VOLUME - II

DRAFT SHELTER MANAGEMENT AGREEMENT

BETWEEN

DELHI URBAN SHELTER INPROVEMENT BOARD

AND

_____{SELECETD BIDDER}

FOR

Management of the Night Shelters Cluster_____

MANAGEMENT OF THE NIGHT SHELTERS IN DELHI

This Shelter Management 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. _____, a _____ incorporated under the provisions of the _____Act, _____and having its registered office at _____, (hereinafter referred to as the **"Shelter Management Agency"** or **"SMA"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part[1].

OR

_____, a _____ incorporated under the _____ Act, _____ and having its registered office at _____, [*please insert address*]; _____, a _____ incorporated under the _____ Act, _____ and having its registered office at _____ _____, [*please insert address*] and _____, a _____ incorporated under the _____ Act, _____ and having its registered office at _____, [*please insert address*] (hereinafter referred to as **"Shelter Management Agency"** or **"SMA"**, which expression unless it be repugnant to the context or meaning thereof shall include its representatives, successors and permitted assigns) of the Other Part[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 implement the provisions of the Slum Areas (Improvement and Clearance) Act, 1956 in the National Capital Territory of Delhi. DUSIB is also responsible for creation and management of Night Shelters in NCT of Delhi. At present, the DUSIB is managing about 200 Night Shelters.

[1] Applicable in case the Selected Bidder is a single entity

[2] Applicable in case the Selected Bidder is a consortium.

B. Pursuant to the above, DUSIB has identified Night Shelters _____ (as defined hereinafter) and intends to outsource operation, maintenance and management of these Night Shelters in accordance with conditions set out in this Agreement.

C. DUSIB has adopted a single stage transparent competitive empanelment process for selection of a Shelter Management Agency for implementing the Project vide its Request for Proposal No. _____ dated _____ (the "**Request for Empanelment**" or "**RFE**").

D. After evaluation of the application received from the applicants in response to the RFE, DUSIB had accepted the request of the {selected agency}_____

E. DUSIB had issued the Letter of Award bearing No. _____ dated _____ (hereinafter called as the "**LOA**") to the _____ ("Selected Bidder)} requiring, *inter alia*, the execution of this Agreement within 7 (seven) days from the date of issue of the LOA.

F. The Shelter Management Agency has submitted an irrevocable bank guarantee from the Bank_____ dated _____, 20__ for a value of Rs. one Lac as Performance Security and hereby agrees to keep it valid till the term of agreement.

G. With a view to facilitate and implement the Project, DUSIB has agreed to execute this Agreement with the Shelter Management Agency to authorise the Shelter Management Agency to deliver Services (hereinafter defined) in accordance with the terms conditions and covenants provided herein.

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

1. Definitions and Interpretations

1.1. **Definitions**

Agreement means this Shelter Management 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, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions including any renewals thereof required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Facilities during the subsistence of this Agreement;

Bid means the documents in their entirety comprising of the commercial bid submitted by the Shelter Management Agency, in response to the RFP and accepted by the DUSIB, signed for verification by the authorized representatives of the Parties, vide letter no. _____dated_____;

Caretaker/s means a person or group of persons appointed by the Shelter Management Agency at each Night Shelter in accordance with Schedule IX;

Confidential Information means all information including personal data (whether in written, oral, electronic or any other format) which relates to the technical, financial and business affairs, customers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party in the course of or in connection with this Agreement (including without limitation such information received during negotiations, location visits and meetings in connection with this Agreement);

Control means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of any entity, whether through the ownership of voting securities, by contract or otherwise;

Data means collectively all the data and updates thereof (a) relating to each User that is collected by the Shelter Management Agency; (b) relating to provision of Service within the Service Area; (c) relating to the Homeless on the road within the Service Area; and (d) any other data collected by the Shelter Management Agency pursuant to this Agreement;

Deliverables means (i) collection and updation of Data within the Service Area throughout the Term of this Agreement; (ii) uploading of the Data and updates thereof as specified by DUSIB; (iii) provide Services in all the Night Shelters within the Service Area, in accordance with this Agreement; and (iv) undertaking all such work and providing all such Data as may be required in relation to each Transaction;

Effective Date means the date of execution of this Agreement by all the Parties to the Agreement;

Equipment/s mean the tools, machines, vehicles or any other equipment procured by the Shelter Management Agency for the purpose of providing Services in accordance with this Agreement;

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

Fees means the amount of charges notified by DUSIB that the Shelter Management Agency can collect from the Users as specified in Schedule IV;

Force Majeure shall have the meaning specified in Clause 16.4;

Homeless / User means any person who is homeless at any point of time within the Service Area;

Monitoring Agency means the entity appointed by the DUSIB in accordance with Clause 11;

Material Adverse Effect means material adverse effect on (a) the ability of the Shelter Management Agency to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement; and/or (b) the legal validity, binding nature or enforceability of this Agreement;

Night Shelter/s means the temporary or permanent structures created by DUSIB to provide shelter to the Homeless within the Service Area;

Payment for Shelter Management means the quarterly fixed payment payable to the Shelter Management Agency by DUSIB in accordance with the provisions of this Agreement,

Project means the delivery of Services in accordance with this Agreement;

Project Facilities means all assets made available to the Shelter Management Agency by the DUSIB for the delivery of the Services;

Proprietary Information means processes, methodologies, technical and business information, including drawings, designs, formulae, flow charts, data and computer programs already owned/licensed by either Party or granted by third parties to a Party hereto prior/ subsequent to the execution of this Agreement;

Services or Shelter Management Services means all such services and actions that are required to be undertaken by the Shelter Management Agency to: (a) operate, maintain and manage the Project Facilities within the Service Area in accordance with the terms and conditions of this Agreement, Service Level Standards and Applicable Laws; (b) handover the Project Facilities to DUSIB in accordance as per the provision of this Agreement; and (c) provide all the Deliverables and undertake all the Transactions so as to enable the discharge of the Services as specified in this Agreement;

Service/s Area means the region, wherein the Shelter Management Agency has been authorized to provide Services, vide letter no. _____ dated _____ and lies within the geographical boundary morefully defined in Schedule I;

Shelter Management Agency Representative means an authorised representative of the Shelter Management Agency holding an identity card provided by the Shelter Management Agency and wearing prescribed uniform, if any;

Service Level Standards means the service levels standards specified in Schedule III;

Third Party Systems means systems (or any part thereof) in which the intellectual property rights are owned by a third party and to which Shelter Management Agency has been granted a license to use and which are used in the provision of services under this Agreement;

Transaction means any of the following: (i) registration of the User as per the process prescribed by DUSIB; (ii) information provided by the Shelter Management Agency to DUSIB about the homeless people on the road within the Service Area as prescribed by DUSIB; and (iii) such other transaction as may be notified by DUSIB as being required to be performed by the Shelter Management Agency under this Agreement;

1.2. **Interpretations**

(a) References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it;

(b) Words denoting the singular shall include the plural and vice-versa and words denoting persons shall include firms and corporations and vice versa;

(c) Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this Agreement as a whole and not to any particular Clause, Schedule. The term Clauses, refers to Clauses of this Agreement. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated;

(d) The headings and use of bold type in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement;

(e) 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;

(f) Reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to such agreement, deed, instrument, license or other document as the same may be amended, varied, supplemented, modified, novated or suspended at the time of such reference;

(g) References to "construction" or "roll out" includes, unless the context otherwise requires, design, development, implementation, engineering, procurement, delivery, transportation, installation, processing, fabrication, acceptance testing, certification, commissioning and other activities incidental to the construction or roll out, and "construct" or "roll out" shall be construed accordingly;

(h) Any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English language meaning;

(i) The damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalties; and

(j) This Agreement shall operate as a legally binding agreement specifying the terms, which apply to the Parties under this agreement and to the provision of the services by the Shelter Management Agency.

1.3. **Priority of agreements and errors/discrepancies**

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

(a) this Agreement; and

(b) all documents forming part hereof.

i.e., the Agreement at (a) above shall prevail over documents at (b) above.

1.3.2. Subject to the provisions of Clause 1.3.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Articles of this Agreement, the provisions of a specific Article;

(b) relevant to the issue under consideration shall prevail over those in other Articles;

(c) between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexures, the Schedules shall prevail;

(d) between any two Schedules, the Schedule relevant to the issue shall prevail;

(e) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and in words, the latter shall prevail.

2. Scope of this Agreement

2.1. The Shelter Management Agency is hereby appointed to provide the Services, and in consideration of the rights, privileges and benefits conferred upon the Shelter Management Agency by DUSIB and other good and valuable consideration expressed herein, hereby accepts its appointment and undertakes to implement the Project and perform/discharge all its obligations in accordance with the provisions of this Agreement, and discharge its responsibilities under this Agreement within the Service Area.

2.2. The Shelter Management Agency shall provide the Services identified in Clause 2.1 above and the matters incidental thereto or necessary for the performance of any or all of the obligations of the Shelter Management Agency under this Agreement, in accordance with the Functional Requirements, Service Level Standards and the Operations Plan.

3. Commencement of Services

3.1. The Shelter Management Agency shall commence delivery of Services within the Service Area from the Effective Date as per the Functional requirements set out in the Schedule II read along with the Service Level Standards set out in the Schedule III.

4. Term of this Agreement

This Agreement shall come into effect on the date of its execution by all the Parties to the Agreement ie the Effective Date and shall continue for a period of 24 (Twenty four) months therefrom, unless terminated earlier in accordance with terms hereof (**"Term**"). However, DUSIB may choose to extend the Term for further period of 12 (twelve) months, with all the terms and conditions being the same as for original Term.

6. Implementation of Services

6.1. DUSIB shall, from the Effective Date:

(a) provide, in accordance with the terms and conditions set forth herein, the right to access and use the Project Facilities together with the Right of Way on an "as is where is" basis for the purpose of implementing the Project in accordance with provisions of this Agreement; and

(b) have put in place a Management Information system (MIS) for monitoring of Services.

Subject to this Article, the Shelter Management Agency shall have the right to enter upon, occupy and use the Project Facilities and to make at its costs, charges and expenses such activities as may be necessary or appropriate for delivery of Services and shall be obligated to commence provision of the Services immediately upon receiving the right to access and use the Project Facilities.

6.2. The Shelter Management Agency shall, within 20 (twenty) days from Effective Date, have in consultation with DUSIB/ Monitoring Agency prepared and submitted an operations plan

("Operations Plan") in accordance with which it shall provide the Services in the Service Area. Operations Plan shall be prepared in compliance with the Functional Requirements set out in the Schedule II, the Service Level Standards set out in the Schedule III and other provisions of this Agreement.

6.3. Within 10 (ten) days of receipt of the Operations Plan, the DUSIB and Monitoring Agency shall review the same, and convey their comments/ observations to the Shelter Management Agency on the Operations Plan, including the need, if any, to modify the same. If the comments/ observations require the Operations Plan to be modified, the Shelter Management Agency shall suitably modify the Operations Plan and re-submit the same for further review. The DUSIB and Monitoring Agency shall give its observations and comments, if any, within 10 (ten) days of receipt of such revised Operations Plan, which shall be taken into account by the Shelter Management Agency while finalising the Operations Plan.

6.4. Notwithstanding any review or failure to review by the DUSIB or the comments/ observations of the Monitoring Agency or the DUSIB, the Shelter Management Agency shall be solely responsible for the adequacy of the Operations 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.

6.5. The Parties agree that the implementation of the Operations Plan shall be reviewed by the Monitoring Agency in consultation with the Shelter Management Agency every quarter from the date of submission of the Operations Plan.

6.6. **Approvals and Required Consents**

Subject to the Shelter Management Agency complying with Applicable Laws, shall Arrange applicable permits as required by the Shelter Management Agency for delivery of Services. In the event that any Applicable Permits are not obtained, the Shelter Management Agency and the DUSIB will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the DUSIB to enable Shelter Management Agency to process its work with as minimal interruption to its business operations as is commercially reasonable until such Applicable Permits are obtained. The Shelter Management Agency shall be relieved of its obligations to provide the Services and to achieve the Service Level Standards until the Applicable Permits are obtained if and to the extent that the Shelter Management Agency's obligations are dependent upon such Applicable Permits provided the delay in such approval is caused for reasons not attributable to the Shelter Management Agency.

6.7. **Provision of Services**

(a) The Shelter Management Agency shall provide the Services in Service Area in from the Effective Date.

(b) However, from the date of approval of the Operations Plan as per Clause 6.3, the Shelter Management Agency shall provide the Services in Service Area in conformity with the Operations Plan and Service Level Standards set forth in Schedule III. The Shelter Management Agency shall not be liable to pay any Damages or penalties for non-conformity with the Service Level Standards or the Operations Plan, until the Operations Plan is approved.

(c) Upon provision of Services within the Service Area, the Shelter Management Agency shall be entitled to receive the Payment for Shelter Management.

(d) In case, DUSIB installs new Night shelters ("Additional Night Shelters") within the Service Area, the Shelter Management Agency shall provide Services in the Additional Night Shelters. The payment for Additional Night Shelters shall be decided by DUSIB.

6.8. **Damages for Delay**

If Services does not commence within 7 (seven) days from the Effective Date, unless the delay is on account of reasons solely attributable to the DUSIB or due to Force Majeure, the Shelter Management Agency shall pay Damages to the DUSIB in a sum calculated at the rate of 25% (twenty five per cent) of the amount of Payment for Shelter Management for delay of each week until delivery of Services has commenced.

6.9. **Access to Project Facilities**

DUSIB agrees to provide to the Shelter Management Agency, upon a reasonable request, information relating to the Project Facilities, which Shelter Management Agency may possess or may hereafter come to possess. Subject to this, DUSIB makes no representation and gives no warranty to the Shelter Management Agency in respect of the condition of the Project Facilities and shall not be liable in any manner for the correctness or completeness of the information provided by it to the Shelter Management Agency. The Shelter Management Agency shall accept such information at its cost, risk and consequence.

6.10. For the purpose of this Agreement, the Shelter Management Agency shall be deemed to have:

(a) inspected the Project Facilities;

(b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Facilities, the form and nature of the Project Facilities, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement;

(c) satisfied itself as to the means of communication with, access to and accommodation on the Project Facilities that it may require or as may otherwise be necessary for the performance of its obligations under this Agreement; and

(d) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Shelter Management Agency and its rights and obligations hereunder and its other rights and obligations under or pursuant to this Agreement.

6.11. The Shelter Management Agency acknowledges that it shall have no recourse against DUSIB in the event of any mistake made or misapprehension harboured by the Shelter Management Agency in relation to any of the foregoing provisions in this section and DUSIB hereby expressly disclaims any liability in respect thereof.

6.12. The Shelter Management Agency acknowledges that prior to the execution of this Agreement, it has, after a complete and careful examination, made an independent evaluation of the Project Facilities as a whole and each of its facilities, buildings, assets, equipment and know-how and has determined the nature and extent of the difficulties, up-gradations, inputs, costs, time and resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement. The Shelter Management Agency further acknowledges that it shall have no recourse to DUSIB if it is, at a later date, found that the Project Facilities is deficient in any manner that prevents the discharge of Shelter Management Agency's obligations under this Agreement ("Deficiency"). If a Deficiency is found, the Shelter Management Agency hereby acknowledges that it shall, at its own cost and expense take all appropriate measures to remedy the same. It is hereby clarified that DUSIB shall not bear any expenses in relation to any Deficiency.

7. Non-Exclusivity for Services

The Shelter Management Agency agrees that the Services to be provided in the Service Area are non-exclusive and DUSIB or any other State Government agency may enter into other agreement or arrangement permitting activities covered under this Agreement by any other party, within the Service Area.

8. Additional Service

Each Party agrees that the Shelter Management Agency shall be eligible to provide any service, subject to the conditions that such activities shall not interfere in performance of the obligation of the Parties, either directly or indirectly, under this Agreement. In case DUSIB believes that such additional service/ activity of the Shelter Management Agency is interfering the Services, it may issue guidelines to the Shelter Management Agency which it shall adhere to in providing the Services or any additional service.

9. Equipment

9.1. In case Shelter Management Agency needs any additional equipment for provision of Services, it shall, at its own risk, cost and expense, procure right to use of such Equipment including any replacement thereof for provision of Service. In case any object/ asset is

donated by or is created from the grant donated by any third party, it shall be considered part of the Project Facilities and property of DUSIB.

9.2. The Shelter Management Agency shall ensure that it always has sufficient Equipment in working condition including redundancy so as to enable it to provide the Services in accordance with the Operations Plan submitted by it and to meet the Service Level Standards.

10. Obligations of the Parties: Scope and Provision of the Services

The Parties agree that time is of essence for the performance of obligations under this Agreement.

10.1. **Obligations of DUSIB**

(a) DUSIB shall coordinate with other government agencies, and shall provide to the Shelter Management Agency access to the Project Facilities so as to facilitate the provision of Services by the Shelter Management Agency.

(b) DUSIB shall appoint a nodal officer, not below the rank of Director, who would be the single point contact for the Shelter Management Agency in relation to the implementation of this Agreement.

(c) DUSIB shall ensure that no barriers are erected or placed on or around the Project Facilities by any Government Instrumentality or persons claiming through or under it, except for reasons of emergency, national security, law and order.

(d) DUSIB shall make payment of all outstanding taxes/ utility charges in relation to Project Facilities prior to the Effective Date.

(e) DUSIB shall support, cooperate with and facilitate the Shelter Management Agency in the delivery of the Services in accordance with the provisions of this Agreement
(g). DUSIB shall make major repairs in project facilities like repair of building(Flooring, Roof etc.) i.e. works which involve large amounts or which are not the works of day to day repairs.

10.2. **Obligations of Shelter Management Agency**

(a) The Shelter Management Agency shall roll out the Services in accordance with the Operations Plan submitted to DUSIB.

(b) The Shelter Management Agency shall at its cost, expenses and risk make all such financing arrangements as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

(c) SMA shall obtain all the Applicable Permits from Government Instrumentality for operations and management of Project Facilities whererever required; provided that nothing contained in this sub-section shall relieve the Shelter Management Agency of its obligations under this Agreement from compliance with the requirements of the Applicable Permits thereof.

(d) In providing the Services, the Shelter Management Agency shall take required steps not to cause any disruption to DUSIB's normal operations.

(e) The Shelter Management Agency shall appoint a Nodal Officer from senior management of the Shelter Management Agency 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.

(f) The Shelter Management Agency shall provide to DUSIB, periodic reports during the Term, in accordance with the Schedule VII and as set forth elsewhere in the Agreement and any other report which DUSIB may reasonably require.

(g) The Shelter Management Agency shall make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims from any third party and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies DUSIB against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall DUSIB be treated as employer in this regard;

(h) The Shelter Management Agency will keep abreast of the relevant technical, managerial and operational requirements applicable to the provision of the Services and best practices in this area and will share their knowledge with the DUSIB, regarding matters which would assist the DUSIB, in its use of the Services, provided that Shelter Management Agency shall not be obligated to share other client information or Confidential Information of the Shelter Management Agency not relevant to the Agreement.

(i) The Shelter Management Agency shall provide the Services (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.

(j) The Shelter Management Agency shall not without the written approval of DUSIB access or use the Project Facilities for any other purpose than in relation to the implementation of the Project in accordance with the terms and conditions contained in this Agreement.

(k) The Shelter Management Agency shall pay in time 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 Shelter Management Agency, their agents or other persons during the subsistence of this Agreement 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;

(l) The Shelter Management Agency shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Facilities;

(m) The Shelter Management Agency shall support, cooperate with and facilitate DUSIB or any other State Government agency in the implementation of its initiatives for the Homeless within the Project Facilities/ Service Area;

(n) During the Term, the Shelter Management Agency shall protect the Project Facilities from any and all occupations, encroachments, and shall not place or create nor permit any other person claiming through or under the Shelter Management Agency to place or create any Encumbrance or security interest over all or any part of the Project Facilities, or on any rights of the Shelter Management Agency therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

(o) During the Term, subject to provisions of this Agreement, the Shelter Management Agency shall maintain the Project Facilities in accordance with this Agreement and if required, can make improvements to the Project Facilities to comply with the provisions of this Agreement in accordance with Applicable Laws and Applicable Permits and Good Industry Practice. Any alteration/modification in the Project Facilities shall be made by the Shelter Management Agency with specific approval in writing from DUSIB. The obligations of the Shelter Management Agency hereunder

i. permitting safe, smooth and uninterrupted use of the Project Facilities during normal operating conditions;

ii. pay utility usage charges for the Project Facilities to the concerned agencies / authorities like electricity and water charges.

iii. carrying out routine maintenance of the Project Facilities to meet the Service Level Standards; and

iv. any other action which may be required to be fulfilled in relation to the maintenance of the Project Facilities.

In the event, the Shelter Management Agency does not maintain and/or repair the Project Facilities or any part thereof in conformity with the Operations 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 Shelter Management Agency, and to recover its cost from the Shelter Management Agency. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Shelter Management Agency to DUSIB as Damages.

(p) The Shelter Management Agency shall remove promptly from the Project Facilities all waste materials, rubbish and other debris and keep them in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

10.3. **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 ight Shelter 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 authorised representatives 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.

10.4. **Employment**

(a) The Shelter Management Agency shall be completely responsible for employing or sourcing sufficient manpower and adequately training them to ensure the due provision of the Service in accordance with the Operations Plan and the provisions of this Agreement.

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

(c) The Shelter Management Agency shall be solely responsible for all the payments due to its employees or retainers or other persons that it sources in order to deliver the Services. It is hereby clarified that at no point shall the Shelter Management Agency represent to its employees that they are working for DUSIB and DUSIB would at no point in time be liable in any manner with respect to the employees, retainer or other persons engaged by the Shelter Management Agency in the implementation of the Services.

(d) DUSIB shall, in any manner, not be liable, at any point including but not limited to, upon Termination or Emergency Takeover, to either employ or make any payments to any person employed or retained or contracted or otherwise engaged by the Shelter Management Agency in relation to the provision of the Services.

10.5. **Maintenance of Complaints Register**

(a) The Shelter Management Agency shall maintain a register (the "**Complaint Register**") at all the Night Shelters where it shall provide access at all times for recording of complaints along with date and contact number by the person (the "**Complainant**").

(b) The Complaint Register shall be securely bound and each page thereof shall be duly machine 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 Shelter Management Agency. Information relating to the availability of and access to the Complaint Register shall be prominently displayed at the Night Shelters.

(c) The Shelter Management Agency 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.

10.6. **Branding of Service**

The Services or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Shelter Management Agency or its shareholders. The Shelter Management Agency undertakes that it shall not, in any manner, use the name or identity of the Shelter Management Agency to advertise or display its own identity, brand equity or business interests, including those of its shareholders.

It is further agreed that the Services shall be known, promoted and advertised in the name of "Delhi Urban Shelter Improvement Board."

10.7. **Erection of Sign Board**

The Shelter Management Agency shall erect a signboard, of a size not less than 7 feet by 5 feet, adjacent to the main entrance to each of the Night Shelter 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 following text in black upper case letters on a white/yellow background:

"This property belongs to the DUSIB and has been handed over to _____ (name of the Shelter Management Agency) for operation, maintenance, and management from _____ to _____".

The Shelter Management Agency shall ensure that the signboard is maintained in good condition throughout the Term of the Agreement.

10.8. **Up-gradation of Project Facilities**

DUSIB reserves the right to upgrade the Project Facilities at any time during the Term of the Agreement and the Shelter Management Agency shall support, cooperate and facilitate DUSIB in undertaking such upgradation works. DUSIB and Shelter Management Agency shall hold discussion in good faith to review the change in the Service Level Standards, if any for any Night Shelter where upgradation works are being undertaken for the period of such upgradation.

11. Monitoring Agency

(a) DUSIB shall have the right to appoint on a fulltime basis, either its employee or its representative as Monitoring Agency (**"Monitoring Agency"**) for the Project. DUSIB shall endeavour to complete the process of appointment of the Monitoring Agency within 15 (fifteen) days of the Effective Date.

(b) The role of the Monitoring Agency has been detailed in Schedule V.

12. Management

12.1. **Variation in the Project**

12.1.1. DUSIB or the Shelter Management Agency may require the provision of additional works or services, which are not included in the scope of this Agreement or the reduction in the works or services from the scope of this Agreement (the "Variation") as provided in this Agreement. Any such Variation shall be made in accordance with the provisions of this Article, and the resultant costs, if any, shall be incurred by the Shelter Management Agency and reimbursed to it by DUSIB subject to and in accordance with this Article.

12.1.2. If the Shelter Management Agency 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.

12.1.3. If DUSIB requires or agrees to proposed Variation, then DUSIB shall issue a notice specifying in reasonable detail the works and services impacted by such Variation (the "Variation Notice").

12.1.4. Upon receipt of the Variation Notice, the Shelter Management Agency shall, with due diligence, provide to DUSIB such information as is necessary, together with documentation in support of:

(a) the cost to the Shelter Management Agency 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)

Provided, however in the event the Variation involves work/item, the rates applicable shall be the relevant market rates as certified by the Monitoring Agency;

(b) 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.

(c) Any other impact of such Variation together with proposed terms and conditions in light of the Variation.

12.1.5. 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 Shelter Management Agency the scope of Variation and proposed method of compensation for consideration by the Shelter Management Agency.

12.1.6. Upon reaching an agreement on the terms of additional compensation for completing the Variation, DUSIB shall issue an order (the "Variation Order") requiring the Shelter Management Agency to undertake the Variation.

12.1.7. 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 Shelter Management Agency to proceed with the implementation of the Variation Order. Pending resolution of any dispute, DUSIB shall pay to the Shelter Management Agency pursuant to such Variation Order, an amount equal to the costs that are certified by the Monitoring Agency 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.

12.1.8. The DUSIB may hold consultations with the Shelter Management Agency, at any time prior to making its decision, to discuss any such proposal with the Shelter Management Agency.

12.2. **Security and safety**

(a) The Shelter Management Agency will comply with the directions issued from time to time by the DUSIB and the standards related to the security and safety so far as it applies to Project.

(b) The Parties shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Project's data, facilities or Confidential Information.

(c) The Shelter Management Agency shall upon request by the DUSIB or its nominee(s) participate in regular meetings.

(d) The Parties shall promptly report in writing to each other any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and security at Night Shelter.

(e) Any private, proprietary or classified information of the disclosing party which has to be made available by the receiving party to a third party , shall be submitted to such a third party with the same restrictions as included in this Clause.

(f) Shelter Management Agency undertakes to meet the laid down security requirements/ stipulations. All the matters related to the Agreement will be treated as classified and confidential and shall not be communicated to anybody (except for the purpose of this Agreement) or published/ advertised without the prior written consent of the DUSIB.

13. Financial Terms

13.1. **Terms of payment and service credits and debits**

(a) In consideration of the Services and subject to the provisions of this Agreement, the DUSIB shall pay the Shelter Management Agency, from the Effective Date, a sum of Rs. 45000/- per month per night shelter where only one night shelter exists, on quaterly basis, being the Payment for Shelter Management. This rate has been worked out considering Single Night Shelter at one location, if the number of night shelter are more than one at A location, the rate per night shelter shall be worked out seperately considering sharing of Services of employees by SMA.

(b) The Shelter Management Agency may demand, collect and appropriate Fees from the Users in accordance with the provisions of Schedule IV . The fees so collected may be utilized by SMA for payment of Electricity charges etc. For free night shelters and for all night shelters during the period from 1st of December to 15th of March electricity charges shall be paid by DUSIB.

(c) In case of any change in the number of Night Shelters during the Term of the Agreement, the Payment for Shelter Management shall be proportionately adjusted.

(d) The Shelter Management Agency shall prepare a quarterly invoice and submit the same to DUSIB by the 7th day of the next month. The invoice shall be supported by the summary statement giving the following:

i. Date wise number of new Night Shelter made operational in the current invoice period;
ii. Number of Night Shelter which have been operational since the previous invoice period;
iii. Date wise number of Users to whom shelter has been provided;
iv. Total Fees collected from the Users for the quarter in accordance with the provisions of Schedule IV;
v. Amount of penalty to be deducted, if any; and
vi. Invoice amount for the quarter calculated as the total the Payment for Shelter Management for each quarter due to the Shelter Management Agency less any penalties/damages.

(e) Upon receipt of the invoice by DUSIB, the Monitoring Agency shall verify the amount claimed in the invoice and forward it to DUSIB with necessary recommendation for payment thereof.

(f) Upon receipt of the invoice together with recommendation for payment forwarded by the Monitoring Agency, DUSIB shall take all necessary steps to ensure payment of invoice.

(g) All payments are subject to the application of liquidated damages defined and provided for in this Agreement. It is clarified here that the DUSIB will pay for the services as stated in accordance with this Agreement and the DUSIB can also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment Schedule as a result of the failure of the Shelter Management Agency to meet the Service Level Standards under this Agreement as set out in Schedule III, such sum being determined in accordance with the terms set out in this Agreement.

(h) 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 services other than those covered by the terms of payment as stated in this Agreement.

(i) 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 Shelter Management Agency 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.

(j) DUSIB shall be entitled to delay or withhold payment of any invoice or part of it delivered by the Shelter Management Agency under this Clause where the DUSIB disputes such invoice or part of it provided that such dispute is bona fide. The withheld amount shall be limited to that which is in dispute. The disputed amount shall be settled in accordance with the Dispute Resolution. Any exercise by the DUSIB under this Clause shall not entitle the Shelter Management Agency to delay or withhold provision of the Services.

(k) Except as otherwise provided for herein or as agreed between the Parties in writing, the Shelter Management Agency shall not charge any Users, except for the Fees, for any services provided to them under this Agreement.

13.2. **Damages for shortfall/ non-compliance in Service Level Standards**

(a) In the event the DUSIB, whether from the review of reports submitted by the Shelter Management Agency/ Monitoring Agency in accordance with the provisions of this Agreement or otherwise, observes that the provision of Services 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 Shelter Management Agency in accordance with Schedule III of this Agreement and demand the Shelter Management Agency by a notice in writing to pay the same within 30 (thirty) days and on failure of the Shelter Management Agency to pay the same, the DUSIB shall recover the amount from the Shelter Management Agency by way of deductions from the future invoices.

Provided that upon receipt of the demand the Shelter Management Agency 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 Shelter Management Agency 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 Shelter Management Agency. The Shelter Management Agency shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution procedure shall apply.

i. The Damages set forth in preceding sub clause may be assessed and specified forthwith by the Monitoring Agency; 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 Shelter Management Agency is otherwise in compliance with its obligations under this Agreement.

ii. In the event, the Shelter Management Agency is in default of any other obligation under this Agreement, DUSIB may estimate the damages and impose corresponding lumpsum damages on the Shelter Management Agency for the duration of such non-performance.

13.3. **Tax**

(a) The DUSIB shall be entitled to deduct taxes from the amounts due and payable to the Shelter Management Agency as per the Applicable Laws. The Shelter Management Agency shall pay for all other taxes in connection with the Agreement, including, but not limited to, property, sales, use, excise duty, value-added, goods and services, consumption and other similar taxes or duties. The DUISB shall provide Shelter Management Agency with the original tax receipt of any withholding taxes paid for Project on payments under the Agreement. The Shelter Management Agency 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) In the event of any increase or decrease of the rate of taxes due to any statutory notification/s during the Term the consequential effect shall be to the account of the Shelter Management Agency.

(c) 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.

14. Emergency Takeover and Termination

14.1. **Emergency Takeover**

In the event that the Shelter Management Agency is unable to provide Services for any reason whatsoever, including for reason of Force Majeure, DUSIB may, at its sole discretion, take over the provision of the Services and the Project Facilities and may in such circumstances requisition the use of the Equipment used by the Shelter Management Agency and the Shelter Management Agency shall allow the use of such Equipment by DUSIB ("**Emergency Takeover**").

An Emergency Takeover pursuant to this provision shall not extend beyond a period of sixty (60) days. In the event DUSIB determines to extend the Emergency Takeover beyond the said period of sixty (60) days, it shall terminate this Agreement and pay the Shelter Management Agency the book value of the Equipment and the termination payments pursuant to the provisions of this Agreement.

14.2. **Breach, Rectification and Termination**

In the event that either Party is in material breach of its obligations under this Agreement, the aggrieved Party may terminate this Agreement upon notice to the other Party. Any notice served pursuant to this Clause shall give reasonable details of the material breach, which could include the following events:

(a) If there is breach which translates into default in providing services by the Shelter Management Agency pursuant to the Agreement, continuously for more than three days, then the DUSIB, will serve a three days notice to Shelter Management Agency for curing such breach. In case the breach continues after the notice period, the DUSIB will have the option to terminate this Agreement at the end of the notice period.

(b) DUSIB may withdraw any shelter(s) from SMA if it is found that there is gross violation of law of land.

(c) The right of the DUSIB to terminate this Agreement pursuant to this provision shall be without prejudice to any other rights and remedies available to the DUSIB.

14.3. **Termination for Shelter Management Agency Default**

Without prejudice to any other rights and remedies available to the DUSIB, the DUSIB may serve written notice to the Shelter Management Agency at any time to terminate this Agreement with immediate effect in the following events ("**Shelter Management Agency Event of Default**"):

(a) The Shelter Management Agency does not commence Services for all the Night Shelters within 7 (seven) days from Effective Date;

(b) The Shelter Management Agency has failed to adhere to the Operations Plan and continues to be in default for 3 (three) days;

(c) The Shelter Management Agency has failed to meet the Service Level Standards as specified in Schedule III;

(d) The Shelter Management Agency or its representative have carried out and caused execution of any unlawful activity within the Service Area, for which the Shelter Management Agency is responsible;

(e) In the event of change of Control of the Shelter Management Agency;

(f) In the event the Shelter Management Agency has merged, amalgamated, acquired by any other agency or acquisition such that the net worth of the surviving entity is less than that of Shelter Management Agency prior to such merger or amalgamation;

(g) In the event of a reasonable apprehension of bankruptcy of the Shelter Management Agency:

i. Shelter Management Agency shall in the event of an apprehension of bankruptcy immediately inform the DUSIB well in advance (at least 3 months) about such a development; and

ii. Conversely if the DUSIB apprehends a similar event regarding the Shelter Management Agency, DUSIB can exercise the right of termination in the manner stated hereinabove.

14.4. **Termination for DUSIB Default**

Without prejudice to any other rights and remedies available to the Shelter Management Agency, Shelter Management Agency may serve written notice to DUSIB at any time to terminate this Agreement after giving 15 days notice or as mentioned below in the following events ("**DUSIB Event of Default**"):

(a) DUSIB has unreasonably withheld or delayed grant of any approval or permission which the Shelter Management Agency is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;

(b) 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 Shelter Management Agency;

(c) DUSIB repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;

(d) 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 Shelter Management Agency and has failed to cure the same within 60 days of notice thereof by the Shelter Management Agency; and

(e) Any representation made or warranties given by the DUSIB under this Agreement is found to be false or misleading.

14.5. **Effects of Termination**

(a) Notwithstanding anything else contained in this Agreement, in the event of termination of this Agreement by DUSIB pursuant to Clause 14.2(a), the Shelter Management Agency shall not be entitled to receive, from the date of termination of this Agreement, any Payment for Shelter Management or any compensation or any other payments from DUSIB.

(b) In the event that the DUSIB, or the Shelter Management Agency, terminates this Agreement pursuant to this Article, and DUSIB decides that it would take over the Equipment being used by the Shelter Management Agency, then in that case in addition to the payment of any amounts due and payable to the Shelter Management Agency in accordance with this Agreement, DUSIB shall also pay the book value of the Equipment that it decides to take over. The book value of the Equipment for the purposes of this Clause would be determined by an auditor appointed by DUSIB.

(c) Upon termination of this Agreement, the Parties will comply with the Exit Management Schedule (Schedule VIII).

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

14.6. **Fraud by Shelter Management Agency's personnel**

DUSIB reserves its right to initiate civil as well as criminal action against the agents/ employees of the Shelter Management Agency for fraud or misappropriation, immorat act, besides claiming damages and indemnification. The management of the Shelter Management Agency would also be made liable for action in case of fraud, under the applicable laws and DUSIB may terminate this Agreement, if finds it necessary to do so.

15. Handback of Project Facilities and Equipment

15.1. **Ownership of Project Facilities**

The ownership of the Project Facilities including all improvements made therein by the Shelter Management Agency shall at all times remain that of DUSIB.

15.2. **Shelter Management Agency's Obligations**

(a) Upon the completion and expiry of the Term, or early Termination of this Agreement, the Shelter Management Agency shall hand back, peaceful possession of the Project Facilities free from any Encumbrance in good operable condition and in accordance with Handback Requirements as may be stipulated after the joint inspection provided in sub-clause (b) below.

(b) DUSIB shall at least 2 (two) months before the expected expiry or during the time period specified in the Termination Notice in case of Termination of the Agreement; conduct a joint inspection of the Project Facilities with the Shelter Management Agency. DUSIB shall, within 7 (seven) days or as specified of such inspection prepare and furnish to the Shelter Management Agency a list of works/ jobs (**"Handback Requirements"**), if any, to be carried out so as to conform to the Service Level Standards. The Shelter Management Agency shall promptly undertake and complete such works / jobs within a maximum period of 30 (thirty) days or period specified by DUSIB from the date of receipt of the Handback Requirements and ensure that the Project Facilities continue to meet such requirements until the same are handed back to DUSIB free from any Encumbrance.

(c) Provided, that certain works / jobs forming part of Handback Requirements are not carried out, DUSIB shall issue a list of outstanding works / jobs signed jointly by DUSIB and the Shelter Management Agency ("Hand Back List"). All Hand back List works / jobs shall be completed by the Shelter Management Agency within such time as may be determined by the DUSIB, but not exceeding 30 (thirty) days of the date of issue of the Hand Back List.

(d) DUSIB shall, within 15 (fifteen) days of the joint inspection undertaken under preceding clause (b) also prepare and furnish to the Shelter Management Agency a

list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to DUSIB along with the Project Facilities.

15.3. **DUSIB's Obligations**

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

(a) carrying out works/jobs listed under Clause 15.2, which have not been carried out / reimbursed by the Shelter Management Agency;

(b) purchase of items, which have not been handed back to DUSIB along with the Project Facilities in terms of Clause 15.2; and

(c) any outstanding dues, which may have accrued in respect of the Project during the Term.

duly discharge and release to the Shelter Management Agency the Performance Security within 3 (three) months from the date of expiry of the Term, or early Termination of this Agreement.

15.4. **Takeover of Equipment**

In case DUSIB decides to take over the Equipment being used by the Shelter Management Agency, in addition to the payment of any amounts are due and payable to the Shelter Management Agency in accordance with this Agreement, DUSIB shall also pay the book value of the Equipment that it decides to take over. The book value of the Equipment for the purposes of this Clause would be determined by an auditor appointed by DUSIB.

16. Protection and Limitations

16.1. **Warranties**

(a) The Shelter Management Agency warrants and represents to the DUSIB that:

i. it is a competent and efficient provider of Night Shelter management services;

ii. it is duly organised and validly existing under the laws of India, and has full capacity and authority and all necessary approvals to enter into and to perform its obligations under the Agreement and to carry out the transactions contemplated hereby;

iii. this Agreement is executed by a duly authorized representative of Shelter Management Agency;

iv. it shall discharge its obligations under this Agreement with due skill, care and diligence so as to comply with the provisions of this Agreement;

v. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

vi. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

vii. there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement;

viii. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

ix. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

x. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement, and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

xi. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

xii. no representation or warranty by it contained herein or in any other document furnished by it to the DUSIB or its nominee including the Proposal or to any Government Authority contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

xiii. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the DUSIB in connection therewith.

(b) *Representations and warranties of DUSIB*

DUSIB represents and warrants to the Shelter Management Agency that:

i. It has full power and authority to execute, deliver and perform its obligations pursuant to the Agreement; and

ii. It has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

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

(d) Notwithstanding what has been stated elsewhere in this Agreement and the Schedules attached herein, in the event the Shelter Management Agency is unable to meet the obligations pursuant to the implementation of the Project and/or provide Services and any related scope of work as stated in this Agreement and the Schedules attached herein, the DUSIB will, inter alia, have the option to deduct the penality amount from the payment of agency
after serving a written notice of 15 (fifteen) days in advance on the Shelter Management Agency. Such right of the DUSIB shall be without prejudice to any other rights or remedies available under law or contract.

16.2. **Third Party Claims**

(a) Subject to Clause 16.2(b) below, Shelter Management Agency (the **"Indemnifying Party"**) undertakes to indemnify the DUSIB (the **"Indemnified Party"**) from and against all losses, claims or damages on account of bodily injury, death or damage to any person, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or non-performance under this Agreement.

(b) The indemnities set out in this Clause shall be subject to the following conditions:

i. the Indemnified Party, as promptly as practicable, informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;

ii. the Indemnified Party may at its option (but shall not be obligated to), at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defense;

iii. if the Indemnifying Party does not assume full control over the defense of a claim as provided in this Clause, the Indemnified Party may at its option participate in such defense at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of the Indemnifying Party will be included in Losses;

iv. the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;

v. all settlements of claims subject to indemnification under this Clause will: (aa) be entered into only with the consent of the Indemnified Party, which consent will not be unreasonably withheld and include an unconditional release to the Indemnified Party from the claimant for all liability in respect of such claim; and (ab) include any appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement; and

vi. the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings.

16.3. **Limitation of Liability**

(a) Notwithstanding any other provision of this Agreement, there shall be no limitation of liability on Shelter Management Agency in case of (i) any damages for bodily injury (including death) and damage to real property and tangible personal property and willful fraud and/or (ii) the intellectual property infringement claims.

(b) In all other cases not covered by sub-Clause (a) above, the total financial liability of the Shelter Management Agency shall be limited to the actual value of the loss or damages, arrived at as the total amounts payable by the Shelter Management Agency.

(c) Nothing contained in this Agreement grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this Agreement, as the case may be.

16.4. **Force Majeure**

(a) Neither Party to this Agreement shall be liable to the other for any loss or damage which may be suffered by the other due directly to the extent and for the duration of any cause beyond the reasonable control of the Party ("**Force Majeure**") events such as, but not limited to, acts of God not confined to the premises of the Party claiming the Force Majeure, flood, drought, lightning or fire, earthquakes, strike, lock-outs beyond its control, labour disturbance not caused at the instance of the Party claiming Force Majeure, acts of government or other competent authority, war, terrorist activities, military operations, riots, epidemics, civil commotions, deteriorated law and order situation, etc. No failure, delay or other default of any person to either Party shall entitle such Party to claim Force Majeure under this Clause.

(b) The Party seeking to rely on Force Majeure shall promptly, within 2 days, notify the other Party of the occurrence of a Force Majeure event as a condition precedent to the availability of this defense with particulars detailed in writing to the other Party and shall demonstrate that it has taken and is taking all reasonable measures to mitigate the events of Force Majeure.

(c) In the event the Force Majeure substantially prevents, hinders or delays the Shelter Management Agency's performance of Services necessary for Project's implementation or the operation of Project's critical business functions for a period in excess of 5 days, the DUSIB may declare that an emergency exists. However, when the situation arising out of Force Majeure comes to an end in the assessment of DUSIB, the following condition shall apply:

i. *Post Effective Date*: If Force Majeure had occurred post commencement of operations, upon its coming to an end, the Shelter Management Agency shall resume normal services under this Agreement immediately. The DUSIB, if he considers it necessary, may grant an extension of time to the Shelter Management Agency for resuming normal services under this Agreement. However, DUSIB will deduct for each day of the extension period an amount proportionate to the number of Night Shelters affected and non operational in the Service Area from the Payment for Night Shelters to be made to the Shelter Management Agency as per this Agreement. If normal services are not resumed immediately or within the extended time, the DUSIB will have the option to deduct penality amount from payment due towards SMA and/or terminate the Agreement.

(d) All payments pursuant to termination due to Force Majeure event shall be in accordance with this Agreement.

(e) Notwithstanding the terms of this Clause, the failure on the part of the Shelter Management Agency under this Agreement or terms under the Service Level Standards to implement any disaster contingency planning and back-up and other data safeguards against natural disaster, fire, sabotage or other similar occurrence shall not be an event of Force Majeure.

(f) Notwithstanding the terms of this Clause, upon the occurrence of a Force Majeure event due to deterioration of law and order within any part of the Service Area, DUSIB shall undertake such measures as may be necessary and within its capability to ensure the restoration of the law and order in the areas so notified.

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

16.5. **Data protection and use**

(a) In the course of providing the services the Shelter Management Agency may be compiling, processing and storing Data.

(b) The Shelter Management Agency is responsible for complying with its respective obligations under the applicable laws.

(c) The Shelter Management Agency shall not transfer any Data to any person or organization unless otherwise authorized in writing by the DUSIB in this regard.

(d) Upon reasonable written request from a Party, the other Party will provide the requesting Party with such information that it has regarding the Project, its Data and its processing which is necessary to enable the requesting Party to comply with its obligations under the applicable data protection law or regulation.

16.6. **Audit, Access and Reporting**

(a) The Parties shall comply with Audit, Access and Reporting Schedule provided in Schedule VII.

(b) The Shelter Management Agency shall, on request, allow access to the DUSIB and its nominees to all information which is in the possession or control of the Shelter Management Agency, which relates to the provision of the services as set out in the Audit, Access and Reporting Schedule and is reasonably required to comply with the terms of the Audit, Access and Reporting Schedule.

(c) DUSIB shall have a right to undertake an audit and inspection of the Shelter Management Agency and the manner in which it is discharging its obligations under this Agreement.

17. **Dispute Resolution**

17.1. **Amicable Resolution**

(a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute")** shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in clause (b) below.

(b) The Parties may refer such Dispute to the Chief Executive Officer, DUSIB for amicable settlement. Upon such reference, the Parties shall meet at the earliest mutual convenience and in any event within 30 (thirty) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 30 (thirty) days of such meeting or such time mutually agreed, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 17.2 below.

17.2. **Arbitration**

In case, a dispute is referred to arbitration, the arbitration proceedings shall be carried under the Indian Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof. Such disputes shall be referred to an arbitrator appointed by CEO DUSIB within 30 days of notice of either Party to refer the matter to arbitration.

Arbitration proceedings shall be held in Delhi and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

The decision of the arbitrator shall be final and binding upon all the Parties. The expenses of the arbitrator as determined by the arbitrator shall be shared equally by DUSIB and the Shelter Management Agency. However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by each Party itself. All arbitration awards shall be in writing and shall state the reasons for the award.

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

18. Miscellaneous

18.1. **Confidentiality**

(a) The Shelter Management Agency recognizes that during the term of this Agreement, sensitive data will be procured and made available to it and agents and others working for or under the Shelter Management Agency. Further Shelter Management Agency also recognizes that any improper and unauthorized disclosure or usage of the data by any such recipient may constitute a breach of applicable laws causing harm not only to the DUSIB but also to the concerned citizens. The Shelter Management Agency shall demonstrate utmost care, sensitivity and strict confidentiality in respect of all such information.

(b) Each Party agrees as to any Confidential Information disclosed by a Party to this Agreement (the "**Discloser**") to the other Party to this Agreement (the "**Recipient**"):

i. to take such steps necessary to protect the Discloser's Confidential Information from unauthorized use, reproduction and disclosure as the Recipient takes in relation to its own Confidential Information of the same type, but in no event less than reasonable care;

ii. to use such Confidential Information only for the purposes of this Agreement or as otherwise expressly permitted or expressly required by this Agreement or as otherwise permitted by the Discloser in writing;

iii. not, without the Discloser's prior written consent, to copy the Confidential Information or cause or allow it to be copied, directly or indirectly, in whole or in part, except as otherwise expressly provided in this Agreement, or as required in connection with Recipient's use as permitted under this Clause, or as needed for the purposes of this Agreement, provided that any proprietary legends and notices (whether of the Discloser or of a third party) are not removed or obscured;

iv. not, without the Discloser's prior written consent, to disclose, transfer, publish or communicate the Confidential Information in any manner to any person except as permitted under this Agreement;

v. limit access to such Confidential Information and materials to those of its directors, partners, advisers, agents or employees who are directly involved in the consideration/evaluation of the Confidential Information and bind each of its directors, partners, advisers, agents or employees so involved to protect the

Confidential Information and materials in the manner prescribed in this Agreement; and

vi. upon discovery of any unauthorized disclosure or suspected unauthorized disclosure of Confidential Information, promptly inform the Discloser of such disclosure in writing and immediately return to the Discloser all such Information and materials, in whatsoever form, including any and all copies thereof.

(c) The restrictions of this Clause shall not apply to Confidential Information that:

i. is or becomes generally available to the public through no breach of this Clause by the Recipient;

ii. was in the Recipient's possession free of any obligation of confidence prior to the time of receipt of it by the Recipient hereunder;

iii. is obtained by the Recipient independently of any of Discloser's Confidential Information;

iv. is rightfully obtained by the Recipient from third parties authorized at that time to make such disclosure without restriction;

v. is identified in writing by the Discloser as no longer proprietary or confidential; or

vi. is required to be disclosed by law, regulation or court order or under the Right to Information Act, or to be furnished to the Parliament and/or its Committees, provided that the Recipient gives prompt written notice to the Discloser of such legal and regulatory requirement to disclose so as to allow the Discloser reasonable opportunity to contest such disclosure.

(d) To the extent that such disclosure is required for the purposes of this Agreement, Recipient may disclose Confidential Information to:

i. its employees, agents and to any of its affiliates and their respective employees but all of them should in turn be bound to maintain the confidentiality referred to herein on their part ; and

ii. its professional advisors and auditors, who require access for the purposes of this Agreement, whom the Recipient has informed of its obligations under this Clause and in respect of whom the Recipient has used commercially reasonable efforts to ensure that they are contractually obliged to keep such Confidential Information confidential on terms substantially the same as set forth in this

Clause. The Recipient may also disclose Confidential Information to any entity with the Discloser's prior written consent.

(e) The provisions of this Clause shall survive the expiration or any earlier termination of this Agreement.

(f) Confidential Information shall be and remain the property of the Discloser and nothing in this Clause or Agreement shall be construed to grant either Party any right or license with respect to the other Party's Confidential Information otherwise than as is expressly set out in this Agreement.

(g) Subject as otherwise expressly provided in this Agreement all Confidential Information in tangible or electronic form under the control of the Recipient shall either be destroyed, erased or returned to the Discloser promptly upon the earlier of: (i) the written request of the Discloser, or, (ii) termination or expiry of this Agreement. Notwithstanding the forgoing, all Parties may retain, subject to the terms of this Clause, a reasonable number of copies of the other Party's Confidential Information solely for confirmation of compliance with the confidentiality obligations of the Agreement.

All the Parties agree that monetary damages would not be a sufficient remedy for any breach of this Clause by the other Party and that the DUSIB and Shelter Management Agency, as appropriate, shall be entitled to equitable relief, including injunction and specific performance as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this Clause, but shall be in addition to all other remedies available at law or equity to the damaged Party including the right to terminate this Agreement.

(h) In connection with the Services, Shelter Management Agency may from time to time undertake one or more quality assessment reviews for the purpose of improving Project. In order for such reviews to be frank and candid, for the greatest benefit to DUSIB and Shelter Management Agency, they shall be kept confidential to the greatest extent possible. The Parties agree that any documentation created in connection with such quality assessment reviews shall be Confidential Information of Shelter Management Agency which is licensed to DUSIB for any internal use except that in no event shall such documentation or the results of such reviews be discoverable or admissible (or used for any purpose) in any arbitration or legal proceedings against Shelter Management Agency related to the Agreement or the Services.

18.2. **Personnel**

(a) Personnel assigned by the Shelter Management Agency to implement the Project and perform the Services shall be employees of the Shelter Management Agency, and under no circumstances will such personnel be considered employees of DUSIB. The Shelter Management Agency 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, and agents of Shelter Management Agency

(b) The Shelter Management Agency shall use its best efforts to ensure that sufficient Shelter Management Agency's personnel are employed to perform the Services, and also that such personnel have appropriate qualifications to perform the Services. The minimum qualification and experience of the Shelter Management Agency's personnel is provided in Schedule IX. The DUSIB shall have the right to require the removal or replacement of any Shelter Management Agency personnel performing work under the Agreement. In the event that the DUSIB requests that any Shelter Management Agency 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) The Shelter Management Agency shall also be responsible to train certain employees of the DUSIB with regard to the Services being provided by the Shelter Management Agency as and when required by the DUSIB during the Term. The parameters of the training required for these employees of the DUSIB shall be communicated by the DUSIB to the Shelter Management Agency periodically and shall be in accordance with the latest procedures and processes available in the relevant areas of work.

(d) In the event the DUSIB identifies any personnel of Shelter Management Agency as "Key Personnel", then the Shelter Management Agency shall not remove such personnel without the prior written consent of the DUSIB under the applicable terms of this Agreement and/or the Service Level Standards.

(e) Except as stated in this Clause, nothing in this Agreement or the Service Level Standards will limit the ability of Shelter Management Agency or any Shelter Management Agency freely to assign or reassign its employees; provided that Shelter Management Agency shall be responsible, at its expense, for transferring all appropriate knowledge from personnel being replaced to their replacements. The DUSIB shall have the right to review and approve Shelter Management Agency's plan for any such knowledge transfer. Shelter Management Agency shall maintain the same standards for skills and professionalism among replacement personnel as in personnel being replaced.

(f) Each Party shall be responsible for the performance of all its obligations under this Agreement or the Service Level Standards and shall be liable for the acts and omissions of its employees and agents in connection therewith.

(g) The Shelter Management Agency shall remain solely responsible to meet the requirements set out in this Agreement.

(h) *Liability for the Actions of the Personnel*

i. The Shelter Management Agency 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 Shelter Management Agency shall be fully responsible for the acts or omissions of all its employees, agents, workmen, suppliers, consultants and any other persons for whom it is contractually responsible for, as if such acts of omissions were its own;

iii. The Shelter Management Agency shall be the principal employer of the employees, agents 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; and

iv. The Shelter Management Agency 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 Shelter Management Agency's employees, agents, etc.

18.3. **Intellectual Property**

(a) Except to the extent otherwise expressly provided in this Agreement, the DUSIB shall retain exclusive intellectual property rights to the forms, content, data and the compilations of the DUSIB to which the DUSIB has sovereign rights and nothing herein shall or will be construed or deemed to grant to the Shelter Management Agency any right, title, license, sub-license, proprietary right or other claim against or interest in, to or under (whether by estoppels, by implication or otherwise) to the aforesaid rights of DUSIB.

(b) Without limiting the generality of the above article, and except to the extent otherwise expressly agreed by the Parties to this Agreement in writing, nothing contained in this Agreement shall or will be construed or deemed to grant to the Shelter Management Agency any right, title, license or other interest in, to or under (whether by estoppels, by implication or otherwise) any logo, trademark, trade name, service mark or similar designations of DUSIB or its respective affiliates/nominees.

(c) The DUSIB shall have no liability or obligation to Shelter Management Agency or any other Party to the extent the Infringement Claim (as defined below) is based upon any use of the equipment, software, information, methods of operation or other intellectual property (or the access, use or other rights thereto) for the benefit of any Party (including any use by Shelter Management Agency or its nominees outside the scope of the Project) other than for the DUSIB.

(d) Notwithstanding any provisions of this Agreement to the contrary, the foregoing remedies constitute the Parties' sole and exclusive remedies and each Party's entire liability, with respect to Infringement Claims.

(e) Nothing contained in this Agreement or the Service Level Standards shall or will be construed or deemed to grant to the Shelter Management Agency or its respective affiliates/nominees any right, title, license or other interest in, to or under (whether by estoppels, by implication or otherwise) any logo, trademark, trade name, service mark or similar designations of the Project or any confusingly similar designations of the Project.

(f) Subject to any sole or exclusive rights granted by the DUSIB to a third party prior to the Effective Date, the DUSIB grants to the Shelter Management Agency or its nominated agencies, solely in their performance of Services for Project non-exclusive, paid-up, royalty-free right and license during the Term of this Agreement (but not the right to sub-license) to use the Data including the right to copy, perform, display, execute, reproduce, modify, enhance and improve the Data to the extent reasonably necessary or useful for the provision of services hereunder.

(g) The Shelter Management Agency shall not use the Data for any other purpose other than for the purpose of providing the services specified under this Agreement.

(h) The Shelter Management Agency shall indemnify, defend and hold harmless DUSIB and their respective officers, employees, successors and assigns, from and against any and all losses, claims or liabilities arising from claims by third parties that any Deliverable (or the access, use or other rights thereto) created by Shelter Management Agency pursuant to the Agreement, or Equipments, information, methods of operation or other intellectual property (or the access, use or other rights thereto) provided by Shelter Management Agency pursuant to this Agreement (aa) infringes a copyright enforceable in India, (ab) infringes any intellectual property rights including without limitation industrial right and/or patent issued in India, or (ac) constitutes misappropriation or unlawful disclosure or use of another Party's trade secret under the laws of India (collectively, "Infringement Claims"); provided, however, that this will not apply to any Deliverable (or the access, use or other rights thereto) created by (A) DUSIB ; (B) third parties (i.e., other than Shelter Management Agency) at the direction of DUSIB.

(i) If, as a result of Infringement Claims, DUSIB or its nominees or its employees or intended users are injuncted from using such Equipments or Deliverables or any part thereof or is likely to be injuncted, Shelter Management Agency, at its expense, shall (aa) modify such Project Asset and/or Deliverables (provided its functionality is not impaired) so that it is no longer infringing and obtains a certificate to the said effect from the party claiming infringement, (ab) replace such Project Asset and/or Deliverables with a functional equivalent of the same, or (ac) obtain the right for the DUSIB to continue using the such Equipments and/or Deliverables. Such remedies shall not be deemed to be the exclusive remedies for this Clause, but shall be in addition to all other remedies available at law or contract to the DUSIB.

(j) If Shelter Management Agency uses in the course of the provision of the Services any Third Party System it will use all commercially reasonable endeavors to pass to the DUSIB such third party's warranties relating to such Third Party Systems. In the event that such warranties cannot be passed through to or enforced by the DUSIB, the Shelter Management Agency will enforce such warranties on DUSIB's behalf and account to DUSIB for so doing. For a third party product supplied under this Agreement, the Shelter Management Agency shall pass on to the DUSIB all the indemnities offered by such third party.

(k) All rights, title and interest in and to, and ownership in, Proprietary Information relating to the Project shall remain solely with the DUSIB. Shelter Management Agency shall be entitled to use such Proprietary Information relating to the Project only during the Term and only for the purposes of providing the services or to the extent necessary for Shelter Management Agency's normal operational, repair and maintenance purposes related to the services. The DUSIB shall retain ownership of all intellectual property rights to Proprietary Information relating to the Project.

(l) All rights, title and interest in Proprietary Information of the Shelter Management Agency, shall remain solely with Shelter Management Agency. The Shelter Management Agency will upon the award of the Project in its favor, declare the status of all the Proprietary Information of the Shelter Management Agency along with documentary support sufficient to establish its sole legal rights in the aforesaid Proprietary Information to the DUSIB. This Proprietary Information shall refer to that which has been owned by the Shelter Management Agency prior to commencement of the Agreement. Additionally, any software that may be acquired from third parties during the term of this Agreement and that which may be developed by the Shelter Management Agency during the course of the Agreement specifically for the Project shall not be considered as Shelter Management Agency Proprietary Information.

(m) With respect to ownership of the Deliverables and intellectual property rights in them, the Parties agree that the following shall apply:

i. All the rights, title, interest and ownership of the Deliverables and their intellectual property rights provided to DUSIB by Shelter Management Agency

during the course of its performance under this Agreement shall vest in DUSIB immediately on creation. To the extent that the Proprietary Information of the Shelter Management Agency is incorporated within the Deliverables, Shelter Management Agency and its employees engaged hereby grant to DUSIB a worldwide, perpetual, irrevocable, non-exclusive, transferable, paid-up right and license to use, copy, modify (or have modified), transport to DUSIB at facilities and Night Shelters provided by DUSIB, and prepare from them, use and copy derivative works for the benefit of and internal use of Project. The DUSIB's rights pursuant to this sub-clause include the right to disclose such Proprietary Information of the Shelter Management Agency to third party contractors solely for use on the Project provided that all such third party contractors execute, deliver and comply with any customary confidentiality and nondisclosure agreements reasonably required by the DUSIB.

ii. If Shelter Management Agency proceeds to apply for, or assign to any third party, any patent rights relating to its Proprietary Information referred to in the above clause, the Shelter Management Agency will ensure that the DUSIB's rights as provided herein are preserved.

(n) The DUSIB hereby grants to Shelter Management Agency a non-exclusive right and license to access and use the Proprietary Information relating to the Project solely for the purpose of providing services pursuant to this Agreement. Such right and license shall terminate upon the expiration or termination of this Agreement.

(o) Upon the expiry or termination of this Agreement, Shelter Management Agency shall undertake the actions set forth below in this Clause.

i. The Shelter Management Agency undertakes to negotiate in good faith with the DUSIB and any relevant third party whom DUSIB may appoint to replace the Shelter Management Agency upon expiry of the Term or termination of this Agreement to undertake the services being performed by Shelter Management Agency under this Agreement ("Replacement Shelter Management Agency"), in respect of commercial terms applying to grant of rights in respect of intellectual property rights relating to the Shelter Management Agency Proprietary Information and which the DUSIB and any relevant Replacement Shelter Management Agency require to enable them to provide or receive services substantially equivalent to the services being provided by the Shelter Management Agency hereunder.

ii. In respect of Shelter Management Agency's usage of third party intellectual property rights, the Shelter Management Agency undertakes to assist the DUSIB to secure such consents or licenses from such third parties as are necessary to enable the DUSIB to receive services substantially equivalent to the services hereunder.

18.4. **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 shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

18.5. **Encumbrance**

The Shelter Management Agency shall not have following rights to:

(a) assign, transfer or sublet or create any lien or Encumbrance on this Agreement, on the whole or any part of the Project Facilities except as expressly permitted by this Agreement; and

(b) sell, license, lease or any other form of transfer of any Project Facility.

18.7. **Exclusion of implied warranties etc.**

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

18.8. **Independent Contractor**

Nothing in this Agreement shall be construed as establishing or implying any agency, partnership or joint venture between the Parties to this Agreement and, except as expressly stated in this Agreement, nothing in this Agreement shall be deemed to constitute any of the Parties as the agent of any other Party or authorizes either Party (i) to incur any expenses on behalf of the other Party, (ii) to enter into any engagement or make any representation or warranty on behalf of the other Party, (iii) to pledge the credit of or otherwise bind or oblige the other Party, or (iv) to commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

18.9. **Assignment**

(a) The DUSIB may assign this Agreement in whole or as part of a reorganization, restructuring, consolidation, merger, or as per the decisions of the Government of India.

(b) The Shelter Management Agency shall not assign this Agreement or its rights or its duties under this Agreement either in whole or in part without the prior written consent of the DUSIB, and any attempted assignment or delegation without such consent will be void. It is understood that transfer of (25%) or more voting share capital of the Shelter Management Agency by one transaction or a series of transaction in favour of any person or a group persons shall inter-alia be considered and deemed to an assignment/transfer of this Agreement and shall require prior written consent of the DUSIB.

18.10. **Trademarks, Publicity**

Neither Party may use the trademarks of the other Party without the prior written consent of the other Party. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either along or in conjunction with any other person any press release, information, article, photograph, illustration or any other material of whatever kind relating to the Agreement, or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed.

18.11. **Notices**

(a) Any notice or other document, which may be given by either Party under this Agreement, shall be given in writing in person or by pre-paid recorded delivery post or by facsimile transmission.

(b) In relation to a notice given under this Agreement, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

DUSIB:
Address: …….
Tel: ……
Fax: ……

Shelter Management Agency:
Address: …….
Tel: ……
Fax: ……

(c) Any notice or other document shall be deemed to have been given to the other Party when delivered (if delivered in person) if delivered between the hours of 9.00 am and 5.00 pm on a working day at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or e-mail on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by post).

(d) Either Party to this Agreement may change its address, telephone number, and facsimile number for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

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

18.12. **Variations and further Assurance**

(a) No amendment, variation or other change to this Agreement or the Service Level Standards shall be valid unless authorized in accordance with the Clause 12.1 and made in writing and signed by the duly authorized representatives of the Parties.

(b) Each Party agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this Agreement.

18.13. **Severability and Waiver**

(a) If any provision of this Agreement, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this Agreement or the remainder of the provisions in question which shall remain in full force and effect. The Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

(b) No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this Agreement of any right, remedy or provision of this Agreement shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision. Without limiting the foregoing, no waiver by a Party of any breach by the other Party

of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

18.14. **Compliance with Laws and Regulations**

Each Party to this Agreement accepts that its individual conduct shall (to the extent applicable to it) at all times comply with all Applicable Laws, rules and regulations. For the avoidance of doubt, the obligations of the Parties are subject to their respective compliance with all Applicable Laws and regulations.

18.15. **Ethics**

The Shelter Management Agency represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of DUSIB, or its nominated agencies in connection with the Agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of DUSIB's standard policies and may result in cancellation of this Agreement.

18.16. **Entire Agreement**

This Agreement, all schedules appended thereto and the contents and specifications of all the Volumes of the RFP constitute the entire agreement between the Parties with respect to their subject matter, and supersede all prior or contemporaneous negotiations, written or oral understandings and agreements, between the Parties regarding such subject matter.

18.17. **Survivability**

The termination or expiry of this Agreement shall in no event terminate or prejudice (a) any right or obligation arising out of or accruing under this Agreement attributable to events or circumstances occurring prior to such termination or expiry; (b) the provisions of this Agreement that by their nature are intended to survive on its termination or expiry.

18.18. **Successors and Assigns**

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

18.19. **Disclaimer**

(a) The Shelter Management Agency acknowledges that prior to the execution of this Agreement, the Shelter Management Agency has, after a complete and careful examination, made an independent evaluation of the scope of the Project, specifications and standards, Service Area, local conditions, and all information

provided by the DUSIB or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The DUSIB makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Shelter Management Agency confirms that it shall have no claim whatsoever against the DUSIB in this regard.

(b) The Shelter Management Agency acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 18.19(a) above and hereby acknowledges and agrees that the DUSIB shall not be liable for the same in any manner whatsoever to the Shelter Management Agency or any person claiming through or under it.

(c) The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 18.19(a) above shall not vitiate this Agreement, or render it voidable.

(d) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Shelter Management Agency and the DUSIB shall not be liable in any manner for such risks or the consequences thereof.

18.20. **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 by duly authorized representatives set their respective hands and seal on the date first above written in the presence of:

SIGNED, SEALED AND DELIVERED For and on behalf of DUSIB acting through	SIGNED, SEALED AND DELIVERED For and on behalf of _____ _____ acting through
by:	
(Signature) (Name) (Designation)	(Signature) (Name) (Designation)
In the presence of: 1.	2.

Schedule I

Service Area

[3] Applicable for Shelter Management Agency for Night Shelter Group A, to be deleted for others

draft Shelter Management Agreement

[5] Applicable for Shelter Management Agency for Night Shelter Group C, to be deleted for others

draft Shelter Management Agreement

[6] Applicable for Shelter Management Agency for Night Shelter Group D, to be deleted for others

Schedule II

Functional Requirements

1. Overview

1.1. The Shelter Management Agency shall maintain a comfortable, safe, and peaceful environment at the Night Shelters and treat all the Users with respect and dignity.

1.2. The Shelter Management Agency shall be open 24/7 for any individual to use the Night Shelter.

1.3. The Shelter Management Agency shall be responsible for physical custody and upkeep of all the Project Facilities and Equipments.

1.4. The Shelter Management Agency shall undertake joint survey with DUSIB, if required, for reclassification of the Night Shelter for segregation of Night Shelters for family, women, children, drug addict, etc.

1.5. The Shelter Management Agency shall assist DUSIB in undertaking the awareness programme. In undertaking the same, the Shelter Management Agency who were not get any financial support from DUSIB.

1.6. A Safety Plan should be developed for each Night Shelter and the staff of the Night Shelter should be trained to execute the same in case of emergency.

1.7. The Shelter Management Agency shall have Caretaker/s for each Night Shelter on 24/7 basis. The Night Shelters earmarked for women shall have women Caretakers.

1.8. The Shelter Management Agency shall have dedicated staff as sweeper/cleaner for each Night Shelter.

1.9. minor maintance and repair works will be conducted by the SMA like (i)Regural availability of detergents Disinfectant like phenol, brooms, brushes & other material required for maintaing hygenic condition.
(ii) Proper functioning of lighting arrangement/ electricity fixture provided in the unit.
(iii) any other minor repair in night sheter including fittings & fixture which involve small expenditure Nothing extra shall be paid to the Agency by DUSIB of this account and same shall be borne by SMA Form user charges collected from users.

2. **Registration of Users**

2.1. Every person shall be permitted to access the Night Shelter.

2.2. All the Users should be registered upon arrival at the Night Shelter. The format of registration shall be finalized by the Monitoring Agency. The information about the Users should be shared with DUSIB within 12 (twelve) hours or as and when required by DUSIB.

2.3. All the Users should be provided basic information on the facilities to be provided at the Night Shelter and the duration of the stay. All basic facilities provided in night shelter should be Deployed on printed notice board.

2.4. The rules and regulations to be adhered to by the Users during their stay in the Night Shelter shall also be intimated to the Users at the time of registration.

2.5. Users should pay a Fee for using the Night Shelter as prescribed by DUSIB in Schedule IV.

2.6. If requested by the User, a locker may be assigned to the User, if available, by the Shelter Management Agency. The charges for providing the locker would be decided by the Shelter Management Agency in consultation with the Monitoring Agency.

3. **Access to Facilities**

3.1. The Shelter Management Agency shall provide the following services to all the Users:

(a) Retiring area
(b) Bed sheets/ pillows / blankets (in winters). The SMA will be reponsible for dry-cleaning of all the blankets Issued to it by DUSIB and Rs. 15/- per blankets will be paid by DUSIB for dry-cleaning of these blankets annually (once in a year). The SMA will also be responsible for washing of all the daries issued to it, on quaterly basis and Rs. 10 per darie per quarter will be paid for washing of these daries.
(c) Bathing/ showers area,
(d) First aid box, and
(e) Dustbins.
(f) Drinking water.

4. **Identity Cards & Uniform for Representatives of Shelter Management Agency**

4.1. The Shelter Management Agency's representatives should carry their identity card and shall wear the prescribed uniform while performing his duties.

5. **Rules to be followed by each User**

5.1. Consumption of alcohol, drugs or smoking shall not be allowed within the Night Shelter premises. However, the Shelter Management Agency may admit Users who have consumed alcohol or drugs.

5.2. Shelter Management Agency may ask any incoming User to have bath/ shower to control odor in the Night Shelter.

5.3. No illegal activity or storage of illegal substances shall be allowed in the Night Shelter.

5.4. No firearms or knives shall be allowed in the Night Shelter.

5.5. No violence or threats of violence shall be allowed in the Night Shelter.

5.6. No sexually suggestive comments or actions shall be allowed in the Night Shelter.

5.7. No littering, inside or outside the Night Shelter shall be allowed.

5.8. The Users shall not leave the Night Shelter during the period 11.00 p.m to 4.00 a.m next day morning. Even in case of the dispute, the Users shall not be asked to leave by SMA during this period. In exceptional cases, it may be done under intimation to DUSIB.

5.9. In case of any dispute/ violence or any illegal activity, the Shelter Management Agency shall immediately call the police and inform DUSIB of the same.

6. **Dispute Resolution amongst the Users**

6.1. The Shelter Management Agency shall try to resolve the dispute involving two or more Users. Physical restraint shall be used only when all other methods of resolving the dispute fails.

6.2. In case the Shelter Management Agency fails to resolve the issue, it shall immediately call the police and inform DUSIB of the same. The Shelter Management Agency shall liaison with the beat constable of the local police for the purpose.

7. **Health Facilities**

7.1. In case any User needs medical assistance, the SMA shall immediately call CATS ambulance and admit the User to nearby government hospital as per the procedure prescribed by DUSIB.

8. **Information on Homeless on Road within Service Area**

8.1. The Shelter Management Agency shall identify homeless people on the road and persuade them to come to Night Shelter in vicinity of its night shelters within 2 kilometers on night shelter.

8.2. In case the Shelter Management Agency fails to convince the Homeless person on the road to come to Night Shelter, it shall provide a bubble sheet to the Homeless to protect the Homeless from the vagaries of the weather and shall immediately inform DUSIB of the same as per the procedure prescribed by DUSIB.

Schedule III

Service Level Standards

1. General

1.1. The Shelter Management Agency shall be responsible for the complete operation, management and routine maintenance covering the scope of work that includes consumables, skilled human resources, facilitate and deliver the desired services to the users including the incidental activities related thereto.

1.2. The Shelter Management Agency shall give due weightage to the objective of the DUSIB to provide a comfortable, safe, and peaceful environment to the homeless persons and identification of the homeless persons within the Service Area. The conduct of Shelter Management Agency's representatives shall assist DUSIB in meeting objectives of the Project.

1.3. The performance standards shall be measured by the Monitoring Agency through appropriate measurement tools to be designed by it for the purpose.

1.4. If the performance of the Shelter Management Agency is degraded significantly at any given point in time during the Term of the Agreement then DUSIB shall have the right to take appropriate corrective actions including termination of this Agreement.

1.5. The performance standards defined in this Schedule shall be reviewed every year by DUSIB in consultation the Shelter Management Agency to take any corrective measures and the subsequent changes shall be adhered by the Shelter Management Agency.

Sl. No.	Performance Parameter	Performance Indicator	Penalty for Non-performance
1.	Cleanliness	Project Facilities shall be kept neat and clean	1. A penalty of Rs. 1,000/- per night shelter would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 2. A penalty of Rs. 3,000/- per night shelter would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 3. A penalty of Rs. 5,000/- per night shelter would be payable for the third event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 4. More than 3 events of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter would be deemed as Shelter Management Agency Event of Default on the part of SMA.
2.	Maintenance	All fittings and fixtures to be in functional condition	1. A penalty of Rs. 1,000/- per night shelter would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 2. A penalty of Rs. 3,000/- per night shelter would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 3. A penalty of Rs. 5,000/- per night shelter would be payable for the third event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 4. More than 3 events of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter would be deemed as Shelter Management Agency Event of Default on the part of SMA.

Sl. No.	Performance Parameter	Performance Indicator	Penalty for Non-performance
3.	Access to Project Facilities	Provide access to Night Shelter and its facilities to homeless persons on 24/7 basis	1. A penalty of Rs. 1,000/- per night shelter would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 2. A penalty of Rs. 3,000/- per night shelter would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 3. A penalty of Rs. 5,000/- per night shelter would be payable for the third event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 4. More than 3 events of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter would deemed as Shelter Management Agency Event of Default on the part of SMA.
4.	Report number of homeless on road within the Service Area	Number of homeless on road within the Service Area. Deviation of 10 persons is allowed per night.	1. A penalty of Rs. 1,000/- per night shelter would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 2. A penalty of Rs. 3,000/- per night shelter would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 3. A penalty of Rs. 5,000/- per night shelter would be payable for the third event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 4. More than 3 events of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter would deemed as Shelter Management Agency Event of Default on the part of SMA.
5.	Fees: Charging of Fees from Users who are	Fees to be charged by the SMA as per the	1. A penalty of Rs. 1,000/- per night shelter would be payable for the first event of non-conformity with specified

Sl. No.	Performance Parameter	Performance Indicator	Penalty for Non-performance
	exempted from payment of Fees, or overcharging of Fees from Users	Agreement	performance indicators in the Project Facilities of same Night Shelter, in any quarter. 2. A penalty of Rs. 3,000/- per night shelter would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 3. A penalty of Rs. 5,000/- per night shelter would be payable for the third event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 4. More than 3 events of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter would be deemed as Shelter Management Agency Event of Default on the part of SMA.
6.	Record Keeping (as per format prescribed by DUSIB)	Maintain proper record of (i) inventory of Night Shelter items; (ii) attendance register for the Caretakers and sweepers; (iii) cleaning register of Night Shelter; (iv) Cash Book; (v) Complaint Register (vi) Register of users. (vii) visitor register.	1. A penalty of Rs. 1,000/- per night shelter would be payable for the first event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 2. A penalty of Rs. 3,000/- per night shelter would be payable for the second event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 3. A penalty of Rs. 5,000/- per night shelter would be payable for the third event of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter. 4. More than 3 events of non-conformity with specified performance indicators in the Project Facilities of same Night Shelter, in any quarter would be deemed as Shelter Management Agency Event of Default on the part of SMA.

Sl. No.	Performance Parameter	Performance Indicator	Penalty for Non-performance
7.	24 x 7 opening of Night Shelter	Must be open as per Services Level Standards of Agreement	A penalty of Rs. 5000/- would be payable in first event and termination of contract in 2nd event.

Schedule IV

Terms of Fees

1. The Shelter Management Agency may demand, collect and appropriate from the Users, the fees/ charges of Rs 10/- (Rupees Ten only) per day for a period of 24 hours, subject to the provisions of this Schedule.

2. Subject to the provision of this Agreement, the Shelter Management Agency shall not demand or collect any Fees from :

   (i) Any women,
   (ii) Any children below the age of 18 years and
   (iii) Any senior citizens ie. any person above the age of 60 years of age and
   (iv) Any handicapped persons.

3. Subject to the provision of this Agreement, the Shelter Management Agency shall not demand or collect any Fees from Users in the Night Shelters classified as "Free" in the Service Area

4. Subject to the provision of this Agreement, the Shelter Management Agency shall not demand or collect any Fees from any Users from the 1st December till 15th March of the next calendar year.

Schedule V

Monitoring Agency

1. **General**

1.1. The Monitoring Agency 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 Monitoring Agency shall facilitate smooth implementation and operation of the Project. Broadly, the role of the Monitoring Agency is to:

(a) Independently review, monitor and where required by the Shelter Management Agreement, to approve activities associated with service delivery of the Project to ensure compliance with the provisions of the Agreement;

(b) Monitor the operation, maintenance and management of the Project Facility by the Shelter Management Agency;

(c) Assist in preparing coordinating any activities to be undertaken by DUSIB or its representatives within the Project Facility or with the Users using the Project Facility.

(d) Verify and submit a monthly report to DUSIB on compliance by the Shelter Management Agency 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 Shelter Management Agreement, the period or any extension thereof, for performing any duty or obligation;

(g) Ensure coordination between Shelter Management Agency and DUSIB, in relation to any defects or faults with the Project Facilities and their to ensure due resolution;

(h) Undertaking all other duties and functions in accordance with the Shelter Management Agreement 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 Monitoring Agency**

2.1. The Monitoring Agency shall ensure that the delivery of Services meets requirements, standards, specifications and performance, by ensuring that the following are associated with clear, quantifiable metrics for accountability:

(a) Functional requirements
(b) Availability of the Services in the defined locations
(c) Performance
(d) Security
(e) Manageability
(f) Project Documentation
(g) Data Quality Review

2.2. Undertake the detailed review of the Operations Plan submitted by the Shelter Management Agency within 15 (fifteen) days of receipt.

2.3. Monitoring Agency shall review all aspects of Project and compliance with all the requirements of the RFP and the Agreement.

2.4. The Monitoring Agency shall review the periodic status report furnished by the Shelter Management Agency and send its comments thereon to the DUSIB and the Shelter Management Agency within 15 (fifteen) days of receipt of such report.

2.5. The Monitoring Agency shall review the activities carried out by the Shelter Management Agency on a monthly 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

2.6. The Monitoring Agency shall in its Review Report specify the remedial measures that the Shelter Management Agency 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 Shelter Management Agency in this behalf.

2.7. As part of the review of operations, the Monitoring Agency shall also determine and recommend the damages / penalties, if any in accordance with the Agreement to be levied on the Shelter Management Agency in view of non-adherence to Shelter Management Agency's obligations under the Agreement.

2.8. The Monitoring Agency shall monitor and review the curing of deficiencies and non compliances by the Shelter Management Agency.

2.9. Conduct random inspections of the operations for identification and quantification of the deficiencies in the Services provided by the Shelter Management Agency.

2.10. Record and report to the DUSIB on the incidents of Material Breach or Persistent Breach of requirements of the Agreement;

2.11. If during the course or upon review/inspection undertaken by the Monitoring Agency or otherwise, it transpires that either of the Parties is in breach/default of any of its obligations under the Agreement, the Monitoring Agency 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 Monitoring Agency may deem fit and in each case the same shall be recorded.

2.12. Monthly review of the various records and registers maintained by the Shelter Management Agency and suggest suitable remedial measures/ procedures, where necessary.

2.13. All gaps, identified by the Monitoring Agency shall be addressed by the Shelter Management Agency. Monitoring Agency will notify the Shelter Management Agency of any shortcomings from defined requirements/ Service Level Standards at the earliest instance after noticing the same to enable the Shelter Management Agency to take corrective action.

3. **Maintenance of records**

3.1. The Monitoring Agency 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.

3.2. The Monitoring Agency 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 Monitoring Agency;

(b) Inspections undertaken and notices/ instructions issued to the Shelter Management Agency;

(c) Review compliance by the Shelter Management Agency 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 Monitoring Agency shall prepare and submit to DUSIB, progress reports including the following:

i. Monthly progress of works; and
ii. Issues, if any, with regard to the works along with the details of the action taken for the resolution of the same;

Schedule VI

Presentation made by the Shelter Management Agency during RFP evaluation Stage[7]

[7] Any commitment made by the Bidder in the presentation, over and above the requirement of the Shelter Management Agreement shall be binding on the Shelter Agency.

Schedule VII

Audit, Access and Reporting

1. Purpose

This Schedule details the audit, access and reporting rights and obligations of the DUSIB or its nominated agency and the Shelter Management Agency.

2. Audit Notice And Timing

2.1. As soon as reasonably practicable after the Effective Date, the Parties shall use their best endeavours to agree to a timetable for routine audits. The DUSIB or its nominated agency shall conduct routine audits in accordance with such agreed timetable and shall not be required to give the Shelter Management Agency any further notice of carrying out such audits.

2.2. The DUSIB or its nominated agency may conduct non-timetabled audits at his/ her own discretion if she reasonably believes that such non-timetabled audits are necessary as a result of an act of fraud by the Shelter Management Agency, a security violation, or breach of confidentiality obligations by the Shelter Management Agency, provided that the requirement for such an audit is notified in writing to the Shelter Management Agency with a reasonable notice period time prior to the audit (taking into account the circumstances giving rise to the reasonable belief) stating in a reasonable level of detail the reasons for the requirement and the alleged facts on which the requirement is based. If the Shelter Management Agency considers that the non-timetabled audit was not appropriate, the matter shall be referred to the escalation procedure as set out in this Agreement.

2.3. The frequency of audits shall be yearly, provided always that the DUSIB or its nominated agency shall endeavour to conduct such audits with the lowest levels of inconvenience and disturbance practicable being caused to the Shelter Management Agency.

3. Access

The Shelter Management Agency shall provide to the DUSIB or its nominated agency reasonable access to employees, suppliers, agents and any third party facilities being used by the Shelter Management Agency, documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The DUSIB shall have the right to copy at it cost and retain copies of any relevant records. The Shelter Management Agency shall make every reasonable effort to co-operate with them.

4. Audit Rights

The DUSIB or its nominated agency shall have the right to audit and inspect suppliers, agents, data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the Services, as shall be reasonably necessary to verify:

(a) The security, integrity and availability of all DUSIB data and documentation related thereto;

(b) The actual level of performance of the Services is the same as specified in the Service Level Standards; and

(c) The compliance of the Shelter Management Agency with any other obligation under the Agreement.

5. Audit Rights of Suppliers And Agents

5.1. The Shelter Management Agency shall use reasonable endeavours to achieve the same audit and access provisions as defined in this Schedule with suppliers and agents who supply labour, services, equipment or materials in respect of the services. The Shelter Management Agency shall inform the DUSIB or its nominated agency prior to concluding any sub-contract or supply agreement of any failure to achieve the same rights of audit or access.

5.2. The Shelter Management Agency will provide periodic reports to the DUSIB regarding any specific aspects of the Project and in context of the audit and access information as required by the DUSIB or its nominated agency.

6. Action And Review

6.1. Any change or amendment to the systems and procedures of the Shelter Management Agency, where applicable arising from the audit report shall be agreed within thirty (30) calendar days from the submission of the said report.

6.2. Any discrepancies identified by any audit pursuant to this Schedule shall be immediately notified to the DUSIB or its nominated agency and the Shelter Management Agency who shall determine what action should be taken in respect of such discrepancies in accordance with the terms of the Agreement.

7. Records and Information

For the purposes of audit in accordance with this Schedule, the Shelter Management Agency shall maintain true and accurate records in connection with the provision of the services and the Shelter Management Agency shall handover all the relevant records and documents upon the termination or expiry of the Agreement.

8. Reporting Requirements

The Shelter Management Agency shall submit to the Monitoring Agency fortnightly progress report (for each calendar month or part thereof) within first 7 calendar days of the report period inter alia, including the following:

(a) Review of milestones set out in Operations Plan and reasons for delay/ deviations, if any;

(b) Details of equipments purchased.;

(c) Suspension of Services in the Service Area or part thereof, if any, its reasons, duration and the steps undertaken to resume the same;

(d) Notes of meetings between the Shelter Management Agency, the Monitoring Agency and DUSIB highlighting critical decisions taken or agreements reached;

(e) Disagreements/ disputes, if any and proposed measures to be taken;

(f) Brief report of any accident/incident related to the Project, injury/ fatality, property damage, cause of accident and actions taken to avoid recurrence;

(g) Any litigation or material claims, disputes or actions, threatened or filed, concerning the Project Facilities or the obligations to be performed by the Shelter Management Agency under the Agreement;

(h) 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

(i) 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 Monitoring Agency. DUSIB may from time to time specify any changes to be made to the format of any report or information required there under.

Schedule VIII

Exit Management Plan

1. Purpose

1.1. This Schedule sets out the provisions, which will apply on expiry or termination of the Agreement.

1.2. In the case of termination of the Agreement due to illegality, the Parties shall agree at that time whether, and if so during what period, the provisions of this Schedule shall apply.

1.3. The Parties shall ensure that their respective associated entities carry out their respective obligations set out in this Exit Management Schedule.

2. Cooperation and Provision of Information

2.1. The Shelter Management Agency will allow the DUSIB or its nominated agencies access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the DUSIB to assess the existing services being delivered;

2.2. The Shelter Management Agency shall, promptly on reasonable request by the DUSIB or its nominated agencies, provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with the Agreement relating to any material aspect of the services (provided by the Service). The DUSIB shall be entitled to a copy of all such information. Such information shall include details pertaining to the services rendered and other performance data. The Shelter Management Agency shall permit the DUSIB and/or any replacement Shelter Management Agency to have reasonable access to its employees and facilities as reasonably required by the DUSIB to understand the methods of delivery of the services employed by the Shelter Management Agency and to assist appropriate knowledge transfer.

3. Confidential Information, Security and Data

3.1. The Shelter Management Agency will promptly on the commencement of the exit management period supply to the DUSIB the following:

(a) information relating to the current services rendered and performance data relating to the performance in relation to the services;

(b) Data and Confidential Information;

(c) documentation relating to suppliers, agents etc;

(d) all current and updated Data as is reasonably required for purposes of Shelter Management Agency transitioning the services to replacement Shelter Management Agency in a readily available format specified by the DUSIB; and

(e) all other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable Project or its nominated agencies, or its replacement Shelter Management Agency to carry out due diligence in order to transition the provision of the Services to Project or its nominated agencies, or its replacement Shelter Management Agency (as the case may be).

3.2. Before the expiry of the exit management period, the Shelter Management Agency shall deliver to the DUSIB all new or up-dated documentation/ information from the categories set out in Clause above and shall not retain any copies thereof, except that the Shelter Management Agency shall be permitted to retain one copy of such materials for archival purposes only.

3.3. Before the expiry of the exit management period, unless otherwise provided under the Agreement, the DUSIB or its nominated agencies shall deliver to the Shelter Management Agency all forms of Shelter Management Agency confidential information, which is in its possession or control.

4. Employees

4.1. Promptly on reasonable request at any time during the exit management period, the Shelter Management Agency shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to the DUSIB or its nominated agencies a list of all employees (with job titles) of the Shelter Management Agency dedicated to providing the services at the commencement of the exit management period;

4.2. To the extent that any transfer regulation does not apply to any employee of the Shelter Management Agency, DUSIB or its nominated agencies, or its replacement Shelter Management Agency may make an offer of employment or contract for services to such employee of the Shelter Management Agency and the Shelter Management Agency shall not enforce or impose any contractual provision that would prevent any such employee from being hired by the DUSIB or any replacement Shelter Management Agency.

4.3. DUSIB or replacement Shelter Management Agency designated by it shall retain the right for hiring a minimum of 5 key personnel of the Shelter Management Agency spearheading the Project, as identified by DUSIB, so as to provide for continuity. Shelter Management Agency is required to incorporate suitable provisions in the appointment orders issued to its personnel.

5. Rights of Access to Premises

5.1. At any time during the exit management period, where part of the Project Facilities are located at the Shelter Management Agency's premises, the Shelter Management Agency will be obliged to give reasonable rights of access to (or, in the case of Project Facilities located on a third party's premises, procure reasonable rights of access to) the DUSIB or its nominated agencies, and/or any replacement Shelter Management Agency.

5.2. The Shelter Management Agency shall also give the DUSIB or its nominated agencies, or any replacement Shelter Management Agency right of reasonable access to the Shelter Management Agency's premises and shall procure the DUSIB or its nominated agencies and any replacement Shelter Management Agency rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the Agreement as is reasonably necessary to migrate the services to the DUSIB or its nominated agencies, or a replacement Shelter Management Agency.

6. General Obligations of the Shelter Management Agency

6.1. The Shelter Management Agency shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the DUSIB or its nominated agencies or its replacement Shelter Management Agency and which the Shelter Management Agency has in its possession or control at any time during the exit management period.

6.2. For the purposes of this Schedule, anything in the possession or control of any Shelter Management Agency, associated entity, is deemed to be in the possession or control of the Shelter Management Agency.

6.3. The Shelter Management Agency shall commit adequate resources to comply with its obligations under this Exit Management Schedule.

7. Exit Management Plan

7.1. An Exit Management plan shall be furnished by Shelter Management Agency in writing to the DUSIB or its nominated agencies within 90 (ninety) days from the Effective Date, which shall deal with at least the following aspects of exit management in relation to the Agreement as a whole.

7.2. A detailed program of the transfer process that could be used in conjunction with a replacement Shelter Management Agency including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer.

7.3. Plans for the communication with such of the Shelter Management Agency's staff, and any related third party as are necessary to avoid any material detrimental impact on Project's operations as a result of undertaking the transfer.

7.4. Plans for provision of contingent support to DUSIB and replacement Shelter Management Agency for a reasonable period after transfer.

7.5. The Shelter Management Agency shall annually submit revised Exit Management Plan thereafter to ensure that it is kept relevant and up to date.

7.6. Each Exit Management Plan shall be presented by the Shelter Management Agency to DUSIB and approved by the DUSIB or its nominated agencies.

7.7. In the event of termination or expiry of Agreement, each Party shall comply with the Exit Management Plan.

7.8. During the exit management period, the Shelter Management Agency shall use its best efforts to deliver the services.

Schedule IX

Format of Performance Security
(Performa of Bank Guarantee)[8]

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

In favour of _____Delhi Urban Shelter Improvement Board, having it's office at _____, New Delhi-110014 (hereinafter referred to as "DUISB", which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS

a. By the Shelter Management Agreement being entered into between the DUSIB and ____, a _____ incorporated under the _____ Act, _____, having its registered office at _____, ("the Shelter Management Agency"), the Shelter Management Agency has been authorised to operate, maintain and manage a cluster of Night Shelters in accordance with conditions set out in this Shelter Management Agreement (hereinafter referred to as "the Project").

b. In terms of **Clause _____** of the Shelter Management Agreement, the Shelter Management Agency is required to furnish to the DUSIB, an unconditional and irrevocable bank guarantee for an amount of Rs. 15.0 Lakhs/- (Rupees Fifteen Lakhs only) as security for due and punctual performance / discharge of its obligations under the Shelter Management Agreement, relating to performance of the Shelter Management Agency.

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

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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 Shelter Management Agency") of all its obligations relating to the Project and in connection with performance by the Shelter Management Agency in accordance with the Shelter

8 To be issued by a Nationalized Bank in India or State Bank of India

Management 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 Shelter Management Agency has failed to meet its obligations under the Shelter Management Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Shelter Management Agency 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 Shelter Management Agency 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 Shelter Management Agreement or other documents or by the extension of time for performance granted to the Shelter Management Agency or postponement/non exercise/ delayed exercise of any of its rights by the DUSIB or any indulgence shown by the DUSIB to the Shelter Management Agency 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 _____[9] unless discharged/released earlier by the DUSIB in accordance with the provisions of the Shelter Management Agency Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____Only).

5. This Guarantee shall not be affected by any change in the constitution or winding up of the Shelter Management Agency / the Guarantor or any absorption, merger or amalgamation of the Shelter Management Agency / the Guarantor with any other Person.

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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 X

Shelter Management Agency's Personnel Requirement

A. Requirement for a Caretaker

The Shelter Management Agency shall deploy the caretakers in the Night Shelters who should have the following qualification:

1. Caretaker should be able to read, write and speak in Hindi;
2. Catetaker must know the uses of mobile App.