3	3a			
	3b			
	3c			
	3d			

Signed & stamped by Statuary auditor along with membership no.

For every Project mentioned in Column 2 of table above, each bidder has to fill following format:

Project A		
Period offered for evaluation <sup>***</sup>	No. of Months of Operations during the offered period <sup>****</sup>	No. of Bicycles during the offered period

<sup>@</sup> Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.3.19.

<sup>#</sup> A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.3.19, shall be provided.

<sup>\*\*</sup> Refer Annex iv of this Appendix I. Add more rows if necessary.

<sup>\*\*\*</sup> Period offered for evaluation of cycle months must be same for all projects being proposed for evaluation

<sup>\*\*\*\*</sup> Any continuous period of 12 months during the last 7 (seven) years preceding the bid due date.

### Annex iii. Financial Capacity of the Bidder

(In Rs. crore)

Bidder type <sup>§</sup>	Net Worth	Annual Turnover		
	As on 31 <sup>st</sup> March 2018	Year 1	Year 2	Year 3
(1)		(3)	(4)	(5)
Single entity Bidder				
Consortium Member 1				
Consortium Member 2				
Consortium Member 3				
<b>AVERAGE ANNUAL TURNOVER</b>				

**Name & address of Bidder's Bankers:**

<sup>§</sup> A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

**Instructions:**

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Proposal Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. For the purposes of this RFP, the term net worth means following:
  - a. "Net worth" for company shall mean the aggregate value of the paid-up share capital and all reserves created out of profits of the company and securities premium account after deducting aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
    - i. Net Worth for Partnership Firm would mean:- [Fixed Assets +Trade Receivables + Current Assets] - [Firms Loan +Current Liabilities]
    - ii. Net worth for Trust or Society would mean: - Capital /Corpus +Free Reserves.
    - iii. Net Worth for Individual Person shall mean:- Assets (including cash) LESS All Liabilities.
    - iv. Net Worth for Sole Proprietorship would mean:- Total Assets- Total Liabilities.
3. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.2 (h) of the RFP document.
4. The Bidder shall also provide the name and address of the Bankers to the Bidder.
5. The Bidder shall provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.3.4 of the RFP document.

## Annex iv. Details of Eligible Projects

**Experience Project Code:**

Item (1)	Particulars of the Project (3)
Title & nature of the project	
Category	
a) Name of Client	
Project Location	
No. of Bicycles Deployed	
Project cost	
Date of commencement of project/ contract	
Date of completion/ commissioning	
Date of Start of O&M Period	
Date of End of O&M Period	
Equity shareholding (with period during which equity was held)	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	

Signed & stamped by Statuary auditor along with membership no.

**Instructions:**

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 2.2 & 3.6 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Proposal. Bidders should also refer to the Instructions below.
2. A separate sheet should be filled for each Eligible Project.
3. In case of projects where Operation and Maintenance or construction experience is shown, particulars such as name, address and contact details of owner / Authority / Agency (i.e., concession grantor, etc.) may be provided.
4. Provide the estimated capital cost of Eligible Project.
5. For ownership projects, the date of commissioning of the project, upon completion, should be indicated. For projects with construction experience shown, date of completion of construction should be indicated. In the case of projects under implementation, the likely date of completion or commissioning, as the case may be, shall be indicated.
6. For projects, wherever applicable, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given.
7. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
8. Certificate from the Bidder's statutory auditor or its respective clients must be furnished for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.

## Annex v. Statement of Legal Capacity

*(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)*

Ref. Date:

To,

**The Chief Executive Officer,**

Chandigarh Smart City Limited,

Second Floor, New Bridge Building no 2, Near TDI Mall, Sector 17 A, Chandigarh – 160017

Dear Sir / Madam,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Proposal) satisfy the terms and conditions laid out in the RFP document.

We have agreed that ..... (Insert member's name) will act as the Lead Member of our consortium.\*

We have agreed that ..... (Insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf\* and has been duly authorized to submit the RFP. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

---

\* Please strike out whichever is not applicable.

## Appendix II.

Deleted

**Appendix III. Power of Attorney for signing of Proposal**

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for Engagement of Agency for Design, Build, Operate, Finance & Transfer Public Bike Sharing System in Chandigarh on PPP Mode proposed or being developed by the Chandigarh Smart City Limited (the "Authority") including but not limited to signing and submission of all Proposals and other documents and writings, participate in Pre-Proposal Conference and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Proposal, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Proposal for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2

For

.....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## Appendix IV. Power of Attorney for Lead Member of Consortium

Whereas the \*\*\*\*\* ("the Authority") has invited Proposals from interested parties for the \*\*\*\*\* Project (the "Project").

Whereas, ....., ....., .....and ..... (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Proposal for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2....

For .....

(Signature)

.....

(Name & Title)

For .....

(Signature)

.....

(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

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

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed The Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## Appendix V. Undertaking/ Affidavit

(In case of Consortium to be given separately by each member)

(duly attested by Notary Public/First Class Magistrate on stamp paper of Rs. 50/-.)

I, \_\_\_\_\_ authorized signatory of M/s\_\_\_\_\_ sole proprietorship / partnership firm/  
public limited company/private limited company, having its principal place of business/registered office  
at\_\_\_\_\_ (Full Address) do hereby solemnly affirm and declare as under: -

- a) That I/We do hereby undertake that I/We have not been black listed / Debarred / suspended by any Govt. or Semi Govt. or Corporation or Private Organization during the last seven years.
- b) That I/We do hereby undertake and confirm that eligible similar works has / have not been executed through another contractor on back to back basis.
- c) That I/We do hereby undertake that no complaint / FIR has been registered / no criminal proceedings against the firm / partners of the firm or its director are pending / ongoing in any court of law regarding any offence punishable under IPC / any other law of the land applicable. If any such fact comes to the notice of the CSCL, the CSCL shall reject the tender / bid straightway without assigning any reason.
- d) That I/We do hereby undertake that he / she / Director / Partner of the firm / company / agency have never been convicted of any criminal offence.
- e) That I/ We do hereby undertake that the particulars given by me are true and correct to the best of my knowledge and belief and nothing has been concealed thereof. I am aware that in case of any discrepancy/ false statement found, it will lead to rejection of my bid / tender and CSCL will debar / blacklist the firm / agency as per policy of blacklisting issued by Chandigarh Administration vide notification dated 27-02-2009.
- f) That I/We do hereby undertake that there are no pending dues to be deposited by the agency with any Government Department / Govt. Undertaking or Board or Organization / Public Sector Undertaking anywhere in the country.
- g) That I/We do hereby undertake that in case any such violation comes to the notice of Department before the date of start of work or during the execution of work, CSCL shall be free to forfeit the entire amount of earnest money and / or performance guarantee deposited by me.

Signature of an authorized Officer of the Entity

Name:

Date:

Address:

## Appendix VI. Joint Bidding Agreement

*(To be executed on Stamp paper of appropriate value)*

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

### AMONGST

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

### AND

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

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

### WHEREAS,

- (A) Chandigarh Smart City limited (CSCL), represented by its Chief Executive Officer and having its principal offices at Second Floor, New Bridge Building no 2, Near TDI Mall, Sector 17 A, Chandigarh- 160017, (hereinafter referred to as the "CSCL" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the "**Applications**") by its Request for Proposal No. .... dated .....(the "**RFP**") Request for Proposal for "Engagement of Agency for Design, Build, Operate, Finance & Transfer Public Bike Sharing System in Chandigarh on PPP Mode" (the "**Project**").
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Proposal.

### NOW IT IS HEREBY AGREED as follows:

#### 1. Definitions and Interpretations

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

#### 2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

#### 3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "**SPV**") under the Indian Companies Act 1956/ 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

#### 4. Role of the Parties

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

a. Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the Consortium shall become effective;

b. Party of the Second Part shall be -----

c. (c) Party of the Third Part shall be -----

## 5. Joint and Several Liability

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

## 6. Shareholding in the SPV

6.1 The Parties agree that the proportion of holding among the Parties in the Consortium shall be as follows:

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that they shall comply with all holding lock-in requirements set forth in the Concession Agreement. Lead member, at any point of time throughout the concession period, cannot assign or delegate its rights, duties or obligations under the Agreement. Other member of the consortium, at any given point of time, may assign or delegate its rights, duties or obligations under the Agreement except with prior written consent of the CSCL. In such case, substitute member shall be of at least equal, in terms of Technical Capacity and/or Financial Capacity, as the case may be, to the Consortium Member who is sought to be substituted and the modified Consortium member shall continue to meet the pre-qualification and short-listing criteria for Applicants. The lead member will remain responsible for successful delivery of the project at all times throughout the concession period.

All the members shall comply with the following additional requirements:

- i. number of members in a consortium shall not exceed Three;
- ii. the Application should contain the information required for each member of the Consortium;
- iii. members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall hold a minimum stake of 51% in the Consortium throughout the concession period. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix IV, signed by all the other members of the Consortium;
- iv. All other members of the Consortium, whose experience will be evaluated for the purposes of this RFP, shall legally and beneficially hold not less than 20 % (twenty per cent) of the paid up & subscribed equity share capital of the Concessionaire till a period of 5 (five) years from the Project Construction Completion Date.
- v. All the consortium members shall collectively hold 100%.
- vi. the Application should include a brief description of the roles and responsibilities of individual consortium members, particularly with reference to financial, technical and O&M obligations;
- vii. an individual Applicant cannot at the same time be member of a Consortium applying for this project. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for this project;
- viii. undertake that each of the members of the Consortium shall have an independent, definite and separate scope of work which was allocated as per each member's field of expertise;
- ix. commit to the profit and loss sharing ratio of each member; commit that scope of work, rights, obligations and liabilities to be held by each member; specifically commit that the Lead Member shall be answerable on behalf of other members for the performance of obligations under this Agreement,

- x. include a statement to the effect that all members of the Consortium shall be severally liable for all obligations in relation to the Assignment until the completion of the Assignment in accordance with the Agreement.
- xi. members of the Consortium shall enter into this Joint Bidding Agreement, (the "Joint Bidding Agreement"), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Joint Bidding Agreement, to be submitted along with the Application, shall, inter alia, state:
  - a. that notwithstanding anything contrary contained in this RFP or the Agreement, the Lead Member shall always be liable for obligations of all the Consortium Members i.e. for both its own liability as well as the liability of other Members;
  - b. that the Lead Member shall be liable for the entire scope of work and risks involved and further shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all of their respective general obligations under this Agreement;
  - c. that each Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in the Agreement
  - d. that the Members of the Consortium shall alone be liable for all obligations of the identified sub-contractor and clearly indemnify the CSCL against any losses or third party claims arising due to the sub-contractor/consortium's default
  - e. that the proposed roles and responsibilities, if any, of each member;
  - f. the minimum holding commitment to be held by each member;
  - g. that each of the members, whose experience will be evaluated for the purposes of this RFP document, shall subscribe to 20% (twenty per cent) or more of the Consortium.
  - h. that members of the Consortium shall not dilute their holding in the Consortium throughout the concession period, except as provided in this RFP document.
  - i. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement.

## 7. Representation of the Parties

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i.) require any consent or approval not already obtained;
  - (ii.) violate any Applicable Law presently in effect and having applicability to it;
  - (iii.) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
  - (iv.) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other

instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

- (v.) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

## 8. Termination

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

## 9. Miscellaneous

- (a) This Joint Bidding Agreement shall be governed by laws of {India}.
- (b) The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

**IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS CONSULTANCY AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN**

### SIGNED, SEALED AND DELIVERED

For and on behalf of  
**PARTY OF THE FIRST PART**  
 By;  
 (Signature)  
 (Name)  
 (Designation)

For and on behalf of  
**PARTY OF THE SECOND PART**  
 By;  
 (Signature)  
 (Name)  
 (Designation)

### Notes:

- The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
- For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

## Appendix VII. Format of Agreement between Bidder and their Associate Company

*(TO BE EXECUTED ON STAMP PAPER OF REQUISITE VALUE AND NOTORISED)*

This agreement made this \_\_\_ day of \_\_\_ month \_\_\_ year by and between M/s. \_\_\_\_\_ (Fill in the Bidder's full name, constitution and registered office address) hereinafter referred to as bidder on the first part and M/s. \_\_\_\_\_ (Fill in full name, constitution and registered office address of Associate Company) hereinafter referred to as "Associate Company" of the other part:

WHEREAS

Chandigarh Smart City Limited (hereinafter referred to as CSCL) has invited offers vide their tender No. \_\_\_\_\_ for \_\_\_\_\_ and

M/s. \_\_\_\_\_ (Bidder) intends to bid against the said tender and desires to have technical support of M/s. \_\_\_\_\_ [Associate Company] and whereas Associate Company represents that they have gone through and understood the requirements of subject tender and are capable and committed to provide the services as required by the bidder for successful execution of the contract, if awarded to the bidder.

Now, it is hereby agreed to by and between the parties as follows:

1. M/s. \_\_\_\_\_ (Bidder) will submit an offer to CSCL for the full scope of work as envisaged in the tender document as a main bidder and liaise with CSCL directly for any clarifications etc. in this context.
2. M/s. \_\_\_\_\_ (Associate Company) undertakes to provide technical support and expertise, expert manpower and procurement assistance and project management to support the bidder to discharge its obligations as per the Scope of work of the tender / Contract for which offer has been made by the Associate Company and accepted by the bidder.
3. This agreement will remain valid till validity of bidder's offer to CSCL including extension if any and till satisfactory performance of the contract in the event the contract is awarded by CSCL to the bidder.
4. It is further agreed that for the performance of work during contract period bidder and Associate shall be jointly and severally responsible to CSCL for satisfactory execution of the contract.
5. However, the bidder shall have the overall responsibility of satisfactory execution of the contract awarded by CSCL.

In witness whereof the parties hereto have executed this agreement on the date mentioned above.

For and on behalf of _____ (Bidder) Signature: Name: Designation: Witness 1: Signature: Full name: Address: Witness 2: Signature: Full name: Address:	For and on behalf of _____ (Associate company) Signature: Name: Designation: Witness 1: Signature: Full name: Address: Witness 2: Signature: Full name: Address:
--	---

## Appendix VIII. Format of Associate Company Guarantee

*(As the case may be)*

*(TO BE EXECUTED ON STAMP PAPER OF REQUISITE VALUE AND NOTORISED)*

### *DEED OF GUARANTEE*

THIS DEED OF GUARANTEE executed at ..... this ..... day of ..... by M/s ..... (mention complete name) a company duly organized and existing under the laws of ..... (insert jurisdiction/country), having its Registered Office at ..... hereinafter called "the Guarantor" which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns.

#### WHEREAS

Chandigarh Smart City Limited, a statutory body under \_\_\_\_\_, having its Registered Office at \_\_\_\_\_, hereinafter called "CSCL" which expression shall unless excluded by or repugnant to the context thereof, be deemed to include its successor and assigns, invited tender number ..... for ..... on ..... M/s ..... (mention complete name), a company duly organized and existing under the laws of ..... (insert jurisdiction/country), having its Registered Office at ..... (give complete address) hereinafter called "the Company" which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successor and permitted assigns, have, in response to the above mentioned tender invited by CSCL, submitted their bid number ..... to CSCL with one of the condition that the Company shall arrange a guarantee from its Associate company guaranteeing due and satisfactory performance of the work covered under the said tender including any change therein as may be deemed appropriate by CSCL at any stage.

The Guarantor represents that they have gone through and understood the requirement of the above said tender and are capable of and committed to provide technical and such other supports as may be required by the Company for successful execution of the same.

The Company and the Guarantor have entered into an agreement dated ..... as per which the Guarantor shall be providing technical and such other supports as may be necessary for performance of the work relating to the said tender.

Accordingly, at the request of the Company and in consideration of and as a requirement for CSCL to enter into agreement(s) with the Company, the Guarantor hereby agrees to give this guarantee and undertakes as follows:

1. The Guarantor (Associate Company) unconditionally agrees that in case of non-performance by the Company of any of its obligations in any respect, the Guarantor shall, immediately on receipt of notice of demand by CSCL, take up the job without any demur or objection, in continuation and without loss of time and without any cost to CSCL and duly perform the obligations of the Company to the satisfaction of CSCL.
2. The Guarantor agrees that the Guarantee herein contained shall remain valid and enforceable till the satisfactory execution and completion of the work awarded to the Company.
3. The Guarantor shall be jointly with the Company and also severally responsible for satisfactory performance of the contract entered between the Company and CSCL.
4. The liability of the Guarantor, under the Guarantee, is limited to the 50% of the annualized contract price entered between the Company and CSCL. This will, however, be in addition to the forfeiture of the Performance Bank Guarantee furnished by the Company.
5. The Guarantor represents that this Guarantee has been issued after due observance of the appropriate laws in force in India. The Guarantor hereby undertakes that the Guarantor shall obtain and maintain in full force and effect all the governmental and other approvals and consents that are necessary and do all other acts and things necessary or desirable in connection therewith or for the due performance of the Guarantor's obligations hereunder.
6. The Guarantor also agrees that this Guarantee shall be governed and construed in accordance with the laws

in force in India and subject to the exclusive jurisdiction of the courts of Chandigarh.

7. The Guarantor hereby declares and represents that this Guarantee has been given without any undue influence or coercion, and that the Guarantor has fully understood the implications of the same.
8. The Guarantor hereby agrees 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 CSCL and the Bidder Company shall in any way release Guarantor from any liability under this guarantee and Guarantor hereby waive notice of any such change, addition or modification.
9. The Guarantor represents and confirms that the Guarantor has the legal capacity, power and authority to issue this Guarantee and that giving of this Guarantee and the performance and observations of the obligations hereunder do not contravene any existing laws.

For and on behalf of \_\_\_\_\_ (name of the Associate company)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Common seal of the guarantor company:

Witness 1:

Signature: \_\_\_\_\_

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

Witness 2:

Signature: \_\_\_\_\_

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

#### INSTRUCTIONS FOR FURNISHING ASSOCIATE COMPANY GUARANTEE

1. Guarantee should be executed on stamp paper of requisite value and notarised.
2. The official(s) executing the guarantee should affix full signature (s) on each page.
3. Resolution passed by Board of Directors of the guarantor company authorizing the signatory (ies) to execute the guarantee, duly certified by the Company Secretary should be furnished along with the Guarantee.
4. Following certificate issued by Company Secretary of the guarantor company should also be enclosed along with the Guarantee.

“Obligation contained in the deed of guarantee No. \_\_\_\_\_ furnished against tender No. \_\_\_\_\_ are enforceable against the guarantor company and the same do not, in any way, contravene any law of the country of which the guarantor company is the subject”

## Appendix IX. Public Procurement (Preference to Make in India), Order 2017

K -14012/101(17)/2018-SC-III-A  
Government of India  
Ministry of Housing and Urban Affairs  
Smart Cities Division

Nirman Bhawan, New Delhi  
Dated: 03<sup>rd</sup> October, 2018

To,  
CEOs of all the Smart Cities SPVs

Sub: Promoting Made in India bicycles for Public Bike sharing projects under the Smart Cities Mission.

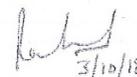
Sir/Madam,

This Ministry is in receipt of the Report of Departmental Related Parliamentary Standing Committee on Commerce (DRPSC), wherein the Committee has, *inter alia*, made observations / recommendations in para 5.52 and 5.53 on the above subject. Copy of the extracts of the report is in annex.

2. The Ministry, *vide* D.O. letter of even No. dated 01/06/2018 from JS & MD (SC) to CEOs of Smart Cities on the above mentioned subject had advised that Smart City SPVs should incorporate necessary stipulations for ensuring quality and sustainability and a level playing field should be provided to bicycle manufactures in India. Further, it was advised that for selecting PBS operators (for both the dock-less and dock station model of development), adequate opportunity should also be given to Indian manufacturers while framing the RFP/MoUs and to comply with the instructions issued by DIPP vide its Public Procurement (Preference to Make in India), Order dated June 15, 2017.

3. In this background, it is requested to furnish the action taken report on the matter to this Ministry by 15.10.2018.

Yours faithfully,



(Rahul Kapoor)  
Director (Smart Cities)  
Telephone : 011-23062194

Annex

## Extract of the Report of Departmental Related Parliamentary Standing Committee on Commerce (DRPSC)

Para 5.52): The Committee further observes that Smart City Administrations across the country are seeking to promote Public Bike Sharing (PBS) Programs that provide citizens rental bicycle on demand at affordable prices for last mile connectivity. However, this worthy initiative seems to have been hijacked by Chinese PBS operators as they are bringing in unfairly cheap Chinese bicycles. Instead of sourcing bicycles locally in India, these Chinese PBS Operators have chosen to bring in to India excessively discounted and unfairly priced bicycles manufactured from Chinese factories. The Committee notes that these Public Bike Sharing (PBS) Programs make use of public infrastructure (created and maintained by public funds) and are bound by the DIPP (GOI) guideline to give preference to Made in India products. However it seems that the Smart City Administrations, especially in cities like Pune and Coimbatore, have chosen to ignore the 'Make in India' guidelines and consented to the dumping of cheap bicycles by the Chinese PBS operators.

Para 5.53): The Committee is of the view that the Indian Bicycle Industry is capable of supplying the bicycle requirement of the Bike Share Programmes under the Smart City Initiative. The Committee recommends the Government to ensure that Smart City Administrations give preference to bicycles manufactured in Indian under their PBS Scheme as per the Public Procurement (Preference to Make in India), Order 2017. The PBS operators must be directed for procuring domestically manufactured bicycles.



No. P-45021/2/2017-PP (BE-II)  
Government of India  
Ministry of Commerce and Industry  
Department of Industrial Policy and Promotion  
(Public Procurement Section)

\*\*\*\*

Dated 28<sup>th</sup> May, 2018  
Udyog Bhawan, New Delhi

To  
All Central Ministries/Departments/CPSUs/All concerned

**ORDER**

**Subject: Public Procurement (Preference to Make in India), Order 2017 – Revision; regarding.**

**Department of Industrial Policy and Promotion, in partial modification of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017' with immediate effect:-**

**Whereas** it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

**Whereas** procurement by the Government is substantial in amount and can contribute towards this policy objective, and

**Whereas** local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

**Now therefore the following Order is issued :**

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:

*'Local content'* means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

*'Local supplier'* means a supplier or service provider whose product or service offered for procurement meets the minimum local content as prescribed under this Order or by the competent Ministries / Departments in pursuance of this order.

*'L1'* means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

*'margin of purchase preference'* means the maximum extent to which the price quoted by a local supplier may be above the L1 for the purpose of purchase preference.

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*'Nodal Ministry'* means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

*'Procuring entity'* means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

*'Works'* means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'*.

**3. Requirement of Purchase Preference :** Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to local suppliers in all procurements undertaken by procuring entities in the manner specified hereunder”

- a. “In procurement of goods, services or works in respect of which the Nodal Ministry has communicated that there is sufficient local capacity and local competition, and where the estimated value of procurement is Rs. 50 lakhs or less, only local suppliers shall be eligible. If the estimated value of procurement of such goods or services or works is more than Rs. 50 lakhs, the provisions of sub-paragraph b or c, as the case may be, shall apply”;
- b. “In the procurements of goods or works which are not covered by paragraph 3a and which are divisible in nature, the following procedure shall be followed”;
  - i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract for full quantity will be awarded to L1.
  - ii. If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be invited to match the L1 price for the remaining 50% quantity subject to the local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such local supplier subject to matching the L1 price. In case such lowest eligible local supplier fails to match the L1 price or accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on local suppliers, then such balance quantity may also be ordered on the L1 bidder.
- c. “In procurements of goods or works not covered by sub-paragraph 3a and which are not divisible, and in procurement of services where the bid is evaluated on price alone, the following procedure shall be followed”:-
  - i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract will be awarded to L1.

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- ii. If L1 is not from a local supplier, the lowest bidder among the local suppliers, will be invited to match the L1 price subject to local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such local supplier subject to matching the L1 price.
  - iii. In case such lowest eligible local supplier fails to match the L1 price, the local supplier with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the local suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.
4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
5. **Minimum local content:** The minimum local content shall ordinarily be 50%. The Nodal Ministry may prescribe a higher or lower percentage in respect of any particular item and may also prescribe the manner of calculation of local content.
6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20% .
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. **Verification of local content:**
  - a. The local supplier at the time of tender, bidding or solicitation shall be required to provide self-certification that the item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made.
  - b. In cases of procurement for a value in excess of Rs. 10 crores, the local supplier shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
  - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.

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- d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
  - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
  - f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
  - g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
  - h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
    - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
    - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
    - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.
- 10. Specifications in Tenders and other procurement solicitations:**
- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
  - b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of local suppliers who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
  - c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.
  - d. If a Nodal Ministry is satisfied that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, it may, if it deems appropriate, restrict or exclude bidders from that country from eligibility for procurement of that item and/ or other items relating to that Nodal Ministry. A copy of every instruction or decision taken in this regard shall be sent to the Chairman of the Standing Committee.

.....Contd. p/5

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- e. For the purpose of sub-paragraph 10 d above, a supplier or bidder shall be considered to be from a country if (i) the entity is incorporated in that country, or (ii) a majority of its shareholding or effective control of the entity is exercised from that country; or (iii) more than 50% of the value of the item being supplied has been added in that country. Indian suppliers shall mean those entities which meet any of these tests with respect to India."
11. **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
12. **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
13. **Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
14. **Powers to grant exemption and to reduce minimum local content:** Ministries /Departments of Government of India and the Boards of Directors of Government companies or autonomous bodies may, by written order,
- reduce the minimum local content below the prescribed level;
  - reduce the margin of purchase preference below 20% ;
  - exempt any particular item or procuring or supplying entities or class or classes of items or procuring or supplying entities from the operation of this Order or any part of the Order.
- A copy of every such order shall be marked to the Member-Convenor of the Standing Committee constituted under this Order.
15. **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.
16. **Standing Committee:** A standing committee is hereby constituted with the following membership:
- Secretary, Department of Industrial Policy and Promotion—Chairman
  - Secretary, Commerce—Member
  - Secretary, Ministry of Electronics and Information Technology—Member
  - Joint Secretary (Public Procurement), Department of Expenditure—Member
  - Joint Secretary (DIPP)—Member-Convenor

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The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

- 17. Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary but not less than once in six months. The Committee
- shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
  - shall annually assess and periodically monitor compliance with this Order
  - shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
  - may require furnishing of details or returns regarding compliance with this Order and related matters
  - may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
  - may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
  - may consider any other issue relating to this Order which may arise.
- 18. Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.
- 19. Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1<sup>st</sup> January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.
- 20. Transitional provision:** This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(B. S. Nayak)  
Under Secretary to Government of India  
Ph. 23061257

## Appendix X. Undertaking Letter to the Authority on the Company's/Entity's letterhead

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Sir,

Sub: RFP for \_\_\_\_\_ (RFP Ref. No. \_\_\_\_\_ dated \_\_\_\_\_)

In response to the Request for Proposal (Bank's tender No. .... hereinafter referred to as "RFP") issued by \_\_\_\_\_, we hereby covenant, warrant and confirm as follows:

We hereby agree to adhere to all the terms and conditions / stipulations as contained in the RFP and the related addendums and other documents including the changes made to the original tender documents if any, issued by the \_\_\_\_\_ (Authority) and notification issued by Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion and Ministry of Housing and Urban Affairs.

Further, as per the mentioned Government notifications, we do hereby declare that the domestic value addition in Bill of Material is \_\_\_\_ % for the items i.e. \_\_\_\_ (participating bidder should mention value addition % for its quoted product only).

Yours faithfully,

Authorized Signatory

Designation

Bidder's corporate name

# Engagement of Agency for Design, Build, Operate & Transfer Public Bike Sharing System in Chandigarh on PPP Mode

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DRAFT CONCESSION AGREEMENT

VOLUME II

30/12/2018



*Chandigarh Smart City Limited*

Second Floor, New Bridge Building No. 2, Near TDI MALL, Sector 17 A, Chandigarh – 160017

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**CONCESSION AGREEMENT**

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

BETWEEN

1. Chandigarh Smart City Limited, represented by its Chief Executive Officer and having its principal office at Second Floor, New Bridge Building No. 2, Near TDI MALL, Sector 17 A, Chandigarh – 160017 (hereinafter referred to as the "Authority" or "Concessioneing Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2. {..... LIMITED}, a company incorporated under the provisions of the Companies Act, 2013 represented by its {Chairman/Managing Director} and having its registered office at ....., (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

WHEREAS:

- A. The Chandigarh Smart City Limited had entrusted to development, maintenance and management of Public Bike Sharing System in Chandigarh on a Public Private Partnership format.
- B. The Authority had resolved to select a private sector developer that shall design, build, finance, operate and transfer ("DBFOT") the Public Bike Sharing System comprising a fleet of Bikes, Stations and supporting infrastructure, business processes and services to operate in Chandigarh (the Project") in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- C. The Authority had accordingly invited proposals by its [Notice/ Request for Proposal No. \*\*\* dated \*\*\*] (the "Request for Proposal" or "RFP") for short listing of bidders for construction, operation and maintenance of the above Project on DBFOT basis and had shortlisted certain bidders including, inter alia, the {the selected bidder/ consortium comprising ....., ..... And ..... (Collectively the "Consortium") with ..... as its lead member (the "Lead Member")}.}
- D. After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award No. .... dated ..... (hereinafter called the "LOA") to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.
- E. {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a Special Purpose Company (SPC) under the Companies Act 1956/2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- F. {By its letter dated ....., the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire

has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.}

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

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

## Article 1. Definitions and Interpretation

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 43) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

### 1.2 Interpretation

#### 1.2.1 Theft

1.2.2 In this Agreement, unless the context otherwise requires,

- a. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b. references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bylaws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c. references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- f. references to "construction" or "building" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;
- g. references to "development" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i. any reference to day shall mean a reference to a calendar day;
- j. references to a "business day" shall be construed as a reference to a day (other than a Sunday);
- k. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l. references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- m. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of

any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

- n. the words importing singular shall include plural and vice versa;
- o. references to any gender shall include the other and the neutral gender;
- p. "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- q. "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- r. references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- s. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- t. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- u. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- v. references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- w. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages");
- x. the Compensation, payable by either Party to the other of them as set forth in this Agreement on account of not meeting or meeting or exceeding the Service Levels set forth in this Agreement (the "Compensation"); and
- y. time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.3 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

1.2.5 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### 1.3 Measurements and arithmetic conventions

Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### 1.4 Priority of agreements, clauses and schedules

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

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

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

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

## Article 2. Broad Scope of the Project

### 2.1 Broad Scope of the Project

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

- a. implementation of the Project as set forth in Schedule-A and in conformity with the Specifications and Standards set forth in Schedule-B;
- b. operation and maintenance of the Project in accordance with the provisions of this Agreement; and
- c. performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

## Article 3. Grant of Concession

### 3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority during the subsistence of this Agreement to design, construct, finance, operate and maintain the Project (the "Concession") for a period of 11 (Eleven) years (including the Construction Period) commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- a. Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- b. finance and construct the Project;
- c. manage, operate and maintain the Project and regulate the use thereof by third parties;
- d. demand, collect Fee from Users liable for payment of Fee for using the Project facilities or any part thereof;
- e. perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- f. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- g. neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.
- h. sell, collect and appropriate revenue through advertisement rights in accordance with this agreement

## Article 4. Conditions Precedent

### 4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 29, 39 and 42, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, at any time after the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- a. procured for the Concessionaire the required land chunks for the Project in accordance with the provisions of Clause 10.3.1;
- b. issued the Fee Notification;
- c. Within 15 (fifteen) days of the receipt of the report of sites locations, design, drawings, branding, advertising etc. provided by the Concessionaire, the Authority/Independent Engineer shall review the same and convey its observations/approval to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards.
- d. Appointed Independent Engineer and constituted a Steering Committee, the Constitution and function of which is specified in Article 20 of this Agreement,

4.1.3 The Concessionaire shall have fulfilled the following Conditions Precedents within a maximum period of 120 (one hundred and twenty) days from the Effective Date. The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- a. carried out sites survey of the proposed locations of docking stations suggested by the Authority as mentioned in Schedule-A. After the survey, the concessionaire may suggest alternative sites for docking stations for maximum of 10% of the total 617 docking sites.
- b. Submit its report of Drawings, Station Design and Terminal Design indicating the Docking Points, Hardware, Bikes, advertising & branding plan and other project facilities to be located at the Site (s) within 30 (thirty) days of signing of this Agreement to the Authority/Independent Engineer for review and comments.
- c. As per the observations of the Authority/Independent Engineer, the drawings/ designs/ locations shall be revised by the Concessionaire and resubmitted to the Authority/Independent Engineer for review within 10 (ten) days of receipt of observations. The Authority/Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised drawings/designs/locations.
- d. No review and/ observations of the Authority/Independent Engineer and its failure to review and/ or convey its observations on any Drawing/ Design/ location shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner.
- e. procured approval of the Government authorities that would enable the Concessionaire to operate the Project in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval; and

- f. executed and procured execution of the Substitution Agreement;
- g. achieved Financial Close and delivered complete Financial Package to the Concessioning Authority that Financial Close has been accomplished.
- h. procured all the Applicable Permits unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- i. executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- j. delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- k. delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
- l. delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- m. proposed high priority stations

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

## 4.2 Damages for delay by the Authority

In the event of delay by the Authority in the fulfilment of any or all of the Conditions Precedent set forth in Article 4.1.2, save and except for reasons attributable to the Preferred Bidder/ Concessionaire or Force Majeure or those which have been waived off by mutual agreement of the Parties hereto; beyond a period of 120 (one hundred twenty) days from the date of this Agreement or such later date as mutually agreed between the Parties, would entitle the Concessionaire to terminate this Agreement as per provisions hereof.

In such an event of termination, the Authority shall

- i. release the Performance Security, subject to any outstanding dues payable to the Authority by the Concessionaire in terms hereof; provided however that in the event the Authority's failure to fulfil its Conditions Precedent is attributable to the Concessionaire's default, the Authority shall forfeit the Performance Security as damages; and
- ii. In the event the access / possession/license in respect of the Project Site(s) shall have been granted to the Concessionaire in terms hereof on or before such date of termination; then the Project Site shall immediately revert to the Authority, free and clear from any encumbrances and along with all associated easementary rights, irrespective of any outstanding mutual claims between the parties or any third party claims; and the License shall be deemed to have been terminated simultaneously with said Termination of this Agreement.

### 4.3 Damages for delay by the Concessionaire

- a. In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 120 (one hundred twenty ) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security; without prejudice to any other rights and remedies available to the Authority in terms hereof or under law or otherwise.
- b. Notwithstanding anything to the contrary in the event delay referred to in aforesaid Article 4.3 (a) above, exceeds a period of 120 (one hundred twenty) days from the date of this Agreement or goes beyond such later date as may be mutually agreed between the Parties for fulfilment of condition precedent, then Authority would be entitled to terminate this Agreement in accordance with the provisions hereto.

In such an event, notwithstanding anything to the contrary contained in the Agreement, the Authority shall, without prejudice to any other right or remedy that may be available to the Authority under this Agreement, be entitled to

- c. forfeit/invoke and appropriate the Performance Security;
  - i. appropriate the payments [if any] made by the Concessionaire in terms of the RFP and/or LOA and/or hereof until such date of termination as damages; and
  - ii. In the event the access / possession/license in respect of the Project Sites shall have been granted to the Concessionaire in terms hereof on or before such date of termination; then the Project Sites shall immediately revert to the Authority, free and clear from any encumbrances and along with all associated easementary rights, irrespective of any outstanding mutual claims between the parties or any third party claims; and the License shall be deemed to have been terminated simultaneously with said termination of this Agreement.

- 4.4. Without prejudice to and notwithstanding anything to the contrary set out in the foregoing, the Parties may by mutual agreement, instead decide to extend the time for fulfilling the Conditions Precedent.

## Article 5. Obligations of the Concessionaire

### 5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - b. procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
  - c. perform and fulfil its obligations under the Financing Agreements;
  - d. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - e. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
  - f. not do or omit to do any act, deed or thing which may in any manner violate of any of the provisions of this Agreement;
  - g. support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - h. transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

### 5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall

submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”),

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

### 5.3 Obligations relating to Change in Ownership

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

5.3.2 the {selected bidder/ Lead Member in case of Consortium}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement to Concession Period; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposal shall hold less than 20% (twenty per cent) of such Equity at least for 5 (five) years from the Appointed Date;

5.3.3 Deleted

### 5.4 Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including

employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

### 5.5 Employment of trained personnel

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

### 5.6 Sole purpose of the Concessionaire

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

### 5.7 Branding of Project

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

## Article 6. Obligations of the Authority

### 6.1 Obligations of the Authority

#### 6.1.1 Deleted

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

- a. upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- b. upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- c. procure that no barriers are erected or placed about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
- d. Deleted
- e. assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project;
- f. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- g. support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- h. upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

## Article 7. Representations and Warranties

### 7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a. it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b. it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- d. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- e. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- f. the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- i. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- k. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Lead Member in case of Consortium}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement to Concession Period; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposal shall hold less than 20% (twenty per cent) of such Equity at least for 5 (five) years from the Appointed Date;
- l. {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- m. {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

- n. all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- o. no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation;
- p. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- q. all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

## 7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

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

## 7.3 Disclosure

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

## Article 8. Disclaimer

### 8.1 Disclaimer

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

## Article 9. Performance Security

### 9.1 Performance Security

- 9.1.1 The Concessionaire shall have, for securing the performance of its obligations hereunder during the Construction and O&M Period, provided to the Authority no later than 30 (thirty) days from the LoA an irrevocable and unconditional guarantee from a Bank for a sum equivalent to in the form set forth in **Schedule E** (the "**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security. Performance Security shall be Rs. 1.25 Cr (Rupees One Crore and Twenty-Five Lakhs only) to be renewed after every 3 years during the concession period
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 30 (thirty) days from the date of LOA, the Authority shall encash the Bid Security and appropriate the proceeds thereof as Damages.
- 9.1.3 The Concessionaire shall keep the Performance Security valid at all times during the stipulated concession period and renew it 30 (thirty) days prior to the expiry of its validity, as applicable;

### 9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 32. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 32.

### 9.3 Release of Performance Security

The Authority shall release the Performance Security forthwith, upon expiry of 180 (one hundred eighty) days from the Transfer Date, subject to deductions towards any outstanding amount payable to Authority by Concessionaire in terms hereof.

## Article 10. License and Access to The Site

### 10.1 The Site

The site of the Project shall comprise the land chunks described in Schedule-A and in respect of which the License and Access shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the "Site"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Project as set forth in Schedule-A.

### 10.2 Licence and Access

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

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

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

10.2.4 The Concessionaire shall surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof.

10.2.5 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

### 10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the

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

10.3.2 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.3 The Authority shall make best efforts to procure and grant, no later than 120 (one hundred twenty) days from the date of Agreement, the Access to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the action may be taken as per Clause 4.2 of this Agreement.

10.3.4 Upon receiving the Access in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon in accordance with the Project Completion Schedule and with Good Industry Practice; provided that the issue of Completion Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which the Access is granted within 120 (one hundred twenty) days of the Date of this Agreement shall be completed before the Project Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.

#### 10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. It is further agreed that the Concessionaire accepts and

undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

### **10.5 Protection of Site from encroachments**

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

### **10.6 Access to the Authority and Independent Engineer**

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

### **10.7 Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property.

## Article 11. Utility, Adjacent Roads and Trees

### 11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the adjacent roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility,

### 11.2 Shifting of obstructing utilities

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

### 11.3 New utilities

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

### 11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project and Project Facilities. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

## Article 12. Implementation of The Project

### 12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- a. carried out sites survey and revalidate the indicative locations of docking stations suggested by the Authority as mentioned in Schedule-A. After the survey, the concessionaire may suggest alternative sites for docking stations for maximum of 10% of the total 617 docking sites.
- b. submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-F;
- c. appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- d. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits;

### 12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Stations including Station Assets as set forth in Schedule-G, the following shall apply:

- a. The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;
- b. By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- c. Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer/ the Authority shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- d. If the aforesaid observations of the Independent Engineer / the Authority indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- e. No review and/or observation of the Independent Engineer/ the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- f. Without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Station Design and Terminal Design indicating the Docking Points, Hardware, Bicycles and other Project facilities to be located

at the Site, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 15 (fifteen) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply mutatis mutandis to the review and comments hereunder; and

- g. Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project. The Concessionaire shall also include a reason for the differences between the initial design and the actual design if any.

## 12.3 Implementation of the Project

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake the Project implementation as per Scope of the Project specified in Schedule-A and in conformity with the Specifications and Standards set forth in Schedule-B.

12.3.2 The Concessionaire shall implement the Project in accordance with the Project Completion Schedule set forth in Schedule-F. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-F, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-F shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-F has been amended as above, however, the term for Concession Period will remain same; provided further that in the event Project Completion Date is achieved on or before the Scheduled Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.3 The Concessionaire upon implementation of the Project shall ensure that:

- a. all deliverables and work including the development, manufacture, installation and testing of the Project Assets are completed, tested and fully operational in accordance with the Implementation Plan;
- b. in terms of the Premises, that the:
  - i. Depot Assets are installed and fully operational;
  - ii. Control Centre Assets are installed and fully operational;
  - iii. System Assets are implemented, tested and fully operational;
- c. Cycle Assets are built and available for use;
- d. Station Assets are installed and commissioned; and
- e. On-street Assets are installed and operational;
- f. the Service Systems are developed, implemented, tested and approved in accordance with the Implementation Plan.

- g. Mobile application is developed and operational
- h. Personalized Card system is developed and operational
- i. Any other specified by the Authority/Independent Engineer in relation to incidental the Project.

## Article 13. Monitoring of Construction

### 13.1 Monthly progress reports

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

### 13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project at least once a month and make a report of such inspection (the **“Inspection Report”**) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

### 13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Authority/Independent Engineer may specify Tests from time to time, in accordance with Good Industry Practice for quality assurance. The costs to be incurred on such Tests or any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

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

### 13.4 Delays during construction

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Authority/Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that it is not likely to be achieved by the Scheduled Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Authority/Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

## 13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and pedestrians.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 29.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "Preservation Costs"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer.

## Article 14. Completion Certificate

### 14.1 Tests

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

14.1.2 All Tests shall be conducted in accordance with Schedule-H. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

### 14.2 Completion Certificate

14.2.1 Upon successful completion, installation, commissioning and implementation of all works required for complete operation of Public Bike Sharing System as per scope of work defined in this RFP, the Independent Engineer determining the Tests to be successful and upon successful Soft Launch, the Independent Engineer shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-I (the "**Completion Certificate**").

14.3 Deleted

14.4 Deleted

### 14.5 Withholding of Completion Certificate

14.5.1 If the Independent Engineer determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Completion Certificate. Upon

receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

#### **14.6 Rescheduling of Tests**

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

#### **14.7 Soft Launch**

Notwithstanding anything to the contrary contained in Clause 14 the Concessionaire shall with prior notice demonstrate the entire operation inter alia Bicycle Check-in and Check-out system, subscription process, transaction at the Terminal, working of the Service System, working of the Prepaid Personalised Card System and Mobile Application for the Users. The Soft Launch shall be a promotional activity for a period of not less than 30 (Thirty) days during which the concessionaire shall not charge/collect any user fee and display any advertisement/hoarding on bicycles and any of the docking stations. The Soft Launch shall be a mandatory even for the Concessionaire to avail the Completion Certificate.

## Article 15. Entry into Commercial Service

### 15.1 Commercial Operation Date (COD)

[The Project shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate] (the “**COD**”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee and revenue in accordance with the provisions of this Agreement.

### 15.2 Damages for delay

Subject to the provisions of Clause 12.3, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

## Article 16.

Deleted

## Article 17. Operation and Maintenance

### 17.1 Service Systems

17.1.1 The Concessionaire shall provide all elements of the Service Systems, including the:

- a. Hardware;
- b. Software; or
- c. Systems,

for use in the Service Systems.

17.1.2 Subject to written notice from Authority, the Concessionaire may at any time during the Term be required (subject to fulfilling the Concessionaire's reasonable requirements, but at no cost to Authority) to allow Authority's Systems to be sited or situated on the Premises for the purpose of interconnecting the Service Systems to the Authority's Systems.

17.1.3 In relation to any Authority's Systems, the Concessionaire shall:

- a. provide Authority with physical access to the Premises from time to time on reasonable notice in order to enable Authority to install, support, maintain and remove the relevant Authority's System at the Premises;
- b. at its own cost and expense, provide a suitable operating environment (including air temperature and humidity, heat extraction, electricity and other features, functions and facilities reasonably required by Authority at the Premises for the Authority's Systems.

### 17.2 O&M obligations of the Concessionaire

17.2.1 During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the Project to comply with the service levels set forth in Schedule-C (the "**Service Levels**"), Applicable Laws, Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- a. permitting safe, smooth and uninterrupted utilisation of Project services during normal operating conditions;
- b. collecting and appropriating the Fee;
- c. maintaining association with insurance agency for the Project Users;
- d. carrying out periodic and routine maintenance of the Project Premise, its hardware, software rolling stocks and other facilities;
- e. undertaking major maintenance such as reconstruction of cycle stand, replacement of hardware system, software system and Bicycles;
- f. preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project facilities;
- g. preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Premise;
- h. protection of the environment and provision of equipment and materials therefore;
- i. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;

- j. maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- k. complying with Safety Requirements in accordance with Article 18.

17.2.2 The Concessionaire shall remove promptly from the Project Premise all surplus construction machinery and materials, waste materials, rubbish and other debris and keep the Project Premise in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.2.3 The Concessionaire shall maintain, in conformity with Good Industry Practice.

### 17.3 Maintenance Requirements

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

### 17.4 Operation & Maintenance Manual

17.4.1 No later than 30 (thirty) days from COD/Project Completion Date, the Concessionaire shall, evolve an operation & maintenance manual (the “Operation & Maintenance Manual”) for the regular operation and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide copies thereof to the Steering Committee. The Operation & Maintenance Manual shall be revised and updated once every 1 (one) year and the provisions of this Clause 17.4 shall apply, mutatis mutandis, to such revision.

17.4.2 Without prejudice to the provision of Clause 17.4.1, the Operation & Maintenance Manual shall, in particular, include provisions for effective operation and maintenance of Project Assets and shall provide for routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

### 17.5 Maintenance Programme

17.5.1 On or before COD and no later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Operation & Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

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

17.5.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Steering Committee shall review the same and convey its comments to the Concessionaire with

particular reference to its conformity with the Maintenance Requirements, Operation & Maintenance Manual and Safety Requirements.

- 17.5.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.5.1 and 17.5.2 shall apply *mutatis mutandis* to such modifications.

## 17.6 System Failure

- 17.6.1 The Concessionaire shall notify the Authority without delay on it becoming aware of any event of or the likely event of a System Failure, whether or not it constitutes a failure to meet the Service Levels.

- 17.6.2 In the event of a System Failure, the Concessionaire shall:

- (a) immediately comply with the provisions of this agreement and take appropriate measures to rectify the problems.
- (b) in the event that such System Failure causes, or is likely to cause, the Concessionaire to fail to meet the Service Levels on any calendar day on which such Service Levels apply:
  - (a) immediately conduct a comprehensive examination of the Project Service Systems (or part(s) thereof) in order to locate the cause of the System Failure;
  - (b) at its own cost, devote such additional time, effort and resources to:
    - (i) resolve the System Failure as soon as possible; and
    - (ii) avoid the recurrence of such System Failure;
  - (c) co-operate fully and expeditiously to resolve the relevant System Failure and at its own cost and at the request of the Authority, promptly provide Authority with:
    - i. all relevant Data and information in connection with the Service Systems, including failure reports, test data, Hardware, Software and System performance reports and such other information as may be required by the Authority, within 5 (five) working days.
    - ii. all volumetric information and operational reports (both historical and current) as may be required by the Authority to facilitate Authority's understanding the steps taken by the Concessionaire to resolve the Service Failure and how to prevent such failure from recurring.

## 17.7 De-commissioning due to Emergency

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

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

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

## 17.8 Compensation against maintenance obligations or Service Levels

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, or fails meet the Service Levels as a result of maintenance default, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Compensation as defined under Service Levels under Schedule-C. Recovery of such Compensation shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.8.2 The Compensation set forth in this Agreement may be assessed and specified forthwith by the Steering Committee; provided that the Authority may, in its discretion, demand a smaller sum as Compensation, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Compensation forthwith and in the event that it contests such Compensation, the Dispute Resolution Procedure shall apply.

## 17.9 Authority's right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Operation & Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.

## 17.10 Overriding powers of the Authority

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

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority

in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 29.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 29. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

### 17.11 Restoration of loss or damage to Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers 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 forthwith so that the Project conforms to the provisions of this Agreement.

### 17.12 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Authority of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Authority may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

### 17.13 Excuse from performance of obligations

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

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

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project open to the Users provided they can be operated safely.

### 17.14 Advertising on the Bicycles

The Concessionaire shall enjoy the right to undertake the commercial advertising at the specified part of the Cycle only after issue of Completion Certificate. The Concessionaire may also have the agreement with a third party that may want to display or advertise through this Project. However, all such advertising shall confirm to Good Industry Practice and applicable Laws.

### 17.15 Advertising at the Docking Stations

The Concessionaire shall be allowed to have advertisement rights of two sides of Triangular Prism only at each docking station. Each side of Triangular Prism shall be 1219 mm x 1964 mm wherein two sides advertisement and one side information related to PBS system i.e. Map, User Fee, Registration process, Use of Mobile App, Emergency Contact Details etc. The Concessionaire may also have the agreement with a third party that may want to display or advertise through this Project. However, all such advertising shall confirm to Good Industry Practice and applicable Laws.

No obscene, liquor and tobacco advertisement will be allowed. The rights to advertising, sponsorship, naming and branding rights will remain with the Concessionaire but CSCL will have the final right of approval on the same.

No advertisement fee shall be charged separately on account of displaying advertisement as this project has been exempted from the purview of the Chandigarh Advertisement Control Order 1954.

The Concessionaire shall not have advertisement rights on 10% of the total 617 docking station. Locations of these 10% Docking Station shall be notified by the CSCL.

The concessionaire shall be allowed to collect advertisement revenue only after successfully achieving COD for the project.

In case, the Concessionaire achieve CoD before 12 (twelve) months as specified, then the Concessionaire shall be allowed display od advertisement for the balance time period left in 12 months of Construction period.

## Article 18. Safety Requirements

### 18.1 Safety Requirements

18.1.1 The Concessionaire shall at all times comply with the provisions specified in this Clause 18.1 (the “**Safety Requirement**”), this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users and the Project Assets. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project specified in this Clause 18.1

18.1.2 The Concessionaire shall:

- (a) be responsible for the observance by itself, Concessionaire’s employees and its Sub- Contractors of all safety precautions necessary for the protection of itself, Concessionaire’s employee, its Sub-Contractors, Users and other persons invited onto or visiting the Premises and the Sites, including all precautions required to be taken by or under any Safety Requirement;
- (b) conduct:
  1. formal risk assessments from time to time during implementation as well as operation of all aspects of the Services, Project Assets and the Sites; and
  2. testing, examination and other work necessary to minimise and, so far as reasonably practicable, eliminate all risk to health or safety resulting from the performance of the Services or the use of any of the Project Assets, equipment or materials or other things in connection with the Services;

18.1.3 In the event that a health or safety risk has arisen or is likely to arise in any part of the Premises or Sites at or from which the Concessionaire provides Services, the Concessionaire shall:

- a. notify the Authority promptly in writing;
- b. provide the Authority with adequate information relating to such risk, including any steps and safeguards which the Concessionaire proposes to take and observe in order to ensure that the Services are performed safely; and
- c. promptly take such steps and adopt such safeguards.

### 18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire

## Article 19. Monitoring of Operation of Maintenance

### 19.1 Real-time data and Monthly status reports

During the entire Operation Period, the Concessionaire shall make available all the data pertaining to the Operation & Maintenance of the Project real-time that can be accessed by the Authority and its representative. The Authority may request the Concessionaire for any additional information other than the real-time data if need be. The real-time data shall be in such a format that the Authority shall be able to evaluate the performance of the Concessionaire against the Service Levels set forth in this Agreement.

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

### 19.2 Inspection

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

### 19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Steering Committee / Authority shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Steering Committee / Authority and furnish the results of such tests forthwith to the Steering Committee / Authority.

### 19.4 Remedial measures

- 19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report and furnish a report in respect thereof to the Steering Committee / Authority within 15 (fifteen) days of receiving the O&M Inspection Report provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

### 19.5 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.5, accidents and unusual occurrences on the Project shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any obstruction on the Project, which results in interruption of the services being provided by the Concessionaire;
- (d) disablement of any equipment during operation;
- (e) communication failure affecting the operation of Project;
- (f) smoke or fire;

such other relevant information as may be required by the Authority

## Article 20. Independent Engineer and Steering Committee

### 20.1 Independent Engineer

#### 20.1.1 Appointment of Independent Engineer

The Authority shall appoint an independent engineer from the empanelled institutions of Chandigarh Administration under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period one year or extending up to the commencement of COD, whichever is earlier.

#### 20.1.2 Duties and functions

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

20.1.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority/Steering Committee or its authorised Representative in respect of its duties and functions set forth in Schedule-L.

#### 20.1.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

#### 20.1.4 Termination of appointment

20.1.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer as replacement. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer.

#### 20.1.5 Authorised signatories

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

### 20.1.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer during the Construction Period, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

## 20.2 Steering Committee

### 20.2.1 Appointment

- a. Within 90 (Ninety) days from the date of this Agreement, the Authority shall constitute a Steering Committee. The Steering Committee shall consist of representatives of the following and any other member duly nominated by the Authority:
  - i. Representative of the Authority
  - ii. 2 (two) domain Experts from Municipal Corporation Chandigarh
  - iii. Representative of the Concessionaire
  - iv. Independent Engineer
  - v. Representative of Project Management Consultant
- b. The representative of the Authority shall act as the Convenor of the Steering Committee. Wherever possible, the Steering Committee shall act by consensus. If consensus is not reached, it shall take vote, and if there is a tie in such vote, the representative of the Authority shall have the casting vote.

### 20.2.2 Powers and Duties

- a. The Steering Committee shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper operation & Maintenance, renovation of the Project, including, (without limitation):
- b. During the Operation & Maintenance Period, the Steering Committee shall, at all reasonable times and upon reasonable notice, have access to the Project Sites for the purpose of discharging its duties under this Concession Agreement.
- c. The Steering Committee shall undertake inspections, at such times as it deems appropriate, to determine the progress during the Operation Period and the extent of compliance with provisions stipulated in this Concession Agreement and notify the Authority, and the Concessionaire of any deviations there from within 7 (seven) days of such inspections.
  - i. Compliance to the O & M Manual
  - ii. Review the Concessionaires periodic reports;
  - iii. Review and verify the implementation of Variations;
  - iv. Approve any improvements or modifications (that are not Variations) proposed by any of the members of the Steering Committee
  - v. Review Performance Guarantee requirements;
  - vi. Any other matter which it deem necessary for the implementation, operation or maintenance of the Project;
  - vii. Review and take actions on matters arising out of the Complaints.
  - viii. Impose penalties on the Concessionaire as stipulated in this Agreement.
  - ix. Monthly inspection of the project;
- d. The Steering Committee shall have the power to appoint Expert or Specialist Person in any area required, for a review of the operation, and maintenance and planning of the Project. Such persons shall act as an "Expert", whose expert professional

opinion, once confirmed by the Steering Committee shall be binding on the Parties and the Steering Committee.

- e. The Concessionaire and the Authority shall extend full co-operation to the Steering Committee and to any Expert appointed by the Steering Committee. All the expenses of the Steering Committee shall be borne by the Authority.
- f. The Steering Committee shall meet at least once every month of the calendar year at such time & venue as may be indicated by the Convener and notified to all the members of the Steering Committee well before the date of the meeting.

## Article 21.

Deleted

## Article 22.

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## Article 23. Concession Fee

### 23.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (**the “Concession Fee or ACF”**) a sum of Rs. \_\_\_\_\_per annum.

In addition to the Annual Concession Fee, the Concessionaire shall also be liable to pay any other tax, levies and other applicable levies as may be applicable to Annual Concession Fee.

### 23.2 Deleted.

### 23.3 Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 23 shall be due and payable in yearly instalments to be counted from the COD or one year from the Appointed Date, whichever is earlier. The Concessionaire shall pay Annual Concession Fee to the Authority within 7 days of beginning of each year thereafter. In the event of delay beyond such period, the Concessionaire shall pay interest for the period of delay calculated at a rate equal to 1.5% (One and half per cent) for the month or proportion of the month's default.

For Illustration:

If CoD or one year from the appointed date, as the case may be, falls on 30<sup>th</sup> April, the concessionaire is liable to pay ACF on or before 7<sup>th</sup> May of the corresponding year. The next ACF will be due on 30<sup>th</sup> April in subsequent years and so on.

## Article 24. User Fee

### 24.1 Collection and appropriation of Fee

- 24.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with this Agreement and approval from the Authority on the Fee to be charged. The Fee shall be of the following categories:
- (a) Annual Subscription Fee
  - (b) User Fee
- 24.1.2 The Concessionaire, upon such approval shall have the right to charge the determined rates (the "**Fee Notification**") as set forth in Schedule-M. The fee determined here is the maximum fee to be charged from the users, however concessionaire is entitled to charge less fee than the determined rates in the fee notification.
- 24.1.3 The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project facilities immediately and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.
- 24.1.4 The User shall have the flexibility to pay either by Prepaid Personalised Card issued by the Concessionaire or by Mobile App developed by the Concessionaire.

### 24.2 Display of Fee rates

- 24.2.1 The Concessionaire shall, prominently display the applicable rates of Fee for information of Users at each of the Station and shall also publish and display such information on its website and Mobile App.
- 24.2.2 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable. Any such event shall be considered as breach of this Agreement.

## Article 25.

Deleted

## Article 26.

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## Article 27. Insurance

### 27.1 Insurance during Concession Period

27.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall be liable for all applicable insurances and damages to the property or any Injury or loss of life to the user. The Authority shall not be held responsible for any of the damages/injury/loss of life of the User.

27.1.2 The Concessionaire shall, procure and maintain Insurance Cover including but not limited to the following:

- (i) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (ii) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;
- (iii) the Concessionaire's general liability arising out of the Concession;
- (iv) liability to third parties for goods or property damage;
- (v) workmen's compensation insurance; and
- (vi) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.

### 27.2 Notice to the Authority

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 27. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### 27.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 27 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, copies of the certificate (s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration

of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

#### **27.4 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 27 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

#### **27.5 Concessionaire's waiver**

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

## Article 28. Accounts and Audit

### 28.1 Audited accounts

The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fees and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the an Accounting Year The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors.

28.1.1 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the Users using the Project and liable for payment of Fee therefore, (b) Fee charged and received, Realisable Fee and other revenues derived from the Project, and (c) such other information as the Authority may reasonably require.

### 28.2 Appointment of auditors

28.2.1 The Concessionaire shall appoint, after a mutual consultation and with the agreement with the Authority a Statutory Auditor of repute fulfilling the criteria set forth in Schedule-O. The Statutory Auditor shall be appointed during the subsistence of this agreement. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

28.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed with mutual consultation and agreement with the Authority.

28.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

### 28.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Statements under Clause 19.5.

### 28.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

## 28.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

## Article 29. Force Majeure

### 29.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3 and 29.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### 29.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Premise);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Premises that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

### 29.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

## 29.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

## 29.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 29 with evidence in support thereof;
- (b) 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;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

29.5.2 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports

containing information as required by Clause 29.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## 29.6 Effect of Force Majeure Event on the Concession

29.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1.3 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to operate the Service System and charge Fee despite making best efforts or it is directed by the Authority to suspend the Services thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof; the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis.

## 29.7 Allocation of costs arising out of Force Majeure

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

29.7.2 Save and except as expressly provided in this Article 29, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

## 29.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 29, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

Upon Termination of this Agreement on account of a Force Majeure Event, the Concessionaire shall be entitled to the discharge of the performance guarantee in full. The Concessionaire shall also be entitled to take over concessionaire assets developed by him for the bike sharing system or any part thereof.

## 29.9 Deleted

## 29.10 Dispute resolution

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

## 29.11 Excuse from performance of obligations

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

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

## Article 30.

Deleted

## Article 31. Suspension of Concessionaire's Right

### 31.1 Suspension upon Concessionaire Default

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

### 31.2 Authority to act on behalf of Concessionaire

31.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, operate the System and collect all Fee and revenues under and in accordance with this Agreement. The Authority shall be entitled to make withdrawals from the revenue earned for meeting the costs incurred by it for remedying and rectifying the cause of Suspension and other such expenses

31.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 31.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

### 31.3 Revocation of Suspension

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

31.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not

exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

### 31.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 31.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

### 31.5 Termination

31.5.1 At any time during the period of Suspension under this Article 31, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 31.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 32.

31.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 31.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

## Article 32. TERMINATION

### 32.1 Termination for Concessionaire Default

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

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-F and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) the Concessionaire has failed to procure all applicable insurances set forth in Article 27;
- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

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

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 32.1.3.

32.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 32.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in

accordance with the Substitution Agreement:

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

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

## 32.2 Termination for Authority Default

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

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

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

## 32.3 Termination Settlement

32.3.1 Termination Settlement in the event of the Termination by Authority on Concessionaire's account of default

- The authority shall take over the entire Authority's assets for the Bike Sharing System or any part thereof.
- CSCL shall not be liable to pay any termination payment to Concessionaire.
- The authority shall receive any outstanding payments due to it under the Concession Agreement up to the date of Termination
- In addition, the Authority reserves the right to appropriate the EMD/Performance Bank Guarantee given by the Concessionaire and black-list the Applicant/Concessionaire.
- The Concessionaire shall take over the Concessionaire's assets developed by the Concessionaire for the Bike Sharing System or any part thereof.

32.3.2 Termination Settlement in the event of the Termination by Concessionaire Upon Termination

of this Agreement on account of Authority's Event of Default, the Authority shall release the performance guarantee in full.

- The Concessionaire, shall take over the entire Concessionaire's assets developed by the Concessionaire for the Bike Sharing System or any part thereof.
- The authority shall take over the entire Authority's assets for the Bike Sharing System or any part thereof.

32.3.3 The Concessionaire expressly agrees that Termination settlement under this Article 32 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

## 32.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all of the Project Assets, implements, and equipment except Concessionaire's Assets on or about the Premise/ site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Premise or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 33.1

### **Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Settlement and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## Article 33. DIVESTMENT OF RIGHTS AND INTEREST

### 33.1 Divestment Requirements

33.1.1 Upon Termination by efflux of time or otherwise, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) all Project Assets except Concessionaire's Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition to the satisfaction of the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that Authority's assets delivered hereunder shall be free from any encumbrance;
- (d) deliver and transfer relevant records, reports pertaining to the Project and its design, engineering, construction, operation and maintenance details pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (e) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project,
- (f) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

### 33.2 Deleted

### 33.3 Cooperation and assistance on transfer of Project

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

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

### 33.4 Vesting Certificate

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

### 33.5 Concessionaire's Assets including Additional Facilities

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

### 33.6 Divestment costs etc.

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

33.6.2 In the event of any dispute relating to matters covered by and under this Article 33, the Dispute Resolution Procedure shall apply.

## Article 34.

Deleted

## Article 35. ASSIGNMENTS AND CHARGES

### 35.1 Restrictions on assignment and charges

35.1.1 Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.1.2 Subject to the provisions of Clause 35.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

### 35.2 Permitted assignment and charges

The restraints set forth in Clause 35.1 shall not apply to:

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

### 35.3 Substitution Agreement

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

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

### 35.4 Assignment by the Authority

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

## Article 36. CHANGE IN LAW

### 36.1 CHANGE IN LAW

36.1.1 In the event of a Change in Law results in a Material Adverse Effect, the Authority or the Concessionaire may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Concessionaire and the Authority shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure described under Article 39 of this Agreement.

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

## Article 37. LIABILITY AND INDEMNITY

### 37.1 General indemnity

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

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

### 37.2 Indemnity by the Concessionaire

37.2.1 Without limiting the generality of Clause 37.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

37.2.2 Without limiting the generality of the provisions of this Article 37, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit,

action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### 37.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### 37.4 Defence of claims

37.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 37, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

37.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 37.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **37.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 37, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

### **37.6 Survival on Termination**

The provisions of this Article 37 shall survive Termination.

## Article 38. RIGHTS AND TITLE OVER THE PROJECT SITES/PREMISES

### 38.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Premises/ Project Sites, as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement. In case there is another operator or a third party, who is required to have the access to the Premises to perform its duty, the Concessionaire upon a written communication and terms from the Authority, shall allow access to the third party concerned.

### 38.2 Access rights of the Authority and others

38.2.1 The Concessionaire shall allow free access to the Project Sites/Premises at all times for the authorised representatives of the Authority, Senior Lenders, and the Independent Engineer, to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such person's reasonable assistance necessary to carry out their respective duties and functions.

38.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility specified in Article 11, allow free access to the Project Sites/Premises at all times for the authorised persons of the controlling body of such utility.

### 38.3 Deleted

### 38.4 Restriction on sub-letting

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

## Article 39. DISPUTE RESOLUTION

### 39.1 Dispute resolution

39.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 39.2.

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

### 39.2 Direct discussion between Parties

The Parties agree that any Dispute that may arise between them shall be first submitted for direct discussion between the Parties. For this purpose, the notice of Dispute (the "Notice of Dispute") sent by one Party to other Party under Article 39.1 shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for conduct of the negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute and the amount claimed. In the direct discussion proceedings, each Party shall be represented by officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order for the discussion to be meaningful. At the discussion proceedings, the Party that has given the Notice of Dispute shall present an offer of a settlement, which may form that starting point of discussion between the two Parties during the discussion proceedings.

### 39.3 Arbitration

39.3.1 Any Dispute which is not resolved amicably by Direct Discussion, as provided in Clause 39.2 above, the Parties shall submit the Dispute for arbitration in accordance with the Chandigarh Arbitration Centre (CAC) Rules, 2018 subject to the provisions of Arbitration and Conciliation Act, 1996 or any statutory amendment thereof.

39.3.2 The appointment of Arbitrator(s) shall be made in accordance with the provisions of the Chandigarh Arbitration Centre (CAC) Rules, 2018 by the parties. In case of disagreement on the appointment of Sole Arbitrator by the parties, there shall be a Board of Three (3) Arbitrators of whom one shall be appointed by the Authority, one shall be appointed by the Concessionaire, and the third shall be appointed by the two arbitrators appointed as aforesaid.

39.3.3 The arbitration proceedings shall be conducted in Chandigarh and the venue of the Arbitration proceedings shall be the Chandigarh Arbitration Centre.

39.3.4 The arbitration proceedings shall be conducted in the English language.

39.3.5 The arbitrators shall make a reasoned award (the "Award"). The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

39.3.6 The Concessionaire and the Authority agree that an Award may be enforced against the

Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

39.3.7 The cost incurred on the process of arbitration including inter alia the fees of the arbitral tribunal and the cost of the proceedings shall be borne by the Parties in equal proportions. Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 39.

39.3.8 Pending the submission of and/or decision on a Dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement.

#### **39.4 Adjudication by Regulatory Authority or Commission**

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. An appeal against such adjudication may be filed before an Appellate Court or High Court, as the case may be within the time specified in the Applicable Law.

## Article 40. DISCLOSURE

### 40.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Operation & Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Concessionaire's Registered Office. The Concessionaire shall prominently display at public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

### 40.2 Disclosure of Documents relating to safety

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

40.3 Notwithstanding the provisions of Clauses 40.1 and 40.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

#### Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 40.1 and 40.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

## Article 41. REDRESSAL OF PUBLIC GRIEVANCES

### 41.1 Complaints through Mobile App

- 41.1.1 The Concessionaire shall develop a Mobile App and customer care helpline number for recording of complaints by any person (the "**Complainant**")
- 41.1.2 Immediately after a complaint is registered, the Concessionaire shall give an acknowledgement to the Complainant stating the date and complaint number.

### 41.2 Redressal of complaints

- 41.2.1 The Concessionaire shall inspect the Complaint every day and take prompt and reasonable action for redressal of each complaint. a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant
- 41.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Steering Committee/ Authority the details of Complaints, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

## Article 42. MISCELLANEOUS

### 42.1 Governing law and jurisdiction

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

### 42.2 Depreciation and Interest

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

42.2.2 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.

### 42.3 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 18% (eighteen per cent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

### 42.4 Waiver

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

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

42.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### 42.5 Exclusion of implied warranties etc.

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

### 42.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

#### 42.7 Exclusion of implied warranties etc.

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

#### 42.8 Survival

42.8.1 Termination shall:

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

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

#### 42.9 Entire Agreement

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

#### 42.10 Severability

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

#### 42.11 No partnership

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

#### 42.12 Third parties

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

#### 42.13 Successors and assigns

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

#### 42.14 Notices

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

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

#### 42.15 Language

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

#### 42.16 Counterparts

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

## Article 43. DEFINITIONS

### 43.1 Definitions

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

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

**"Affected Party"** shall have the meaning set forth in Clause 29.1;

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

**"Annual Subscription"** means subscription having Prepaid Personalised Card with validity of one year. The User can use, recharge or opt for cancelation of the Prepaid Personalised Card during this period. Upon expiry of the validity period, the Prepaid Personalised Card shall be deemed cancelled, if validity period not extended

**"Appendix"** shall have the meaning set forth in Clause 10.3.1;

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

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

**"Appointed Date"** means the date on which Conditions Precedent is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

**"Arbitration Act"** means the Arbitration and Conciliation Act, 1996/2015 and shall include modifications to or any re-enactment thereof, as in force from time to time;

**"Asset Register"** means the register of the Project Assets to be created, maintained and updated by the Concessionaire from time to time;

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

**“Authority’s Assets”** means land chunks for Stations, Workshop and Control Center including the assets which are purchased or installed by the Authority to facilitate the Services, security or any other reason;

**“Authority Default”** shall have the meaning set forth in Clause 32.2.1;

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

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

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

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

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

**“Bike”** means a bicycle that meets the Technical Specifications described in Schedule-B of draft concession agreement and is to be procured, maintained and operated as part of the Bike Sharing System by the Concessionaire in accordance with the terms of this RFP;

**“Charge” or “Fee”** means any of Cycle Hire Charge/ User Fee, Security Fee, Subscription Fee and Non return Charge

**“Change in Law”** means the occurrence of any of the following after the date of this Agreement (other than in case of any Tax laws) having direct bearing on the implementation of the Project:

- (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 judgment of a court of record which has become final conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of this Agreement.

**“Change in Ownership”** shall have the meaning set forth in Sub-Clause 5.3 of Article 5

**“Charge Payments” or “Fee Payment”** means a payment made by a Customer for subscription to, security and hire of Bikes in accordance with the terms for the Project;

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

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

**“Compensation”** shall have the meaning set forth in Sub-clause (x) of Clause 1.2.1;

**“Complaint”** means a complaint made by a Customer and received by the Concessionaire (or a Sub-Contractor) via any channel;

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

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

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

**“Concessionaire’s Assets”** means the:

- a. Cycle Assets;
- b. Control Centre Assets;
- c. Depot Assets (including Spare Parts); and
- d. Service Systems;
- e. Station Assets
- f. Advertisement Panel
- g. On-street Assets; and

those assets which are to be purchased by the Concessionaire in order to provide the Services such as redistribution vehicles and maintenance tools;

**“Concession Fee”** shall have the meaning set forth in Clause 23.1;

**“Concession Period”** means the period starting from Appointed Date to Transfer Date;

**“Concessionaire Default”** shall have the meaning set forth in Clause 32.1.1;

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

**“Consortium”** shall have the meaning set forth in Recital (C);}

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

**“Control Center”** means the central facility of the Bike Sharing System used mainly for service monitoring, operations control, and customer service. It is the location for collecting, storing, consolidating, processing the information obtained from various elements of the Bike Sharing System as well as from users, agents and employees.

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

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

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

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

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

**“Customer”** means any person who:

- a. is a Subscriber; or
- b. is a User; or
- c. makes an Enquiry in relation to any aspect of the Concessionaire in respect of the Project; or
- d. otherwise interfaces with the Project;

**“Customer Record”** means an electronic record of a Customer’s details including but not limited to, Customer’s name, age, sex, contact number, postal address, email address, identification proof, Prepaid Personalised Card number;

**“Cycle Assets”** means the Bicycles and their components (including stocks and Spare Parts for the Bicycles);

**“Cycle Hire Charge”** means the sum due for the Hire Period, based upon the Tariffs or User Fee applicable to the Customer;

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

**“Damaged”** means the status of a Bicycle when it has been reported, by either a Customer or a member of Concessionaire, as broken or unfit for Hire;

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

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

**“Depot Assets”** means the assets used at the Project Sites/Premises and/or at any on-street location to repair and maintain the Station Assets and Cycle Assets;

**“Development Period”** means the period from the Appointed Date to COD

**“Dispute”** shall have the meaning set forth in Clause 39.1.1;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 39;

**“Divestment Requirements”** means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 33.1;

**“Docked”** means the status of a Bicycle when it is secured at a Docking Point after having been returned by a Customer;

**“Docking Point”** means the equipment and mechanism within a Station that is used for the storage and retrieval of Bicycles;

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

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

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

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

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

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

**“Enquiries”** means a Customer request for information or a data search and retrieval in relation to the Project through any channel;

**“Equity”** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;

**“Fee Notification”** means the Notification to be issued by the Government, prior to the Appointed Date, in respect of the levy and collection of Fee during the Concession Period, substantially in the form at Schedule-M;

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

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

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

**“Financial Package”** means the financing package indicating the total capital cost of Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders,

**“Financing Agreements”** means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including

refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

**"Force Majeure"** or **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 29.1;

**"GOI"** means the Government of India;

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

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

**"Hardware"** means all physical materials associated with electronic processing and the transmission of information and data, including computer equipment, telecommunications equipment (including wide area and local area network equipment), chips, chipsets, firmware, fixtures, fittings and peripherals;

**"Hired"** means the Status of a Bike when it has been released under a valid Subscription to a Customer;

- a) Subscription Fee
- b) User Fee

**"Hire Period"** means the time for which a Bike is hired, calculated from the point a Bicycle is Hired until the Bike is Docked;

**"Indemnified Party"** means the Party entitled to the benefit of an indemnity pursuant to Article 37;

**"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 37;

**"Independent Engineer"** shall have the meaning set forth in Clause 20.1;

**"Indirect Political Event"** shall have the meaning set forth in Clause 29.3;

**"Insurance Cover"** shall have the meaning set forth in Article 27;

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

**"Interface"** means those physical or technology interfaces (including associated Software and Hardware), processes, procedures or methods between the Concessionaire and Service Systems and Third Party

**"LOA"** or **"Letter of Award"** means the letter of award referred to in Recital (E);

**"Lead Member"** shall have the meaning set forth in Recital (C);

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

**“Management Information System” or “MIS”** means the Service System to be designed, developed, implemented and maintained, as applicable, by the Concessionaire that will generate the Management Information;

**“Management Information” or “MI”** means the real-time information required by Authority, relating to the operation and performance of the Project Assets and Service Systems. The term “Management Information” shall include the Financial Reports, operational metrics reports and any other report relating to the Project, desired by the Authority;

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

**“Prepaid Personalised Card”** means a pocket sized card with embedded integrated circuits, which can process data in connection with the Project;

**“Prepaid Personalised Card Reader”** means the device used to read data embedded in the Prepaid personalised Card;

**“Prepaid Personalised Card System”** means the Hardware and Software to be designed, developed, implemented, maintained and used by the Concessionaire to receive and process Prepaid Personalised Card transactions;

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

**“Non-Political Event”** shall have the meaning set forth in Clause 29.2;

**“Non-return Charge”** means the charge to be levied on the Customer for not returning a Hired Bicycle;

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

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

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

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

**“O&M Inspection Report”** shall have the meaning set forth in Clause 19.2;

**“On-street Assets”** means assets comprising the Stations, on-street signage and CCTV equipment;

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

**“Operation & Maintenance Manual”** shall have the meaning ascribed to it in Clause 17.4;

**“Operation & Maintenance Programme”** shall have the meaning ascribed to it in Clause 17.5.1;

**“Operation & Maintenance Requirements”** shall have the meaning set forth in Clause 17.3;

**“Operational Services”** means the Services to be provided by the Concessionaire relating to operation, support and maintenance of the Project Assets and Service Systems;

**“Panel of Chartered Accountants”** shall have the meaning set forth in Clause 28.2.3;

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

**“Performance Indicator”** or **“PI”** means an indicator of the Concessionaire’s performance against the Service Levels defined as per Schedule C;

**“Performance Indicator Report”** means the reports to be prepared by the Concessionaire and submitted to the Authority time to time, describing the Performance Indicators of the Concessionaire against the Service Levels defined in this Agreement;

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

**“Point of Sale (POS) Terminal/Terminal”** shall have the meaning set forth in Schedule A;

**“Political Event”** shall have the meaning set forth in Clause 29.4;

**“Project Sites/Premises”** means the premises, property and other accommodation from which the Concessionaire conducts provision of the Services from time to time;

**“Project”** shall have the meaning set forth within Recital (B);

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

**“Project Assets”** means the:

- a) Concessionaire’s Assets; and
- b) Authority’s Assets,

listed in the Asset Register, which are used in the provision of the Project services, whether or not such assets are leased by, owned or licensed to, or in the possession or control of the Concessionaire or its sub-contractors;

**“Project Completion Date”** means the date on which the Completion Certificate, is issued under the provisions of Article 14;

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

**“Project Milestones”** means the project milestones set forth in Schedule-F;

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

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

**“Realisable Fee”** means all the Fee due and realisable under this Agreement, but does not include fees that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee shall be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

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

**“Access”** means the constructive possession of the Site, together with easements and unrestricted access, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

**“Safety Requirements”** shall have the meaning set forth in Clause 18.1.1;

**“Scheduled Date”** means the date from Appointed Date to completion of implementation phase of the Project;

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

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

**“Service Failure”** means the Service Provider /Concessionaire not achieving the acceptable Service Levels;

**“Service Levels”** mean the levels of performance to be achieved by the Concessionaire in the provision of the Services, as set out in Schedule-C (Service Levels);

**“Service System”** means all or any part of any:

- (a) Control Centre;
- (b) Station Systems;
- (c) POS Terminals
- (d) Management Information System;
- (e) Prepaid Personalized Card System;
- (f) Services Website;
- (g) Interfaces;
- (h) Hardware;
- (i) Software,
- (j) Mobile App

Integration with Integrated Command and Control Centre of Chandigarh Smart City

to be designed, developed, implemented, maintained and used, as applicable, by or on behalf of the Concessionaire in connection with the Project Assets and/or the Services;

**“Services Website”** means the website(s), to be designed, developed, implemented and maintained by the Concessionaire in accordance with the Scope of Work in order to provide the relevant parts of the Services to Customers;

**“Site”** means the locations at which a Station is or will be installed;

**“Site Design”** means the process and documentation/drawings required for the works at a Site;

**“Soft Launch”** shall have the meaning set forth in Clause 14.7;

**“Software”** means system software, operating systems, applications, programs and procedures, and all updates and upgrades to any of the foregoing, that enable the Hardware or Systems (including the Service Systems) to perform tasks and/or operations and/or process data, in each case in object code form unless expressly provided otherwise in this Agreement and excluding any other data or input or output;

**“Spare Parts”** means parts or components which are retained so as to assist in maintenance, overhaul or replacement of the relevant Project Asset that they relate to;

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

**“Station”** means the terminal and Docking Points from which a Customer can:

- (a) retrieve and return a Bicycle; and
- (b) make a Fee Payment;

**“Station Assets”** means the Project Assets comprising each Station, including the Docking Point & advertisement panel;

**“Station System”** means the Service System including the information technology, to be designed, developed, implemented, maintained and used, as applicable, by the Concessionaire to process Transactions and Data at the Terminals and Docking Points;

**“Statutory Auditors”** means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956/2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 28.2.1;

**“Subscription Fee”**; means fee to procure a Prepaid Personalised Card for the Annual Subscription;

**“Subscriber”** means a person who holds a Prepaid Personalized Card;

**“Substitution Agreement”** shall have the meaning set forth in Clause 35.3;

**“Suspension”** shall have the meaning set forth in Clause 31.1;

**“System Failure”** means any material failure, fault or problem of the Project Assets; and/or Service System

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

**“Terminal Design”** means the design for the structure and appearance of the Terminal (but excluding the Services System);

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

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

**“Tests”** means the tests set forth in Schedule-H to determine the completion of the Project in accordance with the provisions of this Agreement;

**“Third Party”** means any person or entity which is not a party to this Agreement, but excluding sub-contractors;

**“Total Project Cost”** means the lowest of:

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

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

**“User”** means a person who is authorised to use a Cycle Asset on payment of Subscription Fee or in accordance with the provisions of this Agreement and Applicable Laws;

**“Vesting Certificate”** shall have the meaning set forth in Clause 33.4; and

**“Working Day”** means any day other than any Saturday, Sunday or public holiday in India;

**“Workshop”** is the area equipped with facilities and equipment for general management, repair, maintenance, cleaning and parking of bikes and docking station for the bike sharing system. The workshop may be included along with the control centre or at different location.



# Engagement of Agency for Design, Build, Operate & Transfer Public Bike Sharing System in Chandigarh on PPP Mode

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SCHEDULES

**VOLUME III**



**Chandigarh Smart City Limited**

Second Floor, New Bridge Building No. 2, Near TDI MALL, Sector 17 A, Chandigarh- 160017

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## SCHEDULE - A: SCOPE OF THE PROJECT

### 1 GENERAL

- 1.1 Brand
- a) Branding and marketing is one of the best strategies to generate positive image, easy to recognise, attract the users and also help to generate maximum revenue from advertisements. The Branding will consist of Name, LOGO, Tagline (optional) and design elements for various components of the system like cycles, stands/stations, staff uniform, vehicles, web site and Mobile Application.
  - b) The above components will have to be created by a professional designer and finalised in consultation with the Authority. Thus created Brand and other elements for the scheme/project will be intellectual property of the Authority. The expenditure in this regard will be borne by the concessionaire.
- 1.2 The operation shall be 6 am to 10 pm.
- 1.3 The Concessionaire shall ensure full compliance with Indian Generally Accepted Accounting Principles (GAAP); and as recognised and applied by the Authority in recognition of all financial transactions.
- 1.4 The Concessionaire shall prepare proper books and records of all individual financial transactions, Project Assets and liabilities.
- 1.5 The Concessionaire shall supply a copy of such books and records in both electronic and paper format, as requested by the Authority.
- 1.6 The Concessionaire shall ensure that the completeness and integrity of all financial processes are maintained at all times on all accounting Service Systems.
- 1.7 The Concessionaire shall carry out Tests in accordance with the Schedule-H of the Concession Agreement (Tests); and Good Industry Practice.
- 1.8 The Concessionaire shall provide and implement a security plan and submit the same to the Authority for record.
- 1.9 The Authority shall have the right to conduct their own external testing and audit to check compliance with the security plan.
- 1.10 The Concessionaire shall ensure that the identity of all Users is securely authenticated before using any of the Service Systems.
- 1.11 The Concessionaire shall ensure that the Service Systems prevent unauthorised Users and Concessionaire's employees from making changes to configurations of the Service Systems.
- 1.12 The Concessionaire shall maintain a real time data centre to which the Authority shall have the access towards all messages or email sent and received between the Control Centre and Stations, including messages relating to:
- a) Hire of Bicycles including Bicycle release and Docking of Bicycles;
  - b) Payment transactions;
  - c) System configuration;
  - d) Incidents reported; and
  - e) Prepaid Personalized Card/ mobile app

- 1.13 The Concessionaire shall maintain the Project Assets, Bicycles and any associated components to the standard necessary to meet the Service Levels and Performance Indicators.
- 1.14 The Concessionaire shall ensure that the Systems can provide all Performance Indicator Reports and associated data, in a format to be agreed with the Authority, on a {monthly} basis.
- 1.15 The Concessionaire shall ensure that the raw data used to measure and compile all Performance Indicators is available to the Authority at the time of providing the Performance Indicator Report.
- 1.16 The Concessionaire shall issue its employees with an identification badge, which shall include:
  - a) a photograph; and
  - b) name and the unique employee number.

## 2 IMPLEMENTATION

- 2.1 Station
  - 2.1.1 The Concessionaire shall develop {617 (Six Hundred and Seventeen) Stations as part of the Public Bike Sharing System.
  - 2.1.2 The Concessionaire will design, develop and install a complete PBS station with advertisement panel as a model station for concurrence of sub-group of CHCC. The concessionaire shall incorporate the suggested modification or alteration as suggested by sub-group of CHCC in final PBS station design to be implemented.
  - 2.1.3 The Concessionaire shall design, develop, implement and test each Station in accordance with:
    - a) the Agreement;
    - b) the approval from the Authority.
  - 2.1.4 The Authority will provide the Concessionaire with:
    - a) the Site Details Annex-I of Schedule-A;
    - b) the indicative Station Layout Annex II of Schedule-A.
  - 2.1.5 The Concessionaire shall carry out sites survey and revalidate the locations of docking stations suggested by the Authority as mentioned in Schedule-A. After the survey, the concessionaire may suggest alternative sites for docking stations for maximum of 10% of the total 617 docking sites.
  - 2.1.6 The Concessionaire shall develop for each Station a Site Design, including:
    - a) Docking Points; and
    - b) any infrastructure required to allow the Site to function (e.g. power cables to the Docking Points etc.)
  - 2.1.7 The Concessionaire shall supply the Authority with copies of the Site design and all working drawings produced for carrying out the installation of the Station.
  - 2.1.8 The Concessionaire shall install the Station as per the Specifications and Standards prescribed in the Agreement.
  - 2.1.9 The Concessionaire shall obtain the requisite permit before installing the Stations.
  - 2.1.10 The Concessionaire may ensure the provision of solar lighting in the Station.

## 2.2 Docking Points

2.2.1 The Concessionaire shall be responsible for the design, procure and installation of Docking Points, taking into consideration and complying with the provisions of the Concession Agreement and the approval from the Authority, as applicable to each Site. The Authority shall provide the Concessionaire with an indicative Layout Plan for Docking Points, Annex-II of Schedule-A wherein the area of Advertisement has been prescribed

2.2.2 Deleted

2.2.3 The Concessionaire shall ensure that each Docking Point contains, as a minimum:

- a) an automated mechanism for releasing a Bike when Hired by a Customer/User;
- b) an automated mechanism to Dock a returned Bike;
- c) an automated system clearly indicating to a Customer/User when a Bike has been successfully Released, Docked or cannot be hired either because there is a fault with the Docking Point or the Bike is Damaged;
- d) a manual means to Dock a Bicycle if there is no power at the Docking Point. However, in such a situation, the Concessionaire shall ensure that the actual usage time shall not be linked to the Docking back the Bicycles but arrival of the User at the Station as the manual Docking could take several minutes
- e) a Card reader to allow registered Customers to obtain Bicycles by using the Prepaid Personalized Card.

2.2.4 The Concessionaire may have a manual mechanism instead of an automated system to Dock or Release a Bicycle. In such case the Concessionaire shall appoint its employee at each of the Station to manually Dock and Release the Bicycle. However, in such a situation, the Concessionaire shall ensure that the actual usage time shall not be linked to the Docking back the Bicycles but arrival of the User at the Station as the manual Docking could take several minutes

2.2.5 The Concessionaire shall ensure that the Control Centre records the identity of each unique Bicycle that has been Docked and Released from each Docking Point and of the corresponding User.

2.2.6 The number of Docks at each station shall be two times the number of authorized bikes at each Station, to ensure availability of excess docking space, to accommodate peak hour demand. The Concessionaire is required to assess the demand w.r.t the usage of Bikes/Bicycles periodically. The Concessionaire shall increase/decrease number of docks as per demand assessment at all Docking Stations on approval by competent authority.

2.2.7 The Concessionaire shall ensure that Docking Points are designed such that only a Bicycle designed and manufactured for use in the Public Bicycle Scheme can be Docked.

2.2.8 The Concessionaire shall be responsible for the Operation and Maintenance including the redistribution of Bicycles in the corresponding Stations.

2.2.9 The Concessionaire shall ensure that Docking Points are designed to minimise the theft of Bicycles.

## 2.3 Point of Sale (POS) Terminal

2.3.1 The Concessionaire shall establish Point of Sale Terminals on at least at all E-Sampark Kenderas and any five other designated locations in Chandigarh with necessary Infrastructure.

- 2.3.2 Issuance of prepaid personalized card must not take more than 10 mins at designated POS Terminal and one week at E-Sampark Kendaras respectively from the date of application submission. Citizen shall collect the card from same E-sampark centre after 7 (seven) days from the date of submission of their applications.
- 2.3.3 The Concessionaire shall ensure that each Point of Sale (POS) Terminal comprises as a minimum:
- a) a screen;
  - b) an input device to allow the Customer to interact with the Services Systems;
  - c) a cash drawer
  - d) a card reader for taking Charge Payments from debit cards and credit cards;
  - e) a Prepaid Personalized Card Reader and Writer @ E-Sampark Centers and
  - f) a Prepaid Personalized Card Reader and Writer @ Other Designated Locations
  - g) a device for printing receipts;
  - h) Smart Card Printer @ Designated Locations
  - i) a wireless communications link with the Control Centre, to enable:
    - i. authorisation of Charge Payments; and
    - ii. provision of real-time information regarding the Public Bike Sharing System; and
  - j) Customer information panels for the display of customer information.
  - k) An integrated camera for taking photograph of the applicant
- 2.3.4 The Concessionaire shall ensure that the Prepaid Personalized Cards and its Reader, Writer complies with the industry standards like ISO 14443
- 2.3.5 The Concessionaire shall ensure that the Payment Card Reader has a card protection device that provides the following functions as a minimum:
- i. a silent alarm to notify the Concessionaire instantly of any criminal activity;
  - ii. a device to detect any false fronts or foreign devices being attached; and
  - iii. secures Customers information e.g. Debit/Credit card number.
- 2.4 Bike
- 2.4.1 The Concessionaire shall submit the Bike design and a prototype Bike to the Authority for approval prior to it being put into production. The Authority may provide the Specifications and Standards needs to be met for the design of the Bikes.
- 2.4.2 The Concessionaire shall ensure that each Bike is of a uniform design, and has a colour scheme.
- 2.4.3 The Concessionaire shall ensure that each Bike is identifiable by a unique Bike reference number both electronically (Radio-frequency identification) and manually.
- 2.4.4 The Concessionaire shall design the Bike for unisex and in a manner such that the seat can be adjusted easily and securely by hand and without the need for any tools.
- 2.4.5 The Concessionaire shall ensure that there are unobstructed reflectors on both the front and rear of the Bike.
- 2.4.6 The Bikes with front baskets and without baskets shall be in the ratio of 30:70.
- 2.4.7 The Concessionaire shall design the Bike so as to deter the removal of any of the Bike components (e.g. the seat, the handle bars, etc.) by anyone other than the Concessionaire.

- 2.4.8 The Concessionaire shall design the Bike to prevent Customers, Users, or the general public, from tampering with it.
- 2.4.9 Technical Specification for the Bikes should at least meet the "Minimum Technical Standards" as given in Schedule B.
- 2.4.10 Procurement of equipment shall be limited to those manufactured not earlier than six (6) months prior to the date of signing of the Concession Agreement between the Authority and the Concessionaire. The equipment shall be brand new, not have been put to commercial use anywhere previously to the Commencement of Operations i.e. commercial operation date.

### 3 OPERATION AND MAINTENANCE

- 3.1 The Concessionaire shall ensure that the Service Systems are designed to be flexible and configurable in order to enable the incorporation of modifications (if any) to the Project and its assets, as may be requested by the Authority from time to time, with minimum cost and effort;
- 3.2 Customer registration process
- 3.2.1 The Concessionaire shall ensure that Customer registration process is described at the Sampark Centre, Mobile Application and the Service Website. The Customers/Users who do not use Smart phones should be able to complete the registration process or update their Customer/User Record through Sampark Centre and POS Terminal installed at designated places. The Concessionaire may seek additional information or identification (such as PAN card no, Voter ID Card no, AADHAR no., Driving License no etc.)of the Customers in order to complete the registration process. The Customers shall upon completion of the registration be provided with a Prepaid Personalized Card and 4 (four) digit personal identification number (the "PIN") to access the Prepaid Personalized Card.
- 3.2.2 The Concessionaire shall ensure that the Customers are able to choose the annual subscriptions.
- 3.2.3 The Concessionaire shall ensure that any amendment to the Customer registration is available at the Sampark Centre, POS Terminals and the Service Website and Mobile Application.
- 3.2.4 The Concessionaire shall ensure that the Customers having procured the Prepaid Personalized Card should be able to recharge or amend their Customer Record through the Service Website/ Sampark Centre/ PoS Terminal subject to providing the required identification (such as PAN card no, Voter ID Card no , AADHAR no., Driving License no etc.).
- 3.3 Deleted
- 3.4 Bicycle Availability and Redistribution
- 3.4.1 The Concessionaire shall ensure that Cycles are always available for rent at any Cycle station by redistributing Cycles as necessary. This situation will arise when Cycles accumulate at certain Cycle Stations at certain time of the day. This will require the Concessionaire to physically redistribute cycles.
- 3.5 Bike/Bicycle Hire
- 3.5.1 The Concessionaire shall make the following functions available to Customers:
- a) Subscription recharge;
  - b) Bicycle hire;
  - c) Bicycle return;

- d) receipt printing;
- e) registering inability to return a Bicycle;
- f) balance enquiry;
- g) real time availability of Bicycles and Docking Points across the city;
- h) fault reporting (Bicycles and Station components); and
- i) display of Public Bike Sharing System information, including user terms and conditions.

3.5.2 The Concessionaire shall ensure that the Terminal functions and features are available and enable output in the following languages

- a) Hindi
- b) English
- c) Punjabi

3.5.3 When a Customer elects to hire a Bicycle, ensure that the Service Systems:

- a) check for the Subscription detail (if registered) or the Debit/Credit card details;
- b) display the time remaining on the current Subscription;
- c) display the Docking Points that have Bicycles available for hire;
- d) allow the Customer to choose one or more of the available Docking Points;
- e) check that the Customer has not exceeded the number of Bicycles that can be hired:
  - i. on the Subscription;
  - ii. simultaneously on the Authorised Payment Method;
- f) release the Bicycle(s) at the chosen Docking Point;
- g) Record the hire information against the Subscription/Security Fee/User Fee

3.6 Return

3.6.1 The Concessionaire shall ensure that when a Customer Docks a Bicycle, the Control Centre records the completion of the Hire Period against the Subscription/User Fee. The Concessionaire shall enable all Customers Who Dock a Bicycle to receive a receipt. The receipt shall include:

- a) the Bicycle unique reference number;
- b) the date and time the Bicycle was Docked;
- c) the Docking Point and Station at which the Bicycle was Docked;
- d) the Customer Number or Subscriber Number or last four digits of debit/credit card of the Customer who returned the Bicycle.

3.7 Inability to Return a Bicycle

3.7.1 The System shall provide a facility for Customers and shall indicate that they could not Dock a Bicycle because the Station was full (i.e. all operational Docking Points have Bicycles Docked).

3.7.2 Where a Customer indicates 'Station Full', the Concessionaire shall ensure that Service System:

- a) verifies that the Station is full;
- b) informs the Customer of the nearest Station(s) with free Docking Points;
- c) records the date and time of the interaction; and
- d) grant the Customer a free fifteen (15) minutes period in which to travel to the nearest Station with a free Docking Point

- 3.7.3 The Concessionaire shall ensure that, on request by a Customer or another party (who could be interested in developing a software or application for handy use of such information), the Service System shall display the current availability of Bicycles and Docking Points across the Public Bicycle Scheme.
- 3.8 Fault Reporting (Bicycles and Station components)
- 3.8.1 For a Damaged Bicycle, the Concessionaire shall ensure that the Service Systems shall prevent the Hire or Release of the Bicycle until the fault has been rectified.
- 3.8.2 For a faulty Docking Point, the Concessionaire shall ensure that the Service System sets the Docking Point into a state where other Customers will not attempt to use it (e.g. turn off power to the Docking Point; or set an indication at the Docking Point).
- 3.9 Display of Public Bike Sharing System information
- 3.9.1 The Concessionaire shall ensure that, the Systems I.e. Mobile Application and Service Website/Triangular Advertisement Panel shall display standard Public Bike Sharing System information, including:
- a) subscription fee, current Tariffs;
  - b) general information on how to use the Public Bike Sharing System;
  - c) safety information;
  - d) help information including contact details; and
  - e) User Terms and Conditions.
- 3.10 Charges
- 3.10.1 The Concessionaire shall normally calculate the Cycle Hire Charges incurred by a Customer as per the Hire Period and the Customer's Subscription Type.
- 3.10.2 Deleted
- 3.10.3 The Concessionaire shall notify Customers via their preferred Channel of the total payment amount to be debited.
- 3.11 Non-return Charges
- 3.11.1 The Concessionaire shall enable a Non-Return Charge to be collected from a Customer who has not returned their Bicycle during the operation hours as mentioned in agreement:
- 3.11.2 The Concessionaire shall collect any incurred Non-Return Charges as per the applicable charges by way of deduction from the Subscriber's debit card/ credit card or direct debit mandate.
- 3.11.3 The Concessionaire shall calculate Non-Return Charges based upon the Non-Return Charge Table as part of the Fee notification of the Concession Agreement in Schedule M. In case the customer/user fails to return the bicycle upto 3 days of hiring of Bicycle, the concessionaire shall consider bicycle theft by the customer/user. The concessionaire shall proceed in accordance to clause of theft of bicycle of this agreement.
- 3.11.4 The Concessionaire and/or Authority shall have the ability to waive, vary or refund Non-Return Charges from Customers.

### 3.12 Enquiries and Complaints

- 3.12.1 The Concessionaire shall allow a Customer to make an Enquiry or Complaint using the following contact Channels:
- a) Services Website;
  - b) telephone;
  - c) Mobile Application; and
  - d) e-mail.
- 3.12.2 The Concessionaire shall allow Customers to submit Enquiries and/or Complaints about any aspect of the Public Bike Sharing System.
- 3.12.3 The Concessionaire shall address the Enquiries or Complains at the earliest.
- 3.12.4 The Concessionaire shall ensure that Customer Service Representatives have real-time information regarding the availability of:
- a) Bikes;
  - b) Docking Points;
  - c) Terminals; and
  - d) Stations - for individual Stations and for all Stations for the purpose of responding to Customer Enquiries.

### 3.13 Bicycle Theft

- 3.13.1 When informed by a Customer that a Bicycle has been stolen, the Concessionaire shall request that the Customer:
- a) registers a First Information Report (FIR) of crime to the appropriate police station; and
  - b) supplies the associated FIR number to the Concessionaire.
- 3.13.2 When a Bicycle is reported stolen, the Concessionaire shall ensure that the Control Centre allows a Customer Service Representative to undertake appropriate actions including:
- a) cancel the Customers Current Hire Period;
  - b) Identify that the Bicycle is non-operational

### 3.14 Contact Channels

- 3.14.1 The Concessionaire shall ensure that Control Centre provide as a minimum the following Customer Contact Channels:
- a) e-mail;
  - b) telephone;
  - c) Mobile Application; and
  - d) Service Website
  - e) Contact Centre

### 3.15 Services Website and Mobile Application

- 3.15.1 The Concessionaire shall host a Services Website and Mobile Application providing all the information about the Public Bike Sharing System including specific forms and guidelines for download, real-time information on the availability of Bike, Station and Docking Points.

3.15.2 The Concessionaire shall be responsible for the design, implementation and ongoing hosting, management, maintenance and security of Service Website pages and Mobile Application for which they are responsible.

3.15.3 The Concessionaire shall provide and operate the facility for Customers to submit an Enquiry and/or Complaint to the Concessionaire via e-mail through a web-based form located on the Services Website and Mobile Application.

3.16 Fare Collection System

A hybrid fare collection system using different payment gateways like internet banking/credit/debit cards/mobile wallets/closed loops cards etc. and across different platforms like web, mobile app shall be provided by the Concessionaire.

Mobile application and Personalized closed loop smart cards must be provided by the Concessionaire for Fare collection system of PBSS. Non Personalized card shall not be used for PBSS. Concessionaire to propose a detailed solution description on Smart card and mobile app based solution for PBSS information sharing, renting and fare collection system

Necessary Infrastructure for setting up the Mobile App and Card based ecosystem shall be ready on day 1 of the PBSS start of operations. For the purpose of Personalized Card sale, recharge, replace, refund and other necessary features of Fare Collection System, Concessionaire shall establish Point of Sale Terminal at least at all E-Sampark Kundera's and any other five designated locations in Chandigarh with necessary Infrastructure. Issuance of personalized card must not take more than 10 mins at designated POS Terminal and one week at E-Sampark Kunderas respectively from the date of application submission. Citizen shall collect the card from same E-Sampark centre after 7 (seven) days from the date of submission of their applications. Personalization card shall include Printing of name and photo of the applicant on the card and Writing the relevant credentials of the applicant inside the memory of Smart card. Relevant information to be written inside the card shall include but not limited to – Name, Mobile Number, Unique ID, Aadhaar Number, Address etc., The Fare structure (Subscription Fees, Usage fees, etc.) have been determined by The Authority and is detailed out in Schedule – M.

3.17 Advertising at the Docking Stations

The Concessionaire shall be allowed to have advertisement rights of two sides of Triangular Prism only at each docking station. Each side of Triangular Prism shall be 1219 mm x 1964 mm. wherein two sides advertisement and one side information related to PBS system i.e. Map, User Fee, Registration process, Use of Mobile App, Emergency Contact Details etc. The Concessionaire may also have the agreement with a third party that may want to display or advertise through this Project. However, all such advertising shall confirm to Good Industry Practice and applicable Laws.

No obscene, liquor and tobacco advertisement will be allowed. The rights to advertising, sponsorship, naming and branding rights will remain with the Concessionaire but CSCL will have the final right of approval on the same.

## Annex – I – Maps for Proposed site for 617 Docking Stations

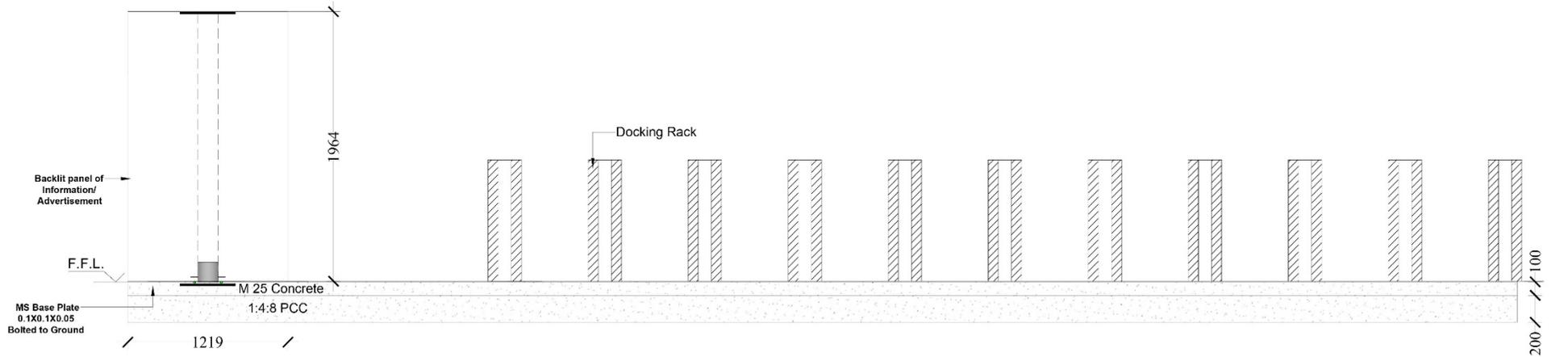
The proposed sites for 617 docking stations marked on maps will be provided by the O/o of Chief Architect, UT Administration with other relevant details if any.

### Proposed Area of Workshop and Control Centre

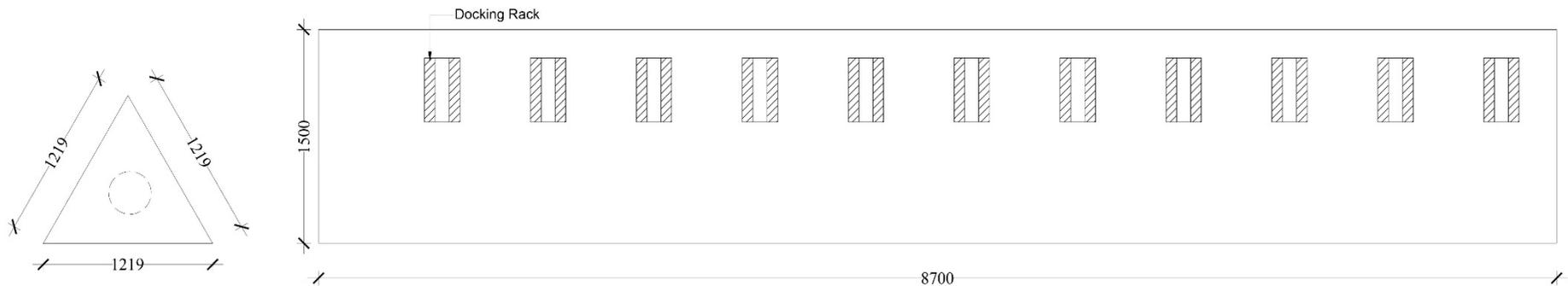
<b>Workshop</b>	~5000 (Five Thousand) Sq. Ft.
<b>Control Centre</b>	Proposed at Tile Factory in Industrial Area Phase – I, Chandigarh or any other suitable site provided by CSCL/ MCC

## Annex – II - Indicative Station Layout

All the dimensions are in millimetres



**ELEVATION**



**PLAN**

NOTE: ALL DIMENSIONS ARE IN MM.  
DIMENSIONS ARE TO BE READ AND NOT TO BE MEASURED FROM THE DRAWING

 <b>Chandigarh Smart City Ltd.</b>	<b>Office Address:-</b> Chandigarh Smart City Limited 2 <sup>nd</sup> FLOOR, New Bridge Building NO-2, Near TDI Mall, Sector 17-A, Chandigarh -160017	<b>PROJECT:-</b> <b>PUBLIC BIKE SHARING SYSTEM                  IN CHANDIGARH ON PPP MODE</b>			<b>TITLE :</b> INDICATIVE DESIGN FOR DOCKING STATION FOR PUBLIC BIKE SHARING		<b>SCALE:</b> NTS			
			R2	CONCEPTUAL DRAWING	20.12.2018	DRAWN BY :	---	SIGNATURE		
			R1	CONCEPTUAL DRAWING	29.11.2018	DESIGNED BY :	---			
			R0	CONCEPTUAL DRAWING	22.11.2018	CHECKED BY :	---			
			NO.	DESCRIPTION OF REVISIONS	DATE	APPROVED BY :	---			
					<b>DRG. NO. :</b> CSCI/PBS/Rev/02		<b>SHEET:</b> 1 OF 1	<b>REV.</b> R2		

## SCHEDULE - B: SPECIFICATIONS AND STANDARDS

### 1 Bike

S. No.	Bike- Minimum Specifications
1	One-Size Fits all with Step Through Frame
2	Visible difference of the Bike from regular bikes in the market through design
3	Seat Adjustable without any tools
4	Light weight Frame – not more than 15 kg
5	Automated lock integrated into bike structure that make it difficult to remove and to resell the components – RFID/GPS enabled. + Kick Stand
6	Front mounted Basket with a capacity up to 10kg (The Bikes with front baskets and without baskets shall be in the ratio of 50:50.
7	Ad Space on basket and the sides of the Bike
8	Simple reliable braking system
9	Rust and Graffiti Resistant
10	Front and Rear mud guards with fenders
11	Enclosed mechanisms
12	Lighting System in the front and back
13	Bell
14	Blinker at rear and Reflective Tape (ACM 12) on front, sides and back
15	Tubeless tyres (more than 26”) and puncture resistance. Width of the tyre- (1.5” – 1.75”)
16	RFID and GPS tag enable identification of Bike while check-in and check out

### 2 Station

S. No.	Stations- Minimum Specifications
1	Modular design- easy to construct and de-construct.
2	Installed in a manner that ensures safety of the stations infrastructure and bikes
3	Shelter less and barrier free access
4	Accommodates gaps caused by on-street obstructions such as manhole covers
5	The docking station will contain Triangular Prism (each side measuring 1219 x 1964 mm) wherein two sides advertisement and one side information related to PBS system shall be displayed i.e. Map, User Fee, Registration process, Use of Mobile App, Emergency Contact Details etc.
6	Rust and Graffiti Resistant design of docks/ locking posts and advertisement panels
7	There should be provision of at least/minimum one number of solar pole lights at each Docking Station.

### 3 Docks

S. No.	Docks- Minimum Specification
1	Separate docks for each Bike. Minimum Ratio of 1 Bicycle: 1.5 Docks to be maintained.
2	Automated Locking Mechanism for the docks/bicycles which are easy to operate.
3	Simple design which do not consume a lot of space
4	Rust and Graffiti free material
5	Guaranteed life for the concession period.

#### 4 Device for Check in and check out/ card verification

S. No.	Device– Minimum specifications
1	Simple and non-bulky design
2	The device should be IT enabled and connected to Central control room to transmit and receive real time information with the latter.
3	Reads Prepaid Personalised cards and indicates validity of the card and availability of minimum balance within 5 seconds
4	Transmits information about user ID and time of check in and check out to the Central Control Room

#### 5 Central Control System

S. No	Central Control System- Minimum Specifications
1	Connected to all the registration centres, station and check in and check out equipment
2	Able to compile information at station level and system level
3	Able to track the availability of bikes and docks at each station of the system
4	Able to use the Bike and dock availability information to make decision on redistribution of bikes
5	Able to provide real time information of the system to Authority
6	Able to receive and save all records on a searchable database
7	Guarantees data security as per Indian law and international best practices
8	All data is the property of Authority
9	Central Computer System should be upgraded and maintained daily
10	The Contractor will provide reports to CSCL in accordance with an agreed upon schedule or on request.
11	Physically staffed Office space housing the central control system
12	Computer terminals and communications equipment allowing Concessionaire staff to monitor system status
13	Call centre: The concessionaire shall provide a call centre number for queries and feedback for the system and this number will be displayed on all docking stations and bikes.
14	Control Centre for Prepaid Personalized Card security Management, Initialization, replacement, refunding, ad hoc reporting and Mobile Application etc..
15	Concessionaire to ensure no loss of personal data of User should happen through the system deployed by the Concessionaire
16	Centralized system of Prepaid Personalized card shall not be cloud based. All relevant hardware and software to be hosted in Central Control System
17	Authority shall be the owner of any kind of Data generated through PBSS. Concessionaire cannot use data generated through PBSS without the consent of Authority
18	Mobile Application shall not be hosted on cloud. The same shall be hosted on physical servers.
19	Concessionaire shall invariably share the feeds & APIs with Integrated Command Control Centre of Chandigarh Smart City Limited and Municipal Corporation Chandigarh – Integrated Command and Control Centre. These feeds will provide information but not limited to available, non-available bike parking slots, functional and non – functional bike parking slots, daily revenue of each parking location, frequency of users, peak time patterns, daily number of users, details of users, duration of each user, frequent users, payment modes, system availability, usage patterns, incidents etc.

## 6 Redistribution Vehicles

S. No	Redistribution Vehicles- Minimum Specifications
1	Designed to ensure transfer of bikes with minimal damage.
2	Follows the same brand guidelines for the entire system as approved by the Authority. Should look like a part of the rest of the system

## 7 Depots/ Workshop

S. No.	Depots/ Workshop- Minimum Specifications
1	Space to store extra/ back up bikes for the system
2	Space to store back up check in/ check out devices and other equipment
3	Space to undertake repair of bikes of the system
4	Space to store the required tools for repairs and maintenance

## 8 Registration Centres

S. No.	Registration Centre- Minimum Specifications
1	Enabled to collect ID proofs and other required documents to register a user to the system
2	Enabled with the required equipment or technology to issue a new prepaid personalized cards to new customer
3	Enabled to issue personalised cards with user id and information for ID proofs linked to the card.
4	Enabled to handle card and cash transactions for subscription fees and top up of smart cards.
5	Enabled to link the transactions to the relevant user id.

## 9 User Information System

S. No	User Information system- Minimum Specifications
1	Integrated website and Smart Phone apps (for the Android and Apple operating system) should be developed and maintained throughout the project, the apps developed should not be of hybrid nature and are supposed to be developed natively for the operating system.
2	Should be easy to access and able to provide information about the system- static and real time for the ease of the user
3	Should be linked to Google maps and user should be able to locate himself and find nearby docking stations along with real time status of bike and docks available in the stations.
4	Should have a user dashboard that allows new users to sign up and also the existing users should be able to access information about their previous trips, smart card balance, top-up their smart card balance and other details.
5	Should have feature of route planner to help users integrate their trips with other modes of transportation.

## SCHEDULE - C: SERVICE LEVELS

The Service level benchmarks and the corresponding Payment shall be made by the Concessionaire as per the following:

S. No.	Performance Indicator	Explanation	Time	Acceptable Service Levels	Penalty for not meeting the Acceptable Service Level	Illustration	
BIKE REDISTRIBUTION	1	High priority stations*-empty, peak hours	Percent of the time that high-priority stations are empty during peak hours	7am - 10 am & 4 pm-7 pm everyday	Should be less than 5% of the total peak time of operation	Rs. 1000/ per station per minute of delay	Total Peak Hour Time: 6 Hrs 5% of Peak Time: 18 Min. (Instance and duration of an Empty Station (ES) during the day) ES 1: 5 min ES 2: 6 min ES 3: 10 Min ES 4: 3 Min Total Time when Station were empty: 24 Min Total Penalty Due: $(24-18)*1*1000 = \text{Rs.}6000/-$
	2	High priority stations*-empty, non- peak hours	Percent of the time that high-priority stations are empty during non-peak hours	Operating hours excluding peak hours	Should be less than 10% of the total time of operation	Rs 1000/ per station per minute of delay	Total non-Peak Hour Time: 10 Hrs 10% of Peak Time: 60 Min. (Instance and duration of an Empty Station (ES) during the day) ES 1: 15 min ES 2: 16 min ES 3: 20 Min ES 4: 34 Min

							Total Time when Station were empty: 85 Min Total Penalty Due: $(85-60)*1*1000 = \text{Rs.}25,000/-$
Availability	3	Bicycle Availability	Average Bike fleet available per day.	During any point of time through the working hours from 06:00am till 10:00 pm	Should always be 95% or more of the total authorized fleet size	Rs 150/ per bike per instance per day	Authorized Fleet size: 5000 95% of Authorized Fleet: 4750 At some moment on a given day total fleet size reduced to 4609 Total Penalty Due: $(5000-4609)*150 = \text{Rs.}58,650/-$
	4	Service Availability	Number of hours when the system is operational	Operating hours of the system	Should always be 99% of the agreed hours of operations (unless permission has been granted by CSCL for otherwise) \	Rs 1,000/ per minute in a day	Total Operating Hrs: 960 min 99% of total operating Hrs: 950.4 min At some moment on a given day service unavailable for 20 Mins Total Penalty Due: $20*1,000 = \text{Rs.}20,000/-$
Maintenance	5	Availability of the Control Center, Website and smart phone app	% of total time in a month when Control Center, website and smart phone app is not available	All through the month	The website and Control Center, smart phone app are available for at least 99 % of the time during the entire month	Rs. 50,000/- per month	Total Up Time for Control Centre: $30*16 = 480$ hrs and should not be unavailable for more than 4.8 Hrs during the month while Total Up Time for website and mobile app: $30*24 = 720$ hrs and should not be unavailable for more than 7.2 Hrs

	6	Maintenance Schedule	Keep all the bike in 95% running condition at all the time	During the entire operation	Keep all the bike in 95% running condition at all the time	Rs 150/- per bike per instance.	Authorized Fleet size: 5000 95% of Authorized Fleet: 4750 At some moment on a given day total running Bikes reduced to 4609 Total Penalty Due: $(5000-4609)*150 = \text{Rs.}58,650/-$
Encroachment	7	Encroachment	Encroachment at station/terminal for purpose other than PBS system	No Encroachment allowed during the entire operations.	To keep the station/terminal allotted for PBS system free from encroachment, and should not be used for any other purpose	Penalty of Rs. 25,000/- per station per month	
Customer Service	8	Enquiry or Complaint	Percentage of all Enquiries or Complaints that shall be accurately responded to by the Concessionaire	within 48 Hours of receipt	All enquiry and complaint must be resolved within 48 hrs of receipt	Penalty of Rs. 1,000/- Per hour per enquiry or complaint beyond 48 Hrs	enquiry and complaint received: 10 enquiry and complaint resolved within 48 Hrs: 5 enquiry and complaint open after 48 hrs: 5 enquiry and complaint resolved within 50 Hrs: 3 enquiry and complaint resolved within 52 Hrs: 2 Penalty Due: $(3*(50-48)+2*(52-48))*1000 = \text{Rs.}14000/-$
* High priority stations will be identified by the concessionaire with the approval of CSCL.							

## SCHEDULE - D: APPLICABLE PERMITS

### **Applicable Permits**

- 1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:

## SCHEDULE - E: PERFORMANCE SECURITY

The Chief Executive Officer,  
Chandigarh Smart City Limited

### WHEREAS:

- A. .... (the "Concessionaire") and the Chandigarh Smart City Limited (the "Authority") have entered into a Concession Agreement dated ..... (the "Agreement") whereby the Authority has agreed to the Concessionaire undertaking Public Bike Sharing System on design, build, finance, operate and transfer ("DBFOT") basis, subject to and in accordance with the provisions of the Agreement.
- B. The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. 1.25 cr. (Rupees One crore and Twenty-Five Lakhs only) (the "Guarantee Amount") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Concession Period (as defined in the Agreement) and valid from the date of issue thereof until the expiry of 180 days from the Transfer Date.
- C. We, ..... through our Branch at ..... (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Concession Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of General Manager in the Chandigarh Smart City Limited that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Concession Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority,

and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of 180 (one eighty ) days from the Transfer Date and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 180 (one eighty ) days from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

In terms of the Agreement, the Bank shall keep the Performance Security valid, enforceable, and subsisting valid from the date of issue thereof until the expiry of 180 (one eighty) days from the Transfer Date thereof and shall ensure that the same is renewed every 3 (three) years in terms of the Agreement, and furnished to the Authority at least 30 (Thirty) days prior to the expiry of the validity of the existing bank guarantee i.e. Performance Security; so as to ensure that the Performance Security remains valid, enforceable, and subsisting throughout the concession period plus 180 (one eighty) days thereafter in terms of the Agreement.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect upto \_\_\_\_\_ or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this ..... day of ....., 20..... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

## SCHEDULE - F: PROJECT COMPLETION SCHEDULE

### 1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-F for each of the Project Milestones and the Scheduled Date (the "Project Completion Schedule"). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

### 2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the last day of six months from the Appointed Date (the "Project Milestone-I").

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project and installed not less than 200 Docking Stations and 2000 Bicycles.

### 3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the last day of 9th month from the Appointed Date (the "Project Milestone-II").

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have installed not less than 417 Docking Stations and 4000 Bicycles along with the Control Centre.

### 4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the last day of 12 months from the Appointed Date (the "Project Milestone-III").

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have installed 617 Docking Stations and 5000 Bicycles along with the Control Centre, Workshop and all other facilities in accordance with this Agreement as also Soft Launch as described in Clause 14.7 of the Draft Concession Agreement.

### 5 Scheduled Date

5.1 The Scheduled Date shall occur on the 1st day of 13th month from the Appointed Date.

5.2 On or before the Scheduled Date, the Concessionaire shall have completed the Project in accordance with this Agreement.

### 6 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly. However, the Concession period will remain same and will not be extended.

## SCHEDULE - G: DRAWINGS

*(See Clause 12.2)*

### 1 Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-G.

### 2 Additional drawings

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-G.

## Annex – I - List of Drawings

(Schedule-G)

All the Drawings that the Concessionaire is required to furnish under Clause 12.3. are as follows:

1. Workshop/Repair Centre
  - a. Layout
  - b. Asset Plan
2. Command Control Centre Layout
3. Docking Station Layouts with Advertisement Panel (As built Drawings)
4. City Map for All Stations
5. Any other Drawings as required by the Authority/Independent Engineer/Steering Committee

## SCHEDULE - H: TESTS

### 1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Project, notify the Independent Engineer and the Authority of its intent to subject the Project to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-H.

### 2 Tests

The Concessionaire shall conduct all Tests as required by the Authority/Independent Engineer/Steering Committee.

### 3 Agency for conducting Tests

All Tests set forth in this Schedule-H shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

### 4 Completion Certificate

Upon successful completion of Tests, the Authority / Independent Engineer shall issue the Completion Certificate in accordance with the provisions of Article 14.

## SCHEDULE - I: COMPLETION CERTIFICATE

1. I, ..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated ..... (the "Agreement"), for Public Bike Sharing System (the "Project") on design, build, finance, operate and transfer (DBFOT) basis, through ..... (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-H of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement. The Concessionaire has also carried out a Soft Launch as per the Agreement and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the ..... day of ..... 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

the INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

## SCHEDULE - J: MAINTENANCE REQUIREMENTS

### 1 Maintenance Requirements

- 1.1 1.1 The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-J (the "Maintenance Requirements").
- 1.2 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-J within the time limit specified in the Service Levels therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover the Compensation as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

### 2 Repair/rectification of defects and deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule-J within the time limit set forth therein.

### 3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-J, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-J, the Independent Engineer/Steering Committee may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

### 4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-J, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Steering Committee and conveyed to the Concessionaire and the Authority with reasons thereof.

### 5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-J, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

### 6 Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Project and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Steering Committee at any time during office hours.

## 7 Divestment Requirements

All defects and deficiencies specified in this Schedule-J shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

## Annex – I - Repair/Rectification of Defects and Deficiencies

(Schedule-J)

The Concessionaire shall repair and maintain the defects and deficiencies specified in this Annex-I of Schedule-J as per the Service Levels defined.

### 1 Bicycle

- 1.1 The Concessionaire in the Operation & Maintenance Manual shall include an operation and maintenance plan for the:
  - a) operational mechanism of the Project Assets detailing the methodology adopted for effective operation
  - b) routine and preventative maintenance of the Bicycles; and
  - c) repair of any identified or reported damage and defects
- 1.2 Notwithstanding the Concessionaire's obligation to maintain and ensure the safe operation of the Bicycles, the Concessionaire shall ensure that, at a minimum, the following maintenance activities are performed on each Bicycle in accordance with the maintenance plan approved by the Authority:
  - a) lubrication of moving parts;
  - b) Ensure proper operation of the brake and gear cables;
  - c) inspection of Bicycle lights;
  - d) inspection of the Bicycle bell;
  - e) tightening loose nuts and bolts;
  - f) inspection of tyre wear and tyre pressure;
  - g) inspection of the Docking Point locking mechanism;
  - h) inspection of the Bicycle identifier and;
  - i) general inspection of Bicycle condition and operation; and
  - j) replacement or repair of any worn, damaged or otherwise faulty or unserviceable parts.
- 1.3 The Concessionaire shall ensure that no maintenance activity compromises the design or capability of the Bicycle, as set out in the Specifications and Standards.
- 1.4 The Concessionaire shall ensure any faulty Bicycle, howsoever identified, which cannot be repaired at the Station is removed from the Station and suitably changed with the new bicycle.

### 2 Stations

- 2.1 The Concessionaire in the Operation & Maintenance Manual shall include a maintenance plan for the:
  - a) routine and preventative maintenance of the Stations; and
  - b) repair of any identified or reported damage and defects.
- 2.2 The Concessionaire shall ensure that each Station, including any Bicycles located at the Station, is cleaned at least once every {fourteen (14)} calendar days
- 2.3 The Concessionaire shall ensure that, when inspecting and cleaning a Station, the following activities, at a minimum, are carried out:
  - a) check that all Customer information at the Terminal or Docking Point is clearly visible and not obscured;
  - b) the Site is generally clean and tidy;
  - c) all Payment Card Readers and Prepaid Personalized Card Readers are checked for tampering;
  - d) all damage is reported;
  - e) damage is repaired where possible;

- f) any area or component of the Station, that is unsafe is immediately isolated; and
- g) all Bicycles are subject to a visual inspection.

## SCHEDULE - K:

*(See Clause 20.1)*

Deleted

## SCHEDULE - L: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

### 1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the "TOR") are being specified pursuant to the Concession Agreement dated ..... (the "Agreement"), which has been entered into between the Authority and ..... (the "Concessionaire") for Public Bicycle Scheme on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project.

### 2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

### 3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
  - i. review of the Drawings and Documents as set forth in Paragraph 4;
  - ii. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
  - iii. conducting Tests on completion of construction and issuing Completion as set forth in Paragraph 5;
  - iv. undertaking all other duties and functions in accordance with the Agreement.

- 3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

## 4 Development Period

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire. The Independent Engineer shall complete such review and send its comments/observations to the Authority/Steering Committee or its Authorised Representative and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.4 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

## 5 Construction Period

- 5.1 In respect of the Drawings and Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and the Project once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

- 5.6 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.7 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.8 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.9 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.10 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.11 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.12 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-H and issue a Completion Certificate. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-H.
- 5.13 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.14 The Independent Engineer shall aid and advise the Concessionaire in preparing the Operation & Maintenance Manual.

## 6 Determination of costs and time

- 6.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 6.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

## 7 Assistance in Dispute resolution

- 7.1 When called upon by either Party in the event of any Dispute the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 7.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

## 8 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

## 9 Miscellaneous

- 9.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 9.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 9.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 9.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 9.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

**SCHEDULE - M: FEE NOTIFICATION**

- a) The Subscription Fee for the membership of Public Bike Sharing shall not more than Rs. 200 per year.  
 b) The User Fee/Cycle Hire Charges (inclusive of GST) of Bikes shall be as follows:

Time Span	User Fee (in Rs.)	
	Member	Non-Member
<b>Up to First 1 hr</b>	5	10
<b>After One hours - For additional one hour or part thereof</b>	+5	+10

\*The user fee above is maximum limit of user charges; however Concessionaire is free to charge less than these prescribed charges.

Illustration:

In Case a Member uses the Cycle for two and half hour, the User Fee will be charged as per the following:

For First 1 hr	Rs. 5
For additional 1 hr	Rs. 5
For additional 30 minutes	Rs. 5
<b>Total for 2.5 Hrs</b>	<b>Rs. 15</b>

- There will be no annual increase in the User Fee.
- Non- returning charges:

Days beyond Hired day	Non- returning charges
1	INR 500
2-3	INR1000

- In case the customer/user fails to return the bicycle upto 3 days of hiring of Bicycle, the concessionaire shall consider bicycle theft by the customer/user.

## SCHEDULE - N:

Deleted

## SCHEDULE - O: PANEL OF CHARTERED ACCOUNTANTS

### 1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 28.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-O.

### 2 Invitation for empanelment

- 2.1 The Concessionaire shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:
- a) the firm should have conducted statutory audit of the annual accounts of at least ten companies registered under the Companies Act, 1956;
  - b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of five years in the profession;
  - c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
  - d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.
- 2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year- wise information relating to the names of all the companies with an annual turnover exceeding {Rs. 1,00,00,000 (Rs. one crore)} whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

## SCHEDULE - P: VESTING CERTIFICATE

1. The Chief Executive Officer, Chandigarh Smart City Limited (the "Authority") refers to the Concession Agreement dated ..... (the "Agreement") entered into between the Authority and ..... (the "Concessionaire") for Public Bike Sharing System (the "Project") on design, build, finance, operate and transfer ("DBFOT") basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 33.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all required title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this ..... day of ....., 20..... at {Delhi}.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

CONCESSIONAIRE by:

For and on behalf of Chandigarh Smart City Limited by

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

## SCHEDULE - Q: SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the ..... Day of ..... 20....

AMONGST

1. The Chandigarh Smart City Limited, represented by its Chief Executive Officer and having its principal offices at Second Floor, New Bridge Building no -2, near TDI Mall, Sector 17-A, Chandigarh - 160017 (hereinafter referred to as the "Authority" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. .... LIMITED, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. ....name and particulars of Lenders' Representative and having its registered office at ....., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

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

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

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

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

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 2013, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

## 1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

## 2 ASSIGNMENT

### 2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## 3 SUBSTITUTION OF THE CONCESSIONAIRE

### 3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders’ Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

- 3.2 Substitution upon occurrence of Financial Default
- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 31 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 270 (two hundred and seventy) days from the date of Suspension hereunder.
- 3.3 Substitution upon occurrence of Concessionaire Default
- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) day's time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### 3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
  - b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
  - c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

### 3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

## 4 PROJECT AGREEMENTS

### 4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

## 5 TERMINATION OF CONCESSION AGREEMENT

### 5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 32 of the Concession Agreement.

### 5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

### 5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim of outstanding Debt Due amount from the Authority.

## 6 DURATION OF THE AGREEMENT

### 6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- a) Termination of the Agreement; or
- b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

## 7 INDEMNITY

### 7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.
- 7.2 Notice and contest of claims  
In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 8 DISPUTE RESOLUTION

- 8.1 Dispute resolution
- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Sole Arbitrator decided by the parties. In case of any disagreement on the appointment of Sole Arbitrator by the parties, the dispute shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held settled by Arbitration in accordance with the Chandigarh Arbitration Centre (CAC) Rules, 2018 and shall be subject to provisions of the Arbitration & Conciliation Act, 1996 or any statutory amendment thereof.
- 8.1.2 The arbitrators shall issue a reasoned award. The arbitration proceedings shall be conducted in Chandigarh and the venue of the Arbitration proceedings shall be the Chandigarh Arbitration Centre. The Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "Award") without delay. The language of arbitration shall be English.

## 9 MISCELLANEOUS PROVISIONS

- 9.1 Governing law and jurisdiction  
This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Chandigarh shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss

or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SIGNED, SEALED  
CONCESSIONAIRE has been affixed AND DELIVERED

pursuant to the resolution passed by the

For and on behalf of

CHANDIGARH SMART CITY LIMITED by:

Board of Directors of the Concessionaire

at its meeting held on the ..... day of  
20..... hereunto affixed in the presence of

....., Director, who has signed these

(Signature)

presents in token thereof and .....,

(Name)

Company Secretary / Authorised Officer

(Designation)

who has countersigned the same in token  
thereof \$:

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

(e-mail address)

In the presence of:

- 1.
- 2.

\$ To be affixed in accordance with the articles of association of the Concessionaire.