

Request for Proposal (RFP)

*Installation, operation, maintenance and management
of bio-digester enabled mobile toilet vans in Delhi*

VOLUME – II

draft Concession Agreement

July 2014

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

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 _____ Act, _____ 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 Part¹;

OR

3. _____, an entity incorporated under the _____
Act, _____ 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)².

WHEREAS:

- 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

¹ Applicable in case the Selected Bidder is a single entity

² Applicable in case the Selected Bidder is a Consortium.

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.
- F. 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**”).
- G. 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**”).
- H. 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.
- J. The Concessionaire has submitted an irrevocable bank guarantee from the bank _____ dated _____, 20____) for a value of Rs._____/ - (Rupees _____) as Performance Security and hereby agrees to keep it valid for a period as stipulated in _____ of this Agreement.
- L. 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:

NOW THEREFORE THIS AGREEMENT WITNESSETH 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 (G);

“Consortium Member” means a company specified in Recital (G) 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 18.1.

"Dispute Resolution Procedure" means the procedure for resolution of Dispute set forth in Article 18.

"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 14.1.

"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 14.3.

"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 14.2.

"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 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 14.4.

"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. 25 lakhs (Rupees twenty five 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.

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.

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.

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.

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.

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 15.2.

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 during Operations Period:

- (a) be entitled to levy, demand, collect and appropriate User Charges in accordance with the Schedule D; 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 atleast 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 14

FORCE MAJEURE

14.1 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 14.2, 14.3 and 14.4 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.

14.2 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 14.3;
- 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.

14.3 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.

14.4 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.

14.5 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 14.7 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 14.6 hereinafter.

14.6 Allocation of costs during subsistence of Force Majeure

Subject to the provisions of Clause 14.5 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.

14.7 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.

14.8 Termination Payment for Force Majeure Events

Upon Termination of this Agreement pursuant to Clause 14.7 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.

14.9 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.

14.10 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 14, 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 14.

14.11 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 14.11 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 14 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 14.11 and such other information as the other Party may reasonably request the Affected Party to provide.

14.12 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 15

EVENTS OF DEFAULT AND TERMINATION

15.1 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 20.2;
- (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.

15.2 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.
- (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 120% (one hundred twenty percent) of the Total Balance Value of MTV.

15.3 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 15.3.

15.4 Termination Payments

The Termination Payment pursuant to Article 14 or 15 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 60 (sixty) days, the amount remaining unpaid shall be paid along with interest @ SBI PLR plus two percent from the Termination Date till payment.

15.5 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.

15.6 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 16

CHANGE IN LAW

16.1 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.

16.2 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 17

HANDBOVER AND DEFECT LIABILITY PERIOD

17.1 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.

17.2 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.

17.3 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 17.2, 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 18

DISPUTE RESOLUTION

18.1 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 18.2 below.

18.2 Arbitration

(a) Arbitrators

Any Dispute which is not resolved amicably as provided in Clause 18.1(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 19

REPRESENTATIONS AND WARRANTIES, DISCLAIMER

19.1 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.

19.2 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.

19.3 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 20

MISCELLANEOUS

20.1 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

20.2 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.

20.3 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 20.3 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 20.3, 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 20.3 (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 20.3(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 20.3(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 20.3(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.

20.4 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.

20.5 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.

20.6 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.

20.7 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.

20.8 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.

20.9 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.

20.10 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

The Managing Director,
----- Limited,

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.

20.11 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.

20.12 Joint and Several Liability³

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.

20.13 No Partnership

³ To be deleted, in case Concessionaire is a single entity

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.

20.14 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.

20.15 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.

21.16 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

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
12.	C-6	Majdoor Kalyan Camp in	164	2050	2

*Request for Proposal - Volume II – draft Concession Agreement
Installation, operation, maintenance and management of bio-digester enabled mobile toilet vans in Delhi*

Sl. No	Name of Division of DUSIB	Name of JJ Cluster	New Cluster code	Number of Indicative Users	Number of Proposed MTVs
		Plot No.W-1 to W-5 and Back Lane Okhla Industrial Area Phase II			
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
22.	C-6	Janta Jeewan Between Park	180	1500	1

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Sl. No	Name of Division of DUSIB	Name of JJ Cluster	New Cluster code	Number of Indicative Users	Number of Proposed MTVs
		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			
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 Jeevan Camp in Plot No. C-43 on 30 Feet Road Okhla Industrial Area Phase-II	175	1500	1
26.	C-6	Janta Jeevan 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 Phase-I	668	200	1

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Sl. No	Name of Division of DUSIB	Name of JJ Cluster	New Cluster code	Number of Indicative Users	Number of Proposed MTVs
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
38.	C-4	B-Block Industrial Area Behind Shiv Mandir Lawrence Road	107	100	1
39.	C-4	Opposite K & L-Block Wazirpur JJ Colony	340	800	2
40.	C-4	Shaheed Udham Singh Park	362	1400	2
41.	C-4	Near Jain mandir Shakti Nagar	349	250	1
42.	C-4	Dr. Ambedkar Camp 52,53 Furniture Block, Kirti Nagar.	39	225	1
43.	C-4	Kailash Park Basai Dara Pur Moti Nagar.	57	250	2
44.	C-4	Shiv Basti Behind Gold Spot Factory Near Railway Station Patel Nagar	68	150	1
45.	C-4	Harijan Balmiki Camp Rangpur Pahadi	72	550	2
46.	C-4	Arjun camp mahipal pur	69	1140	2
47.	C-4	Rangpuri pahari Milkpur kohi.	70	1700	2

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Sl. No	Name of Division of DUSIB	Name of JJ Cluster	New Cluster code	Number of Indicative Users	Number of Proposed MTVs
48.	C-4	Rangpuri pahari Nallah	71	620	2
49.	C-5	Madasi Basti Railway Line Jal Vihar, Lajpat Nagar	397	5000	4
50.	C-5	Sai Baba Camp, Lodhi Road	398	600	1
51.	C-5	Near MCD Store, Pant Nagar	683	300	1
52.	C-5	Sewa Camp, Vasant Vihar	530	460	2
53.	C-5	Nepali Camp, Vasant Vihar	528	2250	1
		Total		56670	67

Schedule B

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 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.
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 confirming 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.

Schedule C

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 & its 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.

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
1	pH
2.	Total Solids
3.	Total Volatile solids
4	Total Dissolved solids
5	BOD
6	Chemical Oxygen Demand (CoD)
7	Fecal Coli Forms count
8	Percentage methane
9	MPN for methanogens

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.

Schedule F

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 users 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 indicators in the Project Facilities in any month would be deemed as

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Sl. No.	Performance Parameter	Performance Indicator	Who would check	When it would be checked	Penalty for Non-performance
					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 Concessionaire Event of Default.

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Sl. No.	Performance Parameter	Performance Indicator	Who would check	When it would be checked	Penalty for Non-performance
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.

Schedule G

Format of Performance Security

(Performa of Bank Guarantee)⁴

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 its 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 _____ Act, _____, having its registered office at _____, (“the Concessionaire”), the Concessionaire has been granted the concession for outsource installation, operation maintenance and management of mobile toilet vans (“MTV”) at these identified locations in accordance with conditions set out in this Agreement (hereinafter referred to as “the Project”).
- b. In terms of **Clause _____** of the Concession Agreement, the Concessionaire is required to furnish to the DUSIB, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) as security for due and punctual performance / discharge of its obligations under the Concession Agreement.

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:

⁴ To be issued by a Scheduled Bank in India

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 _____⁵ 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 - -----th day from the Effective Date

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 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.

Schedule H

Fee Payment Schedule

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

Schedule I

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.

Schedule J

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.

Schedule K

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.

Schedule L

Project Completion Schedule

Sl. No.	Milestone	Time from the Effective Date
1	First 40 MTVs	120 days
2	Remaining MTVs	150 days