

VOLUME IV

DRAFT CONCESSION AGREEMENT

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CONCESSION AGREEMENT

This agreement (hereinafter referred to as the "**Agreement**"/ the "**Concession Agreement**") is made and executed on this _____ day of _____, 2020, at _____.

BETWEEN

- 1. Telangana State Industrial Infrastructure Corporation Ltd (TSIIC)**, A Government of Telangana Undertaking, having its Head Office at 4, 5 and 6 floors, Parishrama Bhavan, Basheerbagh, Hyderabad, and represented herein by its "Chief Engineer" hereinafter referred to as "TSIIC" or the "Concessions Authority" (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and assigns) of the **FIRST PART**,

AND

- 2. /M/s _____**, company within the meaning of the Companies Act, 2013 (incorporated under the Companies Act, 1956/2013), and having its office/registered office at _____, India, represented by ----- hereinafter referred to as the "**Concessionaire/ "Preferred Bidder"**" (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **SECOND PART **]**,

TSIIC and the Concessionaire are hereinafter individually referred to as "**the Party**" and collectively as "**the Parties**".

WHEREAS

- A. The first party, as the absolute owner and/or custodian of all the roads within its jurisdiction, has considered it necessary to provide facilities to pedestrians such as safe crossings on busy roads within the jurisdiction of TSIIC IALA Industrial Area Local Authority (IALAs) of Gachibowli, Hyderabad under Public Private Partnership Mode with an concession period of Ten (10) years Nine (09) months. Designing, construction and Financing of 'Pedestrian Walkway, Cycle track, landscaping, Avenue Plantations and Public Amenities Centre" are the key project facilities considered for development under this project.
- B. Pursuant to the above, TSIIC has invited bids through competitive bidding for selection of the Preferred Bidder for implementing the Project of "**Development of Urban Street Infrastructure for ISB road from DLF circle to Varun Motors (via Wipro Circle), Hyderabad, Telangana on PPP Mode under IALA Nanakramguda**" on the commercial format.
- C. Following a process of competitive bidding, after due evaluation of the bids received by the Concessioneing Authority in response to its RFP dated ____, the Concessioneing Authority accepted the bid submitted by, the Preferred Bidder, for developing and implementing the Project and communicated its acceptance to the Preferred Bidder vide Letter of Intent, dated ____ (the "**Letter of Intent**" or "**LOI**" attached hereto as Appendix I).
- D. Following the issuance of the said LOI, the Preferred Bidder/ Concessionaire in accordance with the terms and conditions as specified in the RFP Volume- I, as being the pre-condition to the execution of this Agreement, has made the following payments within 30 days of date of issue of LOI:
- (i) Irrevocable and unconditional bank guarantee towards Construction Performance Security (Appendix IV) of Rs. 50,00,000/- (Rupees Fifty Lakhs only) from Nationalised/ Scheduled Bank (excluding Cooperative Banks) ----- BG No. ----- dated ----- or a Demand Draft for Rs. 50,00,000/- (Rupees Fifty Lakhs only favoring 'TSIIC Limited' with a validity of _____ months from the date of this Agreement. AND
 - (ii) Demand Draft of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) towards non-refundable Project Development Fee favoring 'TSIIC Limited'.
- E. In light of the compliance by the Concessionaire of the pre-conditions to the execution of the Concession Agreement, Concessioneing Authority has agreed to enter into this Concession Agreement vesting the rights for the implementation of

the Project with the Concessionaire on the terms, conditions and covenants hereinafter set forth in this Agreement.

- F. The Preferred Bidder shall duly discharge its obligations under this Agreement and shall implement the Project according to the terms of the Bidding Documents and this Agreement.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1- DEFINITIONS AND INTERPRETATIONS

Section 1.1 Definitions

"Agreement"/"Concession Agreement" means this Development & Operation Agreement executed between TSIIC and the Concessionaire.

"Applicable Laws" means all laws, promulgated or brought into force and effect by the Government of Telangana or the Government of India including rules, regulations and notifications made there under, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.

"Applicable Permits" means all sanctions, licenses, approvals, clearances, permits, Concessions, consents, approvals and no objection certificates under or pursuant to Applicable Laws, required to be obtained and maintained by the Concessionaire for maintenance of the Facility in accordance with this Agreement.

"Compliance Date" shall have the meaning set forth in Section 3.3 (ii), upon which the Conditions Precedent to this Agreement have been fulfilled, being the date upon which this Agreement becomes unconditional and effective;

"Comprehensive Road Maintenance Contract" or "CRMC" shall mean the Agency appointed /engaged by the Greater Hyderabad Municipal Corporation (GHMC) for maintenance of main roads in Serilingampally zone of GHMC under Comprehensive Road Maintenance Contract for five (05) years.

"Commercial Facilities within Public Amenities Centre" means the facilities such as food courts, snack bar, ATM, Kiosks developed within the Public Amenities Centres as permitted by TSIIC.

"Commercial Operation Date (COD)" shall have the meaning specified in Section 6.3 (b);

"Concession Period" shall have the meaning specified in Section 2.2 of this Agreement;

"Concessionaire" means M/s ____ and shall include its successors and permitted assigns;

"Construction Commencement Date" shall have the meaning specified in Section 6.2;

"Construction Period" shall mean the period from the date of signing of this Agreement till the Commercial Operation date.

"Default/s" means event/s of default as described under Article 14 of this Agreement.

"Development Controls and Technical Specifications" shall mean entire content of the Volume II of the RFP including the specifications and standards mentioned.

"Evaluation Committee" means the Committee that may be constituted (as per Section 6.1 of this Agreement) by the Concessioneing Authority for the bid evaluation and approval of the architectural design submitted by the Concessionaire.

"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 to payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Facility, physical encumbrances and encroachments on the Facility Project Location.

"Essential Facility" shall consist of, unless the context otherwise requires, the details of the Project Location, Pedestrian Walkway, Cycle track & bicycles, Landscaping, Avenue Plantation, street lighting, parking, Public Amenities Centres as approved by TSIIC and also include such other fixtures, fittings or any other additions, the Concessionaire would provide or install/fix to maintain the Facility during the subsistence of this Agreement.

"Force Majeure Events" Shall have meaning as described under Article 13 of this agreement.

"Government Authority" means the state government or a governmental department, agency, authority, instrumentality, central, state, or local, having jurisdiction over the Concessionaire, the Project, the Facility Project Location, Project Assets or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"Maintenance" means upkeep of the facility as per best industry standards and practices for use by the public without hindrance and includes repairs, replacements, renovation or modernization to keep the facility in working and usable condition.

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

"Operation Period" means the period from the Commercial Operation Date till the issuance of Vesting Certificate by the Expert Committee.

"Other Option Facilities" shall mean the other commercial facilities like Advertisements space, Food courts, ATMs/ Kiosks, as approved by TSIIC, may be developed by the Preferred Bidder /Concessionaire only upon prior approval from TSIIC

"Person" means any individual, company, corporation, firm, society, partnership, joint venture, trust, unincorporated organisation, government or government agency or any other legal entity as the context may permit or require .

“Project” means **“Development of Urban Street Infrastructure of ISB road from DLF circle and Varun Motors, Hyderabad, Telangana on PPP Mode under IALA Nanakramguda”**, subject to the provisions of this Agreement, (i) designing, financing, construction, implementation, completion, commissioning, marketing, management, operation and maintenance and use of the Project Facilities (including Essential Facilities & any other permissible optional facilities) at the Project Location, execution of the Works and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period; (ii) the demanding, charging, collecting, retaining and appropriating and revision of advertisement, other rental tariffs and Licensee Fee by the Concessionaire at market driven rates and (iii) the transfer of the Project/Project Facilities (including Essential Facilities & other optional facilities) by the Concessionaire to TSIIC or its nominated agency at the end of the Concession Period by efflux of time or prior termination.

“Project Contracts” shall mean and include Contractual Arrangements.

“Project Facilities” The Project Facilities shall comprise and consist of Essential Facilities and the Optional Facilities as more particularly defined hereunder:

(i) “Essential Facilities” (Minimum Development Obligations)

a) pedestrian walkway with illumination

- Minimum clear walking width of 1.80 meters and length of 3.50 Km on L.H.S side of the ISB road (*i.e., towards IDBI, Infosys, Wipro side*)
- Kerb ramps of standard gradient not exceeding 1:12
- Tactile pavers (*width of 300 mm*) – Guiding the pedestrians with vision impairment
- Pedestrian walkway shall be raised 150mm from the proposed adjoining cycle track
- Illumination along the entire walkway at 15 m intervals with ornamental street lighting arms over Galvanized poles along the Pedestrian walkway and its associated fixtures

b) Cycle track with side railings

- Minimum clear cycle riding track width of 2.0 meters and length of 3.50 Km on L.H.S side of the ISB road
- Cycle track over the existing utilities ducts
- Side railing over the kerb placed near the main carriageway along 3.50 Km, subject to the entrance gates to the existing property holders.
- Develop at least 3 cycle parking docks each in an area not exceeding 180 sq. ft (30 feet X 6 feet) with a capacity of at least 10 cycles as approved by TSIIC and also procure at least Twenty Five (25) Bi-Cycles

c) Avenue Plantation

- At least 200 nos. of avenue plantations of various species (such as conocarpus, swietenia mahagoni & Silver Oak) each plant with a minimum height of 2.5m and

plant at a spacing of at least 2.0 meters spread at a stretch of 510 meters from chainage 1670 to 2180 meter.

d) Themed landscape

- Beautification of street with thematic plantation (shrubs/plants) wherever applicable
- Lawn development including ornamental / flowering shrubs between the property line & proposed pedestrian walkway all along the stretch on LHS
- Procurement of at least 100 no. of planter boxes for flowering plants preferable ornamental / shrubs -- to be installed within the railings.
- Providing lighting / illumination (with LED light) to the landscaped areas
- The Concessionaire shall take utmost care during the plantation works (Themed landscape, Avenue plantation & Plant boxers) duly ensuring high survivability (more than 95%) of the planting materials and quality of execution through their required appropriate level of expertise and experiences in handling of the work.

e) Public Amenities Center & Parking

- Develop maximum of four (04) nos. of Public Amenities centers (Only on the L.H.S of ISB road) each of an area not exceeding 300 sq ft and width of maximum 2.5 m starting from abutting property line.
- Each Public Amenities Center shall comprise of at least one toilet facility, Mobile charging points, seating benches, food courts and other permitted optional facilities, as approved by TSIIC.
- These Amenities are to be developed only at the locations specified below:
 - Near IDBI Bank (Chainage 190)
 - Near Gopichand Academy (Chainage 920)
 - Opposite to Microsoft (Chainage 1620)
 - Near Cyient (Chainage 3370)
- Develop Diagonal parking facility with a capacity of at least five (05) ECS (Equivalent Car Space) adjacent to each of the development Public Amenities Centers

f) Signage and Waste collection Bins

- Procurement of at least Thirty (30) no. of Segregated Solid waste management bins and
- Procurement of at least Six (06) digital directional signage boards at various locations along the LHS of the proposed road, as approved by the Police department & other competent authority.
- Providing street furniture such as Seating benches at regular or necessary intervals to the Pedestrian, physical challenged people and cyclist

(ii) Optional Facilities

- Optional facilities shall mean the commercial facilities like Advertisements space (duly complying to the applicable Local body advertisement norms), Food courts, ATMs/

DEVELOPMENT OF URBAN STREET INFRASTRUCTURE FOR ISB ROAD FROM DLF CIRCLE TO VARUN MOTORS, HYDERABAD, TELANGANA ON PPP MODE UNDER IALA NANAKRAMGUDA

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Kiosks as approved by TSIIC. However, the details of such optional facilities are indicated below;

▪ OPTIONAL FACILITIES*		
ADVERTISEMENT FACILITIES**		
Type of facilities	Size (in feet)	Maximum Nos.
Gantry Arch (Backlit system: Back to Back (two sided display))	30 X 10	06
Central Median pole boards (Back to Back: Backlit display system or any other display system duly complying to the applicable Local body advertisement norms)	5 X 4	100
Uni-poles Back to Back (Front lit or any other display system duly complying to the applicable Local body advertisement norms)	40 X 40	04
Boards on Public Amenities Centre (Single side Backlit display system or any other display system duly complying to the applicable Local body advertisement norms) 'V' Shape (Similar to Advertisement boarding over Bus shelters)	25 x 7	04
Boards above Cycle parking Docks (Single side Backlit display system or any other display system duly complying to the applicable Local body advertisement norms)	25 x 7	3
WITHIN THE PUBLIC AMENITIES CENTER		
Commercial food courts/ snack bar / ATM / kiosks etc.	300 sq ft each including toilets	4

**The tentative locations of the Public Amenities are earmarked in the map enclosed as Annexure-1, however, the Selected Bidder may erect advertisement facilities (as per the permitted numbers and sized mentioned in herein above) along the project stretch i.e. L.H.S and Central Median of the ISB Road, without causing any disturbance to the abutting properties & commuters. These advertisement locations are to be specified in the conceptual plans & DPR and duly approved by the Authority.*

***It shall be noted that in case, if the selected developer erects and operate permissible optional facility i.e., Advertisement display boards, then the selected developer shall earmark / reserve an advertisement space of at least 10% of 50% of the total no. of each of the permitted advertisement boards (including Unipole, Gantry Arch, Central median, Public Convenience facilities, Bi-cycle stand) towards display of the various initiatives undertaken*

by the Govt. of Telangana or any other public information required to advertise. The concept of such Govt. Advertisement shall be issued by TSIIC, as and when desired or instructed and the cost towards printing flex, mounting & unmounting shall be undertaken by the selected developer only.

"Project Assets" means all the moveable and immovable assets relating to and forming part of the Facility as on the date of completion of construction or as may be added or replaced or renovated or modernized by the Concessionaire from time to time during the tenure of the Agreement. It includes all the tangible and intangible assets relating to the Project including, but not limited to, (a) rights over the Project Location in the form of right-of-way or otherwise, (b) tangible assets such as the essential facilities and the optional facilities, foundation, embankments, buildings, structures, super structures, constructions, additions, alterations or improvements etc. thereof, pavement and walkways, sign boards, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, equipment, technology at the Project Location/relating to the Project; (c) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, Tariff etc.; (d) the rights of the Concessionaire under the Project Contracts, (e) the Applicable Permits relating to the Project and (f) insurance;

"Project Completion" shall have the meaning ascribed to it under Section 6.3(b) of this Agreement.

"Project Location" means the location allotted for development of the Project under this Agreement i.e. L.H.S (*Left Hand Side*) of the ISB road (*From DLF Circle to Varun Motors via Wipro Circle*) under IALA Nanakramguda and enumerated at Appendix II to this Agreement.

"RFP" means the Request for Proposal dated _____ issued by the Concessing Authority as part of the competitive bidding process inviting bids for implementing the Project on PPP basis, and includes any addendum / clarifications issued in respect thereof by the Concessing Authority;

"Relevant Authorities" means unless mentioned in this Agreement, means generally any governmental, quasi-governmental, regulatory or administrative authority, agency, department or entity.

"Transfer Date" means the date immediately following the date of expiry of Concession Period/this Agreement/the Concession, including extension thereto or earlier termination thereof in accordance with the provisions of this Agreement

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

"Termination Notice" means a communication by Registered Post in writing by a Party to the other Party regarding termination in accordance with the applicable provisions of this Agreement as described in Clause 15.

"Transaction Documents" means collectively the Project Contracts and the Financing Documents;

Section 1.2 Definitions and Interpretations

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

1.2.1 In this Agreement, unless the context otherwise requires:

- (a) Appendices to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- (b) references to "construction" include, unless the context otherwise requires, investigation, design, development of Project location, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" shall be construed accordingly;
- (c) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, Concession, proposal, communication, information or report or determination by any Party and/or the Zonal Manager, Cyberabad/ Expert, unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, Concession, proposal, communication, information or report or determination shall be in writing under the hand of the duly authorised representative of such Party and/or the Zonal Manager, Cyberabad in this behalf;
- (d) references to Project or Project Facilities in this Agreement shall mean the Essential Facilities and shall not include the Optional Facilities unless the Concessionaire opts to design, finance, construct, complete, commission and operate and maintain the same; and
- (e) the damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage/liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.
- (f) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

- (g) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (h) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (i) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (j) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly;
- (k) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (l) any reference to day shall mean a reference to a calendar day;
- (m) reference to a "**business** day" shall be construed as reference to a day (other than a Sunday) on which banks in Hyderabad are generally open for business;
- (n) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (o) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (p) any reference to any period commencing "from" a specified day or date and "till" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (q) the words importing singular shall include plural and vice versa;
- (r) references to any gender shall include the other and the neutral gender;
- (s) "Lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);

- (t) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - (v) any agreement, consent, approval, Concession, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
 - (w) references to Recitals, Articles, Sections, Sub-sections, Provisos or Appendix in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sections, Sub-sections, Provisos and of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Appendix in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Appendix or Annex, as the case may be, in which such reference appears;
 - (x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such documentation with their comments and/or approval, it shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.2.5 Measurements and arithmetic conventions

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

Section 1.3 Priority of Documents

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

- (a) This Agreement
- (b) The Appendices to the Agreement
- (c) The LOI issued to the Concessionaire
- (d) The written clarifications issued to the bidders at RFP stage (if any)
- (e) Written addenda/corrigenda to the RFP (if any)
- (f) The RFP
- (g) The Concessionaire's Bid

ARTICLE 2 - CONCESSION

Section 2.1 - Grant of Concession

- (a) Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concessioneing Authority hereby grants to the Concessionaire, and the Concessionaire hereby accepts the exclusive right, authority and Concession during the Concession Period to undertake the development, design, engineering, financing, procurement, construction, completion, commissioning, implementation, marketing, management, administration and operation and maintenance of the Project at the Project Location enumerated at **Appendix I**, on the commercial format, and exercise and/or enjoy the rights, powers, privileges, Concessions and entitlements as set forth in this Agreement (collectively the "**Concession**").
- (b) The Concession granted herein includes, subject to the provisions hereof, the exclusive right of the Concessionaire to:
- i. hold, occupy, enter upon and use the Project Location for implementing the Project, establishing the Project Facilities and executing the Works and to make at its cost and expense such development, construction and improvements therein or thereon as may be necessary or appropriate to implement the Project subject to and in accordance with the provisions of this Agreement;
 - ii. letting out spaces at the Project Location and/or Project Facilities for advertisement's / Optional Facilities through licensing, franchising, management service, sub-contracting or other suitable arrangements on mutually agreed market driven conditions ("**Contractual Arrangements**") with any Persons of its choice;
 - iii. determine, revise, charge, demand, collect, recover, retain and appropriate, the Tariff at market driven rates from the 'persons desirous of utilizing the space at the Project Facilities for the display of advertisements or installation of Commercial Facilities within Public Amenities Centre; and
 - iv. Carry out such other activities incidental to the foregoing or proper or desirable for the safe, efficient and economic implementation and operations of the Project.
 - v. **The Concessionaire shall take note of the agreement entered by the Concessioneing Authority for FOB, There is one FOB located at Chainage**

1125 near Infosys Campus & ISB main entrance which was developed on PPP mode and commenced in the year 2013 and valid for 20 years.

- (c) The above relevant extract of the concessionaire agreement executed for FOB's Project is as below " In order to protect sustainability of the subject five projects under this RFP (at Mind space junction, Cyber Gateway, Inorbit Mall, ISB and ICICI Bank towers) and the rights of the selected developers , APIIC (TSIIC) - IALA shall not award any new project with advertisement rights including FOB's, Bus shelters, Unipoles, Hoardings, Gentries etc. across the road or any one side of the road corridor falling within 500 meters (at least) distance from the five subject project locations on all the road corridor directions and within the jurisdiction of APIIC. In case if, APIIC (TSIIC) IALA desires to award public utility projects with advertisement rights, the selected developer of any one of the five project locations awarded through this RFP and nearest(by road) to the newly proposed project shall have the first right of refusal – provide the authorisee with the right to match and accept the price and terms of the highest bid/ prospective preferred bidder that is obtained by the grantor through a competitive bidding process for awarding the new project location. If the authorisee matches and accepts the price and terms of the highest bid/ prospective preferred bidder, then the project shall be awarded to the authorisee as per the RFP conditions of the project. If the Authorisee fails to match the highest bidder, then it will be awarded to the prospective preferred bidder."
- (d) TSIIC Shall adhere to the above clause of the agreement and FIRST RIGHT OF REFUSAL conditions as mentioned in the Concession agreement is applicable for this Project.
- (e) The Concessionaire shall, on the date of issuance of Vesting Certificate by the Expert Committee, transfer and hand over the Project, Project Facilities and the Project Assets to the Concessions Authority or its nominated agency in accordance with the provisions hereof.
- (f) The Concessionaire shall not part with or create any Encumbrances on the whole or any part of the Project Location, Project Assets, Project Facilities save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors, to enter into Contractual Arrangements and to assign its rights here under and create a security interest in favour of the Lenders in accordance with the provisions of this Agreement.

Section 2.2 - Concession Period

The Concession Period is Ten (10) years Nine (09) months, including construction period and shall commence from the date of signing of the Agreement. From such date till the end of Concession Period of 10 years 09 months or the earlier termination or any extension of this Agreement in accordance with the terms and conditions hereof, during which the Concessionaire is authorized to implement the Project and make commercial use thereof in accordance with the provision of this Agreement. For the avoidance of doubt, the Concession Period shall include the period of construction.

Further, the concession period may be extendable, subject to the sole discretion of the TSIIC, for a maximum period of five (05) years only based on satisfactory performance (Prompt License fee payments to TSIIC, successful operations of project facilities, zero accident & injuries adherence, conduct with customers, compliance to complaints received, etc). Further, the license fee for such extension period shall be fixed on mutually agreed basis. The Concessionaire has no right whatsoever in this regard.

Section 2.3 Right of First Refusal

In order to protect sustainability of the subject project under this RFP (3.5km stretch towards L.H.S of ISB Road) and the rights of the selected developer, TSIIC IALA shall not award any new project with advertisement rights including Bus Shelters, Unipoles, Hoardings, Gantries, etc. along this L.H.S of ISB road (within the project area). In case, if TSIIC IALA desires to award public utility projects with advertisement rights within the project area, the selected developer of this project awarded through this RFP and newly proposed project shall have the first right of refusal - provide the Concessionaire with the right to match and accept the price and terms of the highest bid / prospective preferred bidder that is obtained by the Authority through a competitive bidding process for awarding the new project location. If the Concessionaire matches and accepts the price and terms of the highest bid / prospective preferred bidder, then the project shall be awarded to the Concessionaire as per the RFP conditions of the project. If the Concessionaire fails to match the highest bidder, then it will be awarded to the prospective preferred bidder.

ARTICLE 3 - CONDITIONS PRECEDENT

Save and except as may otherwise be expressly provided herein, the rights and obligations of a Party under this Agreement shall be subject to the satisfaction in full of the Conditions precedent relating to the other Party (the "**Conditions Precedent**").

Section 3.1 - Conditions Precedent for Concessions Authority

The Concessions Authority shall have

- (a) Provided to the Concessionaire, permission/license to undertake the Project in the Project Location through an 'Order' in accordance with the terms of this Agreement and handed over the physical possession of the Project Location to the Concessionaire;
- (b) granted advertisement rights (duly complying to the applicable Local body advertisement norms) and rental rights of the Cycle and license rights over commercial facilities within Public Amenities Centre to the Concessionaire for generating revenue for the agreed Concession Period; and
- (c) made necessary arrangements (in co-ordination with the line departments) for procuring necessary approvals from the Government of Telangana (GoT) departments, agencies for administrative sanctions to enable the Concessionaire to commence the implementation of the Project.
- (d) TSIIC shall facilitate the selected Developer towards shifting of all utilities/ infrastructure including power lines that are present within the proposed Project Location. Such shifting shall be done in coordination with and approval/ clearance from the concerned departments/ authorities and the selected developer shall pay applicable fees and charges to the concerned authorities for the purpose of shifting however TSIIC shall reimburse the same as per actuals and hence the cost of shifting is not considered in the project cost.

The above Conditions Precedent are required to be satisfied by the Concessions Authority within a period of [3] (three) months from the date of this Agreement.

Section 3.2 - Conditions Precedent for Concessionaire

The Concessionaire shall have

- (a) made all the applications at its cost and procured the technical alliances, Applicable Permits required for commencing construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect and the Concessionaire is in compliance with the conditions of grant thereof and they are valid and effective;
- (b) Submitted atleast three alternative concepts along with three dimensional (3D) views and the architectural/ G.A. (General Arrangement) drawings of the finalized concept - all within one month of date of signing of this Agreement.
- (c) provided the Concessioneing Authority notarised true copies of its constitutional documents and board resolutions authorising the execution, delivery and performance of this Agreement by the Concessionaire;
- (d) achieved financial assistance as per Section 8 of this Agreement and provided notarised true copies of the Financing Documents to the Concessioneing Authority along with soft copies;
- (e) provided Construction Performance Security to the Concessioneing Authority;
- (f) confirmed in writing that all the representations and warranties of the Preferred Bidder/Concessionaire set forth in the Bid and forming part of this Agreement are true and correct as on the date of execution of this Agreement and the Compliance Date
- (g) DPR: The Concessionaire shall submit a DPR within a month from the date of receiving LoI/LoA to the Concessioneing Authority.

Provided that upon request in writing by the Concessionaire, the Concessioneing Authority may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Section 3.2.

The above Conditions Precedent are required to be satisfied by the Concessionaire within a period of [3] (three) months from the date of this Agreement.

Section 3.3 - Obligations to Satisfy Conditions Precedent

- (i) Each Party shall make all reasonable endeavors at its respective cost and expense to comply in full with the Conditions Precedent relating to it **within a period of Three (3) months** from the date of execution of this Agreement or any extension agreed to between the Parties.
- (ii) The later of the date within such days when the Concessions Authority and the Concessionaire both fulfill their Conditions Precedent (unless Concessions Authority waives the same for the Concessionaire) shall be the date from which the obligations of the Parties hereunder shall commence (the "**Compliance Date**").

Section 3.4 - Non-fulfillment of Conditions Precedent

- (a) In the event the Conditions Precedent for the Concessionaire have not been fulfilled within the stipulated time and the Concessions Authority has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and TSIIC shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it.
- (b) In the event that possession of the Project Location has been delivered to the Concessionaire prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement under this Section 3.4, the Project Location shall immediately revert to the Concessions Authority, free and clear from any Encumbrances and along with all Easement Rights, irrespective of any outstanding mutual claims between the Parties.
- (c) In the event this Agreement is terminated due to non-fulfillment of the Concessionaire's Conditions Precedent and the same is not due to Concessions Authority default, Concessions Authority shall forfeit the Project Development Fee furnished by the Concessionaire and retain the Construction Performance Security as damages.
- (d) In the event this Agreement is terminated due to non-fulfillment of the Concessions Authority's Conditions Precedent, the Concessions Authority shall upon such termination return/refund in full the Construction

Performance Security to the Concessionaire, unless the Concessions Authority's failure to fulfill its Conditions Precedent is as a result of the Concessionaire's default, in which case the Concessions Authority shall forfeit the Construction Performance Security as damages.

- (e) Instead of this Agreement terminating as provided in this Section 3.4, the Parties may by mutual agreement extend the time for three more months or more for fulfilling the Conditions Precedent. In such case, the Concessions Authority shall compensate the Concessionaire by extending the Concession Period accordingly.

ARTICLE 4 - PROJECT LOCATION

Section 4.1 – Possession of Project Location

- (a) The signing of this Agreement and fulfillment of Conditions Precedent by both the Parties is deemed to provide the Concessionaire with access to the Project Location. The Project Location for the proposed Projects are at the key locations as enumerated **at Appendix II.**
- (b) The Parties shall, within 15 (fifteen) days of the Concessions Authority's notice in this behalf to the Concessionaire prior to the Compliance Date, carry out through their duly authorised representative, a joint inspection and verification of all the real estate, structures, land, buildings and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Concessionaire in such joint inspection shall be mandatory. The Concessionaire shall carry out at its cost a due diligence of all Encumbrances at, on or under the Project Location and notify the same to the Concessions Authority, which shall take prompt action for removing the same.
- (c) The Concessions Authority shall bear all the costs of making available the Project Location to the Concessionaire and be liable to remove/relocate at its cost all Persons that may have to be displaced from the Project Location, including the payment of compensation, if any, to such Persons or litigation pursuant thereto and the Concessionaire shall not be liable in this behalf.
- (d) The possession of the Project Location granted hereunder by the Concessions Authority shall be on an "as is where is basis" the vacant possession of all the land and rights comprising the Project Location, free from Encumbrances, and together with the Easement Rights and with the full and free right and liberty of way and passage and other rights in relation thereto and the right, authority and license to implement the Project thereat in accordance with the provisions of this Agreement, for a period that shall be co-terminus with the Concession Period.

Section 4.2 - Use of Project Location

- (a) The Concessionaire shall not without prior written consent or approval of the Concessions Authority, use the Project Location for any purpose other than for the purposes of implementing the Project and commercial use of the Project Location in accordance with the provisions of this Agreement and purposes incidental thereto or as may otherwise be approved in writing by the Concessions Authority. The Concessionaire acknowledges, accepts, confirms and agrees that this is an essential condition of this Agreement.

- (b) The Concessionaire shall maintain vigil over the Project Location during the Concession Period to prevent encroachments or occupation of the Project Location and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform the Concessioneing Authority thereof.

Section 4.3 - Information about Project Location

- (a) The information about the Project Location is provided by the Concessioneing Authority to the Concessionaire in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessionaire acknowledges that before entering into this Agreement, it has had sufficient opportunity to investigate the Project Location, and accepts full responsibility for its condition (including but not limited to its geological condition, any toxic contamination, and the availability or unavailability of adequate supplies of water and electricity); and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Project Location (or part thereof) or for any other reason pertaining to the Project Location.

ARTICLE 5 - OBLIGATION OF PARTIES

Section 5.1 - Obligations of the Concessionaire/Preferred Bidder

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Concessionaire shall, without qualification, at its own cost and expense observe, undertake, perform and comply during the Concession Period with the following obligations:

- (a) The Concessionaire shall design, plan, develop, finance, construct, market, administer, manage and operate and maintain the Project/Project Facilities, including without limitation the necessary infrastructure, services and facilities, during the Concession Period strictly in accordance with the provisions of this Agreement, Development, Controls, Specifications and Standards enumerated at Volume-II of the RFP, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- (b) Minimum Development Obligations (MDOs): The Concessionaire shall plan, design, develop and operationalise the Essential facilities within Nine (09) Months from the date of this Agreement in accordance with the RFP stipulations.
Other Obligations:
 - i. The designs of the project facilities shall be finalized in consultation with the TSIIC.
 - ii. Pedestrians & passengers shall be provided with unlimited and unrestricted access to use the project facilities, round the clock, free of cost
 - iii. Operate and Maintain the Project facilities as per the ISO- 9001: 2008 Standards or equivalent
- (c) The Concessionaire shall arrange for the shifting of all utilities/ infrastructure including power lines that are present within the proposed Project Location only if they are intervening with the Project construction. Such shifting shall be done in coordination with and approval/ clearance from the concerned departments/ authorities and shall pay the applicable fees and charges to the concerned authorities for the purpose of shifting. The shifting shall be the responsibility of the Concessionaire and Concessioning Authority shall extend its best support/ facilitation to the Concessionaire in achieving the same. Also, all the fees and charges paid to the authorities like TSCPDCL, HMWSSB, etc. by the Concessionaire towards shifting of such utilities/ infrastructure shall be reimbursed to by the

Concessions Authority on production of relevant bills. TSIIC shall also facilitate and extend its support to Concessionaire for utility shifting & Clearance of all encroachments by appointing a single point contact for these project.

- (d) Also at any time during the Concession period, if the Project Facilities & other Optional facilities have to be removed or replaced or renovated due to road widening or any other reason (any Government implementation initiatives such as Strategic Road Development Plans, Metro corridors, etc.), then the Concessionaire shall shift such facilities to a mutually agreed location (within the TSIIC IALA's within the HMDA's jurisdiction) at its own expenses. However, TSIIC shall compensate the Concessionaire for such replacement / relocation / renovation and also the revenue loss from the advertisements and commercial spaces (ATMs/ Kiosks), if any, by extending the Concession period. Such additional Concession time period will be decided as per the projected revenues which will be computed based on the latest year revenues from the project facilities with an annual increment of 5% ever year.
- (e) In case of any delay in shifting of the utilities due to which the Project could not be completed and provided that such delay is not due to any default or negligence on the part of the Concessionaire or Persons claiming through or under it, Concessions Authority may commensurate the loss of time period by extending the Concession Period proportionately.
- (f) In implementing the Project, the Concessionaire shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including construction laws, traffic safety regulation, guidelines and the terms of Applicable Permits and the Concessionaire shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Concessions Authority from and against all liabilities and costs in this behalf.
- (g) The Concessionaire shall open the Pedestrian Walkway, Toilets to the public free of cost within (06) Six months from the date of signing of Concession Agreement and till the end of the Concession Period.
 - i. If the Essential Project Facilities are not opened to public free of cost, the Concessions Authority upon verifying and confirming the same shall issue a notice to the Concessionaire to pay a penalty of minimum Rs. 10,000/- (Rupees ten thousand only) per day computed for number of days of such default. If the Concessionaire does not make the payment and/or does not rectify and operate the Project Facilities as per the standard timings defined, the Performance Security shall be forfeited (partly/ wholly) without any prior notice. The Concessionaire shall top up the said Performance Security to the extent forfeited within fifteen days of

- Concessions Authority's notice. In case the Concessionaire does not fulfill the above, it will be treated as event of default as per clause 14.1 a (i) and TSIIC shall have right to terminate this Agreement.
- ii. In case of non-performance of any of the Project Facilities– not opened to public use for a period more than seven days, then the Concessionaire shall immediately remove the optional facilities. In case of non-adherence to the above, the relevant Performance Security shall be forfeited (partly/ wholly) without any prior notice. The Concessionaire shall top up the said Performance Security to the extent forfeited within fifteen days of the Concessions Authority's notice. If the non-performance of the Project Facilities are not rectified even after a period of one month, it will be treated as an event of default as per clause 14.1 a (i) and TSIIC shall have right to terminate the agreement.
 - (h) The Concessionaire shall provide or arrange at its cost during the Concession Period power, electricity, solid waste disposal and other facilities required from time to time in respect of the construction, operation and maintenance of the Project/Project Facilities and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.
 - (i) The Concessionaire shall obtain and maintain at its cost all Applicable Permits, (including all environmental permits), from the State /Central Government or their agencies, as may be required for implementation of this Project and running the facility. The Concessionaire shall maintain such Applicable Permits in full force and effect so long as it is necessary in order for the Concessionaire to perform its obligations hereunder
 - (j) The Concessionaire shall be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. payable under Applicable Laws arising from the respective terms and conditions of employment of all labor and personnel employed by the Concessionaire, its Contractors, agents and representatives on or in connection with the Works at the Project Location under or through whatever legal relationship;
 - (k) The Concessionaire shall make efforts to maintain harmony and good industrial relations among the labor and personnel employed in connection with the performance of the its obligations under this Agreement, whether by itself or through the sub-contractors, and be the principal employer in respect of such labor and personnel. The Concessionaire shall be solely responsible and liable for compliance with all Applicable Laws, including labor and local laws, pertaining to the employment of labor, staff and personnel by it and its Contractors for implementing the Project and the

Concessions Authority shall not be liable in any manner whatsoever in respect of such employees and their employment.

- (l) The Concessionaire may sub-contract at its cost and risk to Contractors possessing the required skill, expertise, capacity and technical and financial qualifications, the designing, engineering, procurement, fabrication and construction of civil / mechanical / electrical engineering structures / equipment, and / or operation and maintenance of the Project or any part thereof provided the Concessionaire shall at all times be solely responsible and liable for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the operation and maintenance of the Project in accordance with the provisions of this Agreement and provided further that this does not result in the carrying out of the whole or substantially the whole, as determined by the Concessions Authority, of the Works by the Contractors. The Concessionaire shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement are incorporated in the terms and conditions under which such Contractor is retained.
- (m) For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a subcontractor by the Concessionaire for any of the aforesaid purposes, the Concessionaire shall remain responsible for obligations performed or to be performed by the subcontractors to the same extent as if such obligations were to be always performed by the Concessionaire and shall at all times be solely responsible for any defect, deficiency or delay by the subcontractor in the implementation of the Project/execution of Works.
- (n) The Concessionaire further undertakes and covenants that it shall be solely responsible for all payments to be made to the subcontractors and shall indemnify the Concessions Authority and keep it indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses that the TSIIC may incur, insofar as such losses directly arise out of, in any way relate to, or result from the non-performance by the Concessionaire of its obligations to the Subcontractors including non-payment of any monies to such Subcontractors.
- (o) The Concessionaire shall provide to the Concessions Authority notarised true copies of every Transaction Document duly executed, to which the Concessionaire is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements etc. thereof within 15 (fifteen) days of such execution or amendment etc.

- (p) Not make any replacement, modification or amendment to any of the Transaction Documents at any time without the prior written consent of the Concessioneing Authority if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on the Concessioneing Authority and in the event any replacement, modification or amendment is made without such consent, the Concessionaire shall not enforce such replacement, modification or amendment nor permit enforcement thereof against the Concessioneing Authority.
- (q) Comply with its obligations set out in the Transaction Documents.
- (r) Ensure and procure that each Project Contract contains provisions that would entitle Concessioneing Authority or a nominee of the Concessioneing Authority to step into such contracts at the Concessioneing Authority's discretion, in place and substitution of the Concessionaire in the event of termination pursuant to the provisions of this Agreement.
- (s) Not enter into any material contract, including without limitation, any EPC contract or agreement with any affiliated party related to or in connection with the Project unless the principal terms including consideration is reviewed, assessed and approved by the Zonal Manager, Cyberabad prior to the execution of any such contract.
- (t) The Concessionaire shall provide to the Concessioneing Authority and the Zonal Manager, Cyberabad / Expert Committee, reports on a regular basis during the Concession Period in accordance with the provisions of Article 7 and as set forth elsewhere in the Agreement and at all times provide the Concessioneing Authority such information, data and documents as the Concessioneing Authority may reasonably require.
- (u) The Concessionaire shall take all reasonable precautions for the prevention of accidents on or about the Project Location and provide all reasonable assistance and emergency medical aid to accident victims. For this purpose Concessionaire shall maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.
- (v) The Concessionaire shall adhere to all the norms of fire safety, etc., and also obtain the insurance coverage for the Project Facilities and third party insurance for the facilities user (pedestrians).
- (w) The Concessionaire shall pay all fines, late fees and other outgoings in relation to the use of utilities and services by the Concessionaire or its Contractors and agents during the implementation and operation of the

Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of such utility.

- (x) The Concessionaire shall undertake marketing of advertisements right, Optional Facilities at its cost and expense and liaison with sector players, and interested parties etc.
- (y) The Concessionaire shall maintain required insurances in accordance with the provisions hereof.
- (z) The Concessionaire shall provide all assistance to the Concessions Authority and the Zonal Manager, Cyberabad/Expert Committee as they may reasonably require for the performance of their duties and services under this Agreement;
- (aa) The Concessionaire shall be responsible for safety, soundness and durability of the Project Assets including all structures forming part thereof and their compliance with the Specifications and Standards.
- (bb) The Concessionaire shall subject to the provisions hereof, achieve Project Completion within 09 (Nine) months from the date of the Concession Agreement.
- (cc) The Concessionaire shall hand over the Project /Project Assets free from Encumbrances and encroachments to the Concessions Authority or its nominated agency upon the expiry/termination of the Concession Period/this Agreement
- (dd) The Concessionaire shall promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Zonal Manager, Cyberabad / Consultant and ensure completion of the construction of the Project in all respects in accordance with the provisions of this Agreement;
- (ee) The Concessionaire shall confine its activities to the Project Location and to any additional areas arranged by the Concessionaire at its cost and not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for its failure to do so;
- (ff) The Concessionaire shall commence Commercial Operations of the Project Facilities only upon issuance of the Completion Certificate.
- (gg) The Concessionaire shall operate, maintain, manage, repair the Project/Project Facilities at its cost and risk during the Operations Period,

strictly in accordance with the provisions of this Agreement, Development Controls and Technical Specifications as enumerated at **Volume-II** of the RFP, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice.

- (hh) The Concessionaire shall undertake the Essential facilities development, implementation, operation and maintenance strictly in accordance with the following minimum specifications and as per the terms and conditions stipulated in this RFP.

I. Essential Facilities / Minimum Development Obligations

a) Pedestrian walkway with illumination

- Minimum clear walking width of 1.80 meters and length of 3.50 Km on L.H.S side of the ISB road (*i.e., towards IDBI, Infosys, Wipro side*)
- Kerb ramps of standard gradient not exceeding 1:12
- Tactile pavers (*width of 300 mm*) – Guiding the pedestrians with vision impairment
- Pedestrian walkway shall be raised 150mm from the proposed adjoining cycle track
- Illumination along the entire walkway at 15 m intervals with ornamental street lighting arms over Galvanized poles along the Pedestrian walkway and its associated fixtures

b) Cycle track with side railings

- Minimum clear cycle riding track width of 2.0 meters and length of 3.50 Km on L.H.S side of the ISB road
- Cycle track over the existing utilities ducts
- Side railing over the kerb placed near the main carriageway along 3.50 Km, subject to the entrance gates to the existing property holders.
- Develop at least 3 cycle parking docks each in an area not exceeding 180 sq. ft (30 feet X 6 feet) with a capacity of at least 10 cycles as approved by TSIIC and also procure at least Twenty Five (25) Bi-Cycles

c) Themed landscape

- Beautification of street with thematic plantation (shrubs/plants) wherever applicable
- Lawn development including ornamental / flowering shrubs between the property line & proposed pedestrian walkway all along the stretch on LHS
- Procurement of at least 100 no. of planter boxes for flowering plants preferable ornamental / shrubs- to be installed within the railings.
- Providing lighting / illumination (duly installing of LED lights of desired watts & color) to the landscaped areas

d) Avenue Plantation

- At least 200 nos. of avenue plantations of various species (such as conocarpus, swietenia mahagoni & Silver Oak) each plant with a minimum height of 2.5m and plant at a spacing of at least 2.0 meters spread at a stretch of 510 meters from chainage 1670 to 2180 meters.

e) Public Amenities Center & Parking

- Develop maximum of four (04) nos. of Public Amenities centers (Only on the L.H.S of ISB road) each of an area not exceeding 300 sq ft and width of maximum 2.5 m, starting from abutting property line.
- Each Public Amenities Center shall comprise of atleast one toilet facility, Mobile charging points, seating benches, food courts and other permitted optional facilities, as approved by TSIIC.
- These Amenities are to be developed only at the locations specified below:
 - Near IDBI Bank (Chainage 190)
 - Near Gopichand Academy (Chainage 920)
 - Opposite to Microsoft (Chainage 1620)
 - Near Cyient (Chainage 3370)
- Develop Diagonal parking facility with a capacity of at least five (05) ECS (Equivalent Car Space) adjacent to each of the development Public Amenities Centers

f) Signage and Waste collection Bins

- Procurement of at least Thirty (30) no. of Solid waste management bins (Segregated bins) and
- Procurement of at least Six (06) digital directional signage boards at various locations along the LHS of the proposed road as approved by the Police department & other competent authority
- Providing street furniture such as seating benches, Gazebos, etc at regular or necessary intervals to the Pedestrian, physical challenged people and cyclist

II. Optional Facilities

- Optional facilities shall mean the commercial facilities like Advertisements space, Food courts, ATMs/ Kiosks as approved by TSIIC. However, the details of such optional facilities are indicated below;

OPTIONAL FACILITIES*		
ADVERTISEMENT FACILITIES**		
Type of facilities	Size (in feet)	Maximum Nos.
Gantry Arch (Backlit system: Back to Back (two sided display))	30 X 10	06
Central Median pole boards	5 X 4	100

DEVELOPMENT OF URBAN STREET INFRASTRUCTURE FOR ISB ROAD FROM DLF CIRCLE TO VARUN MOTORS, HYDERABAD, TELANGANA ON PPP MODE UNDER IALA NANAKRAMGUNDA

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OPTIONAL FACILITIES*		
ADVERTISEMENT FACILITIES**		
Type of facilities	Size (in feet)	Maximum Nos.
(Back to Back: Backlit display system or any other display system duly complying to the applicable Local body advertisement norms)		
Uni-poles back to back (Front lit or any other display system duly complying to the applicable Local body advertisement norms)	40 X 40	04
Boards on Public Amenities Centre (Single side Backlit display system or any other display system duly complying to the applicable Local body advertisement norms) 'V' Shape (Similar to Advertisement boarding over Bus shelters)	25 x 7	04
Boards above Cycle parking Docks (Single side Backlit display system or any other display system duly complying to the applicable Local body advertisement norms)	25 x 7	3
PUBLIC AMENITIES CENTER		
Commercial food courts/ snack bar / ATM / kiosks etc.	300 sq ft each including toilets	4

**The tentative locations of the Public Amenities are earmarked in the map enclosed as Annexure-1, however, the Selected Bidder may erect advertisement facilities (as per the permitted numbers and sized mentioned in herein above) along the project stretch i.e. L.H.S and Central Median of the ISB Road, without causing any disturbance to the abutting properties & commuters. These advertisement locations are to be specified in the conceptual plans & DPR and duly approved by the Authority.*

***It shall be noted that in case, if the selected developer erects and operate permissible optional facility i.e., Advertisement display boards, then the selected developer shall earmark / reserve an advertisement space of at least 10% of 50% of the total no. of permitted advertisement boards (including Unipole, Gantry Arch, Central median, Public Convenience facilities, Bi-cycle stand)*

towards display of the various initiatives undertaken by the Govt. of Telangana or any other public information required to advertise. The concept of such Govt. Advertisement shall be issued by TSIIC, as and when desired or instructed and the cost towards printing flex, mounting & unmounting shall be undertaken by the selected developer only.

III. Minimum Performance Obligations (MPOs)

- a) Maintenance of Public Amenities Centers (toilets etc.) and cycle dock station
- b) Replacement of damaged LED lights including cabling and painting the proposed ornamental street lighting arms / Galvanized poles along the Pedestrian walkway & also landscape area on regular basis
- c) Replacement of damaged LED lights including cabling and painting the existing streetlights (double arm) & Hi-mast lights along the central median
- d) All the power/electrical charges for street lights (including the existing street lights & Hi-Mast lights erected in the central median) shall be borne by the selected concessionaire regularly
- e) The concessionaire shall co-ordinate with the existing CRMC agency appointed by GHMC for comprehensive road maintenance of main roads in Serilingampally zone (*this project stretch falls in this Serilingampally zone*). The appointed CRMC agency shall maintain the road, which include sweeping of roads, pedestrian pathways, regular watering, pruning, trimming the landscapes/greenery, etc. In case, if it is observed that the urban street infrastructure including landscape's maintenance by CRMC is inadequate, the concessionaire has to co-ordinate with them and ensure proper maintenance, if necessary the concessionaire shall take up such maintenance at the cost of concessionaire.

More details on the technical specifications of the above are indicated in the Volume II: Development Controls and Technical Specifications of this RFP. TSIIC shall be the final Authority in case of any uncertainty in interpretation of the specifications

IV. Special Conditions

- i. The Concessionaire shall prepare at least three (03) conceptual plans / designs (with 3D views) of the project for the entire stretch of 3.50 Km, the design shall be modern, innovative, creative and attractive. The conceptual plan shall clearly indicate the location and the design of the advertisement Hoarding especially the Unipoles and Public Amenities centre. The design should be such that it doesn't affect the free, smooth and safe movement of the traffic.
- ii. Based on the designs & views submitted by the Concessionaire, TSIIC shall approve anyone of such designs and the Concessionaire may commence implementation of such approved design.

- iii. The Concessionaire shall provide or arrange at its own cost (*during the Concession Period*) the required facilities such as power, electricity, solid waste disposal and any other associate facilities required from time to time in respect of the construction, operation and maintenance of the Project/Project facilities and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice. However, TSIIC will extend their support in submitting the required requisite to the concern authorities.
- iv. The Concessionaire shall be permitted display advertisement within the permitted space through any new age advertisement technology that grows with time in the future (like LED, sliding digital, digital displace mode etc.) duly complying to the applicable Local body advertisement norms, subject to the additional premium License payments to TSIIC and shall be decided on the mutually agreed basis.
- v. It shall be noted that in case, if the selected developer erects and operate permissible optional facility i.e., Advertisement display boards, then the selected developer shall earmark at least 10% of 50% of the total no. of permitted advertisement boards (including Unipole, Gantry Arch, Central median, Public Convenience facilities, Bi-cycle stand) towards display of the various initiatives undertaken by the Govt. of Telangana or any other public information required to advertise. The concept of such Govt. Advertisement shall be issued by TSIIC and the cost towards printing flex, mounting & unmounting shall be undertaken by the selected developer only.

The Concessionaire shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas:

- I. Preparation of three alternative concepts with 3D views along with the Architectural/G.A drawings for the finalized option within one month of agreement signing and Structural Designs for the Project Facility including optional facilities and other Designs and Drawings within 3 months;
 - i. Arranging the financing for the Project, including mobilization of debt and equity;
 - ii. Procurement of Applicable Permits for commencing and implementing the Project;
 - iii. Award of Project Contracts in respect of engineering, procurement, construction and operation and maintenance of the Project;
 - iv. Timely implementation of the Project in accordance with the provisions of this Agreement, including the Specifications and Standards, the Applicable Laws, the terms of the Applicable Permits and Good Industry Practice.

- v. Marketing of the advertisement rights and optional facilities;
 - vi. Compliance with the provisions of this Agreement relating to liability and indemnification; and
 - vii. Implementation of measures for safety, security and protection of the works, property, life and materials at the Project Location and the environment.
- II. Change of Management of the Preferred Bidder is not allowed within construction time and initial two years of project operations. However, after the aforesaid period and with the prior approval of TSIIC, change of management may be allowed.

Section 5.2 - Obligations of Concessioneing Authority

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Concessioneing Authority agrees and undertake as under:

- (a) The Concessioneing Authority shall, at the request of the Concessionaire, grant Applicable Permits with reasonable promptness that are in its authority and capacity to grant and, as the case may be, assist but without guarantees and/or without assuming any responsibility in that behalf and issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits from Government Authorities, Concessions to import equipment and materials required for the Project and immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project, including renewals thereof; provided that nothing contained in this provision shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Concessionaire (i) provides to the Concessioneing Authority all necessary relevant details and other information as may reasonably be required by the Concessioneing Authority and (ii) keeps the Applicable Permits in force and effect throughout the Concession Period.
- (b) Upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities.

- (c) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Authority, trade union, environmental group or any other Person or organization, which might reasonably be expected to materially and adversely affect the Project Assets, the implementation of the Project or the enjoyment by the Concessionaire of its rights and benefits under the Concession granted herein, the Concessions Authority shall, if requested by the Concessionaire in writing, on a best effort basis, take such reasonable action as is available to it to challenge and to mitigate such effects.
- (d) The Concessions Authority shall assist the Concessionaire in obtaining police assistance against payment of prescribed costs and charges, if any, for maintaining security at the Project Location.

ARTICLE 6 - PROJECT IMPLEMENTATION

Section 6.1 - Architectural and Structural Designs

- (a) The Concessioneing Authority shall constitute an 'Evaluation Committee' consisting of the members as it deems fit, for bid evaluation and approval of the Architectural and Structural Design prepared by the Concessionaire.
- (b) Within one month from the date of signing of this Agreement, the Concessionaire shall at its cost prepare as per the RFP terms and submit to the Concessioneing Authority and the Evaluation Committee, the architectural design / G.A. drawings for the Project for approval by TSIIC as finalized from the three alternative concepts submitted.
- (c) The detailed architectural and structural design for the Project shall, inter alia, set out the full details of the developmental activities proposed to be carried out by the Concessionaire for implementation of the Project, proposed order, sequence and method of working, the steps, procedures and processes undertaken and to be undertaken by the Concessionaire, the Project Implementation Schedule with the Project Milestones, with milestone dates, names of likely subcontractors/ vendors etc., plans for mobilization of finances, plans for marketing the advertisement rights / Optional Facilities and such other similar details which define and clarify the method and direction of the Concessionaire's plans for the implementation of the Project.
- (d) The Concessioneing Authority and the Evaluation Committee shall review the Architectural Designs submitted by the Concessionaire for conformity with the Specifications and Standards and in the event the Evaluation Committee has any objection, it shall promptly within "7(seven) working days" from the submission date by the Concessionaire, notify the Concessionaire of its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon the Concessionaire shall within "7(seven) working days" of such notification provide necessary clarification to the Concessioneing Authority and the Evaluation Committee and/ or re-submit the revised Designs or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the Concessioneing Authority and the Evaluation Committee.

- (e) If the Concessions Authority and the Evaluation Committee does not object to the detailed architectural design submitted to it by the Concessionaire within "15 working days" of its submission, Concessions Authority and the Evaluation Committee shall be deemed to have approved such architectural design. Within "15 (fifteen) working days" after the Architectural Design is approved, the Concessionaire shall submit the Evaluation Committee, the Structural Design, duly verified & approved by the Independent Agency appointed/designated by the Concessions Authority. Once such Structural Design is complete, the Concessionaire shall be entitled to proceed with the Project accordingly. However the Concessionaire expressly, agrees and confirms that non-communication of any comments by the Concessions Authority and / or the evaluation committee in terms of above clause shall not mean or be construed to mean that the right of the Concessions Authority or the Evaluation Committee to notify the objections / comments / or to suggest modifications in architectural and structural design is forfeited.
- (f) Notwithstanding any express or deemed approval or failure to review by or the comments or observation of the Concessions Authority and / or the Evaluation Committee in relation to the architectural and structural design, the Concessionaire shall be solely responsible for any defect and/or deficiency therein or any part thereof and accordingly the Concessionaire shall at all times remain solely responsible for the technical feasibility, operational capability and reliability of the Project and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder. The Concessionaire shall rectify or cure the any such defect within 15 days from date of notice from TSIIC.
In case of default, the Concessionaire shall pay a penalty of minimum Rs. 10,000/-(Rupees ten thousand only) per day computed thereof for number of days after completion of 15 days period.
- (g) Any design, drawing or specification provided by the Concessions Authority to the Concessionaire shall only be indicative and the Concessionaire shall accept the same at its sole risk, cost and consequence. The Concessions Authority or Evaluation Committee shall not be responsible or liable in any manner for the accuracy, completeness or otherwise of the architectural and structural design or the construction and implementation of the Project/Works by the Concessionaire on the basis thereof, irrespective of any

perusal or review thereof or comment thereon by the Concessing Authority and / or the Evaluation Committee.

Section 6.2 - Development of Project Location and Implementation of Works

The Concessionaire shall commence construction of the Works for the development and implementation of the Project within 15 (fifteen) days week of the Compliance Date ("**Construction Commencement Date**"). The Concessionaire shall, by itself or through its subcontractors, at its cost and risk undertake the development of the Project Location, including land filling, leveling, clearing, shifting of utilities, landscaping and demarcation and division of the Project Location etc. for establishment of the Project Facilities, in accordance with the provisions of this Agreement, Development Controls and Technical Specifications and Good Industry Practice.

Section 6.3 - Project Completion

- (a) The Concessionaire shall complete the Construction works in respect of the Essential Facilities, which constitute the Minimum Development Obligations within a period of Nine (09) months from the Agreement Date, which may be extended under the provisions of this Agreement or by mutual agreement of the Parties.
- (b) The Project shall be deemed to be complete and open for Commercial Operations only when the Completion Certificate is issued by the Zonal Manager, Cyberabad (the "**Project Completion**"). The Completion Certificate shall specify the date on which, in the opinion of the Zonal Manager, Cyberabad the Project was completed and ready for Commercial Operations (the "**Commercial Operations Date**").
- (c) For the avoidance of doubt, Project Completion herein refers to the construction and completion of the Essential Facilities in accordance with the provisions hereof, which constitutes the Minimum Development Obligations of the Concessionaire. The Concessionaire may design, construct, complete, commission, operate and maintain the Optional Facilities strictly in accordance with the provisions of this Agreement, Development Controls, Specifications and Standards as set forth at Volume-II of the RFP and Good Industry Practice, at any time during the Concession Period; provided that (i) the procedures for testing and certification of construction and completion thereof shall be as set forth herein in respect of the Essential Facilities; (ii) the Optional Facilities shall not be commissioned and commercial operations thereof shall not be commenced prior to the COD/ commercial operations of the Essential

Facilities under the Project ; and (iii) since the construction, operation and maintenance of the Optional Facilities is not mandatory, the Concessionaire shall not be required to adhere to any implementation schedule for the construction or completion thereof (optional facilities) and hence would not be liable to pay any liquidated damages in respect of delayed construction or non-construction of the optional facilities. The Concessionaire's decision not to/failure to construct, complete and commission the Optional Facilities shall not constitute an Concessionaire Event of Default here under.

- (d) Subject to compliance with the provisions of this Agreement and the Applicable Laws, the Concessionaire shall be entitled to undertake the commercial development and use of the Project Facilities. For the avoidance of doubt, the Concessionaire shall have no right and authority to sub-let the Project Location to any Person, in full or part in any manner, form, arrangement, device except as provided under this Agreement.

Section 6.4 - Marketing of Advertisement Rights & Optional Facilities

- (a) The Concessionaire shall be solely responsible for marketing of the advertisement rights at the Project Facilities and letting out on rent of the Optional Facilities. The Concessionaire shall be entitled to commence such marketing at its cost and risk from the Compliance Date and to accept advances, booking amounts and other considerations from such users(of the Optional Facilities) from such date; provided that Concessioning Authority shall not be liable in any manner whatsoever to any Person in this behalf and the Concessionaire shall disclose the same to such Users.
- (b) Advertisement taxes are exempted for the project under this tender during the Concession period.
- (c) The Concessionaire shall ensure that the advertising and marketing of the advertisement rights at the Project Facilities and the letting out of the Optional Facilities is carried out in a manner that is consistent with and not in derogation of or conflict with any terms or provisions of this Agreement and the Applicable Laws. The Concessionaire shall ensure that advertising at the Project Facilities and letting out the Optional Facilities shall not, in any manner, affect/harm the project facilities or hinder/restrict the pedestrians from using the Project Facilities. The Concessionaire shall abide by the provisions of the Development Controls, Specifications and Standards as set forth at Volume II of the RFP. The Concessionaire shall comply with the guidelines of Advertising Standards Council of India (ASCI), the applicable Local body advertisement norms and other guidelines/ legislations/ Government Orders/Municipal Acts/Bye-Laws etc. relating to advertisement/

commercial publicity/ display of items etc. The Concessionaire shall further ensure that the advertisement has no objectionable and indecent portrays of people, products or any items. The advertisements should not hurt the sentiments of any group or groups of the society.

Section 6.5 – Operation and Maintenance of the Project

- (a) Effective from the Project Completion Date and until the end of the Concession Period, the Concessionaire shall undertake or cause at its cost and risk the operation and maintenance of the Project/Project Facilities, including the infrastructure, works, fire-fighting and other systems and the common services and facilities, in accordance with the provisions of this Agreement, provisions of the Development Controls, Specifications and Standards as set forth at Volume II of the RFP; Good Industry Practice, Applicable Laws and conditions of Applicable Permits, by itself or through Operation and Maintenance (O&M) Contractor or through suitable management/service contractors, without in any way relieving the Concessionaire of its responsibilities, obligations and liabilities as set out in this Agreement; provided that the O&M Contractors shall be appointed not less than 1 (one) month before the Project Completion. Within 1 (One) week of the appointment of such contractors the Concessionaire shall inform the Concessioning Authority of their appointment. In case of O&M Contractor or management/service contractors, the Concessionaire shall exercise appropriate control over them and shall manage, direct, administer and supervise their working so as to ensure compliance with the provisions of this Agreement.
- (b) Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire shall provide to TSIIC, its proposed programme of preventive and other scheduled maintenance of the Project subject to the Minimum Maintenance Requirements set forth in Volume II of the RFP necessary to maintain the Project at all times in conformity with the Specifications and Standards (the "**Maintenance Programme**"). Such Maintenance Programme shall include but not be limited to the following:
- (i) intervals and procedures for the carrying out of inspection of all elements of the Project;
 - (ii) criteria to be adopted for deciding maintenance needs;
 - (iii) preventive maintenance schedule;
 - (iv) intervals at which the Concessionaire shall carry out periodic maintenance; and
 - (v) intervals for major maintenance and the scope thereof.
- (c) The Concessionaire shall make prompt payment of power bills on a monthly basis or as raised by the Relevant TRANSCO department at its own cost. In

case of non-payment of two subsequent power bills by the Concessionaire and/ or non submission of payment receipt to TSIIC, the Concessionaire is liable to pay penalty at the rate of 18% per annum on the due amount for the period of delay. Further, the Concessioneing Authority shall forfeit the Operations Performance Security which is Rs.10,00,000/- (Rupees Ten Lakh only), (part/ whole) for payment of pending bill and/ or the Bank Guarantee submitted by the Concessionaire. In the event of forfeiture of the Operations Performance Security, the Concessionaire shall resubmit the same within 15 days from the date of such notice from TSIIC. If the payment of six consecutive bills is not done, it will be construed as event of default of the Concessionaire as per clause 14.1 a (i) and appropriate action will be initiated as per this Agreement.

- (d) The Concessionaire shall make appropriate arrangements for security at the Project Location and abide by the security regulations/procedures prescribed by the Concessioneing Authority or any Government Authority from time to time. The Concessionaire may secure assistance of the police force for maintaining security upon payment of routine charges for such services.
- (e) The Concessionaire or the Persons claiming through or under it shall be free to determine the Tariff at market driven rates in respect of the advertisement rights at the project facilities and/or the letting out on rent of the Optional Facilities and shall have the right to demand, collect, retain and appropriate and revise the Tariff; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.
- (f) The Concessionaire may, effective from the Operations Date, grant on license basis (i) the advertisement rights at the designated spaces at the Project Facilities and (ii) let out the Optional Facilities for running the Optional Facilities, provided that Concessionaire can let out the Optional Facilities for any other purpose, other than the above mentioned with the prior written consent of the Concessioneing Authority, on mutually agreed market driven terms and conditions (hereinafter the "**Contractual Arrangements**") with any Person of its choice (hereinafter the "**Contractual Counter Parties**").
- (g) The Concessionaire may determine, demand, collect, revise, retain and appropriate the Tariff for such Contractual Arrangements at rates determined by the Concessionaire;
- (h) All Contractual Arrangements shall be subject to the following terms and conditions:
 - (i) such Contractual Arrangements shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions of this Agreement;

- (ii) the terms and conditions of this Agreement are complied with and as applicable form a part of such Contractual Arrangements and the Contractual Counter Parties, if any, shall be bound by such terms and conditions and be liable and accountable in respect thereof;
- (iii) the duration of such Contractual Arrangements shall be limited to and be co-terminus with this Agreement /not exceed the Concession Period herein
- (iv) such Contractual Arrangements shall come into effect and operation only upon the Concessionaire achieving Project Completion in accordance with the provisions of this Agreement unless otherwise authorised by the Concessions Authority in writing;
- (vi) Each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement on one hand and the Contractual Arrangement on the other hand, the provisions of this Agreement, shall prevail and such Contractual Arrangement shall stand modified to that extent;
- (vii) The Concessionaire shall submit to the Concessions Authority for its information and records a notarised true copy of the agreements/documents relating to the Contractual Arrangements within 15 (fifteen) days of the date of execution, modification or amendment thereof.
- (i) The Concessions Authority shall not be liable in any manner whatsoever to any entity/Person in respect of any disputes relating to the Contractual Arrangements between the Concessionaire and such entity or Person or otherwise. The Concessionaire shall indemnify and keep indemnified the Concessions Authority, its employees, agents, representatives and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.

ARTICLE 7 - PROJECT MONITORING

Section 7.1 - TSIIC Zonal Manager, Cyberabad

- (a) The Zonal Manager, Cyberabad shall monitor the implementation of the Project, conduct on behalf of the Concessions Authority the periodic verification of the progress and quality in the construction, issue the Provisional and/or the Completion Certificate and discharge its duties and functions substantially in accordance with the terms of reference set forth in this Agreement. The Zonal Manager, Cyberabad shall submit periodic reports (at least once in a week) in respect of its functions to the Parties in the form and manner as mutually agreed and provide the Parties such additional information as they may reasonably require from time to time to fulfill their obligations hereunder.
- (b) TSIIC and Zonal Manager, Cyberabad shall have access to the Project Location, the Project Facilities and to all property, documents, records etc. relating thereto for purpose of inspection, monitoring, ensuring compliance with provisions of this agreement.
- (c) The Zonal Manager, Cyberabad shall have no authority to relieve the Concessionaire of any of its obligations or responsibilities under this Agreement. Any proposal, inspection, examination, testing, consent, approval or similar act of or by the Zonal Manager, Cyberabad (including absence of disapproval) shall not relieve the Concessionaire from its obligations and responsibilities hereunder.
- (d) In the event the Concessionaire has reason to believe that the Zonal Manager, Cyberabad is not discharging its duties and functions in a fair, efficient or diligent manner, it may make a written representation to the Concessions Authority, supported with necessary documents and specific instances of causes and grievances and seek termination of the appointment of such Zonal Manager, Cyberabad. Within 7 (seven) working days of the date of such representation, the Concessions Authority shall hold a tripartite meeting with the Concessionaire and such Zonal Manager, Cyberabad for resolving the matter amicably and giving a fair hearing to such consultant. In the event the matter is not amicably resolved within 7 (seven) days of such meeting, the appointment of the Zonal Manager, Cyberabad shall be forthwith terminated; provided that prior to such termination the Concessions Authority shall have appointed another Zonal Manager, Cyberabad to replace the existing one in accordance with the provision of Section 7.1 (a) above. The replacement of the Zonal Manager, Cyberabad shall be effected so as to maintain the continuity in supervision and monitoring of construction of the Project by it.

Section 7.1A – Expert Committee

The Concessing Authority and the Concessionaire shall appoint an '**Expert Committee**' consisting of the two representatives from both the parties, to be Supervising Authority, for the Operation Period, under this Agreement. Such appointment shall be made no later than "7 (seven) working days" from the date of issuance of Completion Certificate and shall continue for a period until issuance of Vesting Certificate.

Section 7.2 - Reporting and Inspection

The Concessionaire shall, in addition to the reporting requirements set forth elsewhere in this Agreement, comply with the reporting requirements hereunder:

(a) Construction Period Reports

The Concessionaire shall provide to the Concessing Authority and the Zonal Manager, Cyberabad a weekly progress report during the Construction Period, which shall contain the following information:

- (1) Areas of concern or problem or bottlenecks, impact and corrective action plans, revised resource planning, details. The critical path schedules shall be updated and included as part of this report in order of priority.
- (2) Actual progress made during that week against the construction schedule including a description in reasonable detail of the work carried out;
- (3) Any matters which have come to light which are likely materially and adversely to affect the construction of the Project;
- (4) Any potential or actual deviations from the construction schedule, provisions of the Development Controls and Technical Specifications as set forth at Volume II of the RFP and Good Industry Practice or otherwise confirmation that construction is proceeding in accordance therewith;
- (5) Details of any changes to the proposed date of completion of construction and the reasons for such changes; and
- (6) Written confirmation that all Applicable Permits then required are in full force and effect including a list of such permits.

The Concessionaire shall, without any responsibility for the removal of the above defects/ deficiencies, promptly carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Concessing

Authority/the Zonal Manager, Cyberabad and ensure construction of the Project/Project Facilities is in all respects in accordance with the provisions of this Agreement.

(b) Operation Period Reports

The Concessionaire shall provide to the Concessions Authority and the Expert Committee, a quarterly operation and maintenance progress report during the Operation Period, which shall contain the following information:

- a. Summary of operating and financial results for that quarter and explanations of any major variation between actual and projected results;
- b. Maintenance Plan: A maintenance plan for the Project for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan);
- c. Other Project and Financial Information

The Concessionaire, after becoming aware, will also provide the information; (i) with respect to any Force Majeure Event affecting the Project; (ii) any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to the Project; and (iii) details of contravention of any Applicable Law or with the terms of any Applicable Permit and any fines or penalties that have or may thereby be incurred.

The Concessionaire shall also provide the Information with respect to any Material Adverse Effect in the financial condition of the Concessionaire or the Project promptly following such occurrence.

(c) Additional Information

The Concessionaire agrees to provide the Concessions Authority and the Zonal Manager, Cyberabad / Expert Committee such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

(d) Inspection

The Concessions Authority, the relevant Government Authorities and the Zonal Manager, Cyberabad, Expert Committee and their representatives shall at all reasonable times and upon reasonable notice have access to the Project Location, the Project/Project Facilities and the Works and all related designs, documents, reports, records technology and workmanship to review progress of the construction,

operation and maintenance of the Project/Project Facilities and to ascertain compliance with any of the requirements of this Agreement, and to check the progress of the works or for performing statutory duties and the Concessionaire shall provide the necessary cooperation and assistance to them in this behalf.

Provided that any failure on the part of the Concessions Authority, the concerned Government Authorities and the Zonal Manager, Cyberabad to inspect any work, material, equipment and workmanship etc. shall not, in relation to such work etc. (i) amount to any consent or approval of the Concessions Authority nor shall the same be deemed to be a waiver of any of the rights of the Concessions Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work etc.

ARTICLE 8 - FINANCIAL COVENANTS

Section 8.1 - Financing for Project

- (a) The Concessionaire agrees and undertakes to obtain financing for the design, development, construction and operation and maintenance of the Project in accordance with the provisions of this Agreement.
- (b) The Concessionaire may assign its rights, title or interest or create a security interest in respect of its rights under this Agreement or any part thereof, including right, title and interest under this Agreement, in and to the Project Assets, and its right to receive Tariff (including a security interest on its rights, title and interests to the advertisement rights to it and its right to receive monies/advertisement charges, rental from Optional Facilities) in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or security interest shall be consistent with the provisions hereof and the lenders are made aware of the same.
 - (i) Provided that the Concessioneing Authority shall be informed by the Concessionaire as to the creation of any security interest in favour of the Lenders , together with the Lenders particulars within a period of 1 (one) week from the date such security interest comes into existence and provide to the Concessioneing Authority within such time notarized true copies of documents/agreements relating thereto. Failure to do so shall amount to an event of default on the part of the Concessionaire and any consequential failure or inability on the part of the Concessioneing Authority to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Agreement, if any required, shall be at the risk and responsibility of the Concessionaire only.
 - (ii) Provided further in the event of termination of this Agreement by efflux of time or otherwise, such assignment/security interest shall stand extinguished upon payment of compensation by the Concessioneing Authority to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

Section 8.2 - Payments to Concessioneing Authority

- (a) In consideration for the grant of the Concession, the Preferred Bidder/Concessionaire shall have made the following payments before the execution of this Agreement in the manner mentioned hereunder:
 - (i) Submission of the Construction Performance Security
 - (ii) Payment of the Project Development Fee

The payment referred above form the pre-condition to the execution of this Agreement and this Agreement is not valid unless such payment is made to Concessioning Authority.

- (b) The Concessionaire shall make a payment of Total Annual License Fee. @ Rs. **Lakhs (Rupees Lakhs only)** Plus applicable taxes (1st year of COD or from the 2nd Year from the date of signing the Concession Agreement, whichever is earlier).
- (c) Further, there shall be an increment of 05% in the Total Annual License Fee every year over the previous year till the end of the Concession period.
- (d) This Total Annual License Fee shall be paid on quarterly basis to the TSIIC Limited in advance in the beginning of the quarter (within 7 days from the beginning of the every quarter in the financial year)

Section 8.3 - Advertisement Tariffs, Rentals, and Total Annual License Fee from Project Facilities

Effective from COD and during the Operations Period, the Concessionaire shall be entitled to fix at rates fixed/structured at the discretion of the Concessionaire from time to time, determine, revise, charge, demand, collect, recover, retain and appropriate the Tariff at market driven rates for the advertisement rights at the Project Facilities and rental's in respect of the Optional Facilities that are provided, arranged or procured by the Concessionaire by itself or under or pursuant to Contractual Arrangements. Provided that the Concessionaire shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf. This includes the rentals from Bicycles and Licenses Fee from Commercial Facilities within Project Amenities Centre and Advertisement Tariffs.

Section 8.4 - Audit and Account

- (a) The Concessionaire shall appoint, as its statutory auditors, a reputed firm of chartered accountants duly authorised to practice in India. All fees and expenses of the statutory auditors shall be borne by the Concessionaire. All financial claims or documents provided by the Concessionaire to the Concessioning Authority relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, in connection with the Project shall be valid and effective only if certified by the Concessionaire's statutory auditors.

- (b) The Concessionaire shall, during the subsistence of this Agreement, prepare and maintain its books of accounts in accordance with standard accounting practices and statutory requirements under the Indian laws. The Concessionaire shall provide the Concessions Authority 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 120 (one hundred and twenty) days of the close of the Accounting Year to which they pertain.

- (c) The Concessionaire shall establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of data related to the construction and operation of the Project, including all such information which is necessary to verify costs and expenses incurred or revenues earned and to confirm the amount of Gross Revenue and to confirm that the Concessionaire is in compliance with its obligations under this Agreement. The Concessionaire shall provide copies of such reports to the Concessions Authority within 5 (five) days of the end of each month.

ARTICLE 9 - PERFORMANCE SECURITY

Section 9.1 - Performance Security

- (a) For securing the performance of the obligations of the Concessionaire/ Preferred Bidder, during the Construction Period, under the RFP and this Agreement, the Preferred Bidder has along with the execution of this Agreement, delivered to the Concessioneing Authority (within 30 days of issue of LoI) a Construction Performance Security (Appendix IV) for a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) (as mentioned in Section I of the RFP), drawn from a Nationalized bank/ Scheduled Bank(excluding Cooperative Banks), and payable and enforceable in Hyderabad, Telangana (the "**Construction Performance Security**"). The Construction Performance Security shall be valid for minimum of twelve (12) months from its issue date (after issue of LoI) and may be extendable if required. For avoidance of any doubt it is clarified that the said Construction Performance Security shall be for securing the performance of the Concessionaire/Preferred Bidder as referred above, in respect of the entire Project including the construction of all essential facilities allotted under this Agreement. This Construction Performance Security shall be returned by the Concessioneing Authority to the Concessionaire/ Preferred Bidder within one week of issuance of the Completion Certificate by Zonal Manager, Cyberabad, provided the same has been replaced by the Operations Performance Security.
- (b) For securing the due and punctual performance of obligations of the Concessionaire, during the Operations Period under the RFP and this Agreement, the Preferred Bidder /Concessionaire shall deliver to the Concessioneing Authority, a Operations Performance Security of Rs. 10,00,000/- (**Rupees Ten Lakh only**) (as mentioned in the RFP) favouring the Concessioneing Authority from a Nationalised/ Scheduled Bank (excluding Cooperative Banks), acceptable to the Concessioneing Authority and enforceable and payable in Hyderabad, Telangana (the "**Operations Performance Security**") and valid from the Commercial Operation Date. The Operation Performance Security shall be valid for three years and a fresh performance security shall be submitted every three years, atleast fifteen days prior to the expiry of the performance security in force, without any notice from TSIIC till the end of Concession Period and until the date of issue of the Vesting Certificate. In case of non submission of fresh Operations Performance Security as above, TSIIC shall forfeit the Operations Performance Security in force without notice. For avoidance of any doubt it is clarified that the said Operation Performance Security shall be for securing the performance of the Concessionaire/Preferred Bidder, during the Operation Period, in respect of the entire Project including the operation of the essential facilities allotted under this Agreement.

- (c) The Preferred Bidder /Concessionaire shall keep the Construction and Operations Performance Security valid at all times during the stipulated period.

Section 9.2 - Appropriation of Performance Security

- (a) In the event of the Concessionaire being in default of the due, faithful and punctual performance of its obligations under the RFP, the LOI, and this Agreement during the Construction Period or during the Operations Period and until the date of issue of the Vesting Certificate, as the case may be, or owning any sums whatsoever to Concessions Authority under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Concessions Authority for or against the Concessionaire under this Agreement or against the Concessions Authority in respect of this Agreement, the Concessions Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Securities as damages for such default, dues, demands or claims.
- (b) The decision of the Concessions Authority as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire. The Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Concessions Authority under this Agreement is required to be provided in connection with any demand made by the Concessions Authority to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Concessions Authority's written demand as aforesaid.
- (c) In the event of encashment of the Performance Security by the Concessions Authority, in full or part, the Concessionaire shall within 30 (thirty) days of receipt of the encashment notice from the Concessions Authority provide a fresh Performance Security or replenish the existing Performance Security, as the case may be. The provisions of this Article 9 shall apply mutatis mutandis to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute a Concessionaire Event of Default which shall entitle the Concessions Authority to terminate this Agreement in accordance with the provisions of Article 15 hereof.

Section 9.3 - Release of Performance Security

- (a) Subject to the provisions hereof, the Concessions Authority shall return the Construction Performance Security to the Concessionaire within one week from the issuance of Completion certificate by the Zonal Manager, Cyberabad,

provided that there are no outstanding claims of the Concessions Authority on the Concessionaire.

- (b) Subject to the provisions hereof, the Concessions Authority shall return the Operations Performance Security, to the Concessionaire within two weeks from the issuance of Vesting Certificate by the Expert Committee.

ARTICLE 10 - INSURANCE

Section 10.1 - Insurance Cover

The Concessionaire shall maintain or cause to be maintained, at its own expense, insurance on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders including but not limited to the insurance policies covering the following (the "**Insurance Cover**"):

(a) During Construction Period

- (i) Construction/builders'/contractors' all risk insurance;
- (ii) Erection all risk policy
- (iii) Comprehensive third party liability insurance including injury or death to personnel of the Concessioneing Authority and others who may enter the Project Location;
- (iv) Workmen's compensation insurance;

(b) During Operations Period

- (i) Loss, damage or destruction of the Project Facilities/Project at replacement value or full market value (including fire, burglary, standard and special peril);
- (ii) The Concessionaire's general liability arising out of the Concession;
- (iii) Liability to third parties

Apart from the above Concessionaire shall take any other insurance that may be necessary to protect the Concessionaire and its employees and its assets, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (b) above.

Section 10.2 - Evidence of Insurance

The Concessionaire shall, from time to time, furnish to the Concessioneing Authority copies of all insurance policies and evidence of payment of premium in respect of the Insurance Covers. In the event the Concessionaire does not maintain any Insurance Cover pursuant hereto, the Concessioneing Authority may, at its option,

effect such insurance and the Concessionaire shall reimburse all the costs and expenses incurred in this behalf by the Concessing Authority within 15 (fifteen) days of receipt of the Concessing Authority's claim in respect thereof

Section 10.3 - Application of Insurance Proceeds

The Concessionaire shall apply insurance proceeds for the repair, renovation, restoration or re-instatement of the Project or any part thereof, which may have been damaged or destroyed.

Section 10.4 - Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish certified true copies of the same to the Concessing Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 days' clear notice of cancellation is provided to Concessing Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessing Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessing Authority therefore shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessing Authority by exercising right of set off or otherwise.

ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

Section 11.1 - Mutual Representations and Warranties

Each Party represents and warrants to the other Party 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 actions under the Applicable Laws for the execution, delivery and performance of this Agreement and to carry out the transactions contemplated hereby;
- (d) this Agreement constitutes its legal, valid and binding obligation, fully enforceable against it in accordance with the terms hereof;
- (e) It has the financial standing and capacity to undertake the Project;
- (f) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

Section 11.2 - Further Representations and Warranties of Preferred Bidder/ Concessionaire

In addition, the Concessionaire represents and warrants to the Concessions Authority that:

- (a) The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with any agreement or instrument to which the Concessionaire is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order, injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;
- (b) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a

default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;

- (c) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any government instrumentality which may result in Material Adverse Effect on its ability to perform its obligation under this Agreement and no fact or circumstances exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement.
- (d) 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 individually or in the aggregate have or may have Material Adverse Effect;
- (e) No representation or warranty by the Preferred Bidder /Concessionaire contained herein or in any other document furnished by it to the Concessioneing Authority or to any Government Authority in relation to Applicable Permits or otherwise 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;
- (f) Provided that whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Preferred Bidder /Concessionaire, during the Concession Period, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement, the Concessionaire shall immediately intimate the same to the Concessioneing Authority;
- (g) In submitting its bid the Preferred Bidder/Concessionaire has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which individually or in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project.
- (h) All rights and interests of the Concessionaire in the Project, the Project Facilities and Project Assets shall pass to and vest in the Concessioneing Authority or its nominated agency on the Transfer Date free and clear of all liens, claims, and Encumbrances, without any further act or deed on the part of the Preferred Bidder/Concessionaire or the Concessioneing Authority and that none of Project Assets including materials, supplies or

equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or Encumbrance is retained by any Person save and except as expressly provided in this Agreement;

- (i) All information provided by the Preferred Bidder in response to the RFP or otherwise, is to the best of knowledge and belief, true in all material respects;
- (j) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Preferred Bidder /Concessionaire, to any Person by way of commission or otherwise for securing the Concession execution of this Agreement or for influencing or attempting to influence any officer or employee of the Concessions Authority and

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

Section 11.3 - Waiver of Sovereign Immunity

Each Party hereto unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts and that it is subject to the civil and commercial laws of India with respect to this Agreement;

Section 11.4 - Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Preferred Bidder/Concessionaire acknowledges that prior to the execution of this Agreement, the Preferred Bidder/Concessionaire has after a complete and careful examination made an independent evaluation of the Project, the legal and contractual framework, the Applicable Laws and Applicable Permits and the technical and financial aspects of the Project, Provisions of the RFP, the Specifications and Standards therein, the Project Location and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Concessions Authority, its consultants or any Government Authority, the market and demand conditions, information relating to users and the cost, risks, consequences and liabilities involved in implementing the Project, and

has determined to the Preferred Bidder's/Concessionaire's complete satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, land acquisition etc. in respect of the Project Location.

- (b) The Preferred Bidder /Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that the Concessions Authority, its consultants or any Government Authority shall not be liable for the same in any manner whatsoever to the Preferred Bidder/ Concessionaire or Persons claiming through or under the Preferred Bidder/Concessionaire.
- (c) The Preferred Bidder /Concessionaire agree that any mistake or error in or relating to any of the matters set forth in Clause 11.4 (a) above shall not vitiate this Agreement or render it voidable.
- (d) The Preferred Bidder /Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided to the Concessionaire by the Concessions Authority, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.
- (e) The Preferred Bidder /Concessionaire is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it.
- (f) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Concessions Authority shall not be liable in any manner for such risks or the consequence thereof.

ARTICLE 12- LIABILITY AND INDEMNIFICATION

Section 12.1 - Liability of Concessionaire

Notwithstanding anything to the contrary contained in this Agreement,

- (a) in addition to the Concessionaire's liability and obligations and the Concessioning Authority's remedies provided elsewhere in this Agreement, the Concessionaire shall be solely responsible for any loss of or damage to the Project/Project Facilities and the Project Assets, damage to environment, death or injury to Person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Concessioning Authority:
 - (i) during the Concession Period resulting from any negligent act or omission of the Concessionaire, the Contractors, the Contractual Counter Parties or any other Person and their respective employees, agents, contractors and representatives.
 - (ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Concessionaire, Contractor or Contractual Counter Parties, or non-performance of any term, condition, covenant or obligation to be performed by the Concessionaire, Contractor or Contractual Counter Parties under this Agreement and the Transaction Documents.
- (b) The Concessionaire shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with development control regulations, building bye laws as may be applicable, other Applicable Laws, regulatory requirements of Government Authorities, Specifications and Standards or any other matter) for which the Concessionaire is liable or which is attributable to the Concessionaire and, in turn, the Persons claiming through or under the Concessionaire.

Section 12.2 - Indemnification

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Concessionaire agrees to indemnify and hold harmless the Concessioning Authority and its officers, employees, agents, trustees and consultants (each a "**Concessioning Authority Indemnified Party**") promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable

attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "**Losses**") to which the Concessioneing Authority Indemnified Party may become subject, insofar as such Losses arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Concessioneaire or (ii) the failure by Concessioneaire to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessioneaire Person claiming through or under the Concessioneaire or (iii) any claim or proceeding by any Third Party against the Concessioneing Authority arising out of any act, deed or thing done or omitted to be done by Concessioneaire or (iv) as a result of failure on the part of the Concessioneaire to perform any of its obligations under this Agreement or on the Concessioneaire committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Concessioneaire to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project Facilities or the Concessioneaire's Contactors or employees or any Third Party or Government Authority or (vi) as a result of any failure or negligence or default of the Concessioneaire or its Contractor, sub-contractor, or employees, servants, agents of such Contractor and/or sub-contractor and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Concessioneaire's use and occupation of Project Location and/or construction, operation and maintenance of the Project.

For the avoidance of doubt, indemnification of Losses pursuant to this Article 12 shall be made in an amount or amounts sufficient to restore each Concessioneing Authority Indemnified Party to the financial position it would have been in had the Losses not occurred.

- (b) Without limiting the generality of sub-section (a) of this Section 12.2,
- (i) the Concessioneaire shall fully indemnify and defend the Concessioneing Authority Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Concessioneaire and the Persons claiming through or under the Concessioneaire to comply with Applicable Laws and Applicable Permits, (2) payments of Taxes relating to the Concessioneaire and the Persons claiming through or under the Concessioneaire, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Concessioneaire/such Persons without reimbursement hereunder, or (3) non-payment of amounts due as a result of materials or services rendered/ provided to the Concessioneaire or any Person claiming through or under the Concessioneaire, which are payable by the Concessioneaire or such Person.

- (ii) the Concessionaire shall further indemnify, defend and hold harmless the Concessions Authority Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Concessionaire's performance of this Agreement or arising out of any act or omission of the Concessionaire, and in turn of the Persons claiming through or under the Concessionaire.
- (c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

Section 12.3 - Indirect or Consequential Losses

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to the other Party for any matter arising out of or in connection with this Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

ARTICLE 13 - FORCE MAJEURE

Section 13.1 - Force Majeure Event

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean any event or circumstance or a combination of events and circumstances set out hereunder or the consequence thereof which affect or prevent the Party claiming force majeure (“**Affected Party**”) from performing its obligations in whole or in part under this Agreement and which event or circumstance (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts, skill and care, and (iii) has a Material Adverse Effect.

(a) Non Political Force Majeure Events:

Non Political force majeure events shall mean one or more of the following acts or events:

- (i) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, storm, cyclone, hurricane, flood, landslide, lightning, earthquakes, volcanic eruption or fire (to the extent originating from a source external to the Project), exceptionally adverse weather conditions affecting the construction or operation of the Project;
- (ii) Radio active contamination, ionizing radiation;
- (iii) Epidemic, famine;
- (iv) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, rebellion, insurrection, terrorist or military action, nuclear blast / explosion, politically motivated sabotage or civil commotion;
- (v) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings (which are non collusive and duly prosecuted by the Concessionaire) for reasons other than failure of the Concessionaire or of any Person claiming through or under it to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by the Concessioning Authority; or
- (vi) Any event or circumstances of a nature analogous to any of the foregoing.

(b) Political Force Majeure Events:

Political force majeure events shall mean one or more of the following acts or events by or on account of GoI, GoT or any other governmental agency:

- (i) Change in law/policies of the Government;
- (ii) Expropriation or compulsory acquisition by any governmental agency of any project assets or the rights of the Concessionaire or of the contractors; and
- (iii) Unlawful or unauthorized or without jurisdiction revocation of, refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the contractors to perform their respective obligations under the project agreements. Provide that such delay, modification, denial, refusal or revocation did not result from the Concessionaire or any contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

Section 13.2 – Notice of Force Majeure Events

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event (“the Notice”) as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- (b) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information giving the status and steps taken or proposes to be taken by it, to alleviate the impact of the Force Majeure Event or to mitigate the damage due to Force and such other information as the other Party may reasonably request.

Section 13.3 - Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- (a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Section 13.4; or

(b) termination of this Agreement pursuant to Section 13.6 hereof

Section 13.4 - Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

Section 13.5 - Costs, Revised Timetable

(a) Costs

Each Party shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.

(b) Extension of Time/ Period

The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the Concession Period by the Concessing Authority in appropriate cases.

Section 13.6 - Termination Due to Force Majeure Event

If the Period of Force Majeure continues or is in the reasonable judgment of the Parties is 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 the Agreement in which event, the provisions of Article 15 shall, to the extent expressly made applicable, apply.

ARTICLE 14 - EVENTS OF DEFAULT

Section 14.1 - Events of Default

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

(a) Concessionaire Event of Default

The Concessionaire Event of Default means any of the following events unless such an event has occurred as a consequence of the Concessions Authority's Event of Default or a Force Majeure Event:

- (i) the Concessionaire's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement
- (ii) the Concessionaire's failure to perform or discharge any of its obligations under any other Transaction Documents, which has or is likely to have a Material Adverse Effect.
- (iii) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading or incorrect.
- (iv) the Concessionaire passing a resolution for voluntary winding up.
- (v) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- (vi) levy of an execution or distraint on the Concessionaire's Assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 30 days or any authority, regulatory body, court, tribunal or judicial authority passing or issuing any order or direction against the Concessionaire which would have an or likely to have an Material Adverse Effect on the project or the ability of the Concessionaire to comply with or discharge the obligations and responsibilities under this Agreement.
- (vii) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking (other than transfer of assets in the ordinary course of business) without the Concessions Authority's prior written approval, provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the financial and technical ability

demonstrated to the satisfaction of the Concessing Authority, to undertake, perform/discharge the obligations of the Concessionaire under this Agreement, necessary approval shall be granted by the Concessing Authority.

- (viii) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- (ix) the Concessionaire repudiates this Agreement or otherwise takes any action or evinces or conveys an intention not to be bound by this Agreement.
- (x) the Concessionaire has delayed payment, if any, that has fallen due under this Agreement beyond the specified period or if not so specified beyond 60 (sixty) days.
- (xi) the Concessionaire is adjudged bankrupt or insolvent
- (xii) the whole of Essential Facilities or any part of the Essential Facilities remains closed / un-operational for a aggregate period exceeding "fifteen" days in a year (except for reasons on account of force majeure or Concessing Authority's event of default).
- (xiii) the Concessionaire committing any breach or non compliance of any of the terms and conditions of the financing document executed between the Concessionaire and if all or any of the Lender have recalled their outstanding Dues and in pursuance thereto have initiated the exercise of their right to enforce the security interest created in their favor under the financing documents, as permitted by this agreement, on the project assets and / or the rights and interest under this agreement.
- (xiv) The Concessionaire does not achieve the latest Project Milestone due in accordance with the Project Implementation Schedule and continues to be in a default for within 20 (twenty) days.
- (xv) Failure to maintain Insurance according to the provisions of this Agreement.
- (xvi) Failure to provide, maintain and or replenish the relevant Performance Security to its full amount on encashment, in accordance with the requirements of this Agreement.
- (xvii) If the Concessionaire shall enter into any arrangement or composition for the benefit of its creditors.

- (xix) If the Concessionaire fails to redress the complaints lodged by the public / observed by the Authority during its inspection within 7 days time.

such events as have been specified as Concessionaire Events of Default under the provisions of this Agreement.

(b) Concessioneing Authority Event of Default

- (i) The Concessioneing Authority's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement that has a Material Adverse Effect unless such failure has occurred as a consequence of an Concessionaire Event of Default or a Force Majeure Event;
- (ii) any representation made or warranties given by the Concessioneing Authority under this Agreement is found to be false or misleading;
- (iii) expropriation or compulsory acquisition by any Government Authority of the Project/Project Facilities or part thereof or any material assets or rights of the Concessionaire; provided the same has not resulted from an act or default of the Concessionaire;
- (iv) any defect in the Concessioneing Authority's title, ownership and possession of the Project Location/site.

Section 14.2 - Parties Rights

- (a) Upon the occurrence of the Concessionaire Event of Default, the Concessioneing Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- (b) Upon the occurrence of the Concessioneing Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement:

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall (i) in terms of Section 14.3 provide an opportunity to the other party to state its position and give explanation in the matter, (ii) give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

Section 14.3 - Consultation Notice

Either Party exercising its right under Section 14.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (the "**Consultation Notice**").

Section 14.4 - Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 45 days for the Event of Default during the Construction Period and with 7 (seven) days for the event of default during the Operation Period or such extended period as they may agree (the "**Remedial Period**") the Parties shall, in consultation with the Lenders, endeavor to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is an Concessionaire Event of Default, the Parties shall in consultation with the Lenders endeavor to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances;

- (a) the change of management or control/ownership of the Concessionaire;
- (b) the replacement of the Concessionaire by a new Concessionaire ("**Substitute Entity**") on terms no less favorable than those contained in this Agreement, proposed by either of them or the Lenders and the specific terms and conditions of such replacement which shall include:
 - (i) the criteria for selection of the Substitute Entity,
 - (ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Substitute Entity,
 - (iii) handing over/ transfer of the Project Assets and the Project to the Substitute Entity,
 - (iv) assumption by the Substitute Entity of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets,
 - (v) assumption by Substitute Entity of any amounts due to the Concessioning Authority from the Concessionaire under this Agreement.

Section 14.5 - Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

Section 14.6 - Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Lenders agree upon any of the measures set out in Section 14.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

Section 14.7 - Termination Due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures in accordance with Section 14.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 15 shall, to the extent expressly made applicable, apply.

Section 14.8 - Step-in-rights

The Concessionaire agrees that the Concessions Authority shall be entitled to operate the Project Facilities and all other incidental on the occurrence of an Concessionaire Event of Default by stepping into the shoes of the Concessionaire. In the event of an Concessionaire Event of Default, the Concessions Authority may (but shall not be obliged to) operate, or procure and cause operation of the Project Facilities upon the issue of the Termination Notice.

ARTICLE 15 - TERMINATION AND EXPIRY OF AGREEMENT/CONCESSION

Section 15.1 - Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice shall be of not less than 60 (sixty) days and not ordinarily be more than 90 (ninety) days, ("**Termination Period**") and at the expiry of the Termination Period, this Agreement shall stand terminated.

Section 15.2 - Obligations during Termination Period

During Termination Period, the Parties shall subject to the provisions of Article 14 wherever applicable, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

Section 15.3 - Requisition

Upon issue or receipt, as the case may be, of the Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, the Concessions Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessions Authority to estimate the likely compensation payable by the Concessions Authority to the Concessionaire and/or to finalise the items of Concessionaire's assets comprised in the Project and the Project Assets to be handed over to/taken over by the Concessions Authority.

- (a) the particulars of Debt Due supported by Lenders' certificate ;
- (b) data or records (to be specified by Concessions Authority) regarding the operation and maintenance of the Project and the Project Assets; and
- (c) any other information or records (to be specified by Concessions Authority) regarding Concessionaire, its business, assets and liabilities.

The Concessionaire shall within a period of 30 days of receipt of Requisition furnish the particulars called for by the Concessions Authority.

Section 15.4 - Condition Survey

(a) The Concessionaire agrees that six months prior to the expiry of the Concession Period by efflux of time or on the service of a Termination Notice, as the case may be, it shall conduct or cause to be conducted by the Expert Committee under the Concessing Authority's supervision, a condition survey of the Project and the Project Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project

(b) If, as a result of the condition survey, the Concessing Authority shall observe/notice that the Project Assets and/or the Project or any part thereof have/has not been operated and maintained in accordance with the requirements therefore under this Agreement (normal wear and tear excepted) or are not in a condition fit to be taken back, the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working and fit conditions well before the Transfer Date, in order that the same can be taken by the Concessing Authority.

(c) In the event the Concessionaire fails to comply with the provisions of this Agreement, the Concessing Authority may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. The Concessing Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project and the Project Assets in good working condition.

Section 15.5 - Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Concession Period by efflux of time or due to a Force Majeure Event or an Event of Default.

(a) Transfer of Assets

(i) On the Transfer Date, the Concessionaire shall subject to the provisions of this Agreement:

(A) Transfer, assign and deliver to the Concessing Authority or its nominated agency, free and clear of any Encumbrances, the vacant and peaceful possession of the Project, Project Facilities, Project Assets and the Project Location along with the buildings, facilities and structures constructed on, over, at or under it and its right, title and interest in and to the Project the Project Assets.

(B) transfer all its rights, titles and interest in or over the tangible assets comprised in the Project (including movable assets which the

- Concessions Authority agrees to take over) to the Concessions Authority or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
- (C) hand over to the Concessions Authority or its nominated agency all documents including built drawings, manuals, designs, documents, information and records relating to the Project and the Project Assets.
 - (D) to the extent possible assign to the Concessions Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.
 - (E) at its cost remove from the Project Location all such moveable assets which are not taken over by or transferred/assigned to the Concessions Authority or its nominated agency. In the event the Concessionaire fails to remove such objects within the stipulated time, the Concessions Authority or its nominated agency may remove and transport or cause removal and transportation of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
 - (F) All proceeds of insurance claims shall be handed over to the Concessions Authority or its nominated agency and the Concessionaire or Persons claiming through or under it shall have no claim thereon or rights thereto.
 - (E) The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all leasehold arrangements or licenses in relation to the Project Location and title to all such immovable property shall automatically revert to the Concessions Authority or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.
 - (F) It is clarified that only the assets of the Concessionaire shall be taken over and not the liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire and the Persons claiming through or under the Concessionaire shall be taken over by the Concessions Authority or its nominated agency. All such labour and employees shall be its responsibility of the Concessionaire/such Persons even after the expiry of the Concession Period and they shall have no claim to any type of employment or compensation from Concessions Authority or its nominated agency.

- (G) The Concessionaire may transfer operating rights over commercial facilities within Public Amenities Centre on a license basis within the scope and obligation provided under this agreement.
- (H) All contracts, agreements, arrangement's etc. entered into by the Concessionaire with its suppliers, service providers, O&M contract's, shall also be liable to be terminated forthwith along with the termination of this agreement at the sole option and discretion of the Concessing Authority.

(b) Project Contracts

The Concessionaire shall at the cost of the Concessing Authority transfer/assign such of the Project Contracts which the Concessing Authority may require to be transferred in its favour subject to the counter parties to such contracts consenting to such transfer/ assignment. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned to the Concessing Authority provided, if the termination is on account of the Concessing Authority Event of Default the Concessing Authority shall compensate the Concessionaire to the extent of the termination payments, if any, made or to be made by the Concessionaire to the counter parties to such contracts.

(c) Applicable Permits

The Concessionaire shall, at its cost, transfer to the Concessing Authority all such Applicable Permits which the Concessing Authority may require and which can be legally transferred. Provided if the termination is on account of Concessing Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessing Authority.

(d) Transfer Costs

The Project and the Project Assets shall be transferred to the Concessing Authority or its nominated agency, as the case may be, for a sum of Rupee 1.00 (Re. One only) in a working condition and clear of all Encumbrances and with good title.

(e) Guarantees

The Concessing Authority shall be entitled to encash any subsisting bank guarantee provided by the Concessionaire, if the termination is on account of an Concessionaire Event of Default.

Section 15.6 - Vesting Certificate

- (a) On the Transfer Date the Concessions Authority/Expert-Committee shall verify, in the presence of the Concessionaire or of a representative of the Concessionaire, compliance by the Concessionaire with the requirements of Section 15.5 above. In the event the Concessions Authority/Expert notifies the Concessionaire of shortcomings, if any, in the Concessionaire's compliance with such requirements, the Concessionaire shall forthwith cure the same.
- (b) The Divestment of all rights, title and interest in the Project, Project Assets and the Project Facilities shall be deemed to be complete on the Transfer Date but no later than 30 (thirty) days thereafter, by when all the requirements of Section 15.5 above shall be fulfilled. The Expert Committee shall on such date, issue a certificate (the "**Vesting Certificate**"), with a copy thereof endorsed to the Concessions Authority, which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project and the vesting thereof in the Concessions Authority or its nominee, as the case may be, pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessions Authority or its nominee on or in respect of the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

Section 15.7 - Compensation on Termination

Section 15.7.1 Termination Due to Force Majeure Event or an Event of Default

- (a) In the event of termination of this Agreement/Concession due to Force Majeure Event or an Event of Default, the Concessions Authority shall, upon transfer of the Project, Project Assets and the Project Location by the Concessionaire to the Concessions Authority or its nominated agency in accordance with the provisions hereof, pay to the Concessionaire termination payments on following terms:
 - (I) (A) Upon termination of this Agreement due to an Concessionaire Event of Default compensation payable by the Concessions Authority to the Concessionaire shall be equivalent to the aggregate Depreciated Historic Cost (DHC), as defined at Appendix III and as determined by an Independent Expert, being a reputed valuer, of (a) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Concessionaire and comprised in the Project Facilities, which in the reasonable judgment of the said Expert are capable of being put to use/utilised by the Concessions Authority and (b) the moveable assets which the Concessions Authority agrees to take over LESS any

amount due to the Concessioneing Authority from the Concessionaire under this Agreement and the insurance claims claimed or received.

- (B) Upon termination of this Agreement due to (i) an Concessionaire Event of Default, the Concessioneing Authority shall forfeit and retain the Performance Security; (ii) a Non-Political Force Majeure Event, the Concessioneing Authority shall return/refund the Performance Security to the Preferred Bidder; provided there are no outstanding claims of the Concessioneing Authority on the Preferred Bidder/Concessionaire.
 - (C) Upon Termination of this Agreeemnt due to the Concessionaire event of Default occurring prior to COD, no payment shall be made by the Concessioneing Authority to the Concessionaire
- (II) (A) Upon termination by the Concessionaire due to a Concessioneing Authority Event of Default (by the Concessionaire) or upon termination due to a Political Force Majeure Event (by the Concessioneing Authority and/or the Concessionaire), compensation payable by the Concessioneing Authority to the Concessionaire shall be equivalent to the aggregate Depreciated Historic Cost (DHC), as defined at Appendix III and as determined by an Independent Expert, being a reputed valuer, of (a) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Concessionaire and comprised in the Project Facilities, which in the reasonable judgment of the said Expert are capable of being put to use/utilised by the Concessioneing Authority and (b) the moveable assets which the Concessioneing Authority agrees to take over PLUS any amount due to the Concessioneing Authority from the Concessionaire under this Agreement and the insurance claims claimed or received.

Provided that the compensation shall in no event include the value of the portion of any asset affected by Political Force Majeure Event or Concessioneing Authority's event of Default, to the extent of the insurance claim received or admitted in relation to such Event.

- (B) Upon termination of this Agreement due to (i) Concessioneing Authority Event of Default or Political Force Majeure Event, the Concessioneing Authority shall return/refund the Performance Security to the Preferred Bidder; provided there are no outstanding claims of the Concessioneing Authority on the Preferred Bidder/Concessionaire.

Nothing herein shall prejudice the right of the Concessioneing Authority to recover from the Concessionaire any amounts due and payable to it by the Concessionaire hereunder.

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without

prejudice to accrued rights of a Party, including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of a Party under this Agreement, including without limitation termination payment, shall survive the termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

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

ARTICLE 16 - DISPUTE RESOLUTION

Section 16.1 - Negotiation

The Parties shall use their respective reasonable endeavors to settle any dispute, difference, claim, question or controversy between the Parties arising out of, in connection with or in relation to this Agreement (including its interpretation) ("**Dispute**") amicably between themselves through negotiation. The Parties agree to use their best efforts for resolving all the Disputes arising under or in respect of this Agreement promptly, equitably and in good faith and further agree to provide each other with reasonable access during normal business hours, to all records, information and data pertaining to any Dispute. In case the Dispute is not resolved through negotiations within 45 days of the Party raising the Dispute, then the Parties have right to serve appropriate notices and approach Court/s in Hyderabad and Secunderabad Jurisdiction in accordance with the provisions of this Agreement

ARTICLE 17 - MISCELLANEOUS PROVISIONS

Section 17.1 - Governing Law and Jurisdiction

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

Section 17.2 - Waiver & Remedies

- (a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.
- (c) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

Section 17.3 - Survival

The Termination/expiry of this Agreement shall not relieve either Party of any obligations hereunder which expressly or by implication survive Termination/expiry hereof.

Section 17.4 - Entire Agreements and Amendments

- (a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersede all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.

- (b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorised representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

Section 17.5 - Notices

Unless otherwise stated, notices to be given under this Agreement shall be in writing and shall be given by hand delivery, recognised courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Concessioneing Authority:

Fax No. -----

Attn:

If to Concessionaire:

Fax No. -----

Attn:

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 recognized 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.

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

Section 17.6 - Severability

- (a) If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.
- (b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement or otherwise.

Section 17.7 - No Partnership

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the Provisions of this Agreement. Neither Party shall have any authority to bind the other in any manner whatsoever.

Section 17.8 - Language

The language of this Agreement is English. All notices, correspondence, Project Contracts, documentation, Designs and Drawings, DPR, design data, test reports, certificates, specifications and standards and information in respect of this Agreement, under or in connection with this Agreement shall be in the English language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

Section 17.9 - Counterparts

This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document.

Section 17.10 - Regulatory Framework for Infrastructure Projects

Without prejudice to the rights and obligations of the Parties under this Agreement, if a regulatory framework for the grant, implementation and supervision of Concessions related to infrastructure projects is introduced by GOI or GOT , the Parties shall consult in good faith and to agree to such amendments to this Agreement, as may be reasonably necessary to take account of such regulatory framework but so that the rights of the Concessionaire hereunder are not adversely affected or additional material liabilities imposed.

Section 17.11 - Remedies Cumulative

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

Section 17.12 - Intellectual Property Rights and Confidentiality

(a) Intellectual Property Rights

The Concessionaire accepts and agrees that the Concessions Authority shall be the absolute and exclusive owner and proprietor of the all details, plans, specifications, schedules, programs, budget, reports, calculations and other work relating to the Project hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated or made by any of the Concessionaire or the Persons claiming through or under it or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print.

(b) Confidentiality

No Party shall, without the prior written consent of the other Party, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is by its nature or is marked as Proprietary Material or "confidential", concerning the other (including any information concerning the contents of this Agreement) except to its officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process; provided, however, that a Party, with the written consent of the other Party, may issue press releases containing non-sensitive information in relation to the progress of the Project. This provision shall not apply to information:

- a) already in the public domain, otherwise than by breach of this Agreement;
- b) already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;
- c) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- d) disclosed to the Lenders under terms of confidentiality; or
- e) which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Government Authority.

Section 17.13 - Joint and Several Liability of the Members of the Consortium

Deleted

Section 17.14 - No Liability for Review

Except to the extent expressly provided in this Agreement,

(a) no review, comment or approval by the Concessioneing Authority/Government Authorities/ Zonal Manager, Cyberabad of the DPR, the Designs and Drawing, the Transaction Documents or the documents submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project Facility nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

(b) the Concessioneing Authority or any Government Authority or Project Facility shall not be liable to the Concessionaire by reason of any review, comment, approval observation or inspection referred in sub-section (a) above.

Section 17.15 – Depreciation

For the purpose of depreciation under the Applicable Laws, the property representing the capital investments made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire

Section 17.16 Assignability

- (a) Except as otherwise provided in this Agreement, the Concessionaire shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Concessioneing Authority. Provided the Concessionaire may assign its rights, interests and benefits

under this Agreement to the Lenders as security for the Financial Assistance.

- (b) Notwithstanding anything to the contrary contained in this Agreement, the Concessions Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign any of its rights and benefits and/or obligations hereunder pursuant to any direction of Government of India, Government of Telangana, by the operation of law on such terms and conditions as the Concessions Authority may deem appropriate or as may be required by law.

Section 17.17 - Interest and Right to Set Off

- (a) Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is 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. 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.
- (b) The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 14 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to the prime lending rate of the State Bank of India plus 2% (two percent), and recovery thereof shall be without prejudice to the rights of the Parties under the Law and this Agreement, including termination thereof.

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

<p>Signed on behalf of the Greater Hyderabad Municipal Corporation.</p> <p>_____(Signature)</p> <p>_____(Name)</p> <p>_____(Designation)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>Concessionaire by the hand of its Authorized representative</p> <p>Mr._____.</p> <p>_____(Signature)</p> <p>_____(Name)</p> <p>_____(Designation)</p>
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	<p>pursuant to Resolution dated..... of its Board of Directors.</p> <p>Preferred Bidder by the Hand of its Authorized representative Mr._____.</p> <p>_____ (Signature)</p> <p>_____ (Name)</p> <p>_____ (Designation)</p> <p>pursuant to Resolution dated..... of its Board of Directors.</p>
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In the presence of

Witnesses:

- (i)
- (ii)

Appendix I

Letter of Intent (LOI)

This will be issued by TSIIC to the 'Preferred Bidder' upon completion of bid evaluation process and approval by the Competent Authority.

Appendix II

“Project Location”

[Location Map to be enclosed]

Appendix III

GUIDELINES FOR THE COMPUTATION OF DEPRECIATED HISTORICAL COST

1. The Depreciated Historical Cost ("**DHC**"), wherever applicable, shall be computed based on the following norms:

The depreciation shall be calculated on straight line basis. The depreciation rates shall be in accordance with the provisions of the Companies Act 1956, as may be amended from time to time

2. The date of existence of asset for the computation of the depreciated value shall be the date on which it was scheduled to be completed in all respects or the date on which it becomes capable of being put to or used for commercial operation, whichever is earlier. In respect of replacement assets, the assets shall be deemed to have come into existence when the same is capable of being put to or used for commercial operation as the replacement asset or the date when it was actually put to use, whichever is earlier.
3. Wherever Book Value or Depreciated Historical Cost is applicable, the original cost of such assets and those which have come in as replacement assets shall be that cost, established by the Concessionaire, to the satisfaction of the Concessions Authority, with Chartered Accountant's, Public Accountant's and valuer's certificates and duly supported by bills and other documents of manufacturers/ suppliers/ civil works contractors, at the time of installation.

Appendix- IV

Format for
BANK GUARANTEE FOR PERFORMANCE SECURITY

(On requisite Stamp Paper)

In consideration of Telangana State Industrial Infrastructure Corporation Limited at Hyderabad (hereinafter called "the Concessing Authority") having agreed to exempt _____ (hereinafter called "the Concessionaire") from the demand, under the terms and conditions of Letter of Intent (LOI) issued in respect of the "Development of Urban Street Infrastructure for ISB road from DLF circle to Varun Motors, Hyderabad, Telangana on PPP mode under IALA Nanakramguda" project on Design, Build, Finance, Operate and Transfer (DBFOT) and subsequent Concession Agreement being signed between Concessionaire and the Concessing Authority for performance of the Agreement to be made (hereinafter called "the said Agreement"), for the due fulfillment by the said Concessionaire of the terms and conditions contained in the said Agreement, on production of a Bank Guarantee for Rs. _____ Lakhs (Rupees _____ Only).

We, _____ (hereinafter referred (indicate the name of the bank) to as "the Bank") at the request of Concessionaire do hereby undertake to pay to the CONCESSIONING AUTHORITY an amount not exceeding Rs. _____ Lakhs against any non fulfillment of the obligations of the Agreement or loss or damage caused to or suffered or would be caused to or suffered by the CONCESSIONING AUTHORITY by reason of any breach of any terms and conditions contained in the said Agreement by the said Concessionaire of any of the terms or conditions contained in the said Agreement.

We _____ (indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, hereby on a demand from the CONCESSIONING AUTHORITY stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the CONCESSIONING AUTHORITY by reason of breach of any terms and conditions contained in the said Agreement by the said Concessionaire of any of the terms or conditions contained in the said Agreement or by reason of the Concessionaire failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

We undertake to pay to the CONCESSIONING AUTHORITY any money so demanded not withstanding any dispute or disputes raised by the Concessionaire in any suit or proceeding pending before any court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment hereunder and the Concessionaire shall have no claim against us for making such payment.

We, _____ (indicate the name of bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of TSIIC under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the CONCESSIONING AUTHORITY certifies that the terms and conditions of the said Agreement have been fully and properly fulfilled/carried out by the said Concessionaire and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before _____ (indicate the date till the validity of this BG from the date of signing Agreement), we shall be discharged from all liability under this guarantee thereafter.

We, _____ (indicate the name of bank) further agree with the CONCESSIONING AUTHORITY shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Concessionaire from time to time or to postpone for any time or from time to time any of the powers exercisable by CONCESSIONING AUTHORITY against the said Concessionaire and to for bear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Concessionaire or for any forbearance, act or omission on the part of the CONCESSIONING AUTHORITY or any indulgence by the CONCESSIONING AUTHORITY to the said Concessionaire or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

This Guarantee will not be discharged due to the change in the constitution of the Bank or the Concessionaire.

We, _____ (indicate the name of bank) undertake not to revoke this guarantee during its currency except with the previous consent of CONCESSIONING AUTHORITY in writing.

The Guarantor agrees absolutely, irrevocably and unconditionally guarantees and undertakes to pay to CONCESSIONING AUTHORITY sum of, Rs. _____ without any protest or demur and upon receipt of first written demand from CONCESSIONING AUTHORITY. This Guarantee is independent of the terms and conditions of the Concession Agreement and its validity.

Dated the _____ day of _____ (Month & Year) for _____ (indicate the name of the Bank).

IN WITNESS WHEREOF the Guarantor has executed this Guarantee on this _____ day of _____ and year first herein above written.

Signed and delivered by the above named _____ Bank by its Authorized Signatory as authorized by Board Resolution passed on _____/Power of Attorney dated [.....]

Authorized Signatory

Name :

Designation:

In the presence of:

- 1.
- 2.