

Request for Proposal (RFP)

*Installation, operation, maintenance and
management of bio-digester enabled mobile toilet
vans at Group A locations in Delhi
(Package of 40 MTVs)*

VOLUME – I

Instructions to Bidders

September 2014

Delhi Urban Shelter Improvement Board
Punarvas Bhawan, I.P. Estate, New Delhi – 110002

NOTICE INVITING BIDS
DELHI URBANSHELTER IMPROVEMENT BOARD
OFFICE OF THE EXECUTIVE ENGINEER(E-2)
REQUEST FOR PROPOSAL (R.F.P.)

The Executive Engineer (E-2) invites bids on behalf of DUSIB, from bidders who are essentially registered on Delhi government e-procurement system (<http://www.govtprocurement.delhi.gov.in>) maintained by NIC for the following work.

Name of work: Installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi. (Package of 40 MTVs)

In case the last date of uploading the Bids is extended by DUSIB, the enlistment of bidders shall be valid on the original last date of uploading the RFP.

The RFP document and other details can be obtained from the above referred website or on www.delhishelterboard.in.

Release/uploading of RFP document through e-procurement website (<http://www.govtprocurement.delhi.gov.in>) on **12-09-2014**.

Pre Bid Conference on 26-09-2014 at 15:00 hrs in the office of Chief Engineer-I, DUSIB, Opp. Office of ACP (West) Shivaji Place, Raja Garden, New Delhi-110027.

Date & time for download of entire RFP document /encryption w.e.f. **12-09-2014** to **20-10-2014** upto 15:00 hrs.

Closing of bid on **20-10-2014** upto **15:00 hrs**.

NOTE: No Bidder shall be allotted both the Groups by DUSIB. The financial Bids for E-Tender-I for Group 'A' locations (*Package of 40 MTVs*) shall be opened first and the financial Bid of lowest Bidder for Group 'A' (*Package of 40 MTVs*) shall not be considered for the E-Tender-II related for Group 'B' locations. (**Package of 27 MTVs**)

DUSIB reserves all rights to accept or reject all or any of Bids at any stage without assigning any reasons thereof.

E.E.(E-2)

DELHI URBAN SHELTER IMPROVEMENT BOARD
OFFICE OF THE EXECUTIVE ENGINEER E-2
NOTICE INVITING BID

The Executive Engineer (E-2) invites bids on behalf of DUSIB through e-tender in **two envelop system**, simultaneously, from bidders who are essentially registered on Delhi government e-procurement system (<http://www.govtprocurement.delhi.gov.in>) maintained by NIC for the following work.

Name of work : Installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi. (Package of 40 MTVs)

In case the last date of uploading the Bids is extended by DUSIB, the enlistment of bidders shall be valid on the original last date of uploading the RFP.

However, **blacklisted and / or those bidders** who have been debarred from future tendering in any Central/ any State Government departments/ entities shall **not be eligible** to bid for the work.

Earnest money/Bid Security:

Rs 5.0 Lakhs (Rupees Five Lakhs only) through ECS/RTGS in account of Executive Engineer, E- 2 of (Account No: 06121000095461; Name of Bank: Punjab & Sindh Bank; Address: Siddharth Enclave, New Delhi - 110014; IFSC Code: PSIB0000612) up to **15:00 hrs on 20-10-2014** or in form of Bank Guarantee as per Clause 2.20 of the RFP document.

Tender Cost: Rs. 1500.00 (Rupees one thousand five hundred only)

Contract / Concession Period: 7 years

Release/ uploading of RFP document by the EE(E-2) through e-procurement website on **12-09-2014.**

Pre Bid Conference on **26-09-2014 at 15:00 hrs** in the office of Chief Engineer-I, DUSIB, Opp. Office of ACP (West) Shivaji Place, Raja Garden, New Delhi-110027

Date & time for download of entire RFP document /encryption w.e.f. **12-09-2014 to 20-10-2014 upto 15:00 hrs.**

Closing of bid on **20-10-2014 upto 15:00 hrs.**

Opening of Envelope-1 (Key submissions) on **20-10-2014 at 15:30 hrs.**

Verification of hard copies of scanned/ other documents from originals by engineer – in charge & authorized officer on **27-10-2014 between 11:00 hrs to 16:00 hrs.**

Date and time of **opening of Financial Bid (Envelope-2)** on “to be notified on line”.

NOTE: No Bidder shall be allotted both the Groups by DUSIB. The financial Bids for E-Tender-I for Group ‘A’ locations (*Package of 40 MTVs*) shall be opened first and the financial Bid of lowest Bidder for Group ‘A’ (*Package of 40 MTVs*) shall not be considered for the E-Tender-II related for Group ‘B’ locations. (*Package of 27 MTVs*)

DUSIB, reserves the right to defer the date of opening of envelope-2, without assigning any reason thereof. However, official intimation shall be given by the E.E.(E-2) Validity: Bid to remain open for 180 (one hundred eighty) days from the last date of submission of the bid.

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GLOSSARY

Bid(s)	As defined in the Disclaimer
Bidder	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.5
Bid Due Date	As defined in Clause 1.1.5
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.6
Board	As defined in the Disclaimer
Concessionaire	As defined in Clause 1.1.2
Concession Agreement	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.1.11
CSD	As defined in Clause 2.8
Government	Government of NCT Delhi
LOA	As defined in Clause 3.5.4
Member	Member of a Consortium
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 3.5.1
Technically Qualified	As defined in Clause 3.3.3

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

DISCLAIMER

The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to bidders (the “**Bidder(s)**”), whether verbally or in documentary or any other form by or on behalf of the Delhi Urban Shelter Improvement Board (the “**DUSIB**” or “**Board**”) or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

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

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

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

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

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

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

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

1. INTRODUCTION

1.1. Background

1.1.1. DUSIB has been established under the Delhi Urban Shelter Improvement Board Act, 2010 (“**DUSIB Act**”) in the National Capital Territory of Delhi. Under the DUSIB Act, DUSIB has been designated as the competent authority to implement the provisions of the Slum Areas (Improvement and Clearance) Act, 1956 in the National Capital Territory of Delhi. Pursuant to the provisions of the DUSIB Act, the Board inter alia has the power to provide services to the inhabitants of the Jhuggi Jhopri squatter settlements / clusters (“**JJ Clusters**”). DUSIB has identified locations near the JJ Clusters to provide better sanitation facilities. Therefore, DUSIB intends to outsource installation, operation maintenance and management of bio-digester enabled mobile toilet vans (“**MTV**”) at Group A locations (“**the Project**”) in accordance with conditions set out in this document.

The list of the Group A locations and number of MTVs to be installed are provided in Schedule A of draft Concession Agreement.

1.1.2. The selected Bidder for the Project (the “**Concessionaire**”), shall be responsible for designing, engineering, financing, procurement, construction, installation, operation, maintenance and management of the Project under and in accordance with the provisions of an agreement (the “**Concession Agreement**”) to be entered for the Project between the Concessionaire and the Board in the form provided by the Board as part of the Bidding Documents pursuant hereto.

1.1.3. The draft Concession Agreement sets forth the detailed scope of the Project, the terms and conditions for authorisation to the Concessionaire to implement the Project, including the scope of the Concessionaire’s obligations and is enclosed as Volume II of this RFP.

1.1.4. The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Board’s rights to amend, alter, change, supplement or clarify the scope of work pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims and/or consequent liability, of any nature whatsoever, on that account shall be entertained by or placed on the Board.

1.1.5. The Board shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Board pursuant to this RFP (collectively the "**Bidding Documents**"), as modified, altered, amended and clarified from time to time by the Board, and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2. Brief Description of Bidding Process

1.2.1. The Board has adopted a single-stage process (the "**Bidding Process**") through a e-tendering process for selection of the Bidder for award of the Project.

1.2.2. The Board hereby invites bidders ("**Bidder**" which expression shall, unless repugnant to the context, include the Members of the Consortium) to submit their Bids in accordance with the Bidding Documents for the Project.

1.2.3. The Bidders are requested to submit their Bids in accordance with the Bidding Documents. Interested parties shall download the RFP document from the Board's website (www.delhishelterboard.in) and shall deposit Rs. 1500/- (Rupees one thousand and five hundred only) towards the non-refundable cost of the RFP document through ECS in account of **Executive Engineer E-2 (Account Number: 06121000095461; Name of Bank: Punjab & Sindh Bank; Address: Siddharth Enclave New Delhi- 110014; Bank IFSC Code: PSIB0000612)** up to **15:00 hrs on 20-10-2014.**

1.2.4. The Bid shall be valid for a period of not less than 180 (one hundred eighty) days from the Bid Due Date.

1.2.5. The Bidding Documents include Instruction to Bidders and the draft Concession Agreement, provided as Volume I and II respectively of this RFP.

1.2.6. A Bidder is required to deposit, along with its Bid, a bid security of Rs. 5.0 Lakhs (Rupees Five Lakhs Only) (the "**Bid Security**") as per clause 2.20.

1.2.7. Bidders would need to submit the following sets of documents in as part of their Bid.

(a) "**Key Submissions**" which shall contain all the documents mentioned in Clause 2.11.2; and

(b) "**Financial Bid**" which shall contain financial bid specifying the Fee being quoted by the Bidder in the format provided in Appendix V to this RFP.

1.2.8. The evaluation of the Bid submissions would be carried out in the following three stages:

- (a) The first stage would involve a test of responsiveness based on the Key Submissions. Those Bids found to be substantially responsive would be evaluated in the second stage.
- (b) In the second stage, the information of the Bidders relating to their technical capacity and financial capability would be evaluated as per Clause 3.3 and 3.4 of the RFP.
- (c) In the third stage, the information of the Bidders relating to their technical capacity and financial capability would be verified.
- (d) In the fourth stage, the Financial Bid would be opened and evaluated in accordance with Clause 3.5 of the RFP to identify the Selected Bidder.

1.2.9. The Financial Bids are invited for the Project on the basis of the lowest amount (the **“Fee”**) per MTV per month that the Bidder has quoted to receive from the Board in the form of lump sum payments for award of the Project as per the terms and conditions set out in the draft Concession Agreement. The agreement period is pre-determined, as indicated in the Concession Agreement. **The Fee amount shall constitute the sole criteria for evaluation of the Financial Bids.** Subject to Clause 3.5, the Project will be awarded to the Technically Qualified Bidder quoting the lowest Fee.

In this RFP, the term **“Highest Bidder”** shall mean the Bidder who has quoted the lowest Fee.

In addition to the Fee, the Board shall also make specified fixed lump sum payments (**“Lump sum Payment”**) to the Concessionaire for the Project as per the terms and conditions set out in the draft Concession Agreement.

1.2.10. The Selected Bidder shall be identified as set out in Clause 3.5.

1.2.11. The Bidders are invited to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Project.

- 1.2.12. Any queries or request for additional information concerning this RFP or amendment to Bidding Documents shall be submitted in writing or by fax and confirm by e-mail to the officer designated in Clause 2.11.4 below. The envelopes/ communication shall clearly bear the following identification/title:

“Queries/ Request for Additional Information: RFP for installation, management, operation, and maintenance of bio-digester enabled mobile toilet vans at Group A locations in Delhi”

1.3. Schedule of Bidding Process

The Board shall endeavour to adhere to the following schedule:

Event Description	Date
1. Sale of Bid Documents	12-09-2014
2. Last date for receiving queries	22-09-2014
3. Pre-Bid meeting	26-09-2014 at 3:00 P.M.
4. Board response to queries latest by	10-10-2014
5. Bid Due Date	20-10-2014 at 3:00 P.M.
6. Opening of Key Submissions	20-10-2014
7. Verification of documents	27-10-2014
8. Opening of Financial Bid	to be notified on line
9. Validity of Bids	180 days from Bid Due Date
10. Signing of Concession Agreement	30 days from issuance of LOA

Venue of Pre-bid meeting:

Office of Chief Engineer-I
DUSIB
Opp. Office of ACP (West) Shivaji Place
Raja Garden
New Delhi-110027

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

- 2.1.1. A Bidder shall submit only one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2. A. The Bidder may be either: (i) a single incorporated entity, or (ii) a group of maximum three (3) incorporated entities (the **“Consortium”**), coming together to implement the Project. The term Bidder used in this RFP would apply to both a single entity and a Consortium.
- B. A single entity Bidder shall be entity registered as company under Companies Act, 1956 or Companies Act, 2013, or Societies Registration Act 1860 or The Indian Trust Act 1882. Further, in case of a Consortium, each of the entities forming the Consortium shall be a registered under any of the Acts as per the requirement for single entity Bidder. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.18 below.
- C. The Bidder shall be holder of transfer of technology (**“TOT”**) agreement between the Bidder and Defence Research and Development Organization (**“DRDO”**) or Defence Research and Development Establishment (**“DRDE”**), Gwalior. In the case of Consortiums, at least one member must be a holder of such a TOT agreement with DRDO or DRDE.
- D. The Bidder or any Member of the Consortium can be a Sole Proprietorship Firm. Such Bidder or the Member in case of consortium should be holder of a valid TOT agreement.
- 2.1.3. Unless the context otherwise requires, the terms not defined in this RFP, but defined in the draft Concession Agreement for the Project shall have the meaning assigned thereto in the draft Concession Agreement.
- 2.1.4. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.

- 2.1.5. The Bid should be furnished in the format specified in this RFP, duly signed by the Bidder's authorised signatory.
- 2.1.6. The Bidder should submit a Power of Attorney as per the format at Appendix II, authorising the signatory of the Bid to commit the Bidder.
- 2.1.7. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix III.
- 2.1.8. The Bidder shall not use any sum of money received in form of grant or donation from any third party for implementation of the Project.
- 2.1.9. The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.10. The Bidding Documents including this RFP and all attached documents are and shall remain the property of the Board and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.10 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Board will not return any Bid or any information provided along therewith.
- 2.1.11. A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In case the Bidder is a Consortium, the entire Consortium shall be disqualified. In the event of disqualification, the Board shall be entitled to forfeit and appropriate 5% of the value of the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Board and not by way of penalty for, inter alia, the time, cost and effort of the Board, including consideration of such Bidder's proposal (the "**Damages**"), without prejudice to any other right or remedy that may be available to the Board under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other

Bidder, its Member or Associate, is not more than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in the Companies Act, 2013. For the purposes of this Clause 2.1.11, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the **“Subject Person”**) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Bid of either or each other; or
- (vi) such Bidder or any Associate thereof has participated as a consultant to the Board in the preparation of any documents, design or technical specifications of the Project.
- (vii) such Bidder or Member or any Associate thereof has any of his/her near relative working either directly recruited or on deputation in the Board. For the purpose of this RFP document, near relative is defined as:
 - (a) Members of a Hindu Undivided Family,
 - (b) Spouse,

- (c) The one is related to the other in the manner as father, mother, son(s), son's, wife (daughter-in-law), daughter(s) & daughter's husband (son-in-law), brother(s) & brother's wife, sister(s) & sister's husband (brother-in-law).

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.11, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or otherwise.

- 2.1.12. A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Board in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Board, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Board may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Board being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the Schedule Project Completion Date.
- 2.1.13. This RFP is not transferable.
- 2.1.14. Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.

- 2.1.15. No change in the Consortium will be allowed at any stage during the Bidding Process; however for Selected Bidder, change in the Consortium may be permitted by the Board, in its discretion, during the subsistence of the Concession Agreement upon specific written request for the same by all the members of the Consortium.
- 2.1.16. Notwithstanding anything stated elsewhere in the RFP document, the Board shall have the right to seek updated information from the Bidders to ensure their continued eligibility. Bidders shall provide evidence of their continued eligibility in a manner that is satisfactory to the Board. The Bidders may be disqualified if it is determined by the Board, in its sole discretion, at any stage of the process, that the Bidder will be unable to fulfill the requirements of the Project or fails to continue to satisfy the qualification criteria. Supplementary information or documentation may be sought from Bidders at any time and must so be provided within a reasonable timeframe as stipulated by the Board.
- 2.1.17. Where the Bidder is a single entity, it shall execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, comply with the following additional requirements:
- (a) number of members in a consortium should be limited to 3 (three);
 - (b) subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium;
 - (c) members of the Consortium shall nominate one member as the lead member (the "Lead Member"). The nomination shall be supported by a Power of Attorney, as per the format at Appendix III, signed by all the other members of the Consortium;
 - (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and technical obligations;
 - (e) An individual Bidder cannot at the same time be member of a Consortium, submitting its Bid. Further, a member of a particular Consortium cannot be a member of any other Consortium submitting its Bid;
 - (f) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix VI (the "Jt. Bidding Agreement") on non-judicial stamp paper of relevant value for the purpose of submitting Bid. The Jt. Bidding Agreement shall, inter alia:

- (i) convey the intent to enter into the Concession Agreement and subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the Project is awarded to the Consortium;
- (ii) clearly outline the proposed roles and responsibilities of each member at each stage of the Project;
- (iii) commit that each of the members, whose experience will be evaluated for the purposes of this RFP shall commit for undertaking the project during the subsistence of Concession Agreement
- (iv) include a statement to the effect that all members of the Consortium shall, be liable jointly and severally for all obligations of the Concessionaire in relation to the Project at all times during the term of the Concession Agreement;

(Note: A copy of the Jt. Bidding Agreement should be submitted along with the Bid. The Joint Bidding Agreement entered into between the members of the Consortium should be specific to the Project and should fulfill the above requirements, failing which the Bid shall be considered non-responsive and be liable for rejection) and

- (v) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Board.

2.1.18. Any entity which has been barred by the Central/ any State Government, or any entity controlled by them, from participating in any project, and the bar subsists as on the Bid Due Date, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.1.19. A Bidder/ Consortium Member or Associates should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder/ Consortium Member or Associates as the case may be, nor been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder/ Consortium Member or Associates.

2.1.20. In computing the Technical Capacity and Financial Capacity of the Bidder/ Consortium Members under Clauses 2.1.17, 3.3.3 and 3.4, the Technical Capacity and Financial Capacity of their respective Associates would not be eligible hereunder.

2.1.21. The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member named in the Bid and not, unless specifically requested, to other associated companies or firms;
- (c) Bidders should demonstrate their capacity in accordance with Clause 3.3 and Clause 3.4 below; and
- (d) In case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein.

2.1.22. Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of the Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of the Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2. Number of Bids and the Cost thereof

2.2.1. No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be. Any Bidder who submits or participates in more than one Bid for a Project, either individually or as part of a Consortium, will be disqualified and would cause the disqualification of such consortia.

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

2.3. Site visit and verification of information

2.3.1. Bidders are encouraged to submit their respective Bids after visiting the locations for MTVs and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site,

handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.4. Acknowledgement by Bidder

2.4.1. It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Board;
- (c) satisfied itself about all matters, things and information including matters referred to in Clause 2.4.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (d) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Board relating to any of the matters referred to in Clause 2.4.1 above;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.4.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Board, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged and agreed that any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Board, shall not be entertained by the Board;
- (g) acknowledged that it does not have a Conflict of Interest;
- (h) agreed to be bound by the undertakings provided by it under and in terms hereof;
- (i) made a complete and careful examination of the various aspects of the Project including but not limited to:
 - (i) the locations for MTVs including any existing facilities and structures;
 - (ii) the condition of the access roads, ground conditions, utilities, availability of water and power supply in accordance with the Project requirements in the vicinity of the site;

(iii) all other matters that might affect the Bidder's performance under the terms of this RFP.

2.4.2. The Board shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Board.

2.5. Right to accept and to reject any or all Bids

2.5.1. Notwithstanding anything contained in this RFP, the Board reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Board rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder

2.5.2. The Board reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Board, the supplemental information sought by the Board for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified / rejected. If such disqualification / rejection occurs after the Financial Bids have been opened and the Highest Bidder gets disqualified / rejected, then the Board reserves the right to take any such measure as may be deemed fit in the sole discretion of the Board, including annulment of the Bidding Process.

2.5.3. In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Project thereby granted by the Board, that one or more of the qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Bidder has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Board to the Bidder, without the Board being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be. In such an event, the Board shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually

agreed genuine pre-estimated compensation and damages payable to the Board for, inter alia, time, cost and effort of the Board, without prejudice to any other right or remedy that may be available to the Board.

- 2.5.4. The Board reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Failure of the Board to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Board there under.

B. DOCUMENTS

2.6. Contents of the RFP

- 2.6.1. This RFP (Volume I) comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any CSD issued in accordance with Clause 2.8.

Invitation for Bids

Section 1. Introduction

Section 2. Instructions to Bidders

Section 3. Evaluation of Bids

Section 4. Fraud and Corrupt Practices

Section 5. Pre-Bid Conferences

Section 6. Miscellaneous

Appendices

I. Letter of Bid

II. Power of Attorney for signing of Bid

III. Power of Attorney for Lead Member of Consortium

IV. Bank Guarantee for Bid Security

V. Financial Bid

VI. Joint Bidding Agreement for Consortium

- 2.6.2. The draft Concession Agreement (Volume II of RFP) provided by the Board as part of the Bid Documents shall be deemed to be part of this RFP.

2.7. Clarifications

- 2.7.1. Bidders requiring any clarification on the RFP may notify the Board in writing or by fax and/ or confirm by e-mail to the address provided in Clause 2.11.4. They should send in their queries before the last date for receiving queries as specified in Clause 1.3. The Board shall endeavour to respond to the queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Board shall endeavour to respond to the

queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Board will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

- 2.7.2. The Board shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Board reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Board to respond to any question or to provide any clarification. No extension of any time and date shall be granted on the basis or grounds that the Board has not responded to any question or provided any clarification.
- 2.7.3. The Board may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Board shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by The Board or its employees or representatives shall not in any way or manner be binding on the Board.

2.8. Amendment of Bidding Document

- 2.8.1. At any time prior to the Bid Due Date, the Board may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Common Set of Deviation (“CSD”).
- 2.8.2. Any CSD thus issued will be sent in writing to all those who have purchased the RFP and may also be posted on the website of the Board.
- 2.8.3. In order to afford the Bidders a reasonable time for taking CSD into account, or for any other reason, the Board may, at its own discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.9. Language, Currency and Communication

- 2.9.1. The Bids and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.9.2. The currency for the purpose of the Bid shall be the Indian Rupees (INR).

2.9.3. All correspondences between the Board and the Bidder shall be in writing sent through registered mail or courier (or fax for advance copy only).

2.10. Format and Signing of Bid

2.10.1. The Bidder shall provide all the information sought under this RFP. The Board will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and/or conditional Bids shall be liable to rejection.

2.10.2. The Bidder shall submit one original and one copy of the Key Submissions. In the event of any discrepancy between the original and the copy, the original shall prevail.

2.10.3. The Bid and its copies shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page in **blue ink**. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid shall contain page numbers and shall be bound together in hard cover.

2.11. Sealing and Marking of Bid

2.11.1. The Bidder shall submit the Bids in the manner specified in this Clause 2.11.

2.11.2. The Bidder shall submit coloured scanned copies of the Bids comprising the following documents and marked as “Key Submissions” and “Financial Bid”.

Key Submissions

- (a) Letter of Bid in the prescribed format Appendix I along with Annexes I, II, III, IV and supporting documents as per the provisions of Clause 3.3.3;
- (b) Power of Attorney for signing of Bid in the prescribed format (Appendix II) as per the provisions of Clause 2.1.6;
- (c) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix III) as per the provisions of Clause 2.1.7;
- (d) Bid security as Bank Guarantee in form of a Bank Guarantee or ECS in the prescribed format (Appendix IV) as per the provisions of Clause 2.20;
- (e) Copy of memorandum and articles of association or byelaws or trust deed or any other incorporation documents. In case of a sole proprietorship firm, Income Tax Returns for last 2 (two) preceding financial years immediately preceding the Bid Due Date, Service Tax registration certificate, TIN number and PAN number shall be submitted.
- (f) Copies of Bidder's or each Consortium Member's duly audited balance sheet and profit and loss account for the preceding two years as per the provisions of Clause 3.4.1;
- (g) Copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix VI as per the provisions of Clause 2.1.17 (f);
- (h) A copy of the draft Concession Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (b) hereinabove; and
- (i) A copy bio-digester TOT agreement as specified in Clause 2.1.2 (C).

Financial Bid

“Financial Bid” shall contain financial bid specifying the Fee amount in both figures and words, in Indian Rupees, being quoted by the Bidder in the format provided in Appendix V to this RFP. In the event of any difference between figures and words, the amount indicated in the words shall be taken into account. Financial Bid shall be signed by the Bidder's authorised signatory.

The Fee shall be payable to the Concessionaire by the Board as per the terms and conditions of this RFP and the provisions of the draft Concession Agreement.

2.11.3. The coloured scanned copy of the Key submissions and the Financial Bid shall be uploaded on the Delhi e-procurement website (<http://www.govtprocurement.delhi.gov.in>) by the Bid Due Date.

2.11.4. In addition to electronic submission set out in Clause 2.11.3, the Bidder shall also submit the hard copy of the Key Submissions for verification as follows:

(a) The Bidder shall seal the envelopes of the Key Submissions and mark them as Key Submissions. The sealed envelope shall then be placed in a single outer cover, clearly making each of the envelopes as “Original”.

(b) The envelopes shall clearly bear the following identification:

“Bid for installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi”

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

(c) The sealed envelopes shall be submitted by the Bid Due Date to the address mentioned below:

ATTN. OF:	The Executive Engineer (E-2)
ADDRESS:	Office of Executive Engineer(E-2) DUSIB 1 Kilokari, Opp. Maharani Bagh Ring Road New Delhi - 110014
Mobile:	9560596086
E-MAIL ADDRESS	cddelhishelter@gmail.com

(d) If the envelopes are not sealed and marked as instructed above, The Board takes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

2.11.5. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.12. Bid Due Date

- 2.12.1. The Bid should be submitted upto 1500 hours IST on the Bid Due Date, at the address provided in Clause 2.11.4 in the manner and form as detailed in this RFP.
- 2.12.2. The Board may, in its sole discretion, extend the Bid Due Date by issuing a CSD in accordance with Clause 2.8 uniformly for all Bidders.

2.13. Late Bids

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

2.14. Contents of the Bid

- 2.14.1. The Bid submission shall be made in the manner as set out in Clause 2.11. The Financial Bid shall comprise of the Fee to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Fee required by him in accordance with this RFP and the provisions of the draft Concession Agreement.
- 2.14.2. The Project will be awarded to the Highest Bidder.
- 2.14.3. The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 2.14.4. The proposed Concession Agreement shall be deemed to be part of the Bid.

2.15. Modifications/ Substitution/ Withdrawal of Bids

- 2.15.1. The Bidder may modify, substitute or withdraw its Bid after submission provided that written notice of the modification, substitution or withdrawal is received by the Board prior to Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder after the Bid Due Date.
- 2.15.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

- 2.15.3. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by The Board, shall be disregarded.

2.16. Rejection of Bids

- 2.16.1. Notwithstanding anything contained in this RFP, the Board reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulments, and without assigning any reason thereof. In the event that the Board rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.16.2. The Board reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.
- 2.16.3. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid conditional and non responsive and the Bid shall be summarily rejected and no further queries or claims, of any nature whatsoever, shall be entertained or maintainable against the Board in that regard.

2.17. Validity of Bids

- 2.17.1. The Bids shall be valid for a period of not less than 180 (one hundred eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Board. The Board reserves the right to reject any Bid that does not meet this requirement.
- 2.17.2. Any Bidder may refuse to extend the period of validity of its Bid without forfeiting its Bid Security. A Bidder extending the period of validity of its Bid will not be allowed to modify its Bid, but would be required to extend the validity of its Bid Security for the period of extension and comply with Clause 2.20 of this RFP in all respects.
- 2.17.3. The Selected Bidder shall be required to extend the Bid validity period till the date of execution of the Concession Agreement.

2.18. Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Board in relation to, or matters arising out of, or concerning the Bidding Process. The Board will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Board may not divulge

any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Board or as may be required by law or in connection with any legal process.

2.19. Correspondence with the Bidder

Save and except as provided in this RFP, the Board shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. BID SECURITY

2.20. Bid Security

- 2.20.1. The Bidders will have an option to provide Bid Security through ECS or in the form of a bank guarantee acceptable to the Board.
- 2.20.2. The Bid Security to be submitted in the form of a bank guarantee with the amount referred in Clause 1.2.6 hereinabove shall be issued by a Scheduled Bank in India, in favour of **Executive Engineer E-2, Delhi Urban Shelter Improvement Board, New Delhi** in the format at Appendix IV (the **“Bank Guarantee”**) and having a validity period of not less than 240 (two hundred forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Board and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.20.3. Bid Security referred in the above clause can also be deposited through ECS in account of **Executive Engineer E-2 (Account No: 06121000095461; Name of Bank: Punjab & Sindh Bank; Address: Siddharth Enclave New Delhi – 110014; Bank IFSC Code: PSIB0000612)** up to Bid Due Date. Board shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.20.4. Any Bid not accompanied by the Bid Security shall be rejected by the Board as non responsive.
- 2.20.5. Save as provided in Clause 1.2.6, the Bid Security of unsuccessful Bidders will be returned by the Board, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Board. Bidders may by specific instructions in writing to the Board give the name and address of the person in whose favour the said demand draft shall be drawn by the Board for

refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

- 2.20.6. The Board shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Board will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.20.7. The Bid Security shall be forfeited and appropriated by the Board as Damages without prejudice to any other right or remedy that may be available to the Board hereunder or otherwise, under any of the following conditions.
- (a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
 - (b) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
 - (c) In the case of Selected Bidder, if it fails within the specified time limit -
 - (i) to sign the Concession Agreement and/or
 - (ii) to furnish the Performance Security within the period prescribed therefore in the Concession Agreement;
 - (d) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security; or
 - (e) In any other case as specified under this RFP.
- 2.20.8. The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Board may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.

3. EVALUATION OF BIDS

3.1. Opening and Evaluation of Bids

- 3.1.1. The Board shall open the Bids at the time specified in Clause 1.3, at the place specified below and in the presence of the Bidders who choose to attend.

Office of Executive Engineer (E-2)

DUSIB

1 Kilokari, Opp. Maharani Bagh

Ring Road

New Delhi – 110014

- 3.1.2. The Board will examine and evaluate the Bids in accordance with the provisions set out in this Section 3. The Board shall not open the Bids for which it has received request for withdrawal as per Clause 2.15 of this RFP, by the Bid Due Date.
- 3.1.3. To facilitate evaluation of Bids, the Board may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid. Such clarification shall be provided within the time specified by the Board for this purpose. Any request for clarification(s) and all clarification(s) shall be in writing. However, the Bidders are advised that evaluation of the Bids will be entirely at the discretion of the Board. The Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given. If the Bidder does not provide clarification sought by the Board within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Board may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Board.
- 3.1.4. Any information contained in the Bid shall not in anyway be construed as binding on the Board, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it under the Bidding Process on the basis of such information.
- 3.1.5. The Board reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 3.1.6. To assist in the examination, evaluation and comparison of Bids, the Board may utilize the services of consultant(s) or advisor(s).

3.1.7. If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Board may, in its sole discretion, exclude the relevant project from evaluation of such Bid. In the event that a Bidder claims credit for a project, and such claim is determined by the Board as incorrect or erroneous, the Board shall reject such claim and exclude the same from evaluation of the Bid. Where any information is found to be patently false or amounting to a material misrepresentation, the Board reserves the right to reject the Bid as per terms of this RFP.

3.2. Tests of responsiveness, Evaluation for Qualification and Financial Bid

3.2.1. Prior to evaluation of Bids, the Board shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- (a) it is received as per the format at Appendix I and its Annexes;
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;
- (c) it is signed, sealed, properly bound and marked as stipulated in Clauses 2.11;
- (d) it is accompanied by valid Bid Security as specified in Clauses 2.20;
- (e) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.6 and 2.1.7, as the case may be;
- (f) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
- (g) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.1.17(f);
- (h) it does not contain any condition or qualification; and
- (i) it is not non-responsive in terms hereof.

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

3.3. Evaluation Parameters

3.3.1. Only those Bidders who meet the eligibility criteria specified in Clauses 3.3.3 shall qualify for evaluation under this Section 3. Bids of consortia who do not meet these criteria shall be rejected.

3.3.2. The Bidder's competence and capacity is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity

3.3.3. The Bidder would be evaluated as follows:

(A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall meet the following requirement as specified below:

Parameter
The Bidder should have successfully supplied and commissioned a minimum of 3 (three) bio-digester technology based toilets works in any one of the last 5 (five) years immediately preceding the Bid Due Date. The total value of all such works should be at least Rs 10.0 Lakhs (Rupees Ten Lakhs)

The Bidder must establish a minimum Technical Capacity as specified in this Clause 3.3.3(A), and provide details as per format at Annex-II of Appendix I.

The details of the project under each of the above mentioned category should be provided as per format at Annex-IV of Appendix I.

(B) **Financial Capacity:** The Bidder shall have a minimum average annual turnover (the “**Financial Capacity**”) of Rs 25.0 lakhs (Rupees Twenty Five lakhs only) for last 2 (two) preceding financial years immediately preceding the Bid Due Date.

In case of a Consortium, the combined Technical Capacity and Financial Capacity of all the Members shall be considered and shall satisfy the conditions in this RFP.

The Bidders meeting the Technical and Financial capacity criteria mentioned in the clause 3.3.3 (A) and 3.3.3 (B) shall be terms as “**Technically Qualified**”.

3.4. Financial information for purposes of evaluation

- 3.4.1. The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 2 (two) financial years, preceding the year in which the Bid is made.
- 3.4.2. In case the annual accounts for the latest financial year are not audited and therefore the Bidder could not make it available, the Bidder shall give an undertaking to the same effect and the statutory auditor or a practising Chartered Accountant¹ shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 2 (two) years preceding the year for which the Audited Annual Report is not being provided.
- 3.4.3. The Bidder must establish a minimum Financial Capacity as specified in Clause 3.3.3(B), and provide details as per format at Annex-III of Appendix I.
- 3.4.4. The Bidder shall also enclose with its Bid a certificate(s) from its statutory auditors a practising Chartered Accountant² specifying the turnover of the Bidder, for last 2 preceding financial years and also specifying the methodology adopted for calculating such turnover. For the purposes of this RFP, turnover (the “**Turnover**”) shall mean the annual gross revenue earned by the Bidder in the respective Financial Year.

3.5. Evaluation of Financial Bid

- 3.5.1. The Financial Bid of the Technically Qualified Bidders as specified in Clause 3.3.3 shall be opened in presence of the Bidder’s representative who are present at the time and place notified in advance to such Bidders. The Bidder requiring the lowest Fee from the Board, shall be declared as the Highest Bidder (the “**Selected Bidder**”).
- 3.5.2. In the event that two or more Bidders quote the same amount of lowest Fee from the Board (the “**Tie Bidders**”) for the Project, the Board may: (a) invite fresh Financial Bids from the Tie Bidders provided that the Bidders will not be allowed to quote higher than the amounts already quoted; OR (b) in its sole discretion, may annul the Bidding Process.
- 3.5.3. In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance, the Board reserves the right to take any such measure as may be deemed fit in the sole discretion of the Board, including annulment of the Bidding Process.

¹ Applicable only for Sole Proprietorship Firm, incase such Firm does not have statutory auditor.

² Applicable only for Sole Proprietorship Firm, incase such Firm does not have statutory auditor.

- 3.5.4. After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Board to the Selected Bidder/s as per the format in Appendix VII and the Selected Bidder/s shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder as mentioned above is not received by the stipulated date, the Board may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the Board on account of failure of the Selected Bidder to acknowledge the LOA.
- 3.5.5. After acknowledgement of the LOA as aforesaid by the Selected Bidder/s, it shall execute the Concession Agreement within the period of 30 (thirty) days from date of issuance of LOA. The Selected Bidder/s shall not be entitled to seek any deviation in the draft Concession Agreement. Further, before execution of the Concession Agreement, the Selected Bidder/s shall furnish the Performance Security as per the provisions of the draft Concession Agreement.
- 3.5.6. In the event that any Selected Bidder does not execute the Concession Agreement within the period mentioned in Clause 3.5.5 above, they shall be given an additional 2 (two) weeks for the same, subject to a deduction 0.1% of the Bid Security for each week of delay.

In the event any Selected Bidder as mentioned above, does not execute the Concession Agreement within the stipulated timeframe, the Board may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Selected Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the Board on account of failure of the Selected Bidder to execute the Concession Agreement.

3.6. Contacts during Bid Evaluation

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

4. FRAUD AND CORRUPT PRACTICES

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

Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Board in relation to any matter concerning the Project;

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

5. PRE-BID CONFERENCE

- 5.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. A maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Board. The Board shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

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

APPENDIX I

Letter of Bid

Dated:

To

Office of Executive Engineer (E-2)

DUSIB

1 Kilokari, Opp. Maharani Bagh

Ring Road

New Delhi – 110014

Sub: Bid for installation, operation, maintenance and management bio-digester enabled mobile toilet vans at Group A locations in Delhi

Dear Sir,

1 With reference to your RFP document dated *****, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2 We propose to submit our Bid in individual capacity as _____

OR

We propose to submit our Bid as a consortium comprising of the following Members: (i) _____ (Lead Member); (ii) _____; and (iii) _____.

3 I/We acknowledge that the Board will be relying on the information provided in the Bids and the documents accompanying such Bids for the aforesaid project and we certify that all information provided in the Bid and in Annexes I, II, III & IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bids are true copies of their respective originals.

4 This statement is made for the express purpose of qualifying as a Bidder for the implementation of the aforesaid Project.

5 I/ We shall make available to the Board any additional information it may find necessary or require to supplement or authenticate the Bid.

6 I/ We acknowledge the right of the Board to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by Applicable Law, our right to

challenge the same on any account whatsoever.

- 7 We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract by any public authority terminated for breach on our part.
- 8 I/ We declare that:
- (a) I/ We have examined and have no reservations to the Bidding Documents, including any Common Set of Deviation issued by the Board.
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.11 and 2.1.12 of the RFP document;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Board or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- 9 I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 3.1.5 of the RFP document.
- 10 I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the turnover and meet(s) the requirements as specified in the RFP document and are/ is qualified to submit a Bid in accordance with the RFP document

- 11 I/ We declare that we/ any Member of the Consortium, or our/its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
- 12 I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- 13 I/ We further certify that in regard to matters relating to security and integrity of the country, we or any member of the Consortium or any of our/their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
- 14 I/ We further certify that no investigation by a regulatory authority is pending either against us/any member of the Consortium or against our/their Associates or against our CEO or any of our Directors/ Managers/ employees.
- 15 I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provision of this RFP, we shall intimate the Board of the same immediately.
- 16 I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Board in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
- 17 In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
- 18 I/We have studied all the Bidding Documents carefully and also surveyed the locations for MTVs. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Board or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Project .
- 19 The Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and revenues and after a careful assessment of the locations for MTVs and all the conditions that may affect the Bid.

- 20 I/We have submitted a Bid Security of Rs 5.0 Lakhs (Rupees Five Lakhs only) to the Board in accordance with the RFP Document.
- 21 I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened.
- 22 In the event of my/ our being declared as the Selected Bidder, I/We agree that any sum of money received in form grant or donation from any third party shall not be utilized for implementation of the Project.
- 23 I/ We declare that we/ any Member of the Consortium, or our/its Associates do not have any near relative working in the Board.
- 24 I/We agree to keep this offer valid for 180 (one hundred eighty) days from the Bid Due Date specified in the RFP.
- 25 I/We agree and undertake to abide by all the terms and conditions of the RFP document.

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

Date: Yours faithfully,
(Signature of the Authorised signatory)

Place: (Name and designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Firm

Annex-I
Details of Bidder

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Act under which Bidder is incorporated³:
 - (d) Address of the headquarters and its branch office(s), if any, in India:
 - (e) Date of incorporation and/ or commencement of business:

2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in the Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Board:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:

5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.17 (f) should be attached to the Bid.
 - (c) Information regarding role of each Member should be provided as per table below:

³ Not Applicable for single entity Bidder submitting its Bid as a sole proprietorship firm

Sl. No.	Name of Member	Role* {Refer Clause 2.1.17 (d)}
1.		
2.		
3.		

* The role of each Member, as may be determined by the Bidder, should be indicated.

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

Name of Bidder/ member of Consortium:

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

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

Annex-II
Technical Capacity of the Bidder[@]
(Refer to Clauses 3.3.3 (A))

Bidder type #	Name and location of the project	Number of toilets installed	Bio-digester technology used	Invoiced Amount (in INR)	Year
Single entity Bidder / Lead Member	a				
	b				
	c				
Consortium Member 2	2a				
	2b				
	2c				
Consortium Member 3	3a				
	3b				
	3c				

[@] Provide details of only those projects that have been undertaken by the Bidder under its own name specified in Clause 2.1.20

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

Annex-III
Financial Capacity of the Bidder
(Refer to Clauses 3.3.3 (B), and 3.4 of the RFP)

(In Rs. crore)

Bidder type \$	Turnover€ FY_____	Turnover FY_____	Average Turnover
(1)	(2)		
Single entity Bidder / Lead Member			
Consortium Member 2			
Consortium Member 3			
TOTAL			

Name and address of Bidder's Bankers:

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

€ The Bidder should provide details of its own Financial Capability specified in Clause 2.1.20.

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 2 (two) years preceding the Bid Due Date⁴. The financial statements shall:
 - (a) reflect the financial situation of the Bidder;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. The Bidder shall also provide the name and address of the Bankers to the Bidder.
3. Turnover means the annual gross revenue earned by the Bidder in the Financial Year.
4. The Bidder shall provide an Auditor's Certificate or a practising Chartered Accountant⁵ Certificate specifying the Turnover of the Bidder and also specifying the methodology adopted for calculating such Turnover in accordance with Clause 3.4.4 of the RFP document.

⁴ In case of a sole proprietorship firm, Income Tax Returns for last 2 (two) preceding financial years immediately preceding the Bid Due Date

⁵ Applicable only for Sole Proprietorship Firm, incase such Firm does not have a statutory auditor.

Annex-IV

Details of the Projects

(Refer to Clauses 3.3.3 (A), and 3.4 of the RFP)

Project Code:

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title and nature of the project		
Entity for which the project was constructed/ developed Address of client and details of the contact person.		
Location		
No of seats in the toilets		
Source of bio-digester technology		
Name and address of fabricator of toilets.		
Invoice Amount	4	
Details of the bio-digester technology used		
Date of commencement of project/ contract		
Date of commissioning		

Instructions:

1. Bidders are expected to provide information in respect of project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.3.3 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.
2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each project.
4. Provide the invoice amount for the project.

5. Experience for any activity relating to an project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
6. Certificate from the client or the Bidder's statutory auditor (In case duly certified audited annual financial statement containing the requisite details are provided, a separate certification by statutory auditor would not be necessary) must be furnished as per format below for each project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidders/Member may provide the requisite certification.
7. The client certificate shall provide details of the project as provided in the table above and should be accompanied by the work order issued by the client or agreement entered into with the client.
8. The certificate from its statutory auditor should be in the following format:

Certificate from the Statutory Auditor regarding projects

Based on its Book of Accounts and other published information authenticated by us, {This is to certify that (name of the Bidder/Member) was engaged by (title of the Client) to execute (name of project) for (nature of project)}. (number of toilets) were supplied and commissioned by (name of the Bidder/Member) based on (specify the bio-digester technology). The project was commissioned on (date of commissioning).

We further certify that the total invoice amount for the project was Rs., of which the Bidder/Member had received Rs. (Rupees).

[It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ consortium.]⁶

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the Authorised Signatory and date).

Date:

15. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project.

⁶ This certification should only be provided in case of jobs/contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Bidder in such partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

APPENDIX II
Power of Attorney for signing of Bid
(On stamp paper of appropriate value)

Know all men by these presents, We, _____ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of _____ and presently residing at _____, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of _____], as our true and lawful attorney (hereinafter referred to as the **“Attorney”**) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi proposed by Delhi Urban Shelter Improvement Board (the **“Board”**) including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in Bidders' and other conferences and providing information / responses to the Board, representing us in all matters before the Board, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Board in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Board.

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

IN WITNESS WHEREOF WE, _____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____, 20**.

For _____
(Signature)
(Name, Title and Address)

Witnesses:

1
2

Accepted
(Signature)
(Name, Title and Address
of the Attorney)

[Notarised]

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

APPENDIX III
Power of Attorney for Lead Member of Consortium
(On stamp paper of appropriate value)

Whereas the Delhi Urban Shelter Improvement (“the Board”) has invited Bids from qualified parties for installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi (“the Project”) Whereas, _____, _____ and _____ (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 20**.

For _____ (Name & Title)

For _____ (Name & Title)

For _____ (Name & Title)

Witnesses:

1

2

[Notarised]

(Executants)

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

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

APPENDIX IV
Bank Guarantee for Bid Security

B.G. No.

Dated:

- 1 In consideration of you, Delhi Urban Shelter Improvement Board, having its office at _____, (hereinafter referred to as “Board”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of _____ [a Company registered under provision of the _____ Act⁷, _____] and having its registered office at _____ [and acting on behalf of its Consortium] (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi (hereinafter referred to as “the Project”) pursuant to the RFP Document dated ***** issued in respect of the Project and other related documents (hereinafter collectively referred to as “Bidding Documents”), we [Name of the Bank] having our registered office at _____ and one of its branches at _____ (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of Clause 1.2.6 read with Clause 2.20 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to Board an amount of Rs 5.0 lakhs (Rupees Five lakhs only) as bid security (hereinafter referred to as the “**Bid Security**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
- 2 Any such written demand made by Board stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
- 3 We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of Board is disputed by the Bidder or not merely on the first demand from Board stating that the amount claimed is due to Board by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards

⁷ Strikeout reference of Act incase the Selected Bidder is a Sole Proprietorship Firm

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. _____ (Rupees _____ only).

- 4 This Guarantee shall be irrevocable and remain in full force for a period of 240 (two hundred forty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between Board and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
- 5 We, the Bank, further agree that Board shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of Board that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between Board and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
- 6 The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
- 7 In order to give full effect to this Guarantee, Board shall be entitled to treat the Bank as the principal debtor. Board shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to Board, and the Bank shall not be released from its liability under these presents by any exercise by Board of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of Board or any indulgence by Board to the said Bidder or by any change in the constitution of Board or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
- 8 Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

- 9 We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch that shall be deemed to have been duly authorized to receive the said notice of claim.
- 10 It shall not be necessary for Board to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which Board may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
- 11 We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of Board in writing.
- 12 The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by _____ Bank

By the hand of Mr./Ms _____, its _____ and authorized official.

(Signature of the Authorized Signatory)
(Official Seal)

APPENDIX V

Specimen of Financial Bid

(on the letterhead of the Bidder/ Lead Member)

Date:

To,

Executive Engineer (E-2)

DUSIB

1 Kilokari, Opp. Maharani Bagh,

Ring Road,

New Delhi – 110014

Re: Installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi

Sir,

Being duly authorized to represent and act on behalf of _____ (hereinafter referred to as “the Bidder”), and having reviewed and fully understood all of the information provided in the Request for Proposal (RFP) document dated _____ including the provisions of Article 10 of draft Concession Agreement provided to us by DUSIB in respect of the captioned Project, the undersigned hereby submit below our Financial Bid in response to the RFP.

We hereby submit our bid for undertaking the aforesaid Project in accordance with the Bidding Documents and draft Concession Agreement and require the Fee as follows:

Parameter		Value in Figures	Value in Words
Fee per MTV Per Month (In INR)	(A)		
Total fee per annum for 40 MTVs	(B)= (A) X 40 X12		

We have reviewed all the terms and conditions of the RFP and undertake to abide by all the terms and conditions contained therein. We hereby declare that there are, and shall be no deviations from the stated terms in the RFP Document.

We understand that DUSIB is not bound to accept any Bid they receive.

Yours faithfully,

For and on behalf of

.....
(Name of the Bidder⁸)

(Signature of Authorized Signatory)

(Name and designation of the Authorised Person)

⁸ In case of Consortium, names of all members of Consortium

APPENDIX VI

Joint Bidding Agreement

(Refer Clause 2.1.17 (f))

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. {....., a incorporated under theAct,} and having its registered office at (hereinafter referred to as the **“First Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {....., a incorporated under theAct,} and having its registered office at (hereinafter referred to as the **“Second Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {....., a incorporated under theAct,} and having its registered office at (hereinafter referred to as the **“Third Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above mentioned parties of the FIRST, SECOND and, THIRD PART are collectively referred to as the “Parties” and each is individually referred to as a “Party”

WHEREAS,

- A. _____, established under the _____, represented by its _____ and having its principal offices at _____] (hereinafter referred to as the **“Board”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the Bids”) by its Request for Proposal No. dated(the **“RFP”**) for selecting bidders for installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi (the **“Project”**).
- B. The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- C. It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

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

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall enter into a Concession Agreement with the Board and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

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

- a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and thereafter during the subsistence of the Concession Agreement when all the obligations shall become effective;
- b) {Party of the Second Part shall be the Technical Member of the Consortium;} and
- c) {Party of the Third Part shall be the Financial Member of the Consortium; and}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the draft Concession Agreement, at all times during the subsistence of the Concession Agreement in accordance with the provisions thereof.

6. Representation of the Parties

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

- a. Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- b. The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - i. require any consent or approval not already obtained;

- ii. violate any Applicable Law presently in effect and having applicability to it;
 - iii. violate the memorandum and articles of association, by-laws, trust deed or other applicable organisational documents thereof;
 - iv. violate any clearance, permit, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
 - d. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

7. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Termination of the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for award of the Project, the Agreement will stand terminated upon return of the Bid Security by the Board to the Bidder.

8. Miscellaneous

This Joint Bidding Agreement shall be governed by laws of India.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Board.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

[Notarised]

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

APPENDIX VII

Format of Draft Letter of Award

Date :

To

Authorised Signatory of the Selected Bidder/s

Dear Mr. _____ ,

Subject: Letter of Acceptance for Installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi

1. This is in reference to the Proposal submitted by _____ {Name of Successful Bidder} by the Bid Due Date (_____) in response to the Request for Proposal (“RFP”) Document (along with the amendments made thereafter) released by Delhi Urban Shelter Improvement Board (DUSIB) on ____ {date of release of RFP} for Installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi.
2. The aforesaid Bid was considered and evaluated by the bid evaluation committee constituted by DUSIB for this purpose.
3. *Further, subsequent discussions were held with you on _____, and the summary of such discussions is set out in the enclosed Enclosure/s. {To be inserted where such discussions have been held}.*
4. DUSIB is now pleased to inform that _____ (name of Selected Bidder) has been selected as the Selected Bidder for installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi.
5. This letter is intended to convey the acceptance of DUSIB, subject to the terms & conditions specified in the RFP issued to your company and conditions set out in the draft Concession Agreement to be executed within 30 (thirty) days from the date of this letter, of the Bid submitted by Selected Bidder, wherein Selected Bidder has quoted an Fee of Rs _____ (Rupees _____) per MTV per month and Rs _____ (Rupees _____) for 40 MTVs per annum.
6. As a token of your acknowledgment of this letter, within 7 (seven) days from the date of this letter, you are hereby requested to return a copy of the same to us, duly signed by the authorized signatory.

7. Further, you are also requested to comply, within 30 (thirty) days from the date of this letter with regard to the following:

- a) Execution of the Concession Agreement;
- b) Furnish a Performance Security for the sum of Rs. _____ , in terms of the Concession Agreement;

Kindly note that this communication by itself does not create any rights in you and your rights shall come into effect upon complying with conditions set out in para 6 and 7 and the execution of Concession Agreement.

Yours truly,

Request for Proposal (RFP)

Installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi. (Package of 40 MTVs)

VOLUME – II

Concession Agreement

September 2014

Delhi Urban Shelter Improvement Board
Punarvas Bhawan, I.P. Estate, New Delhi – 110002

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CONCESSION AGREEMENT

This Concession Agreement (“**Agreement**”) is entered into on this the _____ day of _____, 20____

Between

1. **Delhi Urban Shelter Improvement Board** having its office at _____
_____ (hereinafter referred to as the (“**DUSIB**”) which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of One Part;

AND

2. _____, an entity incorporated under the _____ Act⁹, _____ and having its registered office at _____, [*please insert address*] (hereinafter referred to as (“**Concessionaire**”), which expression unless it be repugnant to the context or meaning thereof shall include its representatives, successors and permitted assigns) of the Other Part¹⁰;

OR

3. _____, an entity incorporated under the _____ Act¹¹, _____ and having its registered office at _____, [*please insert address*]; _____, an entity incorporated under the _____ Act, _____ and having its registered office at _____, [*please insert address*] and _____, an entity incorporated under the _____ Act, _____ and having its registered office at _____, [*please insert address*] (hereinafter collectively referred to as (“**Concessionaire**”), which expression unless it be repugnant to the context or meaning thereof shall include its representatives, successors and permitted assigns)¹².

WHEREAS:

⁹ Strikeout reference of Act incase the Selected Bidder is a Sole Proprietorship Firm

¹⁰ Applicable in case the Selected Bidder is a single entity

¹¹ Strikeout reference of Act for the Member of the Consortium who is a Sole Proprietorship Firm

¹² Applicable in case the Selected Bidder is a Consortium.

- A. DUSIB has been established under the Delhi Urban Shelter Improvement Board Act, 2010 (“**DUSIB Act**”) in the National Capital Territory of Delhi. Under the DUSIB Act, DUSIB has been designated as the competent authority to implement the provisions of the Slum Areas (Improvement and Clearance) Act, 1956 in the National Capital Territory of Delhi. Pursuant to the provisions of the DUSIB Act, the DUSIB *inter alia* has the power to provide services to the inhabitants of the Jhuggi Jhopri squatter settlements / clusters (“**JJ Clusters**”).
- B. Pursuant to the above, DUSIB has identified locations near the JJ Clusters where DUSIB intends to provide better sanitation facilities through outsourcing of installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at these said locations in accordance with conditions set out in this Agreement.
- C. DUSIB has adopted a single stage transparent competitive bidding process for selection of a Concessionaire for implementing the Project vide its Request for Proposal No. _____ dated _____ (the “**Request for Proposal**” or “**RFP**”).
- D. After evaluation of the bids received from the bidders in response to the RFP, DUSIB had accepted the bid of the {selected bidder/ Consortium} comprising _____, _____ and _____ (hereinafter collectively referred to as the “**Consortium**”) with _____ as its lead member (the “**Lead Member**”).
- E. DUSIB had issued the Letter of Award bearing No. _____ dated _____ (hereinafter called as the “**LOA**”) to the _____ (“**Selected Bidder**”) requiring, *inter alia*, the execution of this Agreement within 30 (thirty) days from the date of issue of the LOA.
- F. The Concessionaire has submitted an irrevocable bank guarantee from the bank _____ dated _____, 20____) for a value of Rs.15.0- (Rupees Fifteen Lakhs) as Performance Security and hereby agrees to keep it valid for a period as stipulated in Article 4 of this Agreement.
- G. With a view to facilitate and implement the Project, DUSIB has agreed to execute this Agreement with the Concessionaire to authorise the Concessionaire to implement the Project (hereinafter defined) in accordance with the terms conditions and covenants provided herein.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"Agreement" means this Concession Agreement, together with the recitals and all schedules and the contents, requirements, specifications and standards of the RFP (as may be amended, supplemented or modified in accordance with the provisions hereof) and the Bid. In the event of a conflict between this Agreement and the Schedules, the terms of the Agreement shall prevail, with overriding effect.

"Applicable Laws" includes all applicable statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental authority, tribunal, board, court or other quasi-judicial authority.

"Applicable Permits" means all clearances, permits, authorisations, consents and approvals under or pursuant to Applicable Laws, in order to implement the Project and to provide Project Facilities in accordance with this Agreement.

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

"Balance Value of MTV" means the cost of acquisition of MTV as per the audited financial statements of the Concessionaire less the Lumpsum Payment as per MTV discounted at the rate of 12 % (twelve percent) per annum to be computed by DUSIB and the same shall be final and binding on the Concessionaire.

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

- a. the enactment of any new Indian law;
- b. the repeal, modification or re-enactment of any existing Indian law;
- c. the commencement of any Indian law which has not entered into effect until the date of this Agreement; or
- d. a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement;

“Commercial Operations Date” or “COD” means the commercial operations date of the Project which shall be the date on which the DUSIB has issued the Completion Certificate upon completion of construction of the Project.

“Completion Certificate” means the certificate issued by the DUSIB pursuant to Clause 6.3(c).

“Concession” shall have the meaning ascribed thereto in Clause 2.1.

“Concession Period” means the period as applicable specified in Clause 2.2.

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

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

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

“Contractor” means Person with whom the Concessionaire has entered into/ may enter into all or any of the Project Agreements.

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

“Dispute” shall have the meaning ascribed thereto in Clause 17.1.

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

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

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

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

"GoI" means the Government of India.

"Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the DUSIB Act, and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of the Project in accordance with this Agreement, Applicable laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.

"Government Agency" means DUSIB, or any state government or governmental, department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"Effective Date" means the date of execution of this Agreement by all the parties to the Agreement.

"Implementation Period" means the period beginning from the Effective Date and ending on the COD.

“Indirect Political Event” shall have the meaning ascribed thereto in Clause 13.3.

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

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

“Maintenance Requirements” means maintenance requirements for the maintenance of the Project as set forth in **Schedule ‘C’**.

“Mobile Toilet Vans” or **MTVs** means the movable toilet vans designed and installed as per the Specifications and Standards provided in the **Schedule ‘B’** to be stationed at the Point of Service.

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

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

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

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

"Performance Security" means the Performance Security for implementation of Project as applicable in terms of Article 4.

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

“Point of Service” means the specified locations of mentioned in **Schedule ‘A’**, wherein the Concessionaire has been authorized to develop Project Facilities, vide letter no. _____ dated _____.

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

"Project" means the design, build, finance, construct, procure, install, operate maintain and manage the Project Facilities in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project.

"Project Agreements" means collectively this Agreement, any contract for the design, engineering, procurement, construction and O&M of the Project and any other material contract.

"Project Completion Schedule" means the progressive development activities to be taken for implementation of the Project set forth in Schedule L.

"Project Facilities" means all assets including MTVs created by the Concessionaire as per the provisions of the Agreement for implementation of the Project at all the Sites for Point of Service.

"Project Site/s" means the land at the Point of Services on, under, over which the Project Facilities can be developed in accordance with this Agreement for implementation of the Project.

"Project Steering Committee" means the Project Steering Committee constituted pursuant to Article 8;

"Rs." or "Rupees" refers to the lawful currency of the Republic of India.

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

"Scheduled Project Completion Date" shall have the meaning set forth in Clause 6.1(b).

"Service Level Standards" means the service levels standards specified in Schedule 'F'.

"Specifications and Standards" means the specifications and standards relating to the quality, capacity and other requirements for the Project as set forth in Schedule 'B' and any modifications thereof, or additions thereto as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by DUSIB.

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

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

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

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

"Termination Payment" means the aggregate of the amounts payable by DUSIB to the Concessionaire under this Agreement upon Termination including Termination Payment receivable by the Concessionaire pursuant to Clause 14.1.

"Tests" means the tests to be carried out in accordance with the Specifications and Standards or the Maintenance Requirements and as finalized by the Concessionaire in consultation with DUSIB.

"Total Balance Value of MTV" means Balance Value of MTV multiplied by number of MTVs.

"User Charges" means the amount of charges notified by DUSIB and morefully specified in **Schedule 'D'** to be charges from the users of the Project.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the/construction or interpretation of this Agreement;
- (e) terms and words beginning with capital letters and defined in this Agreement including the Schedules;
- (f) the words "include" and "including" are to be construed without limitation;
- (g) references to "construction" include, unless the context otherwise requires investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) any reference to month shall mean a reference to a calendar month;
- (k) the Schedules 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;

- (l) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (m) references to recitals, Articles, sub-articles, clauses, sub-clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses, sub-clauses and Schedules of or to this Agreement;
- (n) any agreement, consent, approval, authorisation,, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Project Steering Committee shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or the Project Steering Committee, as the case may be, in this behalf and not otherwise;
- (o) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; and
- (p) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages;
- (q) unless otherwise expressly provided in this Agreement, any documentation required to be provided or furnished by the Concessionaire to DUSIB/ Project Steering Committee shall be provided free of cost and in three copies and if DUSIB/ Project Steering Committee is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.2 Measurements and Arithmetic Conventions

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

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

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

ARTICLE 2: CONCESSION AND PROJECT SITE

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, DUSIB hereby grants and authorises the Concessionaire to investigate, study, design, engineer, procure, finance, construct, install, operate, maintain and manage the Project/Project Facilities and to exercise and/or enjoy the rights, powers, privileges, authorisations and entitlements as set forth in this Agreement, including but not limited to the right to levy, demand, collect and appropriate User Charges from users liable to payment of User Charges for using the Project/ Project Facilities or any part thereof (collectively **“the Concession”**).

2.2 Concession Period

The Concession hereby granted is for a period of 7 (seven) years commencing from the Effective Date (the **“Concession Period”**) during which the Concessionaire is authorised to implement the Project and to operate Project Facilities in accordance with the provisions hereof.

Provided that;

- (a) in the event of the Concession being extended by DUSIB beyond the said period in accordance with the provisions of this Agreement, the Concession Period shall include the period/aggregate period by which the Concession is so extended, and
- (b) in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Effective Date and ending with the Termination.

However, DUSIB may choose to extend the Concession Period for further period of 12 (twelve) months, on the mutually agreed terms and conditions.

2.3 Acceptance of the Concession

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

2.4 Project Site/s

- (a) DUSIB hereby undertakes to handover to the Concessionaire physical possession of the Project Site/s “as is where is basis” within 15 (fifteen) days from the Effective Date together with the necessary rights of way/way leaves for the purpose of implementing the Project in accordance with this Agreement.
- (b) DUSIB confirms that upon the Project Site/s being handed over pursuant to the preceding sub-clause (a) the Concessionaire shall to make at its costs, charges and expenses such development and improvements in the Project Site/s as may be necessary or appropriate to implement the Project and to provide Project Facilities subject to and in accordance with the provisions of this Agreement.

2.5 Use of the Project Site

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

2.6 Information about the Project Site

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

2.7 Peaceful Possession

DUSIB warrants that;

- (a) the Concessionaire shall have no obligation/liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of any Person from whom the Project Site/s or any part thereof had been acquired and that the same shall be the sole responsibility of DUSIB; and

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

2.8 Rights and Title over the Project Site

- (a) The Concessionaire shall have exclusive rights to the use of the Project Site/s in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.
- (b) The Concessionaire shall allow access to, and use of the Project Site/ Project Facilities for telegraph lines, electric lines or such other public purposes as DUSIB may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facilities for a period exceeding 60 (sixty) days and that DUSIB undertakes to ensure that the Project Facilities is restored at the cost and expenses of DUSIB as per the Specifications and Standards.
- (c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site/s save and except as set forth and permitted under this Agreement provided however that nothing contained herein shall be construed or interpreted as restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project / Project Facilities.

ARTICLE 3: SCOPE OF WORK

- 3.1 The scope of the Project (the **“Scope of Work”**) shall mean and include, during the Concession Period:
- (a) design, construction, installation and commissioning of the Project Facilities in conformity with this Agreement, Specifications and Standards and Applicable Laws;
 - (b) operation, maintenance and management of the Project Facilities in conformity with this Agreement, Specifications and Standards and Applicable Laws;
 - (c) to demand and collect User Charges as per charges from users in accordance to Schedule D; and
 - (d) performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
- 3.2 The Concessionaire shall provide the services identified in Clause 3.1 above in accordance with the Service Level Standards and the timeframes specified in Schedule F and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 4: PERFORMANCE SECURITY

4.1 Performance Security

- (a) The Concessionaire shall, for the due and punctual performance of its obligations relating to the Project, deliver to the DUSIB, prior to / simultaneous with the execution of this Agreement, a bank guarantee substantially in the format provided in the Schedule G from a nationalized bank / State Bank of India, ("**Performance Security**") for a sum of **Rs. 15 Lakhs (Rupees Fifteen Lakhs only)** valid initially for a period of 24 (twenty four) months from the Effective Date. The Concessionaire shall keep the Performance Security valid by renewal or otherwise, throughout the Concession Period.

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

- (b) In case, the Performance Security has been invoked in part or full in accordance with the terms of this Agreement, the Concessionaire undertakes to forthwith replenish the Performance Security in the manner such that the aggregate value of the performance guarantee equals the original value of Performance Security at the time of Effective Date.

ARTICLE 5: OBLIGATIONS AND UNDERTAKINGS

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

5.1 General Obligations of the Concessionaire

The Concessionaire shall at its own cost and expense:

- (a) investigate, study, design, construct, operate, maintain and manage the Project /Project Facilities in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws;
- (b) make such financing arrangement as would be necessary to finance the Project and to meet its obligations under this Agreement in a timely manner;
- (c) implement the Project in accordance with the Implementation Plan;
- (d) appoint a full time employee from senior management of the Concessionaire who shall have sufficient powers to take decisions and who would be the single point contact for DUSIB in relation to the implementation of this Agreement;
- (e) ensure that, while performing their duties under this Agreement, it's representatives should carry their identity card and shall wear the prescribed uniform while performing his duties and treat all the users with respect and dignity;
- (f) implement the Project (i) in a good professional manner commensurate with Good Industry Practices, (ii) so as to comply with the applicable Service Level Standards, in accordance with the terms set out in this Agreement and its Schedules;
- (g) shall, during the Concession Period, subject to provisions of this Agreement, maintain the Project Facilities in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the Project Facilities to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specification and Standards and Good Industry Practice;
- (h) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods,

processes and systems used in or incorporated into the Project. The Concessionaire shall also keep the transfer of technology agreement with Defence Research and Development Organization (“**DRDO**”)/ Defence Research and Development Establishment (“**DRDE**”), Gwalior valid for the entire Concession Period;

- (i) ensure and procure that each Project Agreement contains provisions that would entitle DUSIB or a nominee of DUSIB to step into such agreement at DUSIB’s discretion, in place and substitution of the Concessionaire in the event of Termination pursuant to the provisions of this Agreement;
- (j) provide all assistance to the Project Steering Committee as they may reasonably require for the performance of their duties and services under this Agreement;
- (k) provide to the DUSIB/ Project Steering Committee reports on a regular basis during the Concession Period in accordance with the provisions of this Agreement;
- (l) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (m) develop, implement and administer a surveillance and safety program for the Project/ Project Facilities and the users thereof and the Contractors personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (n) take all reasonable precautions for the prevention of accidents on or about the Project Site/Project Facilities and provide all reasonable assistance and emergency medical aid to accident victims;
- (o) not to place or create nor to permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Site/ Project Facilities, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement;
- (p) be responsible for safety, soundness and durability of the Project Facilities including all structures forming part thereof and their compliance with the Specifications and Standards;

- (q) ensure that the Project Site/s remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (r) pay all expenses, taxes, charges and rates, including penalties for default in payment, fines, late fees and other outgoings at the applicable rates to the concerned Government Instrumentality in relation to the use of utilities and services by the Concessionaire, the sub-Contractors, their agents or other persons during the Implementation Period and Operations Period such as water supply, sewerage 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 the facility, and indemnify and keep indemnified DUSIB in this respect;
- (s) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement including but not limited to the Specifications and Standards, the Maintenance Requirements and Good Industry Practice;
- (t) provide access to the Project Site/s, during the Concession Period, to the Project Steering Committee, the authorised representatives of DUSIB and officer of any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions;
- (u) ensure that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent diversions;
- (v) obtain such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement; and
- (w) remove promptly according to Good Industry Practice, from the Project Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

5.2 Implementation Plan

- 5.2.1 The Concessionaire shall, within 30 (thirty) days from Effective Date, have in consultation with DUSIB, prepare and submit to DUSIB in editable soft copies and hard copy, a detailed plan including Specifications and Standards for development of Project Facilities for implementation of the Project (“Implementation Plan”) in conformity with the Scope of the Services, Project Completion Schedule, the Specifications and Standards and Applicable Laws. The indicative components of the Implementation Plan are provided in Schedule ‘J’. Implementation Plan shall incorporate the comments provided by the DUSIB, if any.
- 5.2.2 Within 15 (fifteen) days of receipt of the Implementation Plan, the DUSIB shall review the same, and convey their comments/ observations to the Concessionaire on the Implementation Plan, including the need, if any, to modify the same. If the comments/ observations require the Implementation Plan to be modified, the Concessionaire shall suitably modify the Implementation Plan and re-submit the same within 7 (seven) days for further review. The DUSIB shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Implementation Plan, which shall be taken into account by the Concessionaire while finalising the Implementation Plan.
- 5.2.3 If, within the period stipulated in the preceding sub-clause, the DUSIB does not respond to the Implementation Plan submitted to it by the Concessionaire within 30 (thirty) days, the Concessionaire shall be entitled to proceed with the Project on the basis of the Implementation Plan submitted by it.
- 5.2.4 Notwithstanding any review or failure to review by the DUSIB or the comments/ observations of the DUSIB, the Concessionaire shall be solely responsible for the adequacy of the Implementation Plan and the conformity thereof with the requirements of this Agreement and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- 5.2.5 The Parties agree that the implementation of the Implementation Plan shall be reviewed by the Project Steering Committee in consultation with the Concessionaire every quarter from the date of submission of the Implementation Plan.
- 5.2.6 The Concessionaire shall be responsible for delays in achieving COD and consequences thereof caused by reason of the Implementation Plan not being in conformity with the Specifications and Standards and shall not be entitled to seek any relief in this regard from DUSIB.

5.2.7 The Concessionaire shall, before commencement of the Project;

- (a) have requisite organisation and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project and to deal with the Project Steering Committee and to be responsible for all necessary exchange of information required pursuant to this Agreement; and
- (b) undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule and to achieve COD under and in accordance with this Agreement.

5.3 Monitoring and Supervision during Implementation

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

- (a) For the purposes of determining that Construction Works are being undertaken in accordance with Specifications and Standards and Good Industry Practice and for quality assurance, the Concessionaire shall carry out such Tests at such time and frequency and in such manner as may be required by the Project Steering Committee or as may be necessary in accordance with Good Industry Practice. The Concessionaire shall with due diligence carry out all such Tests in accordance with the instructions and under the supervision of the Project Steering Committee. The Concessionaire shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such Test results.
- (b) If the Project Steering Committee reasonably determines that the rate of progress of the construction of the Project is such that the achievement of COD is not feasible on or before the Scheduled Project Completion Date, it shall so notify the Concessionaire. Thereupon, the Concessionaire shall within 15 (fifteen) days thereof notify the Project Steering Committee about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

- (c) The Project Steering Committee may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in the reasonable opinion of the Project Steering Committee such work is being carried on in a manner which threatens the safety of the Construction Works or the users of the Project or does not adhere to Specifications and Standards.
- (d) The Concessionaire shall upon, instructions of the Project Steering Committee pursuant to sub-clause (d) above suspend the Construction Works or any part thereof as the case may be, for such time and in such manner as may be specified by Project Steering Committee and the costs if any incurred by DUSIB during such suspension to properly protect and secure the Construction Works or such part thereof as is necessary in the opinion of the Project Steering Committee (**“Preservation Costs”**), shall be borne by the Concessionaire.
- (e) If the Project Steering Committee issues any instructions requiring suspension of Construction Works for any reason other than default or breach of this Agreement by the Concessionaire:
 - (i) the Project Completion Schedule and the Scheduled Project Completion Date shall be extended by the period of suspension; and
 - (ii) the Concession Period shall be extended in accordance to the Agreement.

5.4 Damages for Delay

If the COD is not achieved by the Scheduled Project Completion Date for any reason other than Force Majeure or reasons attributable to DUSIB, the Concessionaire shall be liable to pay liquidated damages for delay beyond the Scheduled Project Completion Date, of an amount equivalent to the amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay, subject to a maximum of 20% (twenty percent) of the Performance Security. Provided further that nothing contained in this Clause shall be deemed or construed to authorise any delay in achieving COD.

5.5 Prototype MTV

- 5.5.1 The Concessionaire shall, within 45 (forty five) days from Effective Date install a prototype MTV (“Prototype MTV”) at one Point of Service decided by DUSIB in conformity with the Specifications and Standards.**
- 5.5.2 Within 15 (fifteen) days of installation of Prototype MTV, the DUSIB shall inspect the same, and convey the modifications/ alteration to the Concessionaire on the Prototype MTV, including the need, if any, to modify/ alter the Prototype MTV.**
- 5.5.3 If the modifications/ alterations are required in the Prototype MTV, the Concessionaire shall within 7 (seven) days suitably modify/ alter the Prototype MTV and request DUSIB for second inspection. The DUSIB shall give its observations and comments, if any, within 7 (seven) days of inspection of revised Prototype MTV, which shall be incorporated by the Concessionaire while installing MTVs for the Project.**
- 5.5.4 If, within the period stipulated in the preceding sub-clause, the DUSIB does not provide its comments, the Concessionaire shall be entitled to proceed with the Project on the basis of the Prototype MTV.**
- 5.5.5 The Concessionaire shall be responsible for delays in achieving COD and consequences thereof caused by reason of the Prototype MTV not being in conformity with the Specifications and Standards and shall not be entitled to seek any relief in this regard from DUSIB.**

5.6 Obligations of DUSIB

DUSIB shall:

- (a) obtain and provide to the Concessionaire, all Applicable Permits in conformity with the Applicable Laws and be in compliance with thereof at all times during the Concession Period, subject to the Concessionaire adhering to the provisions of this Agreement and any conditions set out in such Applicable Permits;
- (b) hand over the physical possession of Project Site together with necessary right of way/ way leaves to the Concessionaire within 15 (fifteen) days from the Effective Date, on ‘as is where is’ basis;

- (c) grant in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from DUSIB in connection with implementation of the Project and the performance of the Concessionaire's obligations under this Agreement;
- (d) ensure peaceful use of the Project Site/s by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from DUSIB or persons claiming through or under it;
- (e) procure that no barriers are erected or placed by DUSIB or any Governmental Agency on the Project Facilities/Project Site, except on account of any law and order situation or upon national security considerations; and
- (f) observe and comply with all its obligations set forth in this Agreement.

5.7 Additional Obligations of Both the Parties

- (a) No Party to this Agreement will at any time perform, or omit to perform, any act which they are aware, at the time of performance, will place the other Party in default under any insurance policy, mortgage or lease, governing activities at any Point of Service provided by the DUSIB.
- (b) *Co-operation:* Except as otherwise provided elsewhere in this Agreement each Party ("**Providing Party**") to this Agreement undertakes promptly to provide the other Party ("**Receiving Party**") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:
 - (i) does not require material expenditure by the Providing Party to provide;
 - (ii) is reasonably required by the Receiving Party in order for it to comply with its obligations under this Agreement;
 - (iii) is not Confidential Information; and
 - (iv) is capable of being provided by the Providing Party.
- (c) Each Party agrees to co-operate with the contractors of the other Party as reasonably requested in order to accomplish the purposes of this Agreement.
- (d) Each Party shall provide each other with all co-operation and information reasonably required to meet their respective obligations under this Agreement.

ARTICLE 6: PROJECT COMPLETION

6.1 Project Completion

- (a) The Project shall be deemed to be complete only when the Completion Certificate is issued by the Project Steering Committee for all the Points of Service in accordance with the provisions of this Article.
- (b) The Concessionaire guarantees that the COD shall be achieved in accordance with the provisions of this Agreement on a date not later than 150 (one hundred fifty) days from the Effective Date (“**the Scheduled Project Completion Date**”).
- (c) If the COD does not occur within 60 (sixty) days from the Scheduled Project Completion Date, DUSIB shall subject to the provisions of this Agreement relating to excuse from performance of the Concessionaire’s obligations hereunder, be entitled to Terminate this Agreement in accordance with the provisions of Clause 14.2.

6.2 Tests

- (a) At least 15 (fifteen) days prior to the likely completion of the construction for any Point of Service, the Concessionaire shall notify the Project Steering Committee of the same and shall give notice to them of its intent to conduct Tests, along with the documentary evidence of the conformity of the part of the Project Facilities at the said Point of Service with the with the Specifications and Standards. The Concessionaire shall give the Project Steering Committee at least 7 (seven) days prior notice of the actual date on which it intends to commence the Tests and at least 7 (seven) days prior notice of the commencement date of any subsequent Tests.
- (b) All Tests shall be conducted in accordance with Schedule E and the Applicable Laws and Applicable Permits. The Project Steering Committee shall have the right to suspend or postpone any Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project or any part thereof does not meet the Specifications and Standards. The Project Steering Committee may designate a representative with suitable qualifications and experience to witness and observe the Tests.

- (c) Upon the Project Steering Committee determining the Tests to be successful, it shall forthwith issue to the Concessionaire a certificate for the said Point of Service (the **“Completion Certificate for the Point of Service”**). When Completion Certificate for the Point of Service of all the Point of Service has been issued the Project Steering Committee shall forthwith issue to the Concessionaire a certificate (the **“Completion Certificate”**) for the Project.
- (d) If the Project Steering Committee certifies that it is unable to issue the Completion Certificate for the Point of Service or Completion Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- (e) The Concessionaire shall bear all the expenses relating to Tests under this Agreement, unless otherwise specifically provided in this Agreement.

ARTICLE 7: USER CHARGES

7.1 Levy, Collection and Appropriation of User Charges

Subject to the provisions of this Agreement, the Concessionaire shall from the date of issuance of the Completion Certificate for the Point of Service where the said MTV is stationed:

- (a) be entitled to levy, demand, collect and appropriate User Charges in accordance with the Schedule D for the usage of the MTV for which Completion Certificate for the Point of Service has been issued; and
- (b) Conspicuously display the User Charges at the Project Facilities.

ARTICLE 8: PROJECT STEERING COMMITTEE

8.1 Constitution

DUSIB shall through an office order, constitute a Project Steering Committee within 15 (fifteen) days of the Effective Date.

8.2 Functions

The Project Steering Committee shall;

- (a) shall issue a certificate of completion on satisfactory completion of construction of the Project Facilities;
- (b) hold meetings at least once every three months during the Operations Period;
- (c) undertake inspection of the Project Facilities by itself or through an agency authorized by DUSIB during the Operations Period; and
- (d) undertake such functions and exercise such powers as are prescribed/ conferred under this Agreement.

The functioning and duties, in detail of the Project Steering Committee are provided in Schedule 'I'.

ARTICLE 9: PROJECT OPERATIONS

9.1 Operation and Maintenance

The Concessionaire shall operate and maintain the Project/Project Facilities by itself, or through a Contractor and if required, modify, repair or otherwise make improvements to the Project/ Project Facilities to comply with Specifications and Standards, and other requirements set forth in this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits and manufacturer's guidelines. More specifically, the Concessionaire shall be responsible for:

- (a) ensure smooth and uninterrupted operation of the Project Facilities without interruption, 24 hours per day for the entire Concession Period without regard to the users religion, age, sex in accordance with the terms of this Agreement;
- (b) undertake specific tests in accordance with the Schedule E of this Agreement and submit reports to the Project Steering Committee;
- (c) ensure that at all time during Operations Period the Project Facilities conforms to the Maintenance Requirements set forth in Schedule C;
- (d) pay utility usage charges for the Project Facilities to the concerned agencies / authorities;
- (e) carrying out periodic preventive maintenance and routine maintenance of the Project Facilities;
- (f) keep the Project Facilities in a clean, tidy and orderly condition free of litter and debris; and
- (g) preventing with the assistance of the concerned law enforcement agencies where necessary, any unauthorised entry to and exit or encroachments on the Project/Project Site and preserving the right of way of the Project.

In the event, the Concessionaire does not maintain and/or repair the Project Facilities or any part thereof in conformity with the Maintenance Requirements or as specified in the Implementation Plan, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of a notice in this behalf from DUSIB, DUSIB shall, without prejudice to its rights under this Agreement

including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to DUSIB as **Damages**.

9.2 Emergency Takeover

- (a) In the event that the Concessionaire is unable to operate the Project Facilities for any reason whatsoever, including for reason of Force Majeure, DUSIB may, at its sole discretion, take over the operations and may in such circumstances requisition the use of the Project Facilities used by the Concessionaire and the Concessionaire shall allow the use of the Project Facilities by DUSIB ("**Emergency Takeover**").
- (b) An Emergency Takeover pursuant to this provision shall not extend beyond a period of 60 (sixty) days. In the event DUSIB determines to extend the Emergency Takeover beyond the said period of 60 (sixty) days, it shall terminate this Agreement and pay the Concessionaire the Total Balance Value of MTV as the termination payments pursuant to the provisions of this Agreement. However, DUSIB shall deduct amounts towards any outstanding dues, which may have accrued in respect of the Project during the Concession Period.

9.3 Shifting of Components of the Project Facilities

The Concessionaire shall upon specific instructions from the DUSIB shift any component of the Project Facilities to any other location within NCR of Delhi. However, such request shall be made by DUSIB only once in a continuous period of 6 (six) months for any specific component of the Project Facilities. DUSIB shall pay to the Concessionaire an amount of Rs. 2000/- (Rupees Two Thousand only) for each such shifting of MTV.

9.4 Monitoring and Supervision during Operations

- (a) The Concessionaire shall undertake periodic inspection of the Project in accordance with the Maintenance Requirements, Specifications and Standards and this Agreement.
- (b) DUSIB by itself or through a third party agency shall undertake inspection of the Project jointly with the Concessionaire to determine the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Specifications and Standards and this Agreement and make out a report of such inspection (the "**O&M Inspection Report**") and forward it to

the Concessionaire. The O&M Inspection Report shall set forth defects and deficiencies, if any, and may also require the Concessionaire to undertake such tests as may be specified by the DUSIB for the purpose of determining that the Project is at all times in conformity with the Specifications and Standards. The Concessionaire shall within 30 (thirty) days of the receipt of the O&M Inspection Report from DUSIB remedy the defects and deficiencies and undertake such tests, if any, set forth therein, without any delay and furnish compliance thereto and/or results thereof to the DUSIB along with a report (O&M Inspection Compliance Report) with a copy to the Project Steering Committee specifying in reasonable detail the measures, if any, that have been undertaken for curing the defects or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. Where the remedying of such defects or deficiencies and/or undertaking such tests is likely to take more than 30 (thirty) days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight and finally the O&M Inspection Compliance Report.

- (c) DUSIB shall have the right to conduct any surprise/random test based on its own initiative or in response to complaint/ request from the users. In case the Tests results meets the prescribed guidelines/ standards provided in Schedule E, the cost of such test shall be borne by DUSIB otherwise the Concessionaire shall bear the cost of such Tests.

9.5 Branding of Project

- (a) The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders.
- (b) It is further agreed that the Project shall be known, promoted and advertised in the name of **“Delhi Urban Shelter Improvement Board”**.
- (c) The Concessionaire shall erect a signboard, of a size not less than 4 feet by 3 feet, on each MTV in a manner such that it is ordinarily visible to any person using such entrance. The signboard shall prominently display the logo of DUSIB and **“Delhi Urban Shelter Improvement Board”** text in black upper case letters on a white/yellow background. In addition, the Board shall also display the following:

- (i) Location;
- (ii) No of WC Seat/ Men/Women;
- (iii) User Charges;
- (iv) Name, Address & Contact No. of the Concessionaire;
- (v) Name of the Concessionaire's Staff deployed on roaster basis; and
- (vi) Telephone number of Complaint Cell.

The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period.

9.6 Maintenance of Complaints Register

- (a) The Concessionaire shall maintain a register (the **"Complaint Register"**) at all the Point of Service where it shall provide access at all times for recording of complaints along with date and complaint number by any person (the **"Complainant"**).
- (b) The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by Concessionaire. Information relating to the availability of and access to the Complaint Register shall be prominently displayed at the Point of Service.
- (c) The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be noted in the Complaint Register.

ARTICLE 10: FINANCIAL TERMS

10.1 Terms of Payment

- (a) In consideration of the Concessionaire accepting the Agreement and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, and subject to the provisions of this Agreement, DUSIB agrees and undertakes to pay to the Concessionaire:
- (i) fixed lumpsum payments (hereinafter the **“Lumpsum Payment”**), of a sum of Rs. 3.0 lakhs (Rupees Three Lakhs only) for each MTV subject to issuance of the Completion Certificate for the Point of Service where the said MTV is stationed; and
 - (ii) the sum of ----- (Rupees -----) per month per MTV (the **“Fee”**) as set forth in its Bid, after the achievement of COD as set forth in Schedule H (**“Fee Payment Schedule”**).
- (b) DUSIB shall pay the Concessionaire such amount pursuant to the invoices received from it, in accordance with this Clause but not later than 30 (thirty) days from the date of receipt of invoice.
- (c) In addition to the Fee payment, the Concessionaire may collect and appropriate, User Charges from the users of the Project Facilities as per the Article 7 of this Agreement.
- (d) The Concessionaire shall prepare invoice and submit the same by the 7th day of next month. The invoice shall be supported by the summary statement giving the following:
- (i) Date wise number of MTVs made operational in the current quarter;
 - (ii) Location and date wise number of users of the MTVs;
 - (iii) Amount of total payments collected from the users for the invoicing period;
 - (iv) Amount of total payments for the quarter calculated as per Schedule H;
 - (v) Cost of random tests, if any; and
 - (vi) Amount of penalty to be deducted, if any.
- (e) Except as otherwise provided for herein or as agreed between the Parties in writing, DUSIB shall not be required to make any payments in respect of the

Project other than those covered by the terms of payment as stated in this Agreement.

- (f) Invoices shall be accurate and all adjustments to or changes in the terms of payment as stated in this Agreement shall be applied to the next payment invoice. The Concessionaire shall waive any charge for a service that is not invoiced within six months after the end of the month in which the terms of payment as stated in this Agreement relating to such service are authorized or incurred, whichever is later.
- (g) Except as otherwise provided for herein or as agreed between the Parties in writing, the Concessionaire shall not charge any user, except the User Charges, for any services provided to them under this Agreement.

10.2 Damages for shortfall/ non-compliance in Service Level Standards

- (a) In the event the DUSIB, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project do not comply or fall short of performance as per the provisions of this Agreement, the DUSIB may levy the amount of Damages payable by the Concessionaire in accordance with Schedule F of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) days and on failure of the Concessionaire to pay the same, the DUSIB shall recover the amount from the Concessionaire from the invoices and/ or by encashment of the Performance Security. Provided that upon receipt of the demand the Concessionaire may make a written representation to the DUSIB which shall be considered by the DUSIB on merits and the DUSIB may waive the payment of Damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution procedure shall apply.
- (b) The Damages set forth in preceding sub clause may be assessed and specified forthwith by the Project Steering Committee; provided that the DUSIB may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations under this Agreement.
- (c) In the event, the Concessionaire is in default of any other obligation under this Agreement, DUSIB may estimate the damages and impose corresponding

lumpsum penalty on the Concessionaire for the duration of such non-performance.

10.3 Tax

- (a) The DUSIB shall be entitled to deduct taxes from the amounts due and payable to the Concessionaire wherever applicable as per the Applicable Laws. The Concessionaire shall pay for all other taxes in connection with the Agreement, including, but not limited to, sales, use, excise duty, value-added, goods and services, consumption and other similar taxes or duties. The DUSIB shall provide Concessionaire with the original tax receipt of any withholding taxes paid for Project on payments under the Agreement. The Concessionaire agrees to reimburse and hold the DUSIB harmless from any deficiency (including penalties and interest) relating to taxes that are its responsibility under this paragraph. For the purposes of this Agreement, taxes shall include taxes incurred on transactions connected with the Project.
- (b) Property tax if any, shall be paid by DUSIB.
- (c) In the event of any increase or decrease of the rate of taxes due to any statutory notification/s during the Concession Period the consequential effect shall be to the account of the Concessionaire.
- (d) The Parties shall cooperate to enable each Party to accurately determine its own tax liability and to minimize such liability to the extent legally permissible.

10.4 Advertising on the Site

The Concessionaire may undertake or permit commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall be visible to public; if the advertising thereon does not, in the opinion of the DUSIB, distract the public or violates Applicable Laws. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

ARTICLE 11: INSURANCE

11.1 Insurance during Concession Period

- (a) At all times during the Concession Period, the Concessionaire shall at its cost and expense and as per the Applicable Laws and Good Industry Practice, procure and maintain by all insurance policies as are customarily and ordinarily available in India including but not limited to builders' all risk insurance, comprehensive third party liability insurance including injury or death to personnel/representatives of Persons who may enter the Project Site, workmen's compensation insurance, standard fire and special perils, general public liability, insurance against all Force Majeure Events that are insurable and any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit in relation to Project Site and Project Facilities ("**Insurance Cover**").
- (b) The Concessionaire shall, from time to time, provide to DUSIB copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement as soon as reasonably practical after they are received by the Concessionaire and furnish evidence to DUSIB that all premiums have been paid and that the relevant policies remain in existence. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 30 (thirty) days' clear notice of cancellation is provided to DUSIB in writing.
- (c) The insurance policies shall be assignable to DUSIB on the happening of Concessionaire's Event of Default and the respective insurance policies shall contain a specific stipulation to that effect. The Concessionaire undertakes and covenants that it shall neither have nor claim to have any rights, title or interest to such sums. Provided that the Concessionaire may, with the prior written approval of DUSIB, assign such Insurance Cover in favour of the lenders.

- (d) All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers thereunder against, inter alia, DUSIB, and its assigns, employees, insurers and any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

- (e) In the event the Concessionaire does not maintain any insurance policy pursuant hereto, DUSIB may, at its option, effect such insurance and the Concessionaire shall reimburse all the costs and expenses incurred in this behalf by DUSIB within 15 (fifteen) days of receipt of DUSIB's claim in respect thereof, failing which the same shall be recovered by DUSIB by exercising right of set off or from the Performance Security. In case of such failure on the part of the DUSIB, DUSIB shall not be liable for damages or claims and the Concessionaire shall indemnify DUSIB for and against all liabilities, costs and expenses arising out of or as a consequence of such failure.

ARTICLE 12: VARIATION IN PROJECT

12.1 DUSIB or the Concessionaire may require the provision of additional works and services, which are not included in the Scope of Work or the reduction in the works and services from the Scope of Work as provided in this Agreement. Any such Variation shall be made in accordance with the provisions of this Article, and the resultant costs shall be expended by the Concessionaire and reimbursed to it by DUSIB subject to and in accordance with this Article.

Provided, however, should the Concessionaire or DUSIB propose any change in the design that does not adversely affect the Specifications and Standards, such change shall be deemed not to be a Variation of the works.

12.2 If the Concessionaire or DUSIB determines at any time that a Variation is necessary, or for any other reason related to the performance of services or the Project, the relevant Party shall by notice in writing require the other Party to consider such Variation.

12.3 If DUSIB requires or agrees to proposed Variation, then DUSIB shall issue a notice specifying in reasonable detail the works and services contemplated by such Variation (the **“Variation Notice”**).

12.4 Upon receipt of the Variation Notice, the Concessionaire shall, with due diligence, provide to DUSIB such information as is necessary, together with documentation in support of:

- (a) the impact, if any, which the Variation is likely to have on the Scheduled Project Completion Date;
- (b) the cost to the Concessionaire of complying with such Variation Notice (including, without limitation, material and labour cost applicable to the works assigned by DUSIB to its contractors, including the premium on such rates);
- (c) the options suggested for implementing the proposed Variation and the effect, if any, each such option would have on the costs and time for the implementation thereof, including a detailed breakdown by work classifications; and
- (d) Any other impact of such Variation together with proposed terms and conditions in light of the Variation.

- 12.5 The DUSIB may either accept or reject the Variation. In the event that it accepts such Variation with modifications, if any, it shall convey to the Concessionaire the scope of Variation and proposed method of compensation for consideration by the Concessionaire.
- 12.6 Upon reaching an agreement on the terms of additional compensation for completing the Variation, DUSIB shall issue an order (the “**Variation Order**”) requiring the Concessionaire to undertake the Variation.
- 12.7 A Variation Order shall be effective and binding upon mutual agreement between the Parties. Notwithstanding a dispute regarding cost and time for implementation of such Variation Order, DUSIB may instruct the Concessionaire to proceed with the implementation of the Variation Order. Pending resolution of any dispute, DUSIB shall pay to the Concessionaire upon completion of work pursuant to such Variation Order, an amount equal to the costs that are certified by the Project Steering Committee as being acceptable to DUSIB, with final adjustment to be made in accordance with the resolution of the dispute under the dispute resolution procedure set out in this Agreement.
- 12.8 The DUSIB may hold consultations with the Concessionaire, at any time prior to making its decision, to discuss any such proposal with the Concessionaire.

ARTICLE 13: FORCE MAJEURE

13.1 Force Majeure Event

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

13.2 Non Political Event.

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

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site);
- b) strikes or boycotts (other than those involving the Concessionaire, contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Facilities for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 13.3;
- c) any failure or delay of a contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

- d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by DUSIB;
- e) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through a Project Site inspection; or
- f) any event or circumstances of a nature analogous to any of the foregoing.

13.3 Indirect Political Event

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

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

13.4 Political Event

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

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

13.5 Effect of Force Majeure Event.

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

- (a) There shall be no Termination of this Agreement except as provided in Clause 13.7 hereinafter;
- (b) Where the Force Majeure Event occurs before COD, the dates set forth in the Project Completion Schedule, and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (c) Where a Force Majeure Event occurs after COD, the Concessionaire shall continue to make all reasonable efforts to operate the Project, but if it is unable or prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the Project Steering

Committee, be extended by the period for which operations remains affected on account thereof; and

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

13.6 Allocation of costs during subsistence of Force Majeure

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

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

For avoidance of doubt, Force Majeure Costs shall not include loss of User Charges or any other revenue, any debt repayment obligations but shall include interest payments on such debt, maintenance expenses and all other costs directly attributable to the Force Majeure Event.

13.7 Termination

If a Force Majeure Event continues or is in the reasonable judgement of the Parties is likely to continue beyond a period 120 (one hundred twenty) 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 (one hundred twenty) days, be entitled to terminate this Agreement by issuing Termination Notice.

13.8 Termination Payment for Force Majeure Events

Upon Termination of this Agreement pursuant to Clause 13.7 hereinabove, Termination Payment to the Concessionaire shall be made in accordance with the following:

- (a) If the Termination is on account of a Non Political Event, the Concessionaire shall be entitled to receive from DUSIB by way of Termination Payment an amount equal to 90% of the Total Balance Value of MTV less pending insurance claims, if any. Provided that in the event such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from DUSIB further sum equal to 90% of amount of such claims not admitted. DUSIB shall release the Performance Security.
- (b) If the Termination is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from DUSIB by way of Termination Payment an amount equal to the Total Balance Value of MTV less pending Insurance claims, if any. Provided, however, that if any of such insurance claims are not admitted and paid, the Concessionaire shall be entitled to receive from DUSIB further sum equal to 80%(eighty percent) of such claims not admitted, and DUSIB shall release the Performance Security.
- (c) If the Termination of this Agreement is on account of a Political Event, the Concessionaire shall be entitled to receive from DUSIB by way of Termination Payment an amount equal to the Total Balance Value of MTV less pending insurance claims, if any, and DUSIB shall release the Performance Security.

13.9 Dispute Resolution

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

13.10 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 13, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article 13.

13.11 Duty to Report

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

- (a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material affect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement;
- (b) Any notice pursuant to this Clause 13.11 shall include full particulars of:
 - (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 13 with evidence in support thereof;
 - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event;
 - (iv) any other information relevant to the Affected Party's claim; and

- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Clause 13.11 and such other information as the other Party may reasonably request the Affected Party to provide.

13.12 Excuse from performance of obligations

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

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

ARTICLE 14: EVENTS OF DEFAULT AND TERMINATION

14.1 Event of Default

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

(a) Concessionaire Event of Default

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

- (i) The Concessionaire fails to install the Prototype MTV within 60 (sixty) days from the Effective Date;
- (ii) The Concessionaire fails to achieve any project milestone specified in Project Completion Schedule within 60 (sixty) days of the timeline for the same;
- (iii) The Concessionaire fails to achieve COD within 60 (sixty) days from the Scheduled Project Completion Date;
- (iv) Any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- (v) The Concessionaire creates any Encumbrance on the Project Site/ Project Facilities in favour of any Person save and except as otherwise expressly permitted under Clause 19.2;
- (vi) The Concessionaire has failed to meet the Maintenance Requirements for 2 (two) consecutive months;
- (vii) the Performance Security or a part of it has been encashed and appropriated and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;

- (viii) The transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the Concessionaire except where such transfer in the reasonable opinion of DUSIB does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Project Agreements;
- (ix) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- (x) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided that:
 - A. the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - B. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at Effective Date; and
 - C. each of the Project Agreements remains in full force and effect.
- (xi) The Concessionaire suspends or abandons the operations of the Project without the prior consent of DUSIB, provided that the Concessionaire shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by DUSIB;
- (xii) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;

- (xiii) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Affect on the Project and such attachment continues for a period exceeding 45 (forty five) days; and
- (xiv) The Concessionaire is otherwise in Material Breach of this Agreement.

(b) DUSIB Event of Default.

The following events shall constitute events of default by DUSIB (each a **“DUSIB Event of Default”**), unless any such DUSIB Event of Default has occurred as a result of Concessionaire Event of Default or due to a Force Majeure Event:

- (i) DUSIB has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- (ii) DUSIB is in breach of this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice in that behalf from the Concessionaire;
- (iii) DUSIB repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (iv) DUSIB has by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and has failed to cure the same within 60 (sixty) days of notice thereof by the Concessionaire;
- (v) DUSIB has delayed payment of any amount without any valid reason that has fallen due in terms of this Agreement beyond 90 (ninety) days; and
- (vi) Any representation made or warranties given by the DUSIB under this Agreement is found to be false or misleading.

14.2 Termination due to Event of Default

- (a) Termination for Concessionaire Event of Default
 - (i) Without prejudice to any other right or remedy which DUSIB may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, DUSIB shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, DUSIB shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the **“Preliminary Notice”**). In case the underlying breach/default is not cured within a period of 60 (sixty) days from the date of the Preliminary Notice (**“Cure Period”**) DUSIB shall be entitled, to terminate this Agreement by issuing the Termination Notice. Provided further, that
 - A. if the default is not cured within 30 (thirty) days of the Preliminary Notice, DUSIB shall be entitled to encash the Performance Security with a notice to the Concessionaire (**“Encashment Notice”**); and
 - B. if the default is not cured within 30 (thirty) days of the Encashment Notice and a fresh Performance Security is not furnished within the same period in accordance with Clause 4.1(b), DUSIB shall be entitled to issue the Termination Notice.
 - (ii) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement :
 - A. The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
 - B. The Cure Period shall not in any way be extended by any period of suspension under this Agreement; and
 - C. If the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by DUSIB or the Government Agency hereunder the applicable Cure Period shall be extended by the period taken by DUSIB or the Government Agency to accord the required approval.

(iii) Upon Termination by DUSIB on account of occurrence of a Concessionaire Event of Default during the Operations Period, the DUSIB shall pay to the Concessionaire by way of Termination Payment an amount equal to 90% (ninety percent) of Total Balance Value of MTV less pending insurance claims, if any.

(iv) Upon Termination by DUSIB on account of occurrence of a Concessionaire Event of Default before the COD, no Termination Payment shall be made to the Concessionaire.

(b) Termination for DUSIB Events of Default

(i) The Concessionaire may, upon the occurrence and continuation of any of DUSIB Event of Default terminate this Agreement by issuing Termination Notice to DUSIB.

(ii) Upon Termination of this Agreement by the Concessionaire due to a DUSIB Event of Default, the Concessionaire shall be entitled to receive from DUSIB, by way of Termination Payment a sum equal to of the Total Balance Value of MTV less pending insurance claims, if any.

14.3 Rights of DUSIB on Termination

Upon Termination of this Agreement for any reason whatsoever, DUSIB shall have the power and authority to

(a) take possession and control of Project Facilities forthwith;

(b) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Facilities /dealing with or any part thereof;

(c) step in and succeed upon election by DUSIB without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as DUSIB may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Agreements. Provided any sums claimed by such counter party as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date of election shall and shall always constitute debt between the Concessionaire and such counter party and DUSIB shall in no way or manner be liable or responsible for

such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provision of this Clause 14.3.

14.4 Termination Payments

The Termination Payment pursuant to Article 13 or 14 as the case may be, shall be payable to the Concessionaire by DUSIB within thirty days of demand being made by the Concessionaire with the necessary particulars duly certified by the Statutory Auditors. If DUSIB fails to pay Termination Payment in full within the said period of 120 (one hundred twenty) days, the amount remaining unpaid shall be paid along with interest @ SBI PLR plus two percent from the Termination Date till payment.

14.5 Mode of Payment

Notwithstanding any instructions to the contrary issued or any dispute raised by the Concessionaire, the Termination Payment, and all other payments that would become payable by DUSIB under any of the provisions of this Agreement shall be made only by way of credit directly to a bank account designated therefor and advised to DUSIB and the Concessionaire in writing. Any payment so made shall to the extent of such payment constitute a valid discharge to DUSIB of its obligations towards the Concessionaire with regard to the Termination Payment and payment of any other monies due hereunder.

14.6 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 either 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 either 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.

ARTICLE 15: CHANGE IN LAW

15.1 Change in Law

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 20,00,000/- (Rupees twenty lakhs only) in any Accounting year, the Concessionaire may notify the same to DUSIB/the Project Steering Committee and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid.

15.2 Extension of Concession Period

The Project Steering Committee shall upon being notified by the Concessionaire of the Change in Law and the proposed amendments to this Agreement, assess the change in the financial position as a result of such Change of Law and determine the extension to the Concession Period so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law and recommend the same to DUSIB. DUSIB shall, within 30 (thirty) days of receipt of such recommendation, extend the Concession Period by such period as has been recommended by the Project Steering Committee.

ARTICLE 16: HANDOVER AND DEFECT LIABILITY PERIOD

16.1 Handing Over of the Project Facilities

Upon the expiry of the Concession by efflux of time and in the normal course, the Concessionaire shall at the end of the Concession Period, hand over peaceful possession of the Project Facilities / Project Site at no cost to DUSIB.

16.2 Joint Inspection and Removal of Deficiency

The handing over process shall be initiated at least 6 (six) months before the actual date of expiry of the Concession Period by a joint inspection by the DUSIB and the Concessionaire. The DUSIB shall, within 15 (fifteen) days of such inspection prepare and furnish to the Concessionaire a list of works/jobs/ additions/ alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least 2 (two) months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works, within the stipulated time period the DUSIB shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire and any cost incurred by DUSIB in this regard shall be reimbursed by the Concessionaire to DUSIB within 7 (seven) days of receipt of demand. For this purpose, DUSIB shall without prejudice to any other right/remedy available to it, under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by DUSIB to the Concessionaire to the extent required/ available and to recover deficit amount, if any, from the Concessionaire.

16.3 DUSIB's Obligations

DUSIB shall, subject to DUSIB's right to deduct amounts from the Performance Guarantee towards:

- (a) carrying out works/jobs listed under Clause 16.2, which have not been carried out / reimbursed by the Concessionaire; and
- (b) any outstanding dues, which may have accrued in respect of the Project during the Concession Period.

discharge and release to the Concessionaire the Performance Security within 3 (three) months from the date of expiry of the Concession Period, or early Termination of this Agreement.

ARTICLE 17: DISPUTE RESOLUTION

17.1 Amicable Resolution

- (a) Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including incompleteness of the Project between the Parties and so notified in writing by either Party to the other (the “**Dispute**”) in the first instance shall be attempted to be resolved amicably by the Project Steering Committee and failing resolution of the same in accordance with the procedure set forth in sub-clause (b) below.
- (b) Either Party may require the Dispute to be referred to the Chief Executive Officer of DUSIB and the Chairman of the Board of Directors of the Concessionaire, for the time being for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 17.2 below.

17.2 Arbitration

(a) Arbitrators

Any Dispute which is not resolved amicably as provided in Clause 17.1(a) shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. A Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If the other Party fails to appoint its arbitrator, the Party appointing arbitrator shall take steps in accordance with Arbitration Act.

(b) Place of Arbitration

The place of arbitration shall be New Delhi but by agreement of the Parties, the arbitration hearings, if required, can be held elsewhere from time to time.

(c) English Language

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

(d) Procedure

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

(e) Enforcement of Award

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

(f) Fees and Expenses

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

(g) Performance during Arbitration

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

ARTICLE 18: REPRESENTATIONS AND WARRANTIES, DISCLAIMER

18.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to DUSIB that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association, byelaws, trust deed or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) 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;

- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (j) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (k) each member of Consortium was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested DUSIB to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (l) subject to receipt by the Concessionaire from DUSIB of the Termination Payment and any other amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Facilities shall pass to and vest in DUSIB on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or DUSIB;
- (m) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to DUSIB or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (n) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into of this Agreement or for influencing or attempting to influence any officer or employee of DUSIB in connection therewith.

18.2 Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the traffic volumes, Specifications and Standards, Project Site and all the information provided by DUSIB, and has determined to

the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in (a) above and hereby confirms that DUSIB shall not be liable for the same in any manner whatsoever to the Concessionaire.

18.3 Representations and Warranties of DUSIB

DUSIB represents and warrants to the Concessionaire that:

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

ARTICLE 19: MISCELLANEOUS

19.1 Personnel

- (a) Personnel assigned by the Concessionaire to implement the Project shall be employees of the Concessionaire, and under no circumstances will such personnel be considered employees of DUSIB. The Concessionaire shall have the sole responsibility for supervision and control of its personnel and for payment of such personnel's entire compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all applicable laws and the DUSIB shall not have any direct or indirect liability or obligation, to pay any charges, claims or wages of any of employee, agents, and contractors of Concessionaire.
- (b) The Concessionaire shall use its best efforts to ensure that sufficient Concessionaire's personnel are employed to implement the Project, and also that such personnel have appropriate qualifications to implement the Project. The DUSIB shall have the right to require the removal or replacement of any Concessionaire personnel performing work under the Agreement. In the event that the DUSIB requests that any Concessionaire personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule, but not later than 3 (three) working days.
- (c) Except as stated in this Clause, nothing in this Agreement or the Service Level Standards will limit the ability of Concessionaire or any Concessionaire freely to assign or reassign its employees.
- (d) The Concessionaire may sub-contract part of the Project to a Contractor possessing requisite technical, financial and managerial expertise/ capability; but the Concessionaire shall remain solely responsible to meet the requirements set out in this Agreement.
- (e) Liability for the Actions of the Personnel and Contractors
 - (i) The Concessionaire agrees to be responsible for managing the activities of its personnel or the personnel of its contractors and shall be accountable for both.

- (ii) The Concessionaire shall be fully responsible for the acts or omissions of all its employees, agents, workmen, suppliers, consultants, contractors and any other persons for whom it is contractually responsible for, as if such acts of omissions were its own.
- (iii) The Concessionaire shall be the principal employer of the employees, agents, contractors, etc. engaged by it and shall be liable for all the acts, deeds or things, whether the same is within the scope of instructions or outside the scope of instructions set out in the Agreement.

The Concessionaire agrees to hold the DUSIB, its successors, assignees employees, representatives and administrators fully indemnified and harmless against loss or liability, claims actions or proceedings, if any, that may arise from whatsoever nature caused to the DUSIB through the action of the Concessionaire's employees, agents, contractors, etc

19.2 Assignment and Charges

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

19.3 Liability And Indemnity

- (a) General Indemnity
 - (i) The Concessionaire shall indemnify, defend and hold DUSIB harmless against any and all proceedings, actions and, third party claims arising out of a breach by Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to DUSIB Event of Default; and
 - (ii) DUSIB will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of DUSIB and/or arising of a breach by DUSIB, its officers, servants and agents of any obligations of DUSIB under this Agreement except to the extent that any such claim has arisen due to Concessionaire Event of Default
- (b) Without limiting the generality of this Clause 19.3 the Concessionaire shall fully indemnify, save harmless and defend DUSIB including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) payments of taxes relating to the Concessionaire's Contractors, suppliers and representatives income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- (c) Without limiting the generality of the provisions of this Clause 19.3, the Concessionaire shall fully indemnify, save harmless and defend the DUSIB from and against any and all damages which the DUSIB may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the

Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for DUSIB a license, at no cost to DUSIB, authorising continued use of the infringe work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

- (d) the Concessionaire shall further indemnify, defend and hold harmless DUSIB 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.
- (e) In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause 19.3 (the **"Indemnified Party" or "Board"**) it shall notify the other Party (**"Indemnifying Party"**) within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.
- (f) Defence of Claims
 - (i) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Clause 21.3, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for

the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or settled;

- (ii) If the Indemnifying Party has exercised its rights under Clause 19.3(e) above, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the indemnifying Party (which consent shall not be unreasonably withheld or delayed);
- (iii) If the Indemnifying Party exercises its rights under Clause 19.3(e) above, then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:
 - A. the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - B. the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - C. the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - D. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either
 - (a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (b) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement,

provided that if sub-clauses (B), (C) or (D) of Clause 19.3(f)(iii) shall be applicable, counsel for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

19.4 Indirect or Consequential Losses

Neither Party under this Agreement shall be responsible/liable to the other party in contract, tort, warranty, strict liability or any other legal theory for indirect, incidental, punitive, or consequential loss or damage or loss of profit resulting from the performance of obligations or the exercise of rights under or pursuant to the Agreement.

19.5 Business Risks

Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the other Project Agreements at its own cost and risk. The Concessionaire be fully responsible for and shall bear the financial, commercial and business risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the other Project Agreements.

19.6 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 New Delhi, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

19.7 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.

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

19.8 Survival

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

19.9 Amendments

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

19.10 Notices

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

If to DUSIB

Fax No. -----

If to the Concessionaire

,
-----,

Fax No. -----

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

19.11 Severability

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

19.12 Joint and Several Liability¹³

The Concessionaire do hereby undertake that all the Members of the Consortium shall be jointly and severally responsible for all obligations and liabilities relating to the Project in accordance with provisions of this Concession Agreement, during the entire Concession Period.

19.13 No Partnership

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

¹³ To be deleted, in case Concessionaire is a single entity

19.14 Language

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

19.15 Exclusion of Implied Warranties etc.

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

19.16 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of _____ by

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE

SCHEDULES

Schedule A

List of Points of Service

Sl. No	Name of Division of DUSIB	Name of JJ Cluster	New Cluster code	Number of Indicative Users	Number of Proposed MTVs
1.	C-6	Suhurpuri Satbari Mehrauli	380	1500	1
2.	C-6	Dr. Ambedker Colony Andheria More Mehrauli	383	300	1
3.	C-6	Chattar Pur Pahari Mehrauli	384	1250	1
4.	C-6	Dr. Ambedkar Colony Satwari Mehrauli	379	1500	1
5.	C-6	Harijan Camp Khanpur & Banjara Camp Opposite PNB Khanpur	536	2000	1
6.	C-6	Sonia Gandhi Camp Pul Prahlad Pur Railway Line Tuglka Bad	91	2750	1
7.	C-6	Ram Pyari Camp Near Nangia Park Lal Kuan	92	750	1
8.	C-6	Mazdoor Kalyan Camp Plot No. A-7,8,12 & Back Lane of A-9 to A-17 Okhla Industrial Area Phase I	657	2750	2
9.	C-6	Mazdoor Kalyan Camp in Back Lane of Plot No. B-317 To B-319 and B-254 To B-250 Okhla Industrial Area Phase-I	284	750	1
10.	C-6	New Sanjay Camp Opposite E-44 Near Mohan Export at Okhla Phase-I	658	3000	1
11.	C-6	New Sanjay Camp Opposite Plot No. A-27 & Back Lane of A-7 To A-35 Okhla Industrial Area Phase-I	660	500	1

Sl. No	Name of Division of DUSIB	Name of JJ Cluster	New Cluster code	Number of Indicative Users	Number of Proposed MTVs
12.	C-6	Majdoor Kalyan Camp in Plot No.W-1 to W-5 and Back Lane Okhla Industrial Area Phase II	164	2050	2
13.	C-6	Yog Shala Camp in Park Near ESS Opposite D-159 Okhla Industrial Area Phase-I	672	900	1
14.	C-6	New Sanjay Camp at Road Berm Inside Lane of E -34, Okhla Industrial Area Phase-II	189	250	1
15.	C-6	Manav Kalyan Camp Z-Block in Back of Plot No.47 To 49 Okhla Industrial Area Phase.II	159	250	1
16.	C-6	Majdoor Camp B Block Plot No.B-122 & Back Lane of B-118 to B-123 Okhla Industrial Area Phase-I	666	500	1
17.	C-6	Majdoor Camp Block. B in Plot No. B-130 & 131 & Its Back Lane Okhla Industrial Area Phase-I	662	1000	1
18.	C-6	Majdoor Camp Plot No.B-145, B-147, B-150 & Its Back Lane of B-143 To B-150 Okhla Industrial Area Phase-I	665	1500	2
19.	C-6	Sanjay Colony Block.C-62/1, Okhla Industrial Area Phase II	675	1000	1
20.	C-6	Amar Jyoti Camp Okhla Phase-I	286	500	1
21.	C-6	G-Block Harikesh Nagar Okhla Industrial Area Phase-II	156	4000	1

Sl. No	Name of Division of DUSIB	Name of JJ Cluster	New Cluster code	Number of Indicative Users	Number of Proposed MTVs
22.	C-6	Janta Jeewan Between Park and Plot No. D-11/1, 11/2,11/4& Back Lane of D-11/4 To D-8/1 Okhla Industrial Area Phase-II	180	1500	1
23.	C-6	Mazdoor Camp in Plot No. B-295 & Back Lane of B-292 to B-301 Okhla Industrial Area Phase-I.	293	300	1
24.	C-6	Ambedkar Camp Okhla Phase-I	285	1000	1
25.	C-6	Janta Jeewan Camp in Plot No. C-43 on 30 Feet Road Okhla Industrial Area Phase-II	175	1500	1
26.	C-6	Janta Jeewan Camp Along Drain Opposite DSISDC Shed Z-Block Okhla Industrail Area Phase-II	178	250	1
27.	C-6	Back Lane of 151 to 159 Okhla Industrial Area Phase-I	294	250	1
28.	C-6	Sanjay Colony in Plot No.C 54/4 & Back Lane 54/1 to 54/4 Okhla Industrial Area Phase-II	187	750	1
29.	C-6	Sanjay Colony Y Block at No.Y-5 to Y-8 and Back Lane of Y-1 to Y-12 and ESS Okhla Industrial Area Phase-II	158	4000	1
30.	C-6	Yog Shala Camp in Back Lane of D-153 to D-157 Okhla Industrial Area Phase-I	669	250	1
31.	C-6	Yog Shala Camp in Back Lane of D-120 to D-126 Okhla Industrial Area	668	200	1

Sl. No	Name of Division of DUSIB	Name of JJ Cluster	New Cluster code	Number of Indicative Users	Number of Proposed MTVs
		Phase-I			
32.	C-6	Yog Shala Camp in Park Opposite D-42 Okhla Industrial Area Phase-I	670	200	1
33.	C-6	Yog Shala Camp in Back Lane of D-56 to D-60 Okhla Industrial Area Phase-I	671	250	1
34.	C-6	Yog Shala Camp in Plot No. D-88/6 Okhla Industrial Area Phase-I	673	200	1
35.	C-6	Gandhi Camp west Tughalakabad	0	225	1
36.	C-6	Loharbasti T-point near red light Lal kuan MB Road Badarpur	0	750	1
37.	C-6	Rodi Bajri Camp Badarpur	0	250	1
		Total		40875	40

Specifications and Standards of MTVs

The Concessionaire shall furnish Design & Drawing of prefab MTV confirming to below technical specification: -

1. **Technology:** MTVs design, specification, inoculum and other parameters shall be approved by the DRDE/ DRDO, Gwalior for the same.
2. **Main Chassis:** The main chassis shall be fabricated by using M.S. Channel of size 150 x 75 mm including intermediate supports.
3. **Base Frame:** Base frame shall be fabricated by using M.S. Channel 75 x 40 including intermediate cross support for making comprising of 10 nos. Toilets (W.C. Seats- 8 Indian style and 2 European style) base on the main chassis.
4. **Front & Rear Suspension Bracket/Chassis:** The front suspension bracket/chassis shall be fabricated approximate to the size 1.30 x 1.00 mt for mounting front suspension fitting and rear chassis to the size 1.17 x 1.00 mt for mounting rear suspension components using M.S. Channel of size 100 x 50 mm under the main chassis.
5. **Turn table arrangement & Towing Bracket:** The turn table arrangement shall be fabricated by using M.S. Flat 65 x 10 mm, M.S. Bearing holder & 2 nos. Ball bearing for proper turning the MTV etc. The towing bracket shall be made by using M.S. Channel of size 100 x 50 mm of proper size including towing hook made of M.S. Round bar 760 x 32.50 mm hardened & proper size helical spring etc.
6. **Cabin structure:** The cabin structure shall be fabricated by using M.S. Tee and M.S. Angle (vertical member) of size not less than 50 x 50 x 6 mm to accommodated 10 nos. cabins & door shutter. The partition walls of cabins shall be provided by using of suitable thickness Machine pressed Fibre Glass Reinforced Plastic (FRP) panels in required finish as approved by the DUSIB made with fire-retardant grade unsaturated polyester resin, moulded to 3 mm thick FRP laminate all round with suitable wooden blocks inside at required places for fixing of fittings and polyurethane foam (PUF) / Polystyrene foam to be used as filler material throughout the hollow panel, casted monolithically with testing parameters of F.R.P. laminate conforming to table -3 of IS 14856 - 2000 complete shall be fixed of proper size with the help of suitable nut & bolts on the existing vertical members.

7. **Door Shutters:** 30 mm thick Machine pressed Fibre Glass Reinforced Plastic (FRP) flush door shutter in different plain and wood finish made with fire-retardant grade unsaturated polyester resin, moulded to 3 mm thick FRP laminate all round with suitable wooden blocks inside at required places for fixing of fittings and polyurethane foam (PUF) / Polystyrene foam to be used as filler material throughout the hollow panel, casted monolithically with testing parameters of F.R.P. laminate conforming to table -3 of IS 14856 - 2000 complete as per direction of DUSIB with all door fitting and locking bolt etc. shall be provided on each door.
8. **Sludge tank and connection:** The sludge tank of minimum capacity of **3000 litres** shall be fabricated of suitable size for 10 seater MTV by using FRP material strictly according to approved norms, Design, specification and other parameters as approved by the DRDO for bio- digester Technology. The disposal arrangement shall be made by providing 1no. Gate valve and hose pipe.
9. **Additional Sludge tank:** In case, the Concessionaire believes that the results of Tests are not confirming to the prescribed standards due to overuse of the MTV/s, the Concessionaire may install additional bio-digester type sludge tanks of adequate capacity with the existing sludge tank of MTV/s. No separate payment shall be made for installation and connection of the additional bio-digester type sludge tanks.

In case the Concessionaire feels the necessity for additional provisions even after providing additional sludge tank at any Point of Service as per the provisions of the Concession Agreement, the Concessionaire shall notify to DUSIB and DUSIB at its own discretion shall make available space for such additional provisions.

10. **Roof structure:** The roof structure shall be fabricated by using 2mm thickness Fiber Glass Reinforced Plastic (FRP) panelled of required colour, made with fire-retardant grade unsaturated polyester resin including projection on both sides with the help of 8 no. size nut bolts and washers and with proper overlapping etc.
11. **Water storage & supply arrangement:** Two Water storage tanks of 500 litres capacity each of ISI marked shall be provided and PVC Pipe fitting conforming to IS specifications shall be done for providing water through tap in each cabin. Wash basin of superior quality for washing hands and looking mirror of superior quality shall also be provided in the MTV at appropriate place. The connection of waste pipes of wash basin shall be connected to disposal pipe by using P-Trap as approved by DUSIB.
12. **Electrification of MTV:** The electrification shall be done by providing bulkhead fitting in each cabin and on each side of ladies and gents for compound lighting etc. The internal wiring shall be done by using PVC Batten/Pipe along with copper wire

of ISI marked making the control arrangement through MCB of 16 amp of ISI marked each side etc.

13. **Suspension arrangement:** Suspension arrangement shall be made by providing 2 nos. M.S. Square axle of size 1.72 x 75 mm fitted with C.I Hubs of bearing no. 32213 on both ends including 2 nos. taper rolling bearing no. 32213 in each hub etc. The axles shall be fitted along with 2 nos. leaf springs of size 914 x 13 plates made up of M.S. Flat of size 70 x 10 mm suitable to bear a load of 5 tons. Each leaf spring fitted with the help of suspension assembly i.e. brackets-3 nos., jhulla-1 no., cotter pin-3 nos., shackle pin-3 nos., thrust washer 6 nos., G.I. nut bolts and washers, 6 nos. on each leaf spring and also with the help of U-bolts of size 280 x 12 mm and M.S. base plate of size 100 x 100 x 12 mm thick and M.S. Thippa etc. The pneumatic tyres of size 750 x 16 mm of make with tube & flap make shall be provided duly fitted with M.S. Rims of proper size and stud nuts etc.

14. **Painting of MTV:** The complete M.S. Sections of all sizes shall be coated primarily with red oxide primer and thereafter painted with two coats of synthetic enamel paint of make Nerolac/Berger/Asian “full gloss” hard drying in required shade as approved by DUSIB.

Maintenance Requirements

1. Maintenance requirements

1.1 General

1.1.1 The Concessionaire shall comply with the Maintenance Requirements set out in this Schedule. In doing so, the Concessionaire shall ensure that the Project Facilities are maintained to the Specifications and Standards and also meet the other requirements as set out in the Agreement.

1.1.2 In the design, planning and implementation of all works and functions associated with the operation and maintenance of the Project Facilities, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging conductors, if any, agents and employees) in such manner, as will:

- a) Keep the Project Facilities from undue deterioration and wear and tear.
- b) Ensure the safety of personnel deployed for operation & maintenance of facilities like pump house, lifts, street lighting, common area lighting etc.

1.2 O&M Plans

1.2.1 Prior to making application for the Completion Certificate for the Project Facilities the Concessionaire shall finalise in consultation with the Project Steering Committee the O&M Plan (including the formats for the reports to be submitted after the issuance of Completion Certificate).

1.3 Facilities to be maintained during the Maintenance Period

1.3.1 The following facilities shall be maintained by the Concessionaire during the Maintenance period.

Component	Parameter	Periodicity
Water tank	General cleanliness Tank emptying & cleaning Check for leaks	Regular Half yearly
Waste water drains	Blockage & weed removal Minor repair Major repair	Before monsoon Half yearly & before monsoon Yearly
Structures	General cleanliness White washing - outside Check for structural stability Check for flooring, windows & doors	Regular Yearly Yearly Yearly
Common areas	General cleanliness Check for flooring, staircase handrails	Regular Yearly
Signage	General cleanliness Repainting Check for stability	Regular Once in 2 years Yearly
Lighting	Check whether lights are working	Regular

1.4 Routine Maintenance Standards

1.4.1 In order to ensure smooth and uninterrupted operations, routine maintenance of the Project Facilities shall include but not be limited to:

- a) Prompt repairs of the Project Facilities;
- b) Replacement of equipment/consumables and repairs to equipment, structures and other civil works which are part of the Project Facilities;
- c) Keeping the Project Facilities in a clean, tidy and orderly condition and taking all practical measures to prevent damage to same;
- d) Periodic maintenance & cleaning of sewerage system lines.
- e) To up keep the drainage system by cleaning the lines & drains at regular intervals.
- f) Replacement of broken cover & frames of manholes of sewerage & drainage system.
- g) Cleaning of chocked lines.

- h) Repairs of water leakages.
- i) Maintenance of door fixtures including replacement of defective fixtures.
- j) Functionality of all controls & indications i.e. flush button/lever, water taps,
- k) All periodic, annual and preventive maintenance as directed by Project Steering Committee as per Good Industry Practices and to meet the Specifications and Standards as specified in this Agreement.
- l) Undertaking maintenance works in accordance with the O&M Plan.
- m) Maintain a register with the details of cleaning activities undertaken at the Project Facilities. The Project Facilities shall be cleaned at least twice daily ie once in the morning and once in the evening. The male person shall be deployed for cleaning the Project Facilities pertaining to male and female person shall be deployed for cleaning the Project Facilities pertaining to female.

1.4.2 The Concessionaire, for the purpose of routine maintenance shall, in consultation with the Project Steering Committee, set forth such criteria as to conform to Good Industry Practice for sound maintenance of the Project Facilities.

1.4.3 The Concessionaire shall regularly carry out the necessary preventive maintenance activities for the Project Facilities.

1.4.4 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of all the defects and deficiencies in the Project Facilities.

1.5 Emergency Maintenance

1.5.1 The Emergency Response Protocol (“ERP”) shall be developed by the Concessionaire in consultation with the Project Steering Committee for the operation & maintenance of Project Facilities.

1.5.2 The ERP shall set out steps to be taken and measures to be adopted by the Concessionaire in responding to dealing with Emergency and force majeure as follows:

- a) In the event of an Emergency, the Concessionaire shall immediately carry out an inspection of the area affected by the Emergency. Where Emergency has necessitated closure of any Project Facilities or part thereof, the Concessionaire shall promptly carry out any repair works necessary to restore the Project Facilities to safe & operating condition and in any event shall carry out such works before the affected area of the Project Facilities is used for normal operations.

- b) The Concessionaire shall ensure that sufficient staff, plant, equipment and materials, including are available to respond to Emergency within reasonable period at all times during the active Operations Period.

1.5.3 In case of Emergency, the Concessionaire shall carry out such emergency maintenance and repairs as may be required to repair the damages, if any, in consultation with the Project Steering Committee in order to ensure that the facilities are returned to normal operating standards as quickly as possible.

1.6 Inspections & Frequency

1.6.1 The Concessionaire shall plan inspection programme for the Project Facilities for its smooth operations as follows:

- a) **Visual Inspection:** Visual Inspections are broad general inspections carried out frequently by maintenance personnel having adequate skills/ knowledge. The purpose of visual inspection is to report fairly obvious deficiencies, which could lead to accidents or maintenance problems. Such inspections should be frequent. The visual inspection may be carried out by visual assessment with careful observation of the specific object/item of the Project Facilities for identification and for quantification of the deficiencies or damages of the Project Facilities.
- b) **Close Inspection:** Close inspections may be visual and/or by standard instrumental aids for assessment of defects/deficiencies of the Project Facilities with careful observation of specific element(s). The close inspection would require detailed examination of the specific element of the Project Facilities and should cover all the aspects against a checklist. This inspection is to be carried out by the skills professional having good knowledge of the specific element to analysis the nature, and extent of defects/deficiencies, suggest suitable remedial measures to rectify/remedy them and quantify repair work.
- c) **Thorough Inspection:** Such an inspection is to be carried out on the basis of comprehensive checklist of items related to the materials, condition and situation of the structure etc. This inspection is to be carried out by the engineer having good knowledge of the specific element to analysis the nature, and extent of defects/deficiencies, suggest suitable remedial measures to rectify/remedy them and quantify repair work.

1.6.2 Frequency of Inspections

- a) The type of inspection and related frequency of various items of Project Facilities have been indicated in the Table below. The frequency of inspection can be suitably

revised in consultation with the Project Steering Committee if the situation so warrants.

Asset	Daily	Monthly	Quarterly	Before and after Rainy Season
Information Boards/ Signage's	V	C	T	-
Staircases	V	C	T	T
Doors and Windows	V	C	T	-
Collection and disposal of waste water /drainage/ Sewerage/ waste treatment tank.	V	C	T	
Electrical Installations	V	C	T	T
General Cleanliness / mal odour/stench	V	C	-	-
Water Supply	V	C	T	-
Building structures/ Common areas	-	V	C	

LEGEND :

V : Visual inspection

C : Close inspection

T : Thorough inspection

1.7 Major Maintenance Work

1.7.1 The Concessionaire shall be responsible at his own cost, for all maintenance and repairs of the Project Facilities. The above and the other necessary standards shall conform to norms as laid out other relevant BIS codes / IS codes / NBC codes for functional requirements of building etc. The performance standards shall match the service standard of comparable International Practice for buildings.

Schedule D

User Charges

The User Charges which the concessionaire can demand from the users of the Project Facilities is as follows:

Sl. No.	Type of Usage	User Charges (in Rs)
1	One time usage	Re. 1.00
2.	Monthly Pass for 5 (five) number of a family for a period one month (including cost of the pass). In case, monthly pass is issued for a period of less than one month that the User Charges shall be proportionally reduced.	Rs. 100.00

Schedule E

List of tests

1. The test shall be conducted before the issue of the Completion Certificate the following parameters shall be tested and acceptable values for these parameters shall be the same as prescribed by DRDO/ DRDE, Gwalior from time to time.

S. No.	Test	Limit (maximum)	Protocols
1	pH	7.0 to 7.2	IS: 3025 (P-11)
2.	Total Suspended Solids	90 to 120 mg/L	IS: 3025 (P-17)
3.	Total Volatile solids	20 to 30 mg/100 ml	IS: 3025 (P-18)
4	Total Dissolved solids	350 to 450 mg/L	IS: 3025 (P-16)
5	Biochemical Oxygen Demand (for 3 days at 27 Deg. C)	70 to 120 mg/L	IS:3025 (P-44)
6	Chemical Oxygen Demand (CoD)	250 to 300 mg/L	IS: 3025 (P-58)
8	Turbidity	70 to 90 NTU	IS: 3025 (P10)
9	Total Coliform (By MPN Method)	300 to 350/100 ml	IS: 1622

2. All the tests shall be conducted only in National Accreditation Board for Testing and Calibration Laboratories (**NABL**) accredited laboratory or any other laboratory agreed upon by DUSIB.
3. For the tests conducted during the Operations Period as per this Agreement, the acceptable values for the parameters shall be values prescribed by DRDO/ DRDE, Gwalior on the date of the tests. During the Operations Period, the tests may vary as per the requirement of DRDO/ DRDE, Gwalior.

Service Level Standards

1. General

- 1.1. The Concessionaire shall be responsible for the complete solution covering the entire Scope of Work that includes technological solution, consumables, skilled human resources to facilitate and deliver the desired services to the including the incidental activities related thereto.
- 1.2. The Concessionaire shall give due weightage to the objective of the DUSIB to provide environmental friendly services to all the users.
- 1.3. The solution provided by the Concessionaire shall be reliable and scalable and shall conform to general industry practices.
- 1.4. The Concessionaire shall provide the services in comprehensible (simple and easy to understand) manner to the users and the conduct of its representatives shall assist DUSIB in meeting the objectives of the Project.
- 1.5. The Concessionaire shall deploy/ implement the solution at all the active Project Site/s within the service area at any point of time.
- 1.6. The performance standards shall be measured as per their frequency by the Project Steering Committee through appropriate measurement tools to be designed by it for the purpose.
- 1.7. If the performance of the Concessionaire is degraded significantly at any given point in time during the Concession Period then DUSIB shall have the right to take appropriate corrective actions including termination of this Agreement.
- 1.8. The performance standards defined in this Schedule shall be reviewed after every 2 (two) years by DUSIB in consultation with the Concessionaire to take any corrective measures and the subsequent changes shall be adhered by the Concessionaire.

2. Performance Review

Sl. No.	Performance Parameter	Performance Indicator	Who would check	When it would be checked	Penalty for Non-performance
1.	Operation of MTV	All the MTVs to be functional on 24/7 basis.	Project Steering Committee	Daily	<ol style="list-style-type: none"> 1. A penalty of Rs. 200/- per MTV would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities in any month 2. A penalty of Rs. 600/- per MTV would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities in any month. 3. A penalty of Rs. 1,000/- per MTV would be payable for the three to seven events of non-conformity with specified performance indicators in the Project Facilities in any month. 4. More than 7 events of non-conformity with specified performance indicators in the Project Facilities in any month would be deemed as Concessionaire Event of Default.
2.	Cleanliness	Project Facilities shall be kept neat and clean.	Project Steering Committee	Daily	<ol style="list-style-type: none"> 1. A penalty of Rs. 200/- per MTV would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities in any month 2. A penalty of Rs. 600/- per MTV would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities in any month. 3. A penalty of Rs. 1,000/- per MTV would be payable for the three to seven events of non-conformity with specified performance indicators in the Project Facilities in any month. 4. More than 7 events of non-conformity with specified performance

Sl. No.	Performance Parameter	Performance Indicator	Who would check	When it would be checked	Penalty for Non-performance
					indicators in the Project Facilities in any month would be deemed as Concessionaire Event of Default.
3.	Maintenance	(i) All fittings and fixtures to be in functional/working condition; (ii) 24/7 availability of water; and (iii) Availability of power from 6:00pm to 6:00 am	Project Steering Committee	Weekly	<ol style="list-style-type: none"> 1. A penalty of Rs. 200/- per MTV would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities in any month 2. A penalty of Rs. 600/- per MTV would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities in any month. 3. A penalty of Rs. 1,000/- per MTV would be payable for the three to seven events of non-conformity with specified performance indicators in the Project Facilities in any month. 4. More than 7 events of non-conformity with specified performance indicators in the Project Facilities in any month would be deemed as Concessionaire Event of Default.
4.	Access to Project Facilities	Provide access to all users	Project Steering Committee	Weekly	<ol style="list-style-type: none"> 1. A penalty of Rs. 200/- per MTV would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities in any month 2. A penalty of Rs. 600/- per MTV would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities in any month. 3. A penalty of Rs. 1,000/- per MTV would be payable for the three to seven events of non-conformity with specified performance indicators in the Project Facilities in any month. 4. More than 7 events of non-conformity with specified performance indicators in the Project Facilities in any month would be deemed as

Sl. No.	Performance Parameter	Performance Indicator	Who would check	When it would be checked	Penalty for Non-performance
					Concessionaire Event of Default.
5.	Fees: Overcharging of Fees from Users	Fees to be charged by the Concessionaire as per the Agreement	Project Steering Committee	Daily	<ol style="list-style-type: none"> 1. A penalty of Rs. 1,000/- would be payable for the first event of non-conformity with specified performance indicators in any month. 2. A penalty of Rs. 3,000/- would be payable for the second event of non-conformity with specified performance indicators in any month. 3. A penalty of Rs. 5,000/- would be payable for the third, fourth and fifth event of non-conformity with specified performance indicators in any month. 4. More than 5 events of non-conformity with specified performance indicators in any quarter would be deemed as Concessionaire Event of Default.
6.	Record Keeping (as per format prescribed by DUSIB)	Maintain proper record of (i) attendance register for the caretakers and sweepers; (ii) cleaning register of MTVs; (iii) Cash Book; (iv) Complaint Register ; and (v) Sharing of information/reports as per the Agreement.	Project Steering Committee	Monthly	<ol style="list-style-type: none"> 1. A penalty of Rs. 1,000/- would be payable for the first event of non-conformity with specified performance indicators in any month. 2. A penalty of Rs. 3,000/- would be payable for the second event of non-conformity with specified performance indicators in any month. 3. A penalty of Rs. 5,000/- would be payable for the third event of non-conformity with specified performance indicators in any month. 4. More than 3 events of non-conformity with specified performance indicators in any quarter would be deemed as Concessionaire Event of Default.

Format of Performance Security

(Performa of Bank Guarantee)¹⁴

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

In favour of _____ Delhi Urban Shelter Improvement Board, having it's office at _____, New Delhi-110002 (hereinafter referred to as “DUSIB”, which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS

- a. By the Concession Agreement being entered into between the DUSIB and _____, a company incorporated under the _____ Act¹⁵, _____, having its registered office at _____, (“the Concessionaire”), the Concessionaire has been granted the concession for installation, operation maintenance and management of bio-digester enabled mobile toilet vans (“MTV”) at Group A locations in Delhi accordance with conditions set out in this Agreement (hereinafter referred to as “the Project”).
- b. In terms of Article 4 of the Concession Agreement, the Concessionaire is required to furnish to the DUSIB, an unconditional and irrevocable bank guarantee for an amount of Rs. 15.0 Lakhs/- (Rupees Fifteen Lakhs Only) as security for due and punctual performance / discharge of its obligations under the Concession Agreement.

At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance / discharge by the Concessionaire of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

14 To be issued by a Scheduled Bank in India

¹⁵ Strikeout reference if Act incase the Selected Bidder is a Sole Proprietorship Firm

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

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s _____ (hereinafter called “the Concessionaire”) of all its obligations relating to the Project by the Concessionaire in accordance with the Concession Agreement.
2. The Guarantor shall, without demur, pay to the DUSIB sums not exceeding in aggregate Rs. _____/- (Rupees _____ Only), within 5 (five) calendar days of receipt of a written demand therefor from the DUSIB stating that the Concessionaire has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the DUSIB and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor’s obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
3. In order to give effect to this Guarantee, the DUSIB shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by the DUSIB or any indulgence shown by the DUSIB to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by the DUSIB or any indulgence shown by the DUSIB, provided nothing contained herein shall enlarge the Guarantor’s obligation hereunder.
4. This Guarantee shall be irrevocable and shall remain in full force and effect until _____¹⁶ unless discharged/released earlier by the DUSIB in accordance with the provisions of the Concession Agreement. The Guarantor’s liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only).
5. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire / the Guarantor or any absorption, merger or

16 - -----th day from the Effective Date

amalgamation of the Concessionaire / the Guarantor with any other Person.

6. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

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

by _____ Bank

by the hand of Shri _____

its _____ and authorised official.

Fee Payment Schedule

S. No.	Date	Amount (in figures)	Amount (in words)
1.			
2.			
3.			
-			

Project Steering Committee

1. General

- 1.1. The Project Steering Committee shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and good industry practice.
- 1.2. The Project Steering Committee shall facilitate smooth implementation and operation of the Project. Broadly, the role of the Project Steering Committee is to:
 - (a) Independently review, monitor and where required by the DUSIB, to approve activities associated with implementation of the Project to ensure compliance with the provisions of the Agreement;
 - (b) Monitor the operation, maintenance and management of the Project Facilities by the Concessionaire;
 - (c) Assist in preparing coordinating any activities to be undertaken by DUSIB or its representatives within the Project Facilities.
 - (d) Verify and submit a monthly report to DUSIB on compliance by the Concessionaire with the requirement of the Agreement.
 - (e) Report to the Parties on the various physical, technical and financial aspects of the Project based on inspections and site visits;
 - (f) Determining, as required under the DUSIB, the period or any extension thereof, for performing any duty or obligation;
 - (g) Ensure coordination between Concessionaire and DUSIB, in relation to any defects or faults with the Project Facilities and their to ensure due resolution; and
 - (h) Undertaking all other duties and functions in accordance with the DUSIB and any other specific function as DUSIB may instruct from time to time relating to the review, monitoring, supervising and observing the implementation of the Project.

2. Role and functions of the Project Steering Committee

- 2.1. The Project Steering Committee shall ensure that the Project meets requirements, standards, specifications and performance.
- 2.2. Project Steering Committee shall review all aspects of Project and compliance with all the requirements of the RFP and the Agreement.
- 2.3. The Project Steering Committee shall review the periodic status report furnished by the Concessionaire and send its comments thereon to the DUSIB and the Concessionaire within 7 (seven) days of receipt of such report.
- 2.4. The Project Steering Committee shall review the activities carried out by the Concessionaire on a quarterly basis. It shall make a report of such review (the **“Review Report”**) stating inter alia the review relating to operations and maintenance of the Project
- 2.5. The Project Steering Committee shall in its Review Report specify the remedial measures that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the operations of the Project is in conformity with the requirements of the Agreement. It shall monitor and review the results of actions taken by the Concessionaire in this behalf.
- 2.6. As part of the review of operations, the Project Steering Committee shall also determine and recommend the damages / penalties, if any in accordance with the Agreement to be levied on the Concessionaire in view of non-adherence to Concessionaire’s obligations under the Agreement.
- 2.7. The Project Steering Committee shall monitor and review the curing of deficiencies and non compliances by the Concessionaire.
- 2.8. Conduct random inspections of the operations for identification and quantification of the deficiencies in the services provided by the Concessionaire.
- 2.9. Record and report to the DUSIB on the incidents of Material Breach or Persistent Breach of requirements of the Agreement;
- 2.10. If during the course or upon review/inspection undertaken by the Project Steering Committee or otherwise, it transpires that either of the Parties is in breach/default of any of its obligations under the Agreement, the Project Steering Committee shall, under intimation to all the Parties, require the defaulting Party to remedy such breach/default

within such time and in such manner as the Project Steering Committee may deem fit and in each case the same shall be recorded.

- 2.11. All gaps, identified by the Project Steering Committee shall be addressed by the Concessionaire. Project Steering Committee will notify the Concessionaire of any shortcomings from defined requirements/ Service Level Standards at the earliest instance after noticing the same to enable the Concessionaire to take corrective action.

3. Performance

- 3.1. Project Steering Committee shall review the performance level of the service and its availability against w.r.t. the defined Service Level Standards.

4. Maintenance of Records

- 4.1. The Project Steering Committee would participate in the review meetings/ emergency/ extra-ordinary meetings held by the Parties and assist the parties in dealing with any problem, Emergency, Force Majeure Event or other exigencies.

- 4.2. The Project Steering Committee shall maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:

- (a) Manpower deployed and other organizational arrangements of the Project Steering Committee;
- (b) Inspections undertaken and notices/ instructions issued to the Concessionaire;
- (c) Review compliance by the Concessionaire with the Agreement;
- (d) Force Majeure Events;
- (e) Material and Persistent Breach of requirements set out in the Agreement and Events of Default by the Parties; and
- (f) During the course of the Project, the Project Steering Committee shall prepare and submit to DUSIB, progress reports including the following:
 - (i) Monthly progress of works;
 - (ii) Slippages, if any, in the schedule and the reasons thereof; and
 - (iii) Issues, if any, with regard to the works along with the details of the action taken for the resolution of the same.

Request for Proposal - Volume I
Installation, operation, maintenance and management of bio-digester enabled mobile toilet vans at Group A locations in Delhi

Components of the Implementation Plan

The Implementation Plan to be submitted by the Concessionaire shall inter alia cover the following:

1. A detailed schedule of implementation for installation and operationalising the Project Facilities;
2. The Critical Path Method (CPM) / Programme- Evaluation and Review Technique (PERT) charts or similar activity planning technique/ method for monitoring. This would cover all stages/ aspects of the Project implementation including design and engineering, procurement of materials and equipment, installation, construction and testing;
3. Manpower deployment plan, including the designation of key personnel for the management and supervision of all Project activities.;
4. A broad method statement for key items setting out the methodology of construction, materials and construction equipment mobilisation/ utilisation plans, broad output calculations and details of the quality assurance and quality control procedures.
5. Format of the monthly report giving details of the physical progress in implementation of the Project and operations and maintenance activities undertaken (Monthly Progress Report).
6. Drawing for the Project Facilities including the following:
 - (a) Project Site/s plan incorporating all Project Facilities indicating entry and exit points, services etc;
 - (b) Architectural Working Drawings of each of the MTVs that are part of the Project Facilities and shall include plans, sections, elevations, details of interiors and exteriors;
 - (c) Structural drawings including foundation, chassis, etc; and
 - (d) Working drawings of all services.
7. Detailed design, procurement engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule.
8. Infrastructure layout for the Project Site/s for all basic infrastructure facilities including

water supply & power distribution, drainage and sewerage networks, etc.;

9. Specifications and Standards of proposed Project Facilities, certification process of MTVs from the authorized agencies, building materials for Project Facilities, procedures, type, and other details of the construction activities; and
10. Details of the reports to be submitted and procedure for reviews.

Record and Reporting

1. Records and Information

The Concessionaire shall maintain true and accurate records in connection with the implementation of Project and the Concessionaire shall handover all the relevant records and documents upon the termination or expiry of the Agreement.

2. Reporting Requirements

The Concessionaire shall submit to the Project Steering Committee quarterly progress report within first 7 calendar days of the report period inter alia, including the following:

- (a) Review of milestones set out in Implementation Plan and reasons for delay/ deviations, if any;
- (b) Details of major equipments purchased;
- (c) Suspension of services at the Point of Service or part thereof, if any, its reasons, duration and the steps undertaken to resume the same;
- (d) Shifting of the MTVs;
- (e) Notes of meetings between the Concessionaire, the Project Steering Committee and DUSIB highlighting critical decisions taken or agreements reached;
- (f) Disagreements/ disputes, if any and proposed measures to be taken;
- (g) Brief report of any accident/incident related to the Project, injury/ fatality, property damage, cause of accident and actions taken to avoid recurrence;
- (h) Any litigation or material claims, disputes or actions, threatened or filed, concerning the Project Facilities or the obligations to be performed by the Concessionaire under the Agreement;

- (i) Copies of any reports submitted for purposes of regulatory compliance and of notices received or reports or notices submitted to any Competent Authority or otherwise; and
- (j) Any other report that may be reasonably required by DUSIB for itself or to fulfill any regulatory compliance.

Formats for the reports shall be finalised in consultation with the Project Steering Committee. DUSIB may from time to time specify any changes to be made to the format of any report or information required there under.

Project Completion Schedule

Sl. No.	Milestone	Time from the Effective Date
1	First 25 MTVs	120 days
2	Remaining 15 MTVs	150 days