

**DRAFT CONCESSION AGREEMENT
Volume-II**

between

**SHIVAMOGGA CITY CORPORATION,
SHIVAMOGGA**

and

for

**DEVELOPMENT OF AN ECO-RESORT AND YOGA RETREAT WITH A WELLNESS
CENTER BUILT ON PRINCIPLES OF NATUROPATHY THROUGH PUBLIC PRIVATE
PARTNERSHIP FRAMEWORK**

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This Concession Agreement entered into on this the ____ day of _____, Two Thousand and _____ at Shivamogga,

BETWEEN

Shivamogga City Corporation represented by its Commissioner having its office Opposite to Gandhi Park, Shivamogga – 577201 or **Shivamogga Smart City Limited** represented by the **Managing Director**, a Company duly established under the Companies Act, 2013 having its registered office at 1st Floor, SN Market, Nehru Road, Shivamogga - 577201 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part

AND

_____, a company incorporated under the provisions of the Companies Act, 2013, having its registered office at _____, hereinafter referred to as the “**Concessionaire**” represented by _____ which expression shall unless repugnant to the context include its administrators, successors and permitted assigns, on the other part

WHEREAS,

- A. Shivamogga city is selected as smart city in second round of Smart City competition. In this context, Shivamogga City has incorporated a special purpose vehicle (SPV) ‘Shivamogga Smart City Limited’ to plan, design, implement, coordinate and monitor the smart city projects in Shivamogga. Shivamogga Smart City Limited has been incorporated under the Companies Act, 2013 to implement the Smart City Plan of Shivamogga.
- B. Pursuant to the above, SSCL intends to develop an Eco- resort and Yoga retreat with a Wellness center built on the principles of Naturopathy through Public Private Partnership (PPP) in proximity of the banks of river Tunga on design, build, finance, operate and transfer (the “**DBFOT**”) basis (“**Project**”) in accordance with the terms and conditions to be set forth in this Concession Agreement.
- 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 who would incorporate the Special Purpose Vehicle (“Concessionaire”), which would undertake the construction, operation and maintenance of the Project and had shortlisted certain bidders in 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 incorporation of the SPV which shall execute the Concession Agreement for the Project within [●] days of the date of issue thereof.
- E. By its letter dated, the Concessionaire has also joined in the said request of the {selected bidder/consortium}to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/consortium} The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.
- F. The Authority acknowledges that as on this day, the Concessionaire/Selected Bidder has submitted an irrevocable revolving bank guarantee for a value of Rs. _____/- (Rupees _____ Only) as Performance Security.
- G. The Authority has agreed to the said request of the Concessionaire, and has accordingly agreed to enter into this Concession Agreement for the Project with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-

ARTICLE 1- DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Clause 9.1.

“Agreement” means this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

“Agreement Date” means the date of this Concession Agreement.

“Applicable Law” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgements, decrees, including those pertaining to SCC byelaws, rules of rainwater harvesting, injunctions, writs or orders of any court of record including zoning regulations as may be in force and effect during the subsistence of this Agreement and applicable to the Project / the Concessionaire in relation to the Project.

“Applicable Permits” means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the renovation, operation and maintenance of the Project during the subsistence of this Agreement.

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

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

“Bid” means the document in its entirety comprised in the bid submitted by the Concessionaire in response to the RFP in accordance with the provision thereof;

“Book Value” shall mean the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged on the basis of straight line method and amortized equally over the Operations Period, duly verified and certified by an independent Chartered Accountant who is the member of the Institute of Chartered Accountants of India, in accordance with IGAAP (Indian Generally Accepted Accounting Principles).

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

- (a) the enactment of any new Indian law as applicable to the State;
- (b) the repeal, modification or re-enactment of any existing Indian law as applicable to the State;
- (c) the commencement of any Indian law, as applicable to the State, which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law, as applicable to the State, by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid;

"Commercial Operation Date or COD" means the date on which the Concessionaire obtains the Project Completion Certificate issued by the Authority.

"Concession" shall have the meaning ascribed thereto in Clause 2.1 of this Agreement.

"Concessionaire" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals.

"Concession Period" shall have the meaning ascribed thereto in Clause 2.2 of this Agreement.

"Concession Payment" shall have the meaning set forth in Clause 8.1.

"Construction Requirements" means the requirements as to construction of the Project Facilities set out in Schedule 6.

"Construction Works" or "Works" means all works and things required to be undertaken by the Concessionaire, in accordance with the Construction Requirements.

"Contractor" means any Person with whom the Concessionaire has entered into / may enter into any of the Project Agreements.

"Drawings" means all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the Construction Requirements.

"Due Date" means the date(s) on which the Concessionaire has to make Payment to the Authority in accordance with Article 8.

"Effective Date" means the date on which the Conditions Precedent shall have been satisfied or waived and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Effective Date shall be deemed to

occur only when each and every Condition Precedent is either satisfied or waived as the case may be.

“Emergency” means a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facilities including the safety of the users thereof or which poses an immediate threat of material damage to the Project Facilities.

“Encumbrance” means any encumbrance 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Site / Project Facilities.

“Expiry” means expiry of the Concession by efflux of time at the end of twenty five (30) years from the Agreement Date.

“Expiry Date” means the date on which Expiry occurs.

“Financing Documents” means collectively the documents evidencing Lenders’ commitment to finance the Project.

“Financial Year” means the period commencing from April 1 of any given year to March 31 of the succeeding year.

“Force Majeure” or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in Article 9.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

“Government Agency” means Government of India, Government of Karnataka, Shivamogga City Corporation (SCC), Shivamogga Smart City Limited, Shivamogga (SSCL) or any State Government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“Implementation Period” means the period commencing on the Effective Date and ending on the Commercial Operation Date.

“Lenders” means financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided financial assistance to the Concessionaire for financing any part of the Project.

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

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

“O&M Requirements” means the requirements as to the operation and maintenance of the Project Facilities as set forth in Schedule 7.

“Operations Period” means the period commencing from the Commercial Operation Date and ending on Expiry Date or Termination Date, as applicable.

“Parties” means the parties to this Agreement and **“Party”** means either of them, as the context may admit or require.

“Payment” means the amounts payable by the Concessionaire to the Authority in accordance with Article 8.

“Performance Security” means the bank guarantee drawn in Shivamogga, delivered to the Authority by the Concessionaire for due performance of its obligations under this Agreement, in accordance with Article 6.

“Person” means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

“Preliminary Notice” means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

“Project Facilities” means the facilities and all other asset comprised therein and / or forming part of the Project Site thereof as on the Agreement Date and shall include all facilities, services and all assets comprised therein which the Concessionaire may build, provide or procure within the Project Site, consistent with Good Industry Practice and the terms of this Agreement.

“Project Agreements” means collectively this Agreement, contracts for engineering, procurement, construction, operation, maintenance and any other material contract (other than Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

“Project Completion Certificate” means the certificate issued by Project Engineer/the Authority certifying, inter-alia, that the Concessionaire has constructed all the Project Facilities in accordance with the Construction Requirements.

“Project Completion Period” means the period of 24 months starting from the Effective Date.

“Project Development Plan” means the plan for development of Project Facilities for implementation of the Project prepared in conformity with the, Construction Requirements and as per the Technical Proposal.

“Project Engineer” means a reputed Person, company or a body corporate appointed in accordance with Article 5 for supervision and monitoring of compliance by the Concessionaire with the Construction Requirements and O&M Requirements, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities set forth in Schedule 8.

“Project Site” shall mean the site admeasuring 15 acres and is more fully described in Schedule 1.

“Revenues” means the taxable income as per the Income Tax Return filed by the Special Purpose Vehicle (“SPV”) in the appropriate form¹ as per the Income Tax Act, 1961 duly certified by the Statutory Auditor.

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

“SCC” means the Shivamogga City Corporation.

“Scheduled Project Completion Date” or “SPCD” means the date occurring on the completion of 2 (two) years from the Effective Date or any extension thereof in accordance with the terms of this Agreement.

“SSCL” means the Shivamogga Smart City Limited.

“Statutory Auditor” 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.

¹Income includes, only the taxable income earned from the activities relating to the Project and certified by the Statutory Auditor.

“**Successful Bidder**” means M/s

“**Technical Proposal**” means the proposal submitted by Successful Bidder for the Project Site that has been accepted and attached in Schedule 10.

“**Termination**” means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include Expiry.

“**Termination Date**” means the date specified in the Termination Notice as the date on which Termination occurs.

“**Termination Notice**” means the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

“**Tests**” means the tests to be carried out in accordance with the Construction Requirements and if not expressly specified in the said requirements, as instructed by Project Engineer, in accordance with this Agreement and “**Testing**” and “**Tested**” shall be construed accordingly.

1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, Acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;
- (c) the words importing singular shall include plural and vice versa, and words denoting persons shall include natural persons, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (d) terms and words beginning with capital letter and defined in this Agreement shall have the meaning ascribed thereto herein, and terms and words defined in the Schedule and used therein shall have the meaning ascribed thereto in the Schedule;
- (e) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

- (f) the words "include" and "including" are to be construed without limitation;
- (g) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (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) the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- (k) reference to an individual shall include his legal representatives, successors, legal heirs, executor and administrator;
- (l) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (m) references to recitals, Articles, Clauses, Sub-Clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, Clauses, Sub-Clauses and Schedules of or to this Agreement;
- (n) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or Project Engineer shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party in this behalf and not otherwise;
- (o) 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;
- (p) 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;
- (q) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and

- (r) unless otherwise stated, 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.
- (s) 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.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities and Discrepancies

In case of ambiguities or discrepancies within this Agreement the following shall apply:

- (i) Between two Clauses of this Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (ii) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (iii) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- (iv) Between any value written in numerals and that in words, the latter shall prevail.

1.5 Priority of Documents

The several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in the order they are set out:

- (i) this Agreement
- (ii) This Agreement
- (iii) Schedules to this Agreement
- (iv) Letter of Acceptance issued to the Successful Bidder
- (v) Proposal of the Successful Bidder
- (vi) Written clarifications issued to the Bidders
- (vii) Written addendum to the RfP
- (viii) The RfP

ARTICLE 2- CONCESSION

2.1 Grant of Concession

2.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants and authorises the Concessionaire.

- (i) to design, engineer, procure, finance, construct, maintain and operate the Project Facilities,
- (ii) to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement including the right to collect, retain and appropriate all rentals, other fees and charges for the Project Facilities and
- (iii) to handback the Project Facilities on the Expiry Date or the Termination Date as the case may be

(sub clauses (i) to (iii) are hereinafter referred to as the “**Concession**”).

2.1.2 Subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Concessionaire shall have the right to enter into agreements with such Persons as it may deem necessary and appropriate, for performing its obligations under this Agreement.

2.1.3 The Concessionaire shall neither assign, transfer or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Facilities nor transfer thereof, save and except as expressly permitted by this Agreement including the right to further sub-license, the Project Facilities in accordance with the provisions of this Agreement.

2.1.4 The Concessionaire shall perform and fulfil its obligations under and in accordance with this Agreement.

2.2 Concession Period

The Concession hereby granted in respect of the Project Facilities is for a period of 30 (Thirty) years commencing from the Effective Date and ending on the Expiry Date (the “**Concession Period**”) including the Project Completion Period.

Provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Effective Date and ending with the Termination Date.

2.3 Acceptance of Concession

In consideration of the rights, privileges and benefits conferred upon by the Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

ARTICLE 3- PROJECT SITE

3.1 Handover of Project Site

3.1.1 The Authority shall within 7 (seven) days from the Agreement Date, grant to the Concessionaire access to the Project Site for carrying out any surveys and investigations that the Concessionaire may deem necessary, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of surveys and investigations carried out or work undertaken by the Concessionaire on or about the Project Site pursuant hereto in the event of Termination or otherwise.

3.1.2 The Authority shall along with the Concessionaire, prior to handing over the Project Site, conduct a joint survey of the Project Site; arrive at and agree to the exact area of the Project Site to be made available to the Concessionaire.

3.1.3 The Authority shall, within thirty (30) days from the Agreement Date, handover to the Concessionaire on as-is-where-is basis, vacant and peaceful physical possession of the Project Site, free from Encumbrance, for the purpose of implementing the Project.

Provided that, if the Authority fails to handover the Project Site within the period stipulated above, then the Project Completion Period shall be extended by number of days of delayed handover of the Project Site.

3.1.4 Upon the Project Site being handed over pursuant to the preceding Sub-Clause (a), the Concessionaire shall have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.1.5 Registration charges in respect of this Agreement shall be borne and paid exclusively by the Concessionaire.

3.2 Rights and Use of the Project Site

3.2.1 The Concessionaire shall have the right to use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry into and use of the same by third parties.

3.2.2 The Concessionaire shall have the right to further license, the Project Facilities to such Person/s as it may deem fit and to collect from such Persons fees, license fees, user fees and maintenance charges, and other amounts during the Concession Period. Before granting license to the licensee the Concessionaire shall submit to the Authority a template of such contractual document and obtain

prior written approval of the Authority for such template. The approved template shall be used by the Concessionaire to enter into contractual relationship with the licensee in respect of the Project Facilities.

Provided that the tenure of such further licence shall not exceed the Expiry Date or Termination Date, as may be the case and a provision of this limitation shall be a part of the arrangement between the Concessionaire and such Persons.

- 3.2.3 The Concessionaire shall, as permitted under the provision of this Agreement, have the right to charge rents/fees/user charges from Persons for the usage of the Project Facilities.
- 3.2.4 In case of any change in Applicable Law resulting in an increase of built – up area possible to be constructed in the Project Site at any time during the Concession Period, the Concessionaire may, at its cost and expense, construct the same by mutual consent of the Parties. Such built - up area shall remain and continue to be the property of the Authority as per the provisions of this Agreement. The Concessionaire shall possess all rights under this Agreement on such built - up area that is part of Project Facilities including the right to sub - let and collect appropriate charges / user fees for the facilities and services provided therein. Any modification to the Project Facilities shall be carried out with prior written permission of the Authority, subject to submission of Modification Proposal as provided in Clause 6.18. The Payment shall be increased proportionately subject to Clause 8.1 of this Agreement.
- 3.2.5 The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site / Project Facilities save and except as set forth and permitted under this Agreement.
- 3.2.6 The Concessionaire shall not without the prior written approval of the Authority use the Project Site / Project Facilities for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- 3.2.7 The Concessionaire shall allow access to and use of the Project Site for laying / installing / maintaining telegraph lines, electric lines or for such other public purposes as the Authority may specify without disturbing the built-up facilities.

Provided that such access or use shall not result in a Material Adverse Effect and that the Authority shall, in the event of any physical damage to the Project Site / Project Facilities on account thereof, ensure that the Project Site / Project Facilities is promptly restored at its cost and expenses.

Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.

3.3 Peaceful Possession

The Authority hereby warrants that:

3.3.1 The Project Site has been acquired through the due process of law and belongs to and is vested in the Authority and that the Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement, and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/resettlement or land acquisition of any Persons affected thereby.

3.3.2 The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site / Project Facilities during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Facilities or any part thereof, or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site / Project Facilities or any part thereof, the Authority shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

3.4 Applicable Permits

3.4.1 The Concessionaire shall within 30 days from the Agreement Date procure all the Applicable Permits unconditionally including environmental clearance or if subject to conditions required to be fulfilled by the date specified therein shall have been satisfied in full and ensure such Applicable Permits are in full force and effect.

3.4.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

3.4.3 The Concessionaire shall make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits including plans for construction of building/ and other structures thereon for such uses and purposes as described under this Agreement and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws.

3.4.4 All the Applicable Permits by the Concessionaire with respect to the Project under this Agreement wherever applicable, shall be procured in the name of the Authority in accordance with the Applicable Laws.

ARTICLE 4- CONDITIONS PRECEDENT

4.1 The rights and obligations of the Concessionaire shall be subject to the satisfaction in full of the following conditions precedent to be fulfilled unless any such condition has been waived. The Concessionaire shall make all reasonable endeavors to procure the satisfaction in full of the Conditions Precedent set out below. Each Party shall bear its respective cost and expense of satisfying such Condition Precedent.

4.1.1 The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- a) handed over to the Concessionaire, on as-is-where-is basis, vacant and peaceful physical possession of the Project Site free from encumbrance and encroachment, for development of Project Facilities;
- b) granted to the Concessionaire or caused to be granted to the Concessionaire all the necessary rights to permit design, construction, testing, commissioning of the Project Facilities and operation and maintenance thereof;
- c) granted or caused to be granted all Applicable Permits for the Project including licenses, consents, exemptions, permissions and approvals from the government agencies concerned necessary or desirable for development of the Project Facilities in the form and substance satisfactory to the Concessionaire provided that the Concessionaire has made the applicable applications for the grant of such Applicable Permits;
- d) received authorizations required for the execution and implementation of the Project and of its rights under this Agreement, including but not limited to the approval of this Agreement by the Government of Karnataka.

4.1.2 The Condition Precedent required to be satisfied by the Concessionaire shall be deemed to have been fulfilled when the Concessionaire shall have

- a) obtained all Applicable Permits for the Project including licenses, consents, exemptions, permissions and approvals from the government agencies concerned necessary or desirable for development of the Project Facilities and as required under Applicable Law.
- b) obtained the approval on the Project Development Plan for development of Project Facilities.
- c) ensured that all of the representations and warranties are true and correct as on the Effective Date.
- d) submitted copies (certified as true copies by an authorized officer of the Concessionaire) of the constitutional documents.
- e) executed the Financing Documents and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of a Concessionaire.
- f) submitted copies (certified as true copies by a Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the

Concessionaire authorizing the execution, delivery and performance by the Concessionaire of this Agreement and each of the Project Agreements.

4.1.3 Non-fulfilment of Conditions Precedent

- a) If the Conditions Precedent set forth above have not been satisfied on or before the expiry of 3 (three) months from the Agreement Date and the Authority has not extended the said period or waived, fully or partially, such conditions, than the Parties may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement.
- b) In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.
- c) Upon Termination on account of non-fulfilment of Concessionaire's Conditions Precedent and if such non-fulfilment has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Performance Security submitted by the Concessionaire shall be forfeited by the Authority. Upon Termination on account of non-fulfilment of Authority's Conditions Precedent, the Authority shall release the Performance Security submitted by the Concessionaire. The Concessionaire shall not be entitled to receive any Termination Payment from the Authority.

ARTICLE 5: PROJECT ENGINEER

5.1 Procedure for Appointment of Project Engineer

- 5.1.1 The Authority shall within 15 days from the date of this Agreement, appoint a consulting engineering firm from a panel of 3 (three) firms or bodies corporate, who are eligible and willing to act as a Project Engineer for the Project.
- 5.1.2 The term of the Project Engineer shall extend upto two years after COD. The scope of work of the Project Engineer shall include that set out in Schedule 8.
- 5.1.3 In the event the Project Engineer is not appointed or its term is not extended, then the Authority shall perform the functions of the Project Engineer.

5.2 Duties and Functions

- 5.2.1 The Project Engineer shall discharge its duties and functions substantially in accordance with the scope of work set forth in Schedule 8.
- 5.2.2 The Project Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule 8.

5.3 Payments to Project Engineer

All fees, costs, charges and expenses payable to the Project Engineer in accordance with the terms of its appointment (collectively "**the Remuneration**") shall be paid by the Concessionaire within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

5.4 Replacement of the Project Engineer

- 5.4.1 The Authority may, in its discretion, terminate the appointment of the Project Engineer at any time, but only after appointment of another Project Engineer in accordance with Clause 5.1.
- 5.4.2 If the Concessionaire has reason to believe that the Project 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 Project Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Project 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 Project Engineer is terminated hereunder, the Authority shall appoint forthwith another Project Engineer in accordance with Clause 5.1.

5.5 Dispute resolution

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

5.6 Authorised signatories

The Authority requires the Project 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 Project Engineer, and any communication or document required to be signed by the Project Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Project Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

ARTICLE 6: CONCESSIONAIRE'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

6.1 Performance Security

6.1.1 The Concessionaire shall, for due and punctual performance of its obligations relating to the Project, deliver to the Authority, simultaneously with the execution of this Agreement, a revolving bank guarantee from a scheduled bank acceptable to the Authority, in the form as set forth in Schedule 3, ("**Performance Security**") for an amount of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs only), drawn in Shivamogga branch, payable at Shivamogga in favour of Commissioner, Shivamogga City Corporation, Shivamogga. The Performance Security handed over to the Authority by the Concessionaire upon execution of the Concession Agreement shall be valid throughout the Concession Period.

6.1.2 The Performance Security shall be returned to the Concessionaire within eight weeks of the Expiry Date.

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to the Authority's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

6.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default, 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 Clause 10.1.

6.3 Specific Obligations

6.3.1 The Concessionaire shall design, develop and finance the Project Facilities at its own cost and expense and in accordance with the Approved Project Development Plan, Drawings and Construction Requirements.

- 6.3.2 The Project Facilities shall be designed with public conveniences in terms of toilets, drinking water fountains, access to the physically handicapped, sufficient parking and proper light and ventilation to house various shops, and as per the Construction Requirements.
- 6.3.3 The operation and maintenance of the Project Facilities shall be the responsibility of the Concessionaire throughout the Concession Period.
- 6.3.4 The Concessionaire shall commence the commercial operation of the Project Facility only on issue of Project Completion Certificate.
- 6.3.5 The Concessionaire shall, 24 months prior to Expiry Date, submit to the Authority a Hand Back Guarantee valid for a period of 30 months, for an amount equal to the payments for the last year of the Concession Period.

6.4 Shareholding pattern of the Concessionaire

- (a) The Concessionaire was incorporated on _____ and its shareholding as on the Agreement Date is as follows:

Names of Shareholders (Successful Bidder)	Description of Shareholding (%)

- (b) The Concessionaire having been set up for the sole purpose to exercise the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire hereby undertakes and agrees to comply with the following conditions:

Shareholding of Consortium

In case the Successful Bidder is a Consortium, the members of consortium whose experience has been evaluated for the purposes of this RFP, shall subscribe to atleast 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV until 1st anniversary of COD.

The members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the first anniversary of COD. The Lead Member shall hold at least 26% of subscribed and paid up equity share capital of the SPV until the expiry of the Concession Period.

Shareholding for single Entity

In case the Selected Bidder is a single Entity, shall hold at least 51% (fifty one percent) of subscribed and paid up equity share capital of the SPV to implement the Project, until 1st anniversary of COD and hold at least 26% (twenty six percent) of subscribed and paid up equity share capital of the SPV until the expiry of the Concession Period.

In the event of non-compliance of (b) above, the same shall constitute an event of default by Concessionaire and the Authority shall be entitled to terminate this Agreement in accordance with Clause 10.1.

6.5 Financing Arrangement

The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

6.6 Project Development Plan

6.6.1 The Concessionaire shall, within 30 (Thirty) days from the Agreement Date, prepare and get approval from the Authority, on a plan for development of Project Facilities for implementation of the Project ("**Project Development Plan**") in conformity with the Technical Proposal attached in Schedule 10 and Construction Requirements as set out in Schedule 6A, 6B and 6C.

6.6.2 The Project Development Plan shall set out in detail the planning for carrying out the Project development activities and shall include necessary information under the following broad heads;

(a) **Approach & Methodology:** This will include the plan for development of the Project and the method statement for the same. In case of phased development, the same shall be indicated for each of the phases envisaged.

(b) **Project Design and Planning:** Drawings including;

- (i) Site Plan including the layout plan, parking, driveways, walkways, entry and exit in accordance with Schedule 1.
- (ii) Architectural Drawings including all floor plans, key sections, elevations, 3D views.
- (iii) Area statements for the above (and for each phase in case of phased development), FSI permissible and proposed to be utilised.
- (iv) Design and details of services and utilities, security, emergency plans, plans for environment friendly solutions such as rain water harvesting, energy efficiency etc.

- (c) **Implementation Plan and Method Statement:** This will include the plan for implementation of the Project clearly indicating construction schedules of the Project (for each phase in case of phased development) and the method statement for the same, providing clearly ascertainable milestones which can be monitored at least quarterly relating to project implementation schedule.

6.7 Procedure for Approval of Project Development Plan

6.7.1 The Authority may constitute a committee (the “**Co-ordination Committee**”) comprising representatives from government departments/ agencies for review and approval of the Project Development Plan. Within 15 (fifteen) days of receipt of the Project Development Plan, the Co-ordination Committee/the Authority shall, review the Project Development Plan for compliance and adequacy with respect to Schedule 9 and other applicable provisions of the Agreement and either approve or convey its comments/observations, if any. Within 15 (fifteen) days of receipt of such comments/observation from the Authority, the Concessionaire shall finalize the Project Development Plan taking into account the comments and observation, if any, by the Authority. The Project Development Plan shall be finalized with mutual consent of the Parties (“**Approved Project Development Plan**”). Approved Project Development shall be appended as Schedule 10 to this Agreement.

6.7.2 If, within the period stipulated in the preceding Sub-Clause(a), the Authority does not respond to the Project Development Plan submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project on the basis of such Project Development Plan submitted by it to the Authority.

6.7.3 Notwithstanding any review or failure to review by or the comments/observations of the Authority, the Concessionaire shall be solely responsible for the adequacy of the Project Development Plan and shall not be relieved or absolved in any manner whatsoever of any of its obligations as set forth in this Agreement.

6.8 Drawings

6.8.1 Preparation of Drawings

- (a) The Concessionaire shall prepare its own Drawings for providing the Project Facilities based on the Approved Project Development Plan, Design and Construction Requirements. Provided that, the Concessionaire shall in any event be solely responsible for the adequacy of the Drawings.
- (b) All Drawings relating to the Project Facilities shall be subject to review by the Project Engineer as hereinafter provided in the succeeding Sub-Clause (b).

6.8.2 Review of Drawings

- (a) The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirement, submit a copy of each of the Drawings to the Project Engineer and the Authority.
- (b) By forwarding the Drawings to the Project Engineer and the Authority pursuant to the preceding Sub-Clause (i), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Construction Requirement.
- (c) Within 15 days of receipt of the Drawings, Project Engineer shall review the same taking into account, inter alia, comments of the Authority, if any, thereon, and convey its comments / observations to the Concessionaire on the conformity of Drawings with Construction Requirement. If the comments / observations of the Project Engineer indicate that the Drawings are not in conformity with the Construction Requirement, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Project Engineer for further review. The Project Engineer shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalising the Drawings.
- (d) If, within the period stipulated in the preceding Sub-Clause (iii), the Project Engineer does not respond to the Drawings submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project on the basis of such Drawings submitted by it to the Project Engineer, and intimate the same to the Authority.
- (e) Notwithstanding any review or failure to review by or the comments / observations of the Project Engineer or the Authority, the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Construction Requirement, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (f) The Concessionaire shall be responsible for delays in meeting the Construction Requirement caused by reason of any Drawings not being in conformity with the Construction Requirement, and shall not be entitled to seek any relief in that regard from the Authority.
- (g) The Concessionaire shall in consultation with the Project Engineer finalise an implementation schedule for the Project in accordance with the Design and Construction Requirements.

- (h) The Concessionaire shall furnish to the Authority three copies of "as built" Drawings illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities reflecting the Project as actually designed, engineered and constructed.

6.9 Project Implementation: Construction Works

- 6.9.1 Unless otherwise permitted by the Authority, no Construction Works shall begin until the Project Engineer is in place and has assumed charge.
- 6.9.2 The Concessionaire shall adhere to the Construction Requirements in accordance with the milestones set out under the Approved Project Development Plan and obtain Project Completion Certificate before the expiry of Project Completion Period. Except for reasons of a Force Majeure Event, the Concessionaire shall not be entitled to any extension of time in the Project Completion Period. If there is a delay in achieving the milestones set out under the Approved Project Development Plan ("**Scheduled Project Milestone Date**"), the Concessionaire shall pay to the Authority liquidated damages at the rate of Rs. 10,000 (Rupees ten thousand only) for every day of delay in fulfilling the specified obligations on or before a milestone date including a delay in obtaining the Project Completion Certificate. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Authority is likely to suffer and are not by way of a penalty. The Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Security.
- 6.9.3 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements and O&M Requirements.
- 6.9.4 The Concessionaire shall, before commencement of Construction Works, have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Authority/Project Engineer and to be responsible for all necessary exchange of information required pursuant to this Agreement and provide and maintain a reasonably furnished accommodation for the Project Engineer/the Authority at the Project Site upto the Commercial Operation Date.
- 6.9.5 For the purposes of determining whether the Construction Works are being undertaken in accordance with the Construction Requirements and Approved Project Development Plan, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the Construction Requirements and Approved Project Development Plan under the supervision of the Project Engineer/the Authority. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

- 6.9.6 If the Tests are successful and it is ascertained that the Project Facilities can be safely and reliably opened for operation as the case may be, the Authority shall in consultation with the Project Engineer issue the Project Completion Certificate, as the case may be.
- 6.9.7 Project Engineer/the Authority, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements and Approved Project Development Plan.
- 6.9.8 Project Completion Certificate shall be issued by Project Engineer/the Authority upon successful completion of tests and it is ascertained by the Authority/Project Engineer that the Project Facilities can be safely and reliably opened for operation and submission of Occupancy Certificate issued by the municipal authority concerned by the Concessionaire in respect to the Project Facilities.
- 6.9.9 Construction of Project Facilities should be in accordance with the Construction Requirements and Approved Project Development Plan.
- 6.9.10 All the Drawings for Project Facilities shall be approved by the Authority.
- 6.9.11 The Project Facility shall be deemed to be complete and ready for operations only when the Project Completion Certificate is issued by the Authority. Provided if the issue of the Project Completion Certificate is delayed beyond 90 days of the Project Completion Period of 24 months from the Effective Date, the Authority shall, subject to the provisions of Clause 6.16, be entitled to terminate this Agreement and to appropriate the Performance Security.
- 6.9.12 The Concessionaire shall remove at its cost from the Project Site in accordance with Good Industry Practice all surplus structures at, on, over or under the ground at the Project Site, construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris and keep them in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

6.10 Completion Certificate

- 6.10.1 At least 30 (thirty) days prior to the likely completion of the Project Facilities, the Concessionaire shall notify the Authority of its intent to subject the Project Facilities to Tests. The date and time of each of the Tests shall be determined by mutual consent and the Authority may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Authority may reasonably require for conducting the Tests. If the Concessionaire and the Authority fails 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 Authority.

6.10.2 All Tests shall be conducted in accordance with Schedule 6A, 6B and 6C of this Agreement, Applicable Laws and Good Industry Practice. The Authority shall observe, monitor and review the results of the Tests to determine compliance of the Project Facilities with specifications and standards. If it is reasonably anticipated or determined by the Authority during the course of any Test that the performance of the Project Facilities 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 carry out remedial measures and rectify the defects or deficiencies. Upon completion of each Test, the Authority shall provide to the Concessionaire copies of all Test data including detailed Test results.

6.10.3 One half of the cost incurred on such Tests, and to the extent certified by the Authority as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

6.10.4 Upon completion of Construction Works and the Authority determining the Tests to be successful, it shall forthwith issue to the Concessionaire a certificate (the “**Project Completion Certificate**”).

6.11 **Commercial Operation Date (COD)**

The Project Facilities shall be deemed to be complete when the Project Completion Certificate is issued by the Authority, and accordingly the commercial operation date of the Project shall be the date (the “**COD**”) on which Project Completion Certificate is issued and the same shall be achieved within Scheduled Project Completion Date.

6.12 **Operation and Maintenance**

6.12.1 The Concessionaire shall maintain the Project Facilities in accordance with the Operation and Maintenance Requirements set out in Schedule 7.

6.12.2 The Concessionaire shall, by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability, operate and maintain the Project Facilities, but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.

6.12.3 The Concessionaire shall, during the Concession Period:

- (a) have requisite organisation and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project Facilities, to deal with the Authority and Project Engineer and to be

responsible for all necessary exchange of information required pursuant to this Agreement;

- (b) For the purposes of determining that the Project Facilities is being maintained in accordance with O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the Applicable Laws. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

6.12.4 The Concessionaire shall appoint professionals in the field of yoga and naturopathy to provide the services to the users / visitors of the Project Facilities. Such professionals must be registered naturopathic practitioner. For the avoidance of doubt, registration and accreditation shall be from a competent authority nominated by the Central Council for Research in Yoga and Naturopathy (CCRYN). The Concessionaire shall submit a attested documentary proof of such registration and accreditation of the professionals deployed to the Authority.

6.12.5 The Concessionaire shall prepare and submit to the Project Engineer, the Authority and the Expert appointed by the Authority, every month a report relating to users of the Project Facilities including details such as name and details of the users, hours for which the users availed the service at the Project Facilities, nature of service availed along with timestamping and the revenue collected in the form of any fee / charge collected from such users.

6.12.6 In the event the Concessionaire has failed to operate and maintain the Project Facilities in accordance with O&M Requirements and such failure has not been remedied despite a notice to that effect issued by the Authority/ Project Engineer ("**Notice to Remedy**"), the Concessionaire shall be deemed to be in material breach of O&M Requirements.

6.12.7 The Authority, acting reasonably and in accordance with the provisions of this Agreement, determines that due to breach of its obligations by the Concessionaire,

- (a) the maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level by the Authority/ Project Engineer; and
- (b) there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facilities or any part thereof are not safe for operations;
- (c) Upon occurrence of Material Breach of O&M Requirements, the Authority shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to

terminate this Agreement. For avoidance of doubt, persistent breach shall mean:

- (i) any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Authority;
- (ii) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Authority requiring the Concessionaire to remedy a breach, and
- (iii) repeated occurrence of a breach, notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

6.13 Insurance

6.13.1 During Construction

The Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the construction, such insurance as are necessary including but not limited to the following:

- (i) builders' all risk insurance;
- (ii) comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Project Site;
- (iii) workmen's compensation insurance;
- (iv) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.
- (v) Advance Loss of Profits (ALOP) insurance in case of delay in completion which has substantial impact on the expected revenue of the Company.

6.13.2 During O&M

The Concessionaire shall at its cost and expense, purchase and maintain by re-instatement or otherwise, during the operation and maintenance, insurance against:

- (i) loss, damage or destruction of the Project Facilities, at replacement value;
- (ii) the Concessionaire's general liability arising out of the Concession;

- (iii) liability to third parties;
- (iv) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.
- (v) Loss of profit which is also referred to as “**Business Interruption**”

6.13.3 Evidence of Insurance

The Concessionaire shall, from time to time, provide to the Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

6.13.4 Validity of Insurance

The Concessionaire shall from time to time promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period, and furnish copies thereof to the Authority. The insurance policy shall not be cancelled or terminated unless 60 days' clear notice of cancellation is provided to the Authority in writing.

If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, the Authority may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by the Authority thereof shall be reimbursed by the Concessionaire to the Authority together with interest thereon at 2% over Bank Rate from the date the respective sums were incurred by the Authority, within 7 days from the receipt of claim in respect thereof made by the Authority.

6.13.5 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

6.14 Environmental Compliance

The Concessionaire shall, ensure that all aspects of the Project Facilities during the Concession Period, as the case may be, and processes employed in the construction, operation and maintenance thereof shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto, including rainwater harvesting, energy conservation and other such ecological/ sustainable solutions/mechanisms.

6.15 General Obligations

The Concessionaire shall at its own cost and expense:

- (a) investigate, study, design and construct Project Facilities,
- (b) operate and maintain the Project Facility in accordance with the provisions hereof;
- (c) obtain all Applicable Permits as required by or under the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- (d) comply with Applicable Law governing the operations of commercial properties at all times during the Concession Period;
- (e) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (f) appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;
- (g) ensure and procure that any contract relating to the Project, entered into by the Concessionaire for implementing the Project in accordance with this Agreement contains provisions that would entitle Lenders or a nominee of the Authority to step into such contract/s at the Authority's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement;
- (h) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies the Authority against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall the Authority be treated as employer in this regard;

- (i) make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Law and Applicable Permits;
- (j) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period;
- (k) ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- (l) upon receipt of a request thereof, afford access to the Project Facilities to the authorised representatives of the Authority for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- (m) Pay all development charges, statutory deposits, taxes, duties (including stamp duties), fees (including any license fees) and other user charges (including those applicable for existing utility connections and any other dues assessment or outgoings payable in respect of implementation of the Project and Project Facilities (including new utility connections obtained by it, if any) or in respect of materials stored there in which may be levied by an Government Instrumentalities, wherever applicable. if required for execution of this agreement, and outgoings relating to the Project Facilities. The deposits would not be refundable after the expiry of the Concession Period;
- (n) Reimburse to the Authority the amount of property tax as assessed by the relevant government authority payable by the Authority to the authority concerned; and
- (o) Pay all utility charges (including electricity consumption and water supply charges) relating to the Project Facilities on Project Site.
- (p) Provide parking facility (4-wheelers and 2-wheelers) for the users of the Project Facility as per Good Industry Practice. The minimum number is 1 car for every 50 sq.m. of the builtup area and as per the Authority bye-laws.

6.16 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (a) Force Majeure Event, subject to Clause 10.3;
- (b) the Authority Event of Default;

- (c) Compliance with the instructions of the Authority/ Project Engineer or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations as set forth in this Agreement;

- (d) Closure of the Project Facilities or part thereof with the approval of the Authority.

6.17 Utilities, Associated Roads and Trees

(a) Existing utilities and roads

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

(b) Shifting of obstructing utilities

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

(c) New utilities and roads

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

with this Agreement and any damage caused by such use shall be restored forthwith.

(d) **Felling of trees**

the Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project Facilities. The cost of such felling shall be borne by the Authority, 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.

6.18 Alterations, Modifications of Project Facilities

Subject to adherence of Applicable Law and obtaining of prior approvals and Applicable Permits, the Concessionaire shall be at liberty to carry out necessary alterations or modifications to the Project Facilities or undertake new construction in order to meet its obligations. Provided however that such alteration, modification or new construction shall be undertaken only upon submitting necessary plans to the Authority. Further the Authority shall ensure that such alteration modification or new construction does not at any time cause any damage or have a dangerous effect on either the stability of the Project Facilities or otherwise adversely affect the safety of the users of the Project Facilities.

Provided that, if in the opinion of the Concessionaire, the said alteration, modification or new construction requires demolition of any part or whole of the Project Facilities (including the cutting of trees, if any), then such demolition shall be undertaken only after obtaining prior written approval from the Authority and other Government Agencies, which approval shall not be unreasonably withheld. For this purpose, the Concessionaire shall submit to the Authority a proposal (hereinafter referred to as "**Modification Proposal**") clearly describing such demolition and its impact on the structural stability of the Project Facilities, at least sixty (60) days prior to carrying out such demolition.

The Concessionaire would be required to obtain Applicable Permits and adhere to Applicable Laws for any demolition.

6.19 Safety Compliance

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the users of the Project Facilities. In particular, the

Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Facilities.

6.20 Expenditure on Environment or Safety Compliance

All costs and expenses arising out of or relating to environment and safety compliance shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the scope of the Project and performance of obligations envisaged in the Agreement.

6.21 Restriction on Floor Area Ratio (FAR) and Height

The Floor Area Ratio (FAR) and height of Project Facilities shall be restricted to the limits specified by the local authorities under Applicable Laws.

6.13.6 Utilization of Additional Floor Area Ratio(FAR)

The Concessionaire shall have the right to utilize any additional FAR on account of Change in Law provided that such additional construction shall not compromise the structural stability and aesthetics of the Project that may adversely affect the safety and the marketability of the Project. The Concessionaire shall intimate the Authority prior to exercising the right of utilizing the additional FAR.

It is further agreed that if such additional construction is carried out on the Project Site as a result of such increased FAR, the Concession Payment payable to the Authority shall be increased proportionately with respect to the increased built up area.

6.22 Others

(a) The Concessionaire shall be at liberty to,

- (i) demolish all structures within the Project Site subject to Construction Requirements, Applicable Laws and Applicable Permits, and
- (ii) use, sell or dispose in accordance with Applicable Laws and Applicable Permits, the material obtained as a result of demolition under Sub-Clause(i) above.
- (iii) All gold, silver, oil, minerals, precious stones, treasures, fossils, coins, articles of value or antiquity and structures and other relics or remains or things of geological or archaeological interest discovered on the Project Site shall be the property of the Authority. The Concessionaire shall take reasonable precautions to prevent any person from removing or damaging any such article or thing. The Concessionaire shall immediately upon the discovery of such article or thing inform the

Authority and follow the instructions for dealing therewith that may be issued by the Authority.

ARTICLE 7: THE AUTHORITY'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Authority shall have the following obligations:

7.1 Specific Obligations

- (a) The Authority shall grant in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from the Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorisation for avilment of utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by the Authority in the form as set out in Schedule 4, within 21 (twenty one) days from receipt of request from the Concessionaire to make available such authorisation.
- (b) The Authority shall appoint an expert in the field of yoga and naturopathy ("**Expert**") to monitor and report the services provided by the Concessionaire in the Project Facilities. Such Expert must be a registered naturopathic practitioner. For the avoidance of doubt, registration and accreditation shall be from a competent authority nominated by the Central Council for Research in Yoga and Naturopathy (CCRYN). The Expert shall discharge its duties and functions as stipulated by the Authority from time to time and submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions.
- (c) The Authority shall respond in writing within a period of 90 (ninety) days from the date of receipt of a Modification Proposal, as specified under Clause 6.18, communicating its decision on such Modification Proposal.

In case the Authority does not respond within 90 (ninety) days, as aforesaid, then such Modification Proposal would be deemed to have been approved by the Authority. However, this shall not relieve the Concessionaire from its obligation of ensuring safety of the Project Facilities and adherence to Applicable Laws.

In the event that the Authority does not approve a Modification Proposal or any part thereof, the Authority shall, as part of its written response, clearly describe the reasons for such non-approval.

7.2 General Obligations

the Authority shall:

- (a) where appropriate provide necessary assistance to the Concessionaire in securing Applicable Permits;
- (b) Observe and comply with all its obligations set forth in this Agreement.

ARTICLE 8: PAYMENT

8.1 Concession Payment

8.1.1 In consideration of the Concession hereby granted, the Concessionaire shall pay to the Authority, by way of concession payment (the “**Concession Payment**”). The Concession Payment with escalation as set out in Schedule 2, shall be made on SPCD and the subsequent payments shall be made on every Year (“**Due Date**”) till the end of the Agreement. The Concession Payment shall increase by 5% (five percent) every year throughout the Concession Period. The Due Date and the Concession Payment to be paid by the Concessionaire under this Clause are provided in Payment Schedule set out in Schedule2.

The Concessionaire shall during the Concession Period, submit to the Authority, annual Revenue statement duly certified by the Statutory Auditor.

8.1.2 Any delay in making any Concession Payment shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at the rate equal to 4% (four percent) above the Bank Rate, compounded annually, from the relevant due date of payment/realisation.

8.1.3 In case of any change in Applicable Law resulting in an increase of built – up area possible to be constructed at any time during the Concession Period, the Concessionaire may, at its cost and expense, construct the same by mutual consent of the Parties. Such Project built - up area shall remain and continue to be the property of the Authority as per the provisions of this Agreement. Accordingly the revision in the Payment shall be made proportionately.

8.2 Mode of Payment

The Payment should be made by way of RTGS / NEFT or any other mode prescribed in favour of Commissioner, Shivamogga City Corporation and the Authority shall sufficiently in advance provide the necessary bank details to the Concessionaire so as to ensure realisation/ encashment thereof on or before Due Date.

ARTICLE 9: FORCE MAJEURE

9.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("**Affected Party**") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event:

- (a) act of God which includes epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, 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 Project Site);
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- (c) fire caused by reasons not attributable to the Concessionaire or parties to whom Project Facilities have been further sub-letted / licensed by the Authority or the Concessionaire or any of their employees, contractors or agents appointed by the Concessionaire for purposes of the Project;
- (d) acts of terrorism;
- (e) strikes, labour disruptions, riots or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor, war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this Sub-Clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor;
- (f) action of a Government Agency having Material Adverse Effect including but not limited to:
 - (i) Acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facilities or any part thereof or of the Concessionaire's or the Contractor's rights in relation to the Project Facilities.
 - (ii) any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in

any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and

(iii) any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgement or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.

(g) Early termination of this Agreement by the Authority for reasons of national emergency, national security or the national interest.

9.2 Obligations of Parties

(a) As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party and Project Engineer of the same setting out, inter alia, the following in reasonable detail:

- (i) the nature and extent of the Force Majeure Event;
- (ii) the estimated Force Majeure Period;
- (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
- (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
- (v) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

(b) As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding Sub-Clause 9.2 (a), the Parties along with the Project Engineer shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facilities in order:

- (i) to assess the impact of the underlying Force Majeure Event,
- (ii) to determine the likely duration of Force Majeure Period,
- (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
- (iv) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.

- (c) The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding Sub-Clause (b) as also any information, details or document, which the Parties may reasonably require.

9.3 Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Clause 9.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- (f) any insurance proceeds received shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by the Authority.

9.4 Effect of Force Majeure Event on the Concession

Upon the occurrence of any Force Majeure Event at any time during the Concession Period, the Concession Period and the dates set forth in the implementation schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

9.5 Termination due to Force Majeure Event

a. Termination

- (i) If a Force Majeure Event, is an event described under Clause 9.1(a) to 8.1(e), continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- (ii) If the Force Majeure Event is an event described in Clause 9.1 (f) or 8.1 (g) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in Clause 9.1 (f) or 9.1 (g) subsists or is likely to subsist for a period exceeding 180 days.

Provided further, the Authority may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clause 9.1(f) or 9.1(g).

b. Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding Sub-Clause (a) (i) or (a) (ii), it shall issue Termination Notice setting out;

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof and;
- (iv) any other relevant information.

c. Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (i) the Termination Payment, if any, payable by the Authority in accordance with the following Sub-Clause (d) is paid to the Concessionaire on the Termination Date and
- (ii) the Project Facilities are handed back to the Authority by the Concessionaire on the Termination Date free from all Encumbrances.

d. Termination Payment

- (i) If Termination is due to a Force Majeure Event, described under Sub-Clauses 9.1(a) to 9.1(e), no Termination Payment shall be made by the Authority to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies.
- (ii) If Termination is due to the occurrence of any event described under Sub-Clauses 9.1(f) or 9.1(g), before COD the Authority shall pay to the Concessionaire Termination Payment equal to 100% of the Book Value.
- (iii) If Termination is due to the occurrence of any event described under Sub-Clauses 9.1(f) or 9.1(g), after COD the Authority shall pay to the Concessionaire Termination Payment equal to 125% of the Book Value.

Provided the Authority shall be entitled to deduct from the Termination Payment any amount due and recoverable by the Authority from the Concessionaire as on the Termination Date and release the Performance Security.

9.6 Liability for other losses, damages etc.

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

ARTICLE 10: EVENTS OF DEFAULT AND TERMINATION

10.1 Events of Default

Event of Default means either Concessionaire Event of Default or the Authority Event of Default or both as the context may admit or require.

(a) Concessionaire Event of Default

Any of the following events shall constitute an event of default by the Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a result of a Force Majeure Event or the Authority Event of Default or any governmental action for reasons other than any breach, default or lapse on the part of the Concessionaire:

- (i) The Concessionaire has failed to obtain the Project Completion Certificate within 90 days of Project Completion Period.
- (ii) The Concessionaire does not adhere to Construction Requirements and/or O & M Requirements for the Project Facilities during the Concession Period, as specified in the Agreement.
- (iii) The Concessionaire has failed to make any Payment on Due Date thereof and more than 30 days have elapsed since such default;
- (iv) The Concessionaire has failed to abide by the Shareholding pattern envisaged under Clause 6.4 of this Agreement;
- (v) The Concessionaire has not submitted the Handback Guarantee and has subsequently failed to remedy the same within a further period of 30 days;
- (vi) The Concessionaire is in Material Breach of any of its other obligations under this Agreement on account of its own acts of omission or commission or on account of any act of omission or commission of the Person to whom the Concessionaire has further sub-let / licensed the Project Facilities and the same has not been remedied for more than 60 days;
- (vii) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (viii) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;

- (ix) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement.
- (x) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- (xi) The Concessionaire has abandoned the Project Facilities;
- (xii) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (xiii) If the Concessionaire fails to pay the necessary insurance premiums towards the Project Facilities and thereby causes the insurance coverage on the Project Facilities to diminish, terminate or expire;
- (xiv) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days.
- (xv) The Successful Bidder dilutes its shareholding in the Concessionaire contradicting the conditions set out in the undertaking provided as Schedule 11 to this Agreement.
- (xvi) The Concessionaire has failed to adhere to O&M Requirements including the environment and safety requirements in accordance with Applicable Laws for the Project Facilities during the Concession Period;
- (xvii) In case the Performance Security has been encashed and appropriated (in part or full) in accordance with Clause 6.2 and the Concessionaire has failed to replenish or provide fresh Performance Security within the stipulated period of 30 (thirty) days.

(b) The Authority Event of Default

Any of the following events shall constitute an event of default by the Authority ("**the Authority Event of Default**"), when not caused by a Concessionaire Event of Default:

- (i) The Authority fails to handover the Project Site for construction of the Project Facility within sixty (60) days of the Agreement Date. However, above such time period for the handover of the Project Site could be extended by consent of both the Parties;
- (ii) The Authority, has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement; and
- (iii) The Authority has withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek from the Authority under this Agreement, and thereby caused or likely to cause Material Adverse Effect.

10.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Authority may terminate this Agreement in the manner as set out under Clause 10.2(a)(ii) and Clause 10.2(a)(iii).
- (ii) If the Authority decides to terminate this Agreement pursuant to preceding Sub-Clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within thirty (30) days of receipt of the Preliminary Notice, the Concessionaire shall submit to the Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessionaire's Proposal to Rectify**"). In case of non submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, the Authority shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, the

Authority shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security if subsisting.

(b) Termination for the Authority Event of Default

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of the Authority Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding Sub-Clause (i) it shall in the first instance issue Preliminary Notice to the Authority. Within 30 days of receipt of Preliminary Notice, the Authority shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "**Authority Proposal to Rectify**"). In case of non submission of the Authority Proposal to rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If the Authority Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, the Authority shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the Authority fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

(c) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Sub-Clause (a) or (b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and
- (iv) any other relevant information.

(d) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
- (ii) the termination payment, if any, payable by the Authority in accordance with the following Sub-Clause (f) is paid to the Concessionaire on the Termination Date, and
- (iii) the Project Facilities are handed over to the Authority by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to the Authority.

(e) Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs/consequences occasioned by the Event of Default which caused the issue of Termination Notice.

(f) Termination Payments

- (i) Upon Termination of this Agreement on account of the Authority Event of Default before COD, the Concessionaire shall be entitled to receive from the Authority Termination Payment equal to 100% of the Book Value. The Authority shall release the Performance Security.
- (ii) Upon Termination of this Agreement on account of the Authority Event of Default, after COD, the Authority shall release the Performance Security, if subsisting, and the Concessionaire shall be entitled to receive from the Authority, termination payment equal to 125% of the Book Value as on the Termination Date.

- (iii) Upon Termination of this Agreement on account of Concessionaires Event of Default, Concessionaire shall not be entitled to receive termination payment from the Authority and the Performance Security, may be appropriated by the Authority.

10.3 Rights of the Authority on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, the Authority shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:
 - (i) enter upon and take possession and control of the Project Facilities forthwith;
 - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Facilities;
- (b) Notwithstanding anything contained in this Agreement, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facilities by the Concessionaire to the Authority shall be free from any such obligation.

10.4 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the termination payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 11: HANDBACK OF PROJECT FACILITIES

11.1 Ownership

Without prejudice and subject to the Concession, the ownership of the Project Facilities, including all improvements made therein by the Concessionaire, shall at all times remain that of the Authority.

11.2 Concessionaire's Obligations

- (a) Upon the expiry of the Concession Period by efflux of time and in the normal course, the Concessionaire shall on the Expiry Date, hand back vacant and peaceful possession of Project Facilities on Project Site, to the Authority free of cost and in good operable condition.
- (b) At least 24 months prior to the Expiry Date, the Concessionaire shall, for due performance of its obligations relating to handback of Project Facilities on Project Site, submit to the Authority a bank guarantee, in the form as set forth in Schedule 5 ("**Handback Guarantee**"), from a scheduled bank acceptable to the Authority for a sum of Rs. _____ (Rs. _____ only) (Equal to the Payment for the last year of the Concession Period). The Handback Guarantee shall be kept valid for a period of thirty (30) months.
- (c) At least 12 months before the Expiry Date a joint inspection of the Project Facilities shall be undertaken by the Authority and the Concessionaire. The Authority shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs, if any, to be carried out so as to conform to the Project Facilities requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least 3 (three) months prior to the Expiry Date and also ensure that the Project Facilities continue to meet such requirements until the same are handed back to the Authority on the Expiry Date.
- (d) The Authority shall, within 15 (fifteen) days of the joint inspection undertaken under Clause 11.2(c) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to the Authority along with the Project Facilities.
- (e) The Concessionaire hereby acknowledges the Authority's rights specified in Clause 10.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.
- (f) If at the time of handing back of the Project Facilities any material defect is observed, then the Concessionaire shall be obligated to make good the

defect, failing which, the Authority shall reserve the right to deduct such amount from the Concessionaire's Handback Guarantee.

- (g) Concessionaire shall 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.

11.3 The Authority's Obligations

The Authority shall, subject to the Authority's right to deduct amounts towards;

- (i) carrying out works/jobs listed under Clause 11.2(d), which have not been carried out by the Concessionaire,
- (ii) purchase of items, which have not been handed back to the Authority along with the Project Facilities in terms of Clause 11.2(e),
- (iii) any outstanding dues, which may have accrued in respect of the Project during the Concession Period and
- (iv) duly discharge and release to the Concessionaire the Handback Guarantee within 3 months from the Expiry Date.

ARTICLE 12: DISPUTE RESOLUTION

12.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Sub-Clause (b) below.
- (b) Either Party may require such Dispute to be referred to the Managing Director, Shivamogga for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 12.2 below.

12.2 Arbitration

(a) Procedure

Subject to the provisions of Clause 12.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

(b) Place of Arbitration

The place of arbitration shall ordinarily be Shivamoggabut by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

(c) English Language

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

(d) Enforcement of 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 provision of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

(e) Performance during Arbitration

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 without prejudice to a final adjustment in accordance with such award.

ARTICLE 13: REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) 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 Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (j) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 6.4; and that the [selected bidder/Consortium Members], 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; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of qualification and short-listing in response to the ITB shall not hold less than 26% (twenty six per cent) of equity during the Construction Period;

- (k) subject to receipt by the Concessionaire from the Authority of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Facilities shall pass to and vest in the Authority on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or the Authority;
- (l) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (m) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concessionaire.
- (n) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Facilities, and the information provided by the Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (o) The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire.
- (p) The Consortium Members and their Associates have the financial standing and resources to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement.

13.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) The Authority has full power and authority to grant the Concession;
- (b) The Authority has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes the Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) There are no suits or other legal proceedings pending or threatened against the Authority in respect of the Project Facilities or the Project.

13.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 14: MISCELLANEOUS

14.1 Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement in or the rights, benefits and obligations hereunder save and except with prior consent of the Authority. However, the Concessionaire shall have rights as set out in Clause 3.2.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Facilities, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in Sub-Clauses (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - (ii) Pledges / hypothecation of goods / moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
 - (iii) assignment of Concessionaire 's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

14.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at Bank Rate plus 2% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Clause 14.2 shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

14.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Shivamoggashall have jurisdiction over all matters arising out of or relating to this Agreement.

14.4 Waiver

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

14.5 Survival

Termination of this Agreement

- (a) shall not relieve the Concessionaire or the Authority of any obligations already incurred hereunder which expressly or by implication survives 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.

14.6 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject

hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

14.7 Notices

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

If to the Authority:

Shivamogga City Corporation
Opposite to Gandhi Park,
Shivamogga- 577201.

Fax No:

Phone No:

E-mail:

If to the Concessionaire:

Fax No:

Phone No:

E-mail:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

14.8 Severability

If for any reason whatsoever 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 shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to

agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

14.9 No Partnership

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

14.10 Language

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

14.11 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 and any representation by any Party not contained in a binding legal agreement executed by the Parties.

14.12 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of City Municipal Council by:

(Signature)

(Name):

(Designation):

For and on behalf of _____ (**Concessionaire**) by:

(Signature)

(Name):

(Designation):

Confirming Party:

For and on behalf of _____ **(Successful Bidder)** by:

(Signature)

(Name):

(Designation):

In the presence of:

1)

2)

SCHEDULE 1: Project Site

(Joint survey copy enclosed as separate attachment)

SCHEDULE 2: Payment Schedule

(Amounts in Rupees)

Payment No.	Due Date	Yearly Payments	
		In Figures	In Words
1.	SPCD		
2.	Subsequent payments will be on dates occurring every year of the Commercial Operation Date.		

The Payments would be escalated by 5% every year after the Commercial Operation Date.

SCHEDULE 3: Performance Security

(PROFORMA OF BANK GUARANTEE)²

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ by _____ (Name of the Bank) having its Head / Registered office at _____ hereinafter referred to as “the **Guarantor**” which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

Shivamogga City Corporation, represented by the Commissioner, having its office at Opposite to Gandhi Park, Shivamogga- 577201, hereinafter referred to as “the Authority”, which expression shall, unless repugnant to the context or meaning thereof include its successors or assigns.

WHEREAS

- A. By the Concession Agreement being entered into between the Authority and _____, a company incorporated under the provisions of the Companies Act, 2013, having its registered office/ permanent address at _____ (“the **Concession Agreement**”), the Company has been granted the Concession to implement the project envisaging development, operations, maintenance and transfer of the Eco-resort and Yoga retreat with a Wellness Center built on principles of Naturopathy through Public Private Partnership framework, hereinafter referred to as Project.
- B. In terms of Clause 6.1 of the Concession Agreement, the Company is required to furnish to the Authority, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to achieving operations of the Project, substantially in the format annexed as Schedule 3 to the Concession Agreement.
- C. At the request of the Company, the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Concession Agreement relating to achieving operations of the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

² To be issued by a Scheduled Bank in India

2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called “the **Concessionaire**”) of all its obligations relating to achieving operations of the Project during the Concession Period.
3. The Guarantor shall, without demur, pay to the Authority sums not exceeding in aggregate Rs. _____/- (Rupees _____ Only), within five (5) calendar days of receipt of a written demand therefore from the Authority stating that the Company has failed to meet its performance obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Authority and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor’s obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, the Authority shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by the Authority or any indulgence shown by the Authority to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by the Authority or any indulgence shown by the Authority provided nothing contained herein shall enlarge the Guarantor’s obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____³ unless discharged/released earlier by the Authority in accordance with the provisions of the Concession Agreement. The Guarantor’s liability in aggregate be limited to a sum of Rs. ----- (Rupees -----Only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

³ Refer Clause 6.1 of this Agreement

by _____ Bank
by the hand of Shri _____
its _____ and authorised official.

SCHEDULE 4: Format for Letter of Authorisation

(To be given on the Authority letterhead)

To whomsoever it may Concern

This is to confirm that the Project site in Survey Nos. ____ has been handed over to _____ and _____ (*Name of Concessionaire*) for development, operation and maintenance pursuant to the Concession Agreement dated _____, entered into between the Shivamogga City Corporation, Shivamogga and _____ and _____ (*Name of Concessionaire*).

In terms of the said Agreement, the Concessionaire is authorised to occupy the said Project Site and carry out all activities authorised by the said Agreement, and for that purpose, to apply for and obtain all approvals, licenses and permits, required in connection with any construction on the Site, carry out operation and management and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,

Commissioner
Shivamogga City Corporation, Shivamogga

SCHEDULE 5: Handback Guarantee

(PROFORMA OF BANK GUARANTEE)⁴

(Should be drawn from a scheduled bank's branch in Shivamogga)

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ by _____ (Name of the Bank) having its Head/Registered office at _____ hereinafter referred to as "the **Guarantor**" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

Shivamogga City Corporation, represented by the Managing Director, having its office at Opposite to Gandhi Park, Shivamogga- 577201, hereinafter referred to as "the Authority", which expression shall, unless repugnant to the context or meaning thereof include its successors or assigns.

WHEREAS

- A. By the Concession Agreement being entered into between the Authority and _____, a company incorporated under the provisions of the Companies Act, 2013, having its registered office/ permanent address at _____ ("the **Concession Agreement**") the Company had been granted the Concession to implement the Project envisaging development, operations, maintenance and transfer of the Eco-resort and Yoga retreat with a Wellness Center built on principles of Naturopathy through Public Private Partnership framework, on Site, in Shivamogga, hereinafter referred to as Project.
- B. In terms of Article 11 of the Concession Agreement, the Company is required to furnish to the Authority, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to handback of Project Facilities.
- C. At the request of the Company, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Concession Agreement relating to handback of Project Facilities.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

⁴To be issued by a Scheduled Bank in India

2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called the “**Concessionaire**”) of all its obligations relating to handback of Project Facilities under the Concession Agreement.
3. The Guarantor shall, without demur, pay to the Authority sums not exceeding in aggregate Rs. _____/- (Rupees _____ Only), within five (5) calendar days of receipt of a written demand therefore from the Authority stating that the Company has failed to meet its performance obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Authority and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor’s obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, the Authority shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by the Authority or any indulgence shown by the Authority to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by the Authority or any indulgence shown by the Authority provided nothing contained herein shall enlarge the Guarantor’s obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____⁵ unless discharged/released earlier by the Authority in accordance with the provisions of the Concession Agreement. The Guarantor’s liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire / the Guarantor or any absorption, merger or amalgamation of the Concessionaire / the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN

⁵30 months from the date of issue of the Handback Guarantee in accordance with Clause 11.2(b) of the Concession Agreement (CA)

SIGNED AND DELIVERED

by _____ Bank

by the hand of Shri _____

its _____ and authorised official.

SCHEDULE 6A: General Design and Construction Requirements

1.0 Introduction

The Project Facilities shall be so constructed as to meet the requirements in respect thereof contained in the Technical Proposal of the Concessionaire approved by the Authority.

The Concessionaire shall investigate, design and construct the facilities in all aspects and meeting all requirements for its intended purpose inclusive of all its supporting facilities.

The Concessionaire in a true spirit of a Design and Build Agreement, shall adopt the Authority's requirements and design and develop it in conformance with the design intent, further refine it to equal or better than the prescribed objective with the ultimate aim of translating the description to physical works. In the process of achieving this, all reference must be made to all relevant prevailing design standards and codes, Uniform Building By-Laws and other related statutory authorities requirements.

In addition, the Concessionaire shall observe and meet the requirements set out in this and other Schedules.

2.0 Authorities Requirements

All Works designed and constructed under this Agreement shall fully comply with the requirements of the relevant Authorities:

The Concessionaire shall be responsible for the preparation of all required submissions to the relevant statutory authorities to obtain the Building Plans and other approvals.

All costs incurred for compliance with all the conditions stated for all approval or any subsequent Project requirements imposed by the approving authorities during implementation of the Works shall fully and solely be borne by the Concessionaire.

The Concessionaire shall be responsible to obtain all supporting letters and a Certificate of Fitness of Occupancy from the statutory authorities or authorised agency. Strict compliance to this scope shall be a condition precedent to the written application to the Project Engineer for a Certificate of Practical Completion.

The onus of obtaining timely approval from each relevant approving authority shall be on the Concessionaire. Penalty charge or fines (if any) imposed by the statutory authorities shall be fully borne by the Concessionaire. Untimely receipt

of approvals or order to suspend work (if any) imposed by the statutory authorities which may affect the Concessionaire's design/construction programme shall not be in any way be basis for consideration of time extension or cost variation to the Agreement.

3.0 Programme of Works

Within thirty (30) days from the Agreement Date, the Concessionaire shall submit to the Project Engineer for his approval a detailed programme showing the order of work activities and time schedule in which the Concessionaire proposes to carry out the Works in Microsoft Project or other project management software acceptable to the Project Engineer. The approval by the Project Engineer of such a programme shall not relieve the Concessionaire of any of its duties or responsibilities under the Agreement.

If at any time it should appear to the Project Engineer that the actual progress of the Works does not conform to the approved programme referred to herein before, the Concessionaire shall submit for approval, a revised programme showing the modifications to the previously approved programme necessary to ensure the completion of the whole Works within the time set for completion as per the terms of this Agreement.

4.0 Office for Project Engineer and his Staff

The Concessionaire shall provide and maintain the minimum office working space for the use of the Project Engineer and his staff, inclusive of all furniture, office equipment such as telephones, computers, printers, photocopying / telefax machine, stationeries etc.

The above facilities shall be illuminated by fluorescent fittings giving a general level of illumination of at least 215 lumens/m² and provided with thermostatically controlled air-conditioners capable of maintaining a temperature below 20°C.

5.0 Concessionaire's Office and Accommodation

The Concessionaire shall provide and maintain a suitable office for itself and its staff at a location within project site to be approved by the Project Engineer. In addition, the Concessionaire shall provide and maintain temporary accommodation and living facilities, etc., including all necessary services for water supply, drainage and lighting for its staff off-site. The Concessionaire will not be allowed to erect any workers accommodation or similar facility at the Project Site.

The Concessionaire shall be responsible for all fees and other charges or expenses incurred in connection with such office and housing and shall keep the whole area in a clean, tidy and hygienic condition. When instructed by the Project

Engineer, the Concessionaire shall remove all such buildings and appurtenant works from the Site, clean up the area and restore it to its original condition.

6.0 Water and electricity supply

The Concessionaire shall provide at its own risk and cost all water, lighting and electric power where required for use in the Works and shall pay all costs, fees and charges and comply with all safety regulations and statutes in connection therewith.

7.0 Project Signboard

The Concessionaire shall provide, erect and maintain signboards at locations to be decided by the Project Engineer and pay all charges in connection with this, including obtaining permission, licenses and fees, etc. The signboard shall comply with the design and specification as per requirement of the relevant approving authority and to the Authority's approval. On completion of the project, the Concessionaire shall dismantle and clear away the signboards as directed by the Project Engineer

8.0 Hoarding

The Concessionaire shall design, erect and maintain approved metal hoarding to enclose the Works and all areas of land occupied by the Concessionaire within the site to the satisfaction of the Project Engineer and relevant approving authorities.

9.0 Protection of Works

From the commencement of the Works to the date the Works are taken over, the Concessionaire shall take full responsibility for the care thereof together with all temporary Works and in case of any damage, loss or injury shall happen to the Works or to any part thereof or to any temporary Works from any cause whatsoever, the Concessionaire shall at its own cost repair and make good the same so that at completion, the Works shall be in good order and condition and in conformity in every respect with the requirements of the Agreement and the Project Engineer instructions.

10.0 Design of Temporary Works by the Concessionaire

Unless otherwise provided in the Agreement, the Concessionaire shall submit the design of all temporary Works to the Project Engineer for clearance. Such submission shall be made at least two weeks before the temporary Work is scheduled to commence. Notwithstanding the clearance by the Project Engineer, the Concessionaire is solely responsible for the adequacy and safety of its Work and for any necessary modification or addition work whenever found necessary by the Project Engineer.

11.0 Location, temporary protection and temporary diversion of public utility installations and other services

The Concessionaire shall be responsible for locating the position of all existing utility installations, including water mains, overhead and underground cables, pipes, sewers and drains and all service connections to buildings, and where necessary, shall adopt such methods of excavation as may be required by the appropriate authorities or owners to ensure that no damage is caused to them.

The Concessionaire shall make good, at its own expense, any damage caused by him to the existing services to the approval of and in accordance with the instruction of the appropriate authority or owner concerned, and shall keep the Authority indemnified at all times from all claims, costs and expenses which may arise on account of any damage (whether permanent, temporary or recurring) to the said-services.

All such installations which are encountered in the course of the Works shall be adequately supported, slung-up, strutted or otherwise protected from damage to the satisfaction of the respective authority.

The temporary diversion or relocation of any service within or outside the Works to permit the construction of the Works shall be the responsibility of the Concessionaire. Where a service is required to be interrupted or relocated the Concessionaire shall inform and obtain the approval of the Project Engineer shall notify the appropriate authority or owner of the required removal and/ or relocation.

Temporary diversion shall mean Works involved in the diversion of services that will be reinstated to their original position and condition on completion of the Works in the affected areas. In planning its work for the diversion or relocation of services, the Concessionaire shall make reasonable allowance for the time necessary to obtain the approval of the respective utilities, drainage or sewerage authority in addition to the Project Engineer approval for the Work and for the appropriate authorities or owners to authorize the Work, obtain the necessary materials and carry out the Work.

The Concessionaire shall not be entitled to any extension of time due to its failure to allow for a reasonable period of time necessary for obtaining approval and completing the Work.

12.0 Lighting, Marking and Watching

The Concessionaire shall at all time take full and sufficient precaution to ensure the safety of all traffic through and around the Works.

The Concessionaire shall provide and maintain all necessary watching by day and night including proper lighting and marking for the protection of its equipment, any third party or parties and all vessels operating in the vicinity of the site.

13.0 Dumping Ground

All unsuitable material, excess earth construction waste, garbage etc must be transported and disposed of offsite to the Concessionaire's own dumping ground approved by relevant statutory authority. The Concessionaire shall be responsible for providing its own dumpsite and comply with all statutory requirements such as payment of royalties, environmental protection etc.

14.0 Quality Assurance and Quality Control

The Concessionaire shall implement a Quality system that effectively provides detailed procedures for managing the quality of design, procurement, construction, commissioning and start-up. The Concessionaire shall be responsible for controlling the quality of the Works. However, during construction of the Works, the Project Engineer may perform inspection to verify that performance and progress meets the requirements under the Agreement. During this phase of activity, the Project Engineer may require that Concessionaire to make the Works available for continuous approval and correct all non-compliances that might occur. The Concessionaire shall render all assistance to the Project Engineer and supply all labour, survey instrument, tools, material etc to enable the Project Engineer to carry out the required task.

The quality system shall be developed to provide and implement Quality Assurance procedures. These procedures shall be described in a "**Quality Assurance Plan**". The Quality Assurance Plan shall be submitted by the Concessionaire within thirty days from the appointment of the Project Engineer.

15.0 Design Submission / Clearance Process

The Concessionaire is required to make submissions throughout the duration of the project of all design documentation viz. calculations, drawings, catalogues, samples, prototypes, test certificates, works method statement, etc., which shall be accompanied by all necessary supporting workings and documents.

The Concessionaire shall note that all design submissions are to detail and describe fully the design and construction of the Works. No claims whatsoever will be entertained by the Authority on the failure of the Concessionaire to submit detailed design submissions well in advance of the construction Works and to the satisfaction of the Project Engineer.

The design and construction of the Works shall be professionally undertaken by engineering consulting firm, the name of which shall be intimated to the

Authority prior to appointment. All design submissions to the Project Engineer and authorities shall be duly endorsed by the design Engineers.

The Concessionaire's design shall be subject to the approval of relevant approving authorities and clearance of Project Engineer prior to construction.

Detailed Design Submissions

The Concessionaire shall progressively submit the detailed design documentation to the Project Engineer for his review and clearance. The submissions shall include, but not be limited to:

- Design calculations (including all input/output generated by design software)
- Design Report
- Drawings
- Any approved deviation of detailed specifications from Standard Specification
- Any other relevant information and data (e.g. Project soil investigation report, etc.)

Detailed Standard and Codes

- Standards and Codes of Practice applicable to cover design, materials, workmanship, performance, etc for the design of the project facilities are:

16.0 Codes and Standards

- a) The codes and standards applicable for the design of the Project Facilities are given in Table 1 below :

Table 1

Building Works and Electrical System	
i.	Central Public Works Department Specifications (CPWD);
ii.	Bureau of Indian Standards (BIS);
iii.	National Building Codes (NBC); and
iv.	CPWD Specifications on fire fighting and fire alarm systems
v.	SCC Building Byelaws

- b) Electrical system shall be provided as per the following applicable codes:

Sl. No.	Code No.	Application Details
1	IS-10118 (Part I), 1982	Code of practice for selection, installation and maintenance of switch gear & control gear
2	IS-3646 (part-I), 1992 (Rev.-I) & part-II	Guide for interior illumination
3	IS-732, 1989 Rev. 3	Electrical wiring system
4	IS-3043, 1987	Code of practice for earthing

5	IS-13032, 1992 (Rev. 2)	MCB distribution boards for voltage up to and including 1000V AC
6	IS-12640, 1988	Residual current operated circuit breakers
7	IS-649, 1990 (Rev. -3)	PVC insulated cables for working voltage upto and including 1100 V AC.
8	IS-9537 (Part-I), 1980	Conduits for electrical installations-general requirements
9	IS-10322 (Part-I), 1982	General requirements of luminaries
10	IS-13118, 1991	Circuit breakers-general requirements
11	IS-13947 (Part-III), 1993	Air break switches for voltage not exceeding 1000V AC or 1200 V DC
12	IS-1248 (All parts), 1983, 1984, 1993	Electrical direct acting instruments
13	IS-2147, 1962	Degree of protection provided by enclosures for LV switch gear and control gear
14	National Electrical Code Part 4 Appendix	Recommended values of illumination and limiting values of Glare Index-Industrial Building (Parking Space Indoor and Outdoor)

c) Where the aforesaid are silent on any aspect, the following standards in order of preference shall be adopted in consultation with the Independent Engineer, unless otherwise specified in this Schedule:

- (i) Euro norm standards EN: 14010: 2003 for parking structure safety
- (ii) American National Standard Institute (ANSI)
- (iii) Building Officials and Code Administrators of America (BOCA)
- (iv) International Standards Organization (ISO)
- (v) British Standards (BS)
- (vi) National Fire Protection Association of America (NFPA)
- (vii) National Electric Code of America (NEC)
- (viii) Safety Code for Mechanized Parking Garage Equipment of America(ASA.A113.1)
- (ix) American Society of testing Materials (ASTM)
- (x) International Society for Measurement and Control (ISA)
- (xi) ISO 9000
- (xii) Occupation Safety and Health Administration of U.S. Department of Labor (OSHA)
- (xiii) Americans with Disability Act Aecessibility Guidelines (ADA)
- (xiv) American Association of State Highway and Transport officials (AASHTO)
- (xv) American Society of Mechanical Engineers code on Storage Retrieval (S/R) Machines and Associated Equipment (ASME B30.13)

d) Any other national or International standards approved by the Project Engineer. The above codes shall include policy circulars, guidelines and special publications, issued in respect thereof from time to time and shall

incorporate all amendments and/or modifications to such codes and standards which are available to public.

The Concessionaire shall adopt the latest edition of each Standard/Code of Practice as at the time of award of Bid, notwithstanding the reference year of the edition of that stated in the Standards and Codes of Practice used at the time of preparation of bid.

17.0 Implementation

The Concessionaire will be required to carry the design intent through to completion of the project, by the processes of:-

- Design development
- Construction documentation
- Construction

Design Development

Design Plan

The Concessionaire will be required to develop a design which reflects the design intent, safe, fit-for-purpose, free of errors and ambiguities. This process will necessarily involve a design management process providing control and verification of the design, by means including:-

- Implementation of a Quality System.
- Identification of all design input criteria.
- Suitably qualified and experienced management and design teams, with identified responsibilities.
- An open and accessible design process involving regular interaction with the Project Engineer.
- A process of regular meetings, reviews and presentations with the Project Engineer and the Authority.
- A design program which acknowledges the time constraints of the project and the effect of critical design elements on the process as a whole.

The Concessionaire shall submit details of its proposed Design Plan with reference to the above points as part of the Bid as stated in the RFP Document and during the design development phase as and when required for the Project Engineer's review and comments.

Construction Documentation

Documentation Plan

The Concessionaire will be required to develop construction drawings, schedules and documents which reflect the developed design, achieve the required program for completion, by means including:

- compliance with all relevant Codes and Standards
- identification, documentation and review of design changes
- appropriate document review, verification, and records procedures
- Implementation of appropriate Quality Assurance programs for each trade.
- Realistic and enforceable warranties consistent with the required quality and maintenance regime of the building.
- Regular meetings with the Project Engineer and the Authority, reviews and presentations of the documentation process, at times to suit documentation program requirements.

The Concessionaire shall submit details of its proposed Documentation Plan with reference to the above points as part of the Bid as stated in the RFP Documents and during the design development phase as and when required for the Project Engineer's review and comments.

Construction

The Concessionaire will be required to construct the Works in accordance with the construction documentation, and achieve the required quality at completion by:-

- implementation of appropriate Quality Assurance programs,
- Works method statement, shop drawings, prototypes and samples for all relevant elements.
- Inspection and approval processes.
- Regular meetings, reviews and inspections with the client.

Any Work found not constructed in accordance with the approved construction drawings shall be reconstructed or rectified by the Concessionaire at its own cost to the satisfaction of the Project Engineer

Before Commencement of construction

Prior to commencement of any construction activity, the Concessionaire shall finalise an implementation plan for the Project (Implementation Plan) in consultation with the Authority/ Project Engineer. The Implementation Plan shall, inter alia, include:

- (i) A detailed schedule of implementation for putting up and operationalising the Project Facilities covering all stages/ aspects of the Project implementation including design and engineering, procurement of materials and equipment, installation, construction and testing;
- (ii) Manpower deployment plan, including the designation of key personnel for the management and supervision of all Project activities. (This would include the designation of suitably qualified personnel for areas such as contract administration and supervision, construction management, safety, environmental management, plant and equipment maintenance, procurement, materials management and quality control);

- (iii) A broad method statement for key items (Earth Works, Concrete Works, Structural Steel Works and Roads) setting out the methodology of construction, materials and construction equipment mobilisation/ utilisation plans, safety management plan and environmental management plan;
- (iv) Details of the quality assurance plan and quality control procedures; and
- (v) Format of the monthly report giving details of the physical progress in implementation of the Project and operations and maintenance activities undertaken (Monthly Progress Report)

Prior to commencement of construction of any of the Project Facilities, the Concessionaire shall have:

- (i) Obtained all such Applicable Permits as are necessary to commence construction of such Project Facilities;
- (ii) Finalised such Drawings as are necessary and the implementation schedule in consultation with the Authority/ Project Engineer;
- (iii) Mobilised the requisite resources, personnel and organisation necessary for the same and designated and appointed suitable officers/ representatives as it may deem appropriate with responsibility to supervise implementation of the Project and for exchange of information with the Authority/ Project Engineer;
- (iv) Finalised in consultation with the Authority/ Project Engineer a method statement setting out details of the actual methods that would be adopted by the Concessionaire for the construction of such Project Facilities including details of equipment and machinery that would be used, their locations, and arrangements for conveying and handling materials;

Finalised in consultation with the Authority/ Project Engineer quality assurance and quality control procedures to cover all aspects of the Work so as to ensure the desired quality.

During Construction

The Concessionaire shall:

- (i) Ensure that the construction of the Project Facilities is undertaken with minimal inconvenience to the traffic using the existing access road and provide detours wherever required;
- (ii) Ensure that no building material, salvage etc is placed on footpaths and right of way so as to interrupt the movement of traffic or pedestrian circulation;
- (iii) Take necessary precautions to minimise accidents and respond to Emergency as quickly as possible;
- (iv) Take precautions to avoid inconvenience to, damage to, destruction of or disturbance to any third party rights and properties;
- (v) ensure adequate safety of personnel deployed at the Project Site which would include measures for the safety such as the provision and maintenance of barricades and illumination during night in consultation with the Authority/ Project Engineer;

- (vi) be in compliance with the Applicable Laws and Applicable Permits obtained for the Project including the clearances obtained by the Authority;
- (vii) Adhere to the Implementation Plan; and
- (viii) Deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the Authority/ Project Engineer.

A. Positions and Levels

- a. The Concessionaire shall be responsible for:
 - (i) the accurate setting-out in relation to original survey control points, lines and levels of reference provided by the Authority;
 - (ii) the correctness of the positions, levels, dimensions and alignment of all parts of the Works;
 - (iii) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities;
- b. If, at any time during execution of the Works, any error is noticed in the position, levels, dimensions or alignment of any part of the Construction Works, the Concessionaire, on being asked to do so by Project Engineer, shall at its own cost, rectify such errors to the satisfaction of Project Engineer.
- c. The checking of any setting-out or of any line or level by Project Engineer shall not in any way relieve the Concessionaire of its responsibility for the accuracy thereof and the Concessionaire shall carefully protect and preserve all benchmarks, sight rails, pegs and other materials used in setting-out the Works.

B. Tests

Various quality control tests would be undertaken for the Project as per the standards prescribed by National building Code and Bureau of Indian Standards. Where no testing methods are specified by the said standards, details of the tests to be carried out and specifications to be achieved for the respective Project Facilities / Construction Works or part thereof shall be agreed upon with Project Engineer prior to construction;

- (i) The tests would be carried out at a location (place of manufacture, fabrication or preparation, at site or any specialised testing laboratory) that Project Engineer may reasonably require, at the cost and expense of the Concessionaire.
- (ii) The Concessionaire shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or plant and shall supply samples of materials, as required by Project Engineer to undertake Tests.

Project Engineer may from time to time require:

- (i) removal from the Project Site, within such time as may be specified in its instructions, any material, equipment, machinery or plant which, in its opinion, do not meet the standards specified;
- (ii) Substitution/ replacement of such improper material, equipment, machinery or plant;
- (iii) Re-execution, of any or part of the Construction Works which in the opinion of the Authority do not meet the standards; and
- (iv) the Concessionaire to make boreholes or to carry out exploratory excavation for the Project.

The Concessionaire shall mobilise adequate numbers of equipment, plants and machinery to ensure adherence to the Implementation Plan. Prior to making the request for the issue of Project Completion Certificate, the Concessionaire shall submit to the Authority the following, duly finalised in consultation with the Authority.

- (i) the Operation and Maintenance Manual for the Project Facilities (O&M Manual) setting out in detail the standards, schedules, procedures, type, periodicity and other details of the operation and maintenance activities to be carried out for the Project during the Operations Period as well as details of the management information system to be incorporated, reports to be submitted and procedure for reviews.
- (ii) The Operations & Maintenance Plan (O&M Plan) for the first year of operations.

Completion of Construction

A. Materials and Workmanship

All material to be incorporated in the Works shall be new and the workmanship throughout the Works shall be of high quality. All materials and workmanship shall comply with the relevant Indian or relevant International Standards and Specifications.

Whenever proprietary goods or materials are specified, such are to be deemed as being minimum standard/quality that is acceptable. Goods or materials of alternative manufacture may be considered for acceptance by the Project Engineer provided they comply in all aspects with strength, size, appearance and quality to that specified. The Concessionaire shall submit to the Project Engineer proof and proper technical evidence of such alternative material to substantiate their compliance / brochures on the technical information shall be used in the submission. The Concessionaire shall comply with the requirements of all tests deemed necessary by the Project Engineer

for such alternative material. The Concessionaire is responsible for all such test implications in cost and time.

Approval or acceptance by the Project Engineer of material and workmanship shall not relieve the Concessionaire of its responsibilities under the Agreement for the quality of materials and standard of workmanship required in the Work or subsequent rejection if the materials are found to be unsuitable later.

B. Samples

The Concessionaire shall submit samples of materials together with supporting technical information for review by the Project Engineer prior to incorporating them in the Works as and when required. Where so directed test certificates shall be produced. The Concessionaire shall allow fifteen days for the Project Engineer to review the technical information, test certificates etc. of each submitted sample. All samples which are accepted shall indicate the standard to be maintained in the execution of the Works. Materials whose samples are rejected shall not be used in the Works.

All accepted samples shall further

- Bear the word 'APPROVED' and the date of approval on a special label attached securely to the sample,
- Be properly catalogued with technical information, test results, etc.,
- Be neatly and systematically kept in special containers for the Project Engineer reference and for subsequent comparison check with actual respective delivered materials.

Any completed Work found not using material in accordance with standard of the approved sample shall be rectified or re-constructed to the approval of the Project Engineer and all cost incurred shall be fully borne by the Concessionaire.

C. Supervision and Inspection

The Project Engineer / the Authority have the right and power to instruct Concessionaire to remove, replace any of the Concessionaire's supervision personnel without giving any reason or any compensation. The Concessionaire shall comply accordingly within 24 hours.

The Concessionaire shall note that the Authority may appoint Consultants (such as Architects, Civil and Structural Engineers, Mechanical and Electrical Engineers and Specialist Consultants) to review and inspect the Works to

ensure that the Works are completed in strict accordance to the Agreement Requirements. The Concessionaire will be required to allow all required access to its processes of design development, documentation and construction for such review and inspection.

The Project Engineer or his representative or other the Authority Appointed Consultants may at any stage of the Works carry out inspections, measurements and tests on any part of the Works to ensure compliance with the Specifications. The Concessionaire shall provide the necessary attendance, all at the Concessionaire's costs, whenever required by the Project Engineer, his representatives or other the Authority Appointed Consultants.

Notwithstanding any tests which have been carried out off the site, the Project Engineer shall be empowered to order further tests of any materials or goods to be made on site and to reject such materials or goods should they fail to pass the on site tests. All costs incurred shall be borne by the Concessionaire.

All inspections notes, measurements, quality control test results, certifications of permanently covered works etc. shall be properly certified collated and bound and submitted monthly to the Project Engineer by the first week of the following month.

D. Progress Report

Reporting Requirements and Documents to be provided

During the Implementation Period, the Concessionaire shall submit to the Authority/ Project Engineer, Monthly Progress Report (for each calendar month or part thereof) within the first 5 working days of the following month. The report shall review the progress made, identify slippages if any, and project the future activities to be undertaken (including rectifications), operations and maintenance activities undertaken and would, inter alia, include the following:

- a. Listing of working drawings/sketches submitted
- b. Comments of the Authority, if any on the working drawings/sketches submitted
- c. Concessionaire's response to the comments on the Drawings/sketches
- d. Listing of the "As Built" drawings submitted
- e. Progress of pre-construction activities - mobilization of plant and equipment, personnel, site office, utility relocation etc.,
- f. Concessionaire's compliance inspection report, if any required
- g. Constraints in construction
- h. Progress data with "S" curves, if applicable
- i. Project data and sectional completion details

- j. Tests carried out, if any, and results thereof
- k. Remedial measures taken by the Concessionaire following such tests, where required
- l. Suspension of construction, if any, its reasons, duration and the steps undertaken to resume construction
- m. Change of Scope Notice issued by the Authority, if any, and status thereof
- n. All actual or potential deviations from the Implementation Plan
- o. Disagreements/ Disputes , if any and proposed measures to be taken
- p. Maintenance activities carried out by the Concessionaire
- q. Accidents and Injury/fatality to any construction personnel during construction, its severity, cause and remedial measure(s) taken to avoid recurrence
- r. Brief report of any accident / incident within the Project Facilities, property damage, cause of accident and actions taken to avoid recurrence
- s. Report on major breakdown of any machinery/equipment, reasons for delays caused and action taken to avoid recurrence and plans to make – up lost time
- t. Notes of meetings between the Concessionaire, the Authority and Project Engineer highlighting critical decisions taken or agreements reached. Minutes of the meeting issued by the Authority shall also be included in the monthly progress reports.

The Concessionaire shall submit to the Project Engineer on the first day of each week, a detailed programme of Work activities to be carried out during the week and also planned activities for the preceding week in the form of Weekly Report. This Weekly Report shall also highlight datelines for resolution of design issues / outstanding decision (if any) from Project Engineer / the Authority in order for construction activities to progress as scheduled etc.

E. As-Built Drawings

As-Built Drawings for the Works shall cover the Works as completed, incorporating all modifications carried out during construction of the Works. As Work progresses, the Concessionaire shall keep record of the said modifications on a separate set of paper prints which shall be made available, from time to time, for inspection by the Project Engineer.

Upon completion of construction of each individual work component the Concessionaire shall produce the as-built drawings in A1 size paper prints progressively and submit the same to the Project Engineer for verification.

Upon verification by the Project Engineer, the as-Built Drawings shall be certified correct by a principal of the engineering consulting firm responsible for the Works. The duly endorsed As-Built Drawings shall then be submitted to the Project Engineer and the Authority.

The submission of all as-built drawings shall be completed within two (2) months from the issue of the Certificate of Practical Completion. All paper

prints shall be suitably bound with an appropriately titled cover as approved by the Project Engineer.

F. Testing and Commissioning

All equipment after installation shall be properly tested and commissioned. The Concessionaire shall carry out pre-tests and tests on all individual sections of each system to prove that the individual capacities specified for all of the equipment can be produced and maintained. He shall also carry tests on each system as a whole to prove that the equipment has been properly adjusted and calibrated to produce the required guaranteed performance as offered.

The Concessionaire shall arrange for the whole installation to be completed, tested, certified safe to use according to the rules, regulations and requirements of the authorities having jurisdiction over the installation of Works and the equipment installed. The tests shall be carried out to provide test results that are wholly endorsed by qualified and competent personnel and accord with all local laws.

For the major product/equipment/system such as structural steel, pumps, generator set, compressors transformers etc., the Concessionaire shall arrange and provide all expenses for the Project Engineer and his delegates to witness the performance and all required testing either locally or at some other location having the testing facilities. The testing facilities shall preferably be of international accreditation or use internationally accepted testing procedures. The Concessionaire shall also submit the testing procedures (that shall be approved by the Project Engineer and be in accordance with international recognized test standards) and valid calibrated test certificates of all measuring instruments used in the test laboratory to the Project Engineer three(3) weeks prior to the testing date. Testing shall be carried out to meet the requirements, specifications, routine tests or similar applicable standards and the Authority's requirements.

When the above tests have been completed to the satisfaction of the Concessionaire, the Concessionaire shall arrange with the Project Engineer for a joint inspection so that the Project Engineer may be present to witness the testing and commissioning. The Concessionaire shall certify the satisfactory completion of all electrical works systematically and respectively.

The Concessionaire shall also submit commissioning manuals and procedures to the Project Engineer before the commencement of testing and commissioning. Brief lectures on the testing and commissioning procedures shall be conducted for the Project Engineer and his delegates and seconded personnel before the testing and commissioning.

A complete record of the tests and results of such tests (whether successful or otherwise) shall be kept up-to-date by the Concessionaire. At the conclusion of all of the testing, all records shall be collected, bound and submitted to the Project Engineer.

Should the whole or part of the installation or equipment fail to produce the required performance as offered, the Concessionaire shall be required to carry out all necessary modifications or replacements at its cost with an alternative as agreed to by the Project Engineer.

All energy, water, fuel, and fire extinguishing agents etc. consumed during the testing and commissioning shall be paid for and be included in the pricing of the Concessionaire.

G. Operation and Maintenance Manual

At the time of handing over the project, the Concessionaire shall supply for all installed equipment the following:-

- Operation and maintenance manuals duly endorsed by the Concessionaire’s Consultants.
- Manufacturers’ spare parts books.
- Itemized lists of equipment and spare parts that the manufacturers consider essential to keep in ready stock for the purpose of proper and efficient service and maintenance.

H. Submittals

Submittals are to be forwarded to the Project Engineer in hard and soft copy during the following stages of project implementation. Digital files for drawings shall be in “Autocad” format while documents shall be in “Word / Excel” and not PDF or scanned format.

Stage of Implementation	Documents	Number of Set		Drawings	Number of Set	
		Hard Copy	Soft Copy		Hard Copy	Soft Copy
Bid		2	-	Concept Plan and Drawings - A1 size - A3 size	2 2	- -

Stage of Implementation	Documents	Number of Set		Drawings	Number of Set	
		Hard Copy	Soft Copy		Hard Copy	Soft Copy
Detailed Design Development	Design Brief, Calculations Computer Design Analysis etc	2	2	Design Drawings	2	2
	- During progress of design	2	2	- A0 size	2	2
	- Upon finalisation			- A1 size - A3 size	2	2
Construction Stage	- Material / Product sample	2	-	Construction Dwgs.		
	- Site diary Inspection form, test result, product catalogue, etc.	2	-	- A1 size	2	2
	- Monthly compilation of inspection forms, quality control test result, etc	2	-	- A3 size	2	2
	- Monthly Progress Report	2	-			
	- Weekly Work Report	2	-			
Completion Stage	Operation & Maintenance Manuals			As-built Drawings		
	- During process of preparation					
	• Text / write up	2	2	- A1 size	2	2
	• Original Catalogue	2	-	- A3 size	2	2
	- Upon finalisation					
• text write up	2	2	- A1 size	2	2	
• original Catalogue	2	-	- A3 size	2	2	

I. Site Cleanliness and Clearing up of Site

The Concessionaire shall make every effort to keep the Site in a clean, neat and rubbish-free condition at all times for the full duration of the Works. He shall clean up the site on a daily basis and place all rubbish in containers or bins complete with lid. In addition, from time to time on the completion of any area of the Works or where directed by the Project Engineer to remove rubbish, surplus materials, or any other construction debris from such areas as may be attributable to his work under this Agreement and generally leave them in a satisfactory condition, to the approval of the Project Engineer.

Should the Concessionaire fail in carrying out its obligations of this requirement, the Authority, will upon giving twenty-four (24) hours notice, undertake to accomplish such obligations and all costs incurred shall be fully borne by the Concessionaire.

On completion of the Works, the Concessionaire shall remove all rubbish, debris and surplus materials from the Site and leave the whole Site in a neat and tidy condition to the satisfaction of the Project Engineer.

SCHEDULE 6B: General Design Parameters

1 Building and Utilities

In accordance with Applicable Law, All structural/ building works shall conform to Central Public Works Department (CPWD) specifications for Class-I building works and standards given in the National Building Code (NBC) as amended and/or modified from time to time.

2 Structural design

Load calculations and structural designs shall be as per relevant BIS code / NBC / IRC Codes including any revisions or amendments there to.

All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/lots shall have proper cross slope and drainage. They shall be marked with paint as per IRC: 35-1997 to demarcate parking and circulation space.

3 Fire Fighting System

The Concessionaire shall design and implement a comprehensive fire fighting system and shall obtain approval from the Chief Fire Officer with regard to the same. Fire fighting equipment including smoke detectors and audio-visual alarm system shall be planned and installed as per relevant sections of NBC.

SCHEDULE 6C: Specific Design And Construction Requirements

1. Requirement for Project Facility

1.1 Parking Facility

The Concessionaire shall also provide parking space for the users of Project Facility on Site.

1.2 Other Facilities

1.2.1.1 Lighting

The Concessionaire shall provide adequate lighting system along area of Project Facilities and Parking facility area to achieve a minimum lux level in accordance with Table 2 below.

Table 1

Area	Minimum Lux Level
Parking areas	50
Ramps	70
Roofs	20
Entrance & exit Areas for Parking	150
For external lighting	20
Stairways and subways	100
Toilets	100

The subway and stairways, Toilets and Entry and Exit Areas for Parking shall be provided with auxiliary emergency lighting system such that in the event of failure in general power supply the auxiliary emergency lighting system is activated immediately.

1.2.1.2 Signage

The Concessionaire shall provide illuminated signages in accordance with NBC/ IRC Norms at suitable locations within the Parking Facility. The scheme for signages shall be finalised in consultation with the Project Engineer.

1.2.1.3 Generator Back-up

The Concessionaire shall provide power back-up adequate for 100% of the designed power load of the Parking Facility (except Walkways), and Toilet Area. The generator shall be equipped to have a switch-over mechanism so as to be activated automatically in the event of power failure. The generator shall be installed in a separate sound-proof enclosure.

1.2.1.4 Drainage

The Concessionaire shall design and implement drainage facilities in such a manner that there is no stagnation of water in the Project Site. The internal drainage system shall be connected to main common drain at an appropriate location in accordance with the approved drawings.

1.2.1.5 Worker Amenities

The Concessionaire shall provide worker/employee amenities in accordance with Good Industry Practice.

1.2.1.6 Safety Barriers

The Concessionaire shall provide, at appropriate locations, safety barriers to effectively manage pedestrian and vehicular traffic.

- (i) National Mechanical Code of America (NMC)
- (ii) Noise Pollution (Control and Regulation) Rules, 2000.
- (iii) Suitable specification/standard devised by the Independent Engineer
- (iv) Any other standard proposed by the Concessionaire and approved by the Independent Engineer

2.0 Construction Requirement for Project Facilities on Site

2.1 The minimum facilities to be provided in the Project Facilities which is to be implemented by the Concessionaire as part of the Project shall be as set out in this Schedule.

2.2 The Concessionaire would be at liberty to design the Project Facilities, subject to review by the Project Engineer/ the Authority and compliance with Applicable Law. The Project Engineer/ the Authority shall only review the designs/drawings pertaining to the Project Facilities to check for structural stability and conformance to the conditions specified in this Schedule.

2.3 Parking Facility

The Concessionaire shall design the Project Facilities so as to provide adequate parking space for users of the Project Facilities. The requirement of parking space shall be calculated based on the proposed end-use of the Project Facilities in accordance with SCC Building bye Laws and as provided in this schedule.

The Concessionaire is put on notice that the proposed use of the land shall not impose unduly on the infrastructure or environs of the contiguous area, nor create substantial demand or increase in vehicular traffic.

SCHEDULE 7: O&M Requirements

1. General

- (a) The Concessionaire shall comply with the O&M Requirements set out in this Schedule.
- (b) In the planning and implementation of all Works and functions associated with the operation and maintenance of the Project Facilities, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging contractors) in such manner, as will:
 - (i) Ensure the safety of personnel deployed on and users of the Project Facilities or part thereof;
 - (ii) Keep the Project Facilities from undue deterioration and wear;
 - (iii) Permit unimpaired performance of statutory duties and functions of any party in relation to the Project.
- (c) During the Concession Period, the Concessionaire shall ensure that :
 - (i) Project Facilities is kept free from undue deterioration and undue wear;
 - (ii) applicable and adequate safety measures are taken;
 - (iii) adverse effects on the environment and to the owners and occupiers of property and/or land in the vicinity of the Project Facilities, due to any of its actions, is minimised;
 - (iv) any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimised;
 - (v) disturbance or damage or destruction to property of third party by operations of the Project Facilities is controlled/minimised;
 - (vi) members of the public are treated with due courtesy and consideration by its employees/ agents;
 - (vii) a complaint register to record grievances of any member of the public in relation to the operations and maintenance of the Project Facilities is duly maintained;
 - (viii) all materials used in the maintenance, repair and replacement of any of the Project Facilities shall meet the Construction Requirements.
 - (ix) the personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O & M Requirements.

2. Maintenance Requirements

A. Routine Maintenance Activities

- (a) In order to ensure smooth and uninterrupted use of the Project Facilities during normal operating conditions, routine maintenance of the Project Facilities shall include but not be limited to:
- (i) repairs to equipment, pavement, building and other civil works which are part of the Project Facilities;
 - (ii) replacement of equipment/consumables,
 - (iii) maintenance of the Project Facility in accordance with Good Industry Practice;
 - (iv) keeping the Project Facilities in a clean, tidy and orderly condition free of litter and debris;
 - (v) removing and disposing of in accordance with all Applicable Laws and Applicable Permits, all rubbish, debris, etc. including any and all equipment, supplies, materials and wastes brought or produced by the Concessionaire / Contractor;
 - (vi) taking all practical measures to prevent damage to the Project Facilities;
 - (vii) preventing, with the assistance of concerned law enforcement agencies where necessary, any unauthorised entry to and exit from and any encroachments on the Project Facilities;
 - (viii) Taking all reasonable measures for the safety of all the workmen, material, supplies and equipment brought to the Project Facilities. Explosives, if any, shall be stored, transported and disposed of by the Concessionaire in accordance with Applicable Laws / Applicable Permits.
- (b) The Concessionaire shall regularly carry out the necessary preventive maintenance activities for the Project Facilities to ensure adherence to the Construction Requirements throughout the Concession Period.
- (c) All maintenance activities shall be planned and coordinated in such a way that the maintenance works shall generally be done during nights and holidays (if unavoidable) so as to cause least disturbance.
- (d) A manual shall be prepared by the Concessionaire for operation & maintenance of building, water supply, electric supply and fire fighting, other facilities, etc. before commercial operation date. The Concessionaire shall comply with the provisions contained in the manual.

3. Reporting Requirements

The reporting and information that generally need to be provided by the Concessionaire are given below. The requirements given below are indicative of the type of information to be provided. The format of such reports, recording requirements, software standards and number of copies required would be

finalised in consultation with the Project Engineer. All reports and records shall be in the English language.

3.1 Inspection Reports and Remedial Measures

The periodicity of inspections for maintenance activities by the Concessionaire and regular reports on the same shall be sent to the Authority. Where required, the Concessionaire shall carry out any maintenance, repair or rehabilitation works found necessary as a result of such inspections.

3.2 Monthly O & M Report

During the Concession Period, within 5 days of the end of each calendar month or part thereof, the Concessionaire shall provide to the Authority a monthly report (Monthly O&M Report) which shall contain the following minimum information:

- (i) Daily schedule of vehicle day and night parking;
- (ii) Monthly usage of consumables;
- (iii) Details of major maintenance undertaken and expense incurred towards the same;
- (iv) Inspections undertaken by the Concessionaire during the month and action taken/ proposed thereafter;
- (v) Details of all reports submitted to the Authority during the month;
- (vi) O & M inspection compliance report;
- (vii) Maintenance activities undertaken during the month ended;
- (viii) Details of any Emergency and action taken.

The format of the O&M Report would be finalised in consultation with the Project Engineer.

Service Output	Maximum Tolerance Level	Permissible Time Limit for repairs/rectifications
Smooth and pot-hole free	Maximum three potholes of diameter more than 150 mm and depth 25mm or more	Repaired as per standard procedure within 7 days
No unsealed cracks	Unsealed cracks of width 3mm or more not to exceed 50m	Repaired as per standard procedure within 7 days
No rutting	No ruts exceeding 20mm using 2 m straight edge	Repaired as per standard procedure within 7 days
Clean, without debris and garbage	Nil	Soil, debris, garbage and other objects shall be removed immediately upon detection
Traffic signs, pavement markings shall be visible and legible	Nil	Minor damages / wear and tear rectified within three days. Missing signs and those with

Service Output	Maximum Tolerance Level	Permissible Time Limit for repairs/rectifications
		major damages shall be replaced within seven days.
No water stagnation. Fully functional drainage system free from clogging	Nil	Obstructions must be cleared within 24 hours after detection. Major defects repaired within seven days after detection by reconstructing to adequate shape and size. De-silting operations should ordinarily be done once in a month and once in a week during monsoon.
Floors : smooth and free from cracks, chipping or any other similar damage	Nil	Repaired / rectified within seven days from detection
Floors : Kept clean, dry without any litter, stains etc.	Nil	Debris/ garbage/other litter shall be removed immediately upon detection. Damaged / dysfunctional dustbins / shall be repaired / replaced immediately upon detection
Walls : no cracks, spalling/ scaling/blistering of plaster, no stains, no defaced / dis-coloured surfaces	Not more than 5% of surface shall be damaged / defaced/ dis-coloured, subject to, the damaged / defaced / dis-coloured area not exceeding a maximum area of 7.5sqm in one single patch.	Repaired/rectified within seven days from detection Repainting (in accordance with standard procedure) of the Project Facilities shall be carried out within a period not exceeding 36 months.
Dado and skirting should be intact	Not more than 5% of surface shall be damaged subject to, the damaged / defaced / dis-coloured area not exceeding a maximum area of 5sqm in one single stretch.	Repaired/rectified within seven days from detection
Drinking Water Facilities: Clean, potable water as per norms laid down by KUWS&DB or any other equivalent agency. All taps / faucets functional	At least 95% of the taps/faucets provided to be operational	Damaged / dysfunctional taps / faucets to be replaced / repaired within 24 hours of detection
Toilets:Kept dry, free from stains, litter and foul odour at all times. All flushes, taps, faucets, hand-washes, showers etc. shall be fully	Nil	In case the toilet does not meet the Cleanliness Service Output specified herein, it shall be rectified immediately. Minor defects in flushes, taps, faucets, hand - washes, showers etc.

Service Output	Maximum Tolerance Level	Permissible Time Limit for repairs/rectifications
functional		shall be rectified within 24 hours of detection. Major defects in flushes, taps, faucets, hand - washes, showers etc. shall be rectified within three days from detection
Information Boards/ Signages : visible, legible and functional	Nil	Obstructions shall be removed immediately upon detection. Dirty information boards/signages shall be cleaned immediately upon detection. Damaged information boards/signages shall be repaired/replaced within 24 hours of detection
Staircases Cleanliness : Kept dry, free from stains, litter etc. at all times Safety : No damaged hand-rails, broken steps	Nil	In case any part of the staircase does not meet the Cleanliness Service Output specified herein, it shall be rectified immediately Defects affecting Safety shall be rectified within three days from detection
Lifts shall be fully functional	Maximum of one lift not operational	Repaired/rectified within three days from detection of fault
Doors and Windows: All hinges and fasteners functional All glass panes clean, well-polished and in unbroken condition	Nil	All dysfunctional hinges / fasteners repaired / replaced within three days of detection. Broken glass panes replaced within three days of detection
Fire Fighting System		
Functional in accordance with Applicable Laws and Applicable Permits	Nil	Any minor fault to be repaired/rectified within 24 hours of detection. Any major fault to be repaired/rectified within three days from detection
Electrical Installations		
Lights : all lights fully functional and illumination as per Construction Requirements	At least 95% of the lights shall be fully functional	Any faulty light bulb / tube shall be repaired / replaced within 24 hours of detection
Fans : all fans functional	Maximum of three fans dysfunctional	Any faulty fan shall be repaired / replaced within seven days from detection
Other Electrical Installations	Nil	Any minor fault to be repaired/rectified within 24 hours of detection. Any major fault to be repaired/rectified within three days from detection

Service Output	Maximum Tolerance Level	Permissible Time Limit for repairs/rectifications
Back-up power facilities : fully functional in accordance with Construction Requirements	At least 80% of the capacity specified under Construction Requirements should be functional at all times. Provided that, the lighting load for the entire Complex shall be met to the extent of at least 75%.	Any shortfall in capacity vis-à-vis that set out under Construction Requirements shall be repaired within seven days
Sump and Overhead Tank		
Clean	Nil	Should be cleaned at least once in 3 months
Landscaping including walkways		
Neat, attractive, aesthetically pleasing. Soft landscape- green and clean. Hard landscape- free from litter, well drained, no water stagnation		Regular de-weeding, re-planting, pest-control. Debris, garbage, and other objects shall be cleaned upon detection. Obstructions must be cleared within 24 hours after detection. Major defects in drainage repaired within seven days after detection
Boundary Wall		
Clean, without graffiti	Nil	Dirty/defaced sections shall be cleaned/repainted within seven days from detection
No breaches	Nil	Reconstructed within seven days from detection

SCHEDULE 8: Scope of Work of Project Engineer

1. Role of the Project Engineer

The Project Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the Project Engineer is to:

- i) independently review, monitor and where required by the Agreement, to approve activities associated with the design and construction of the Project Facilities to ensure compliance by the Concessionaire with the Project Requirements,
- ii) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,
- iii) assist the Parties in arriving at an amicable settlement of disputes, should the need arise, and
- iv) Review matters related to safety measures adopted by the Concessionaire for the Project.

2. Scope of Services

The services to be provided by the Project Engineer are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

2.1 Implementation Period - Design and Approved Project Development Plan

- a. The Concessionaire must design and plan the Project Facilities in accordance with its Approved Project Development Plan approved by the Authority.
- b. In case the Concessionaire (i) proposes any deviation to the Drawings or (ii) submits alternative Drawings for any of the Project Facilities, the Project Engineer shall review the same to ensure conformity with the Design Requirements.
- c. Review of the following submitted by the Concessionaire:
 - (i) Approved Project Development Plan;
 - (ii) Quality Assurance Plan;
 - (iii) Implementation Plan;
 - (iv) Condition Survey of the existing facilities on site and other construction in the Project area.

2.2 Implementation Period - Construction

- a. The Project Engineer would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the Construction Requirements. For this purpose the Project Engineer shall

undertake, inter-alia, the following activities and where appropriate make suitable suggestions:

- (i) monitor the progress in implementation of the Project based on the Implementation Plan submitted by the Concessionaire;
- (ii) review and approve the material testing and mix designs results and recommend special tests, where required, for materials and/or completed Works, require removal/substitution of unsuitable materials and /or Works and report deficiencies in respect of the same to the Authority;
- (iii) review and monitor the quality assurance and quality control procedures followed by the Concessionaire;
- (iv) review the manpower and equipment deployed by the Concessionaire;
- (v) monitor the Construction Works for conformity with the Project Requirements;
- (vi) verify the 'As Built' drawings for each component of the Works prepared by the Concessionaire and require removal of deficiencies found therein;
- (vii) review the safety measures implemented;
- (ix) require, monitor and review the results of Tests to be carried out by the Concessionaire in accordance with the Construction Requirements;
- (x) require suspension of whole or any part of the Construction Works if in its reasonable opinion the same does not conform to the Construction Requirements;
- (xi) issue Completion Certificate in accordance with the applicable provisions of the Agreement; and
- (xii) review and assist in finalisation of the O&M Manual and first annual O&M Plan prepared by the Concessionaire.

2.3 Operations Period

Review of operations of Project Facilities every 6 months to check compliance with the O&M Requirements.

2.4 Breach of Obligations

If during the course or upon review / inspection undertaken by the Project Engineer or otherwise, it transpires that either of the Parties is in breach/ default of any of its obligations under the Agreement, the Project Engineer shall, under intimation to the other Party, require the defaulting Party to remedy such breach/ default within such time and in such manner as the Project Engineer may deem fit and in each case the same shall be recorded.

2.5 Meetings, Records and Reporting

- a. The Project Engineer would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected

to be held once a month during the construction and once every two months during the operation as also to participate in emergency or extra-ordinary meetings of the Parties held to deal with any Emergency, Force Majeure Event or other exigencies.

b. The Project Engineer shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:

- (i) Manpower deployed and other organizational arrangements of the Project Engineer;
- (ii) Reviews of documents submitted to it by the Concessionaire to meet Project Requirements, such as manuals, Drawings, As Built drawings, schedules, plans and reports;
- (iii) Inspections undertaken and notices/ instructions issued to the Concessionaire;
- (iv) Review of compliance with Project Requirements;
- (v) Tests;
- (vi) Emergency (including accidents);
- (vii) Force Majeure Events;
- (viii) Breaches and defaults by the Parties; and
- (ix) Handback Requirements

c. The Project Engineer would be required to submit the following reports to the Parties during the Concession Period:

- (i) Implementation Period
 - Monthly Progress Report (including details of slippages and remedial measures)
 - Report on Tests and report on notices Issued
 - Completion Certificate
 - Any supplemental or special report that may be considered necessary by the Project Engineer (including Emergency, Force Majeure, and breach of obligations).
 - Any other report as may be reasonably required by the Authority or as may be necessary to give effect to the provisions of the Agreement.

SCHEDULE 9: Details of Project Facilities

A map providing details of the Project site has been provided in Schedule 1 of the Concession Agreement.

**SCHEDULE 10: Copy of the Technical Proposal to be Attached by the
Concessionaire**

SCHEDULE 11: Undertaking by Successful Bidder
(Refer Clause 10.1 (a) (xv))