

**VOLUME-II**

**DRAFT CONCESSION AGREEMENT**

**(for illustration purpose only)**

## **CONCESSION AGREEMENT**

This **CONCESSION AGREEMENT** is entered into on this the [ ] day of [ ] (Month), 2025 at Kolkata, West Bengal

### **BETWEEN**

The **WBSIDC Ltd** having its office at “Shilpa Bhavan”, 31, Black Burn Lane, Kolkata -700012 West Bengal (hereinafter referred to as the “**AUTHORITY**”), acting through its Managing Director which expression shall, unless the context otherwise requires, include its administrators, successors and assigns of **ONE PART**;

### **AND**

M/s. \_\_\_\_\_, a {Company/ LLP/ Partnership} incorporated under t h e { name of the applicable Act} and having its registered office at \_\_\_\_\_ acting through its \_\_\_\_\_ (hereinafter referred to as the “**CONCESSIONAIRE**”) which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes of the **OTHER PART**

### **WHEREAS**

- A. The Authority had decided to develop a DEVELOPMENT OF MARKETING HUB FOR SHGS/ ARTISANS IN DIFFERENT DISTRICTS OF WEST BENGAL IN PPP MODE on government land, whose ownership vests with the Authority.
- B. With an objective to seek private sector participation in the development of the aforesaid Project, The West Bengal Small Industries Development Corporation Limited (WBSIDCL) undertook, for and on behalf of the Authority, the process of selection of a suitable Bidder through competitive bidding, after issuing a Request for Proposal document (**RFP**) dated ....., 2025 inviting Bids/ Proposals from prospective Bidders to implement the said Project.
- C. On evaluation of the submitted Bids, WBSIDCL accepted the Bid of M/s ..... {name of Selected Bidder/ Consortium comprising of M/s \_\_\_\_\_ as Lead Member, M/s \_\_\_\_\_ & M/s \_\_\_\_\_ as Members} (the “**Selected Bidder**”) having quoted the highest area sharing value @ \_\_\_\_\_ % and issued Notice of Award (LOA) bearing no. \_\_\_\_ dated \_\_\_\_\_.
- D. The Selected Bidder has since promoted and incorporated a limited liability company under the Companies Act 2013 i.e..... to act as the Concessionaire, and had requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into a Concession Agreement pursuant to issuance of the LOA for executing the Project.
- E. By its letter dated \_\_\_\_\_ the Concessionaire has also joined in the said request of the Selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder or the Consortium under the LOA, including the obligation to enter into this Concession Agreement pursuant to issuance of the LOA for executing the Project. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder/ Consortium for the purposes hereof and has delivered to the Authority a legal opinion from the Indian Legal Counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof.

- F. The Authority had agreed to the said request of the Selected Bidder and the Concessionaire, and had accordingly entered into a Concession Agreement dated \_\_\_\_\_ with the Concessionaire and granted to the Concessionaire, the Concession on the mutually agreed terms and conditions for the Concession Period to (a) plan, design, engineer, finance, develop, construct, commission, operate and maintain the Project on a commercial basis, and (b) at the end of the Concession Period transfer back the Project Site including the Project Facility thereon to the Authority.
- G. The Concessionaire hereby accepts the Concession hereby being granted and undertakes to implement the Project in accordance to the provisions of this Concession Agreement.

**NOW THEREFORE**, in view of the mutual promises and consideration set out herein, the Authority, the Concessionaire and the Selected Bidder (each individually referred to as “Party” hereto, and collectively the “Parties”) hereby agree to be bound by the provisions of this Concession Agreement.

## **ARTICLE 1: DEFINITIONS AND INTERPRETATION**

### **Definitions**

In this Concession Agreement, unless repugnant to the context in which these words and expressions appear the words and expressions defined below shall have the meanings assigned to them: -

- (i) **“Applicable Laws”** means all laws which are applicable to the Project and/ or the Concessionaire extending to the State of West Bengal, having been enacted or brought into force by Government of West Bengal or Go WB including regulations, rules and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any Court of Record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.
- (ii) **“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, registrations, filings or other authorisations of whatever nature, which is necessary for effective implementation of the Project, any approvals and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws during the subsistence of this Agreement;
- (iii) **“Authority” or “WBSIDCL”** means the West Bengal Small Industries Development Corporation Limited.
- (iv) **“Commercial Complex”** means the area, to be commercially developed at the Project Site as a part of the Project and includes developments as specified , which the Concessionaire shall utilize for commercial purposes (including its maintenance and management) to generate revenue during the Concession Period.
- (v) **“Commercial Area Charges”** means the license/ sub-license fee, advertisement revenues, charges, levies, tariffs, etc. all sources of revenue by whatever name called that are payable at any time and from time to time by any Person/ Users, using the Commercial Area, to the Concessionaire. Subject to the provisions hereof, the Concessionaire shall have the right to determine, demand, charge, collect, revise, retain and appropriate the Commercial Area Charges as per the applicable/ prevalent market driven rates.
- (vi) **“Commercial Operations”** means the commercial use of the Commercial Area by charging, demanding, collecting, retaining and appropriating User Charges.
- (vii) **“Commercial Operations Date” or “COD”** means the date on which the Concessionaire commences the Commercial Operations.
- (viii) **“Competent Authority/ies”** means any agency, authority, department, ministry, public or statutory Person of the Government of West Bengal or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession Agreement.

- (ix) **“Concession”** shall have the meaning set forth in Article 3 and **“Concession Agreement”** means and includes this signed Concession Agreement (including the Schedules of the Concession Agreement, all other documents attached as annexures, the Notice of Award & Addendum to Notice of Award issued by WBSIDCL and the written clarification(s), addendums, amendments, etc. to the RFP Document issued subsequently to the bidders).
- (x) **“Concessionaire”** means **M/s.**  
\_\_\_\_\_, a Special Purpose Company  
incorporated by the Selected Bidder under the Companies Act, 2013), having its  
registered office at  
\_\_\_\_\_ and  
includes its subsidiaries, successors and permitted assigns.
- (xi) **“Concessionaire's Equipment”** means all machinery, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, and includes any equipment referred to as "Construction Equipment" but does not include Plant and Materials.
- (xii) **“Concessionaire's Representative”** means the Person appointed by Concessionaire under Article 8.6.
- (xiii) **“Concession Period”** is the period of **99 (Ninety-nine) years**, for which this Concession is granted, commencing from the Compliance Date.
- (xiv) **“Conditions Precedent”** means the conditions set out in Article 4 hereof.
- (xv) **“Consortium Members”** means \_\_\_\_\_, \_\_\_\_\_ & \_\_\_\_\_  
\_\_\_\_\_.
- (xvi) **“Construction Documents”** means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature prepared in relation to the Project.

- (xvii) **“Construction Period”** means the period from the Compliance Date to the date of issue of Construction Completion Certificate, which involves the design, setting out, construction of works, erection and installation of equipments, commissioning, testing and certification of Construction Works.
- (xviii) **“Construction Completion Date”** means the date of actual completion of the Construction Works in accordance with the provisions of this Concession Agreement, pursuant to obtaining of all statutory approvals for operating the project from all Competent Authorities.
- (xix) **“Construction Works”** means all works and things necessary to complete the Project in accordance with this Agreement.
- (xx) **“Contractor”** means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the construction contract, operation and maintenance contract or any other agreement or contract for construction, operation and/or maintenance of the Project Facility and/ or Project Facilities or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire.
- (xxi) **“Cost”** means all expenditure properly incurred (or to be incurred) by the Concessionaire with respect to the Project, whether on or off the Project Site, including overheads and similar charges, but does not include profit.
- (xxii) **“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:
- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
  - (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
  - (c) not in any way be extended by any period of Suspension under this Agreement;
- provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval.
- (xxiii) **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 days.
- (xxiv) **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
- (a) The principal amount of the debt provided by the Senior Lenders under the Financing Documents for financing the Total Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;

- (b) All accrued interest, financing fees and charges payable under the Financing Agreements, on or in respect of, the debt referred to in the para (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lenders, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority's Default; and
- (c) Any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/ or the Concessionaire, it shall for the purposes of this Concession Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

provided further that the Debt Due, on or after COD, shall in no case exceed 75% (seventy five percent) of the Total Project Cost.

- (xxv) **"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;
- (xxvi) **"Directive"** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Authority or the Independent Engineer to the Concessionaire, and any modification, extension or replacement thereof from time to time in force.
- (xxvii) **"Dispute"** shall have the meaning set forth in Article 17.
- (xxviii) **"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 17 of this Concession Agreement.
- (xxix) **"Drawings"** means all of the drawings, calculations and documents pertaining to the Project and Project Facilities, and shall include 'as built' drawings of the Project and Project Facilities.
- (xxx) **"Easementary Rights"** means all easements, reservations, right of way, utilities and other similar purposes, or zoning or other restrictions as to the use of the real property, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project or which customarily exist on properties which are similarly situated and are engaged in similar activities.
- (xxxi) **"Effective Date"** means the date of the signing of this Concession Agreement.
- (xxxii) **"Encumbrances"** means 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any

insurance policy pertaining to the Project Site, physical encumbrances or encroachments on the Project Site where applicable herein.

- (xxxiii) **"Emergency"** means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets.
- (xxxiv) **"Event of Default"** means the Concessionaire Event of Default and/ or Authority Event of Default, as the case may be.
- (xxxv) **"Equity"** means the sum expressed in Indian Rupees representing the equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purpose of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component.
- (xxxvi) **"Financial Closure"** means the fulfilment of all conditions precedent under the Financing Documents.
- (xxxvii) **"Financial Model"** means the financial model adopted by Senior Lenders setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which the financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.
- (xxxviii) **"Financial Year"** means the year commencing from 1<sup>st</sup> April of any calendar year to the 31<sup>st</sup> March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31<sup>st</sup> March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1<sup>st</sup> April to the Transfer Date.
- (xxxix) **"Financing Documents"** means the documents executed by the Concessionaire in respect of financing of the Project to be provided by the Senior Lenders by way of loans, guarantees, subscription to non convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.
- (xl) **"Financing Package" or "Financing"** means the financing package of the Project furnished by the Concessionaire indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding the Project.
- (xli) **"Force Majeure" or "Force Majeure Event"** shall mean an act, event, condition or occurrence specified in the Article 13.
- (xlii) **"Good Industry Practice"** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from



a reasonably skilled, prudent and experienced operator engaged in construction and operation of projects akin to the Project. It would include good engineering practices in the design, engineering, construction and project management which would be expected to result in the performance of its obligation by the Concessionaire and in operation and maintenance of the Facilities in accordance with this Concession Agreement, Applicable Laws, and Applicable Permits, reliability, safety, environment protection, economy and efficiency.

- (xliii) **“Go WB”** means the Government of the State of West Bengal, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of West Bengal and its administrators, successors and assigns.
- (xliv) **“GOI”** means the Government of India.
- (xlv) **“Lenders' Representative”** means the person duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes.
- (xlvi) **“Material Adverse Effect”** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provisions of this Concession Agreement or any of the Project Agreements.
- (xlvii) **“Nominated Company”** means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement.
- (xlviii) **“Operation and Maintenance” or “O&M”** means the operation and maintenance of the Project Facility and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Charges in accordance with the provisions of this Agreement.
- (xlix) **“O&M Expenses”** means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement
- (l) **“Operation and Maintenance Period”** is the period commencing from the Commercial Operations Date and terminating at the Transfer Date.
- (li) **“Party”** means any of the parties to this Concession Agreement.
- (lii) **“Person”** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.

- (liii) **“Project”** shall mean planning, designing, construction, development, financing, operation, maintenance, management and Transfer of the Project Facility in accordance with the provisions of this Agreement and includes all works, services and equipment relating to or in respect of the Scope of Work of the Project;
- (liv) **“Project Agreements”** means, collectively, this Concession Agreement, the Financing Documents, hire purchase agreements, sub-license agreements/ arrangements, construction work agreement and maintenance agreements, in each case as amended, supplemented or otherwise modified from time to time but does not include the Escrow Agreement, Substitution Agreement or any agreement for procurement of goods.
- (lv) **“Project Assets”** means all physical and other assets relating to and forming part of the Site including but not limited to; (a) rights over the Project Site in the form of license, sub-license, right-of-way or otherwise; (b) tangible assets such as civil works, foundation, all buildings, substructures and superstructures, equipments, drainage works, sign boards, communication systems, administrative offices, HVAC works, electrical works including sub-station at the Project Facility; (c) all rights of the Concessionaire under the Project Agreements; (d) financial assets, such as receivables, cash, security deposits, etc.; (d) insurance proceeds; and (e) Applicable Permits and authorizations relating to or in respect of the Project.
- (lvi) **“Project Asset and Project Facilities Register”** means the register to be prepared and maintained by the Concessionaire.
- (lvii) **“Project Facility”** means the Commercial Area developed herein including all Project Facilities and other related structures, buildings, internal & external building services etc., common areas to be developed, designed, financed, constructed, upgraded, completed, commissioned, operated and maintained at the Project Site along with any Value Added Services and associated operations established by the Concessionaire in accordance with the provisions of the Concession Agreement.
- (lviii) **“Project Facilities”** means all the amenities and facilities required as basic and support infrastructure for Project, for the optimal functioning thereof, including but not limited to sewage and sanitation system, water supply, electricity distribution and supply, etc., situated on the Site, as prescribed in this Agreement including Schedules hereof and includes any additional facilities proposed by the Concessionaire as the part of its plans approved by the Authority.
- (lix) **“Project Implementation Schedule”** means the Concessionaire’s Project Implementation Proposal and its time frame as accepted by the Authority.
- (lx) **“Project Revenues”** means all sources of revenues and User Charges viz. Parking Fees, Service Charges, License Fee, Commercial Area Charges, etc. accruing to the Concessionaire from the Project.
- (lxi) **“RFP”** means the Request for Proposal document issued by the WBSIDCL. The terms "RFP" and "Request for Proposal" are synonymous with "Tender Documents" and "Bidding Documents".
- (lxii) **“Right of Way”** means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement.

- (lxiii) **“Schedules”** mean the Schedules to this Concession Agreement.
- (lxiv) **“Scope of the Project”** shall have the meaning set forth in Article 2 of this Concession Agreement.
- (lxv) **“Service Charges”** means the charges, fees, rates, proceeds or any other sources of revenue or amounts of money by whatever name called that are payable at any time and from time to time by any Person to the Concessionaire pursuant to the utilization of Value Added Services.
- (lxvi) **“State”** means the State of West Bengal and the **“State Government”** means the government of that State.
- (lxvii) **“Statutory Auditors”** means an Independent, recognised and reputable firm of the Chartered Accountants duly licensed to practice in India acting as the Independent statutory auditors of the Concessionaire under the provisions of Companies Act, 2013 including any statutory modification or re-enactment or replacement thereof, for the time being in force.
- (lxviii) **“Subordinated Debt”** means any borrowings by the Concessionaire subordinated to the financial assistance provided by the Senior Lenders for meeting the Total Project Cost but does not include any interest thereon.
- (lxix) **“Sub-Licensee”** means the Person, selected by the Concessionaire, with whom the Concessionaire shall enter into a sub-license deed authorizing the said Person to utilize earmarked built-up space within the Commercial Complex strictly in accordance with the provisions of this Concession Agreement.
- (lxx) **“Tax”** means any tax, duty, levy, charge whatsoever charged, imposed or levied under Applicable Laws.
- (lxxi) **“Technical Requirements”** means and includes the description of the scope, standards, design criteria and performance criteria, specifications, drawings and similar information related to the design, construction and implementation of the Project as set forth in the Schedules to this Concession Agreement and any alterations and modifications thereto.
- (lxxii) **“Temporary Works”** means all temporary works of every kind (other than Concessionaire's Equipment) required for the construction, operation and maintenance of the project, services, facilities and the remedying of any defects relating thereto.
- (lxxiii) **“Tender”** means the Selected Bidder's quoted financial offer and detailed proposal for the Project, including the Concessionaire's Proposal, submitted to the Authority and as accepted by the Authority.
- (lxxiv) **“Termination Date”** means the date on which this Concession Agreement terminates by efflux of time or by issuance of a Termination Notice.
- (lxxv) **“Termination Notice”** means the communication issued in accordance with this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.
- (lxxvi) **“Termination Payment”** means the amount payable by the Authority to the Concessionaire upon the termination of this Concession Agreement as are expressly provided for under this

Agreement.

- (lxxvii) **“Third Party”** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement.

## ARTICLE 2: SCOPE OF THE PROJECT

### 2.1 Scope of the Project

The Scope of the Project shall mean and include the following during the Concession Period:

- (i) Planning and designing of a conventional component to be constructed at the Project Site and thereafter, get it approved from the authority, as per the laid down provisions of the Concession Agreement and Schedules hereof.
- (ii) Construction of Commercial Complex component on the Project Site, conforming to Applicable Laws & Applicable Permits including building bye-laws and regulations and provisions of this Concession Agreement.
- (iii) Option to develop Value Added Services related to the project component of the Project and levy, demand and collect Service Charges from the Users.
- (iv) To develop a Commercial Area at the Project Site, wherein the developments as laid down in **Schedule-I** shall be permitted.
- (v) Operation and Maintenance of the Project Facility/ Complex in accordance with the provisions of this Concession Agreement and the Schedules hereof.
- (vi) Demand, levy, collect, enforce, retain and appropriate Parking Fees, from all the Users using the Car Parking at rates determined herein.
- (vii) Determine, demand, levy, collect, enforce, retain and appropriate User Charges including Service Charges, Commercial Area Charges etc. from the sub-licensees/ Users as per the laid down provisions of the Concession Agreement and the Schedules hereof.
- (viii) To make payment of all applicable existing and future taxes, charges, fees, levies etc. as may be applicable to the Project and/ or any activities in pursuance of the draft Concession Agreement during the Concession Period.
- (ix) Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

## ARTICLE 3: CONCESSION

### 3.1 Grant of Concession

- 3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of **99 years (Ninety-nine) years**, commencing from the Compliance Date, including the exclusive right, license and authority during the subsistence of this Agreement, including extension thereof, to plan, design, finance, engineer, construct, develop, equip, operate, maintain and manage the Project and enjoy its commercial benefits for the Concession Period and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in

accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concessionaire undertakes the following in accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Permits :

- (i) To have Right of Way, access and licence to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (ii) To develop, finance and implement the Project;
- (iii) manage, operate and maintain the Project and regulate the use thereof by third parties;
- (iv) To enjoy complete and uninterrupted access and license to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement and for a period that shall be co-terminus with the Concession Agreement;
- (v) To have access and liberty to plan, design, construct, finance, maintain and operate the Project Facility during the Concession Period in accordance with the provisions of this Concession Agreement & Schedules thereof. Any construction or development made by the Concessionaire on the Project Site in respect of the Complex shall be deemed to be the property of the Authority and the Concessionaire relinquishes all his rights in such property in favour of Authority upon Termination;
- (vi) To have exclusive right and authority, during the Concession Period, to carry out the specified activities in relation to the Project Facility;
- (vii) To demand, levy, collect, enforce, retain and appropriate Parking Fees from all the Users using the Car Parking component of the Complex.
- (viii) To Sub-License the use of the Project to sub-licensees and thereupon, determine, demand, levy, collect, enforce, retain and appropriate Service Charges and Commercial Area Charges and to periodically revise the same in conformity with the market rates. Within the limitations of statutory provisions and decency of operations, the Concessionaire shall make all the efforts to maximise the earnings from the Value Added Services and associated operations and to keep the Authority informed of actions taken and results thereof;
- (ix) To regulate the use of the Complex by the Third Parties/ sub-licensees and enforce the collection of Parking Fees, Service Charges, Commercial Area charges etc. from delinquent Users, as per the Applicable Laws;
- (x) To manage, operate and execute rights over all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Concession Agreement;
- (xi) To fulfil its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Concessionaire of its obligations as set out in this Agreement;
- (xii) To arrange for all the Applicable Permits from the Competent Authorities for the development of the Complex and the Authority is no way liable for the same. Neverthe less the Authority without any binding obligation may provide any assistance upon written request from the Concessionaire.

- (xiii) To exercise such other rights as the Authority may determine as being necessary or desirable for the purposes incidental and necessary for developing, financing, implementing, managing, operating, running & maintaining the Project.
- (xiv) Bear and pay all expenses, costs, taxes, duties, levies and charges incurred in the fulfilment of all the Concessionaire's obligations under this Agreement; and

Nothing contained herein, including the act of granting permission to develop the Project at the designated area shall vest or create any proprietary interest in the Project or any part thereof including any permanent fixtures, fittings etc. installed in the structure of the Commercial Complex in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

### 3.2 Concession Period

- 3.2.1 The Concession Period for ***“the Project”*** shall commence from the Compliance Date and shall extend for a period of **99 (ninety-nine)** years from such date (the **“Concession Period”**) during which the Concessionaire is authorized to implement the Project and to operate the Project Facility/ Complex in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall include the Construction Period.
- 3.2.2 At the end of the Concession Period by way of efflux of time, the Authority would either operate the Project itself or may re-bid the same by suitably re-defining or re-structuring the Project parameters as per its sole discretion. In the event of re-bidding, if the Concessionaire chooses to participate in the re-bidding process and does not emerge as the successful bidder by being the highest bidder (i.e. H1) or the lowest bidder (i.e. L1) as required, then the Concessionaire shall be provided with the right of first refusal to match the bid of the H1/ L1 bidder (this right to be given only subject to the condition that the Concessionaire is/ was not in default in respect of its obligations under the Agreement and its performance is considered satisfactory by the Authority) and to enter into fresh agreement upon the terms and conditions frozen as a part of the bid documents to be then issued by the Authority, provided its financial bid is within the range of 10% of the financial bid quoted by the H1 or the L1 bidder, as the case may be. However, the terms and conditions including the financial parameters, if any with regard to the mode, manner etc. of the right of first refusal and the provisions related thereto in the bidding documents shall be determined by the Authority at its sole discretion.
- 3.2.3 It is hereby made clear that:
  - (i) In the event of the Concession Period being extended by Authority beyond the said period in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period/ aggregate period by which the Concession is so extended, and
  - (ii) In the event of Termination on an earlier date, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination.



- 3.2.4 At the end of the Concession Period or sooner termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site, Project Facility/ Complex with all the furniture and fixtures and other assets permanently attached to the Complex shall revert to the Authority without any Encumbrances and obligation to Authority to pay or adjust any consideration or other payment to the Concessionaire.

### 3.3 Construction Period

- 3.3.1 The Concessionaire shall be required to complete the construction within a period of **24 (twenty-four) months** starting from the Compliance Date (the “**Scheduled Date of Construction Completion**”):
- (i) The bidder who will be selected for specific location, shall have to complete the construction work within 24 months of handing over the possession of the land, failing which the plot with structure shall be resumed by WBSIDCL.
  - (ii) The bidder will be responsible for obtaining statutory clearances from the competent authorities as are applicable. However, WBSIDCL may facilitate such approval as and when required. The allottee shall be responsible for design, construction, finance, operation, and maintenance of proposed units.;
  - (iii) Obtain all the necessary applications at its cost and procure all necessary/ mandatory Applicable Permits/ permissions including environmental Applicable Permits that are required for commencing the construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect.
  - (iv) Hand over to the Authority agreed percentage (%) of built-up space within the Commercial Complex free of cost,

### 3.4 Sub-Licensing of built up areas at the Commercial Area

- 3.5.1. The Concessionaire shall have the right to sub-license built up space for setting up of **shops, hyper-marts, offices, restaurants, banquets, gaming zones, etc..** Provided however, it shall be obligatory upon the Concessionaire to first operationalize the SHG / Govt. sharing component before allowing occupation of the spaces/ areas at the Commercial Area and operationalizing the same. The Concessionaire shall enter into appropriate sub-license deeds and contractual arrangement with such sub-licensees/ third parties. Each such sub-license deed shall, incorporate clauses, that (i) the sub-license deeds shall be co-terminus with this Agreement and shall stand terminated immediately upon Termination of this Agreement (either by efflux of time or pre-mature, as the case may be); in no event the term of such sub-license(s) shall extend beyond the Agreement Period. The Project Facility shall be handed back to the Authority free of such sub-licensees; and (ii) the terms of such sub-license(s) shall not be contrary to or in derogation of the terms of this Agreement.
- 3.5.2. All contracts, agreements or arrangements with sub-licensees shall specifically stipulate the aforesaid covenant of termination of the sub-licensees rights and further that the sub-licensee shall not have any claim whatsoever against the Authority for any such termination. The Concessionaire shall prepare a draft standard format of the sub-license deed/ agreement which



the Concessionaire will be required to sign with the sub-licensee for the use of the Complex. The Concessionaire shall furnish the draft of such agreement/ arrangement to Authority for modification or suggestion. The Authority shall be entitled to incorporate such clauses as Authority may consider appropriate to protect Authority's interest. The Concessionaire shall enter into sub-license arrangements as per the standard format with the covenants stipulated by the Authority and the Concessionaire shall not incorporate or change any clause in the arrangement/agreement that would have adverse effect on the covenants incorporated by the Authority. In case of any deviation from the above mentioned standard draft of the agreement in any particular circumstances, which supersedes or adversely effects Authority's terms and covenants, the prior written consent of the Authority shall be taken before entering into any such agreement with sub-licensees. The Concessionaire shall submit the copy of the executed and signed sub-license deed(s) to the Authority for its records.

- 3.5.3 Provided however, at no point of time, the Concessionaire will enter into any licence with any third party(ies) in which they give any such right to Sub-Licensee or to any third party which may adversely affect the interests of the Authority and/ or is not available to the Concessionaire at the very first place.
- 3.5.4 The Concessionaire shall maintain Sub-License Register, in such format as may be acceptable to the Authority. Details of all the sub-license deeds shall be entered into the Sub-License Register within 30 (thirty) days of entering into the Sub-License Deed and copy of such Sub-License Deed shall be supplied to the Authority (the "**Sub-License Register**"). The Concessionaire shall provide copy of the Sub-License Register to the Authority every year before the 15th of April. Further, upon the receipt of written request from the Authority, the Concessionaire shall allow the representative of the Authority to conduct due diligence of all the Sub-License Deeds entered into by the Concessionaire with respect to the Project and shall, upon demand, supply the relevant extracts of the Sub-License Register to the representative of the Authority.

**ARTICLE 4: CONDITIONS PRECEDENT**

Subject to the express terms to the contrary, limited aspects of the Construction Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Concession Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out in Articles

4.1 and 4.2 on or before the expiry of a period of **180 (one hundred eighty) days** from the Effective Date. However, the Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent of the Concessionaire.

**4.1 Conditions Precedent for Authority**

The Authority shall have:

- (i) Provided the land comprising the Project Site to the Concessionaire along with the right of way, leave and license rights in respect of the same, clear and free from all Encumbrances including removal of existing buildings and trees from the Project Site and with a right to sub-license;
- (ii) Constituted a Design Approval Committee for the approval of the design of the Project, to be developed by the Concessionaire;
- (iii) Approved the Project Implementation Schedule and the design of the Project Facility, as approved by the Design Approval Committee and also, give comments on the design submitted by the Concessionaire.
- (iv) Issued any Notification as regard to any Local Bye Laws required for development and implementation of the Project.

**4.2 Conditions Precedent for Concessionaire**

The Concessionaire shall have:

- (i) Submitted a detailed design including the architectural plans, elevation section, traffic circulation plan of the Complex as per Applicable Laws including applicable Local Building Bye laws, Developments Envisaged (**Schedule-I**) Scope of Work, Technical Requirements and Performance Standards (**Schedule-II**), to the Authority for its approval from the Design Approval Committee, within a time period of 60 (sixty) days from the Effective Date;
- (ii) Incorporated the necessary suggestions/ amendments proposed by the Design Approval Committee/ Authority, within a period of 15 (fifteen) days from the date of receipt of such suggestions from the Design Approval Committee. However, it is clarified here that the Concessionaire shall not start the construction until and unless (a) the Design

Approval Committee/ Authority approves the detailed design of the Complex, which shall not be unduly delayed by the Design Approval Committee/ Authority and (b) the Concessionaire has obtained approval for the design/ drawings/ plans of the Project Facility (as approved by the Design Approval Committee) from the Competent Authority;

- (iii) Submitted structural geometry, location, quality certification etc, entry & exit area plan and design, building and underground civil work, details of electrical and electronic system for the Complex, power backup fire safety measures, traffic management, energy consumption, installed load, time of retrieval (minimum/ maximum), quality assurance program, EMP, occupational safety and health, conservation of energy, pollution control, protection of environment, ease of maintenance, facility of retrieval in case of partial failure, standby power arrangement and expected lifecycle of the system and the structure evacuation plans. It is stipulated that while preparing all the plans, design and layouts, the Concessionaire shall comply with the Applicable Laws, Applicable Permits, Developments Envisaged Schedule, Scope of Work, Technical Requirements and Performance Standards specified in **Schedule II**;
- (iv) Submitted Project Implementation Schedule to the Authority for its perusal;
- (v) Procured all the Applicable Permits required for commencing construction of the Project;

Provided that upon request in writing by the Concessionaire, the Authority may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.2.

### **4.3 Damages for delay by the Concessionaire**

- 4.3.1 In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.2 within the period specified in respect thereof or within such extended time period as mutually agreed between the Parties, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Article 4.1 or other breach of this Agreement by the Authority or due to Force Majeure or fulfillment of such Conditions Precedent has not been waived off by mutual agreement of the Parties hereto, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 0.2% (zero point two percent) of the Construction Period Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Construction Period Performance Security and upon reaching such maximum, the Authority may in its sole discretion, terminate the Agreement.
- 4.3.2 Upon termination of the Concession Agreement, all rights, claims and entitlements of the Concessionaire under or arising out of this Agreement shall cease and the Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees; further the Authority shall forfeit the Construction Performance Security of the Concessionaire as Damages.
- 4.3.3 In the event that the encumbrance free Project Site has been handed over to the Concessionaire prior to the fulfilment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances, irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.

## ARTICLE 5: PERFORMANCE SECURITY

In consideration of the rights, privileges and interests granted by the Authority to the Concessionaire in terms of this Agreement, the Concessionaire shall pay to the Authority, the following:

### 5.1 Performance Security

- 5.1.1 The Concessionaire for the due and faithful performance of its Conditions Precedent and obligations under the Concession Agreement has provided to the Authority, Performance Security for the value specified herein prior to the signing of this Agreement by way of unconditional and irrevocable Bank Guarantee from any scheduled Bank in India as per the format specified herein in favour of “The WBSIDC Ltd, Kolkata” (the “**Construction Period Performance Security**”). The validity of the Performance Security as specified herein shall be maintained at all times till the end of the 1<sup>st</sup> (first) anniversary of the Commercial Operations Date (COD) by the Concessionaire by way of periodic renewals.
- 5.1.2 The Concessionaire shall keep and maintain the Performance Security Bank Guarantee valid and in full force and effect at all times during the term of this Agreement (through periodic renewals, if any required, at least one month prior to the expiry of the subsisting Performance Security Bank Guarantee. In the event the Concessionaire fails to provide the renewed/ extended Performance Security at least one month prior to the expiry of the subsisting bank guarantee, so as to maintain the Performance Security valid throughout the term of the Agreement, the Authority shall have the right to forfeit and appropriate the subsisting Performance Security Bank Guarantee. Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute a Concessionaire Event of Default in terms hereof.
- 5.1.3 Upon Concessionaire’s failure to meet any obligation or upon occurrence of Concessionaire Event of Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level the Performance Security and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Authority a fresh Performance Security as aforesaid, failing which the Authority shall be entitled to terminate this Agreement.

## ARTICLE 6: HANDOVER AND USE OF PROJECT SITE

### 6.1 Entry to the Project Site for Work

- 6.1.1 In consideration of the Offer, this Agreement and the covenants & warranties on part of the Concessionaire herein contained, the Authority in accordance with the terms and conditions set forth herein, hereby grants onto the Concessionaire, commencing from the Compliance Date, leave and license rights in respect of all the land (after demolishing any existing buildings and removal of trees, if any, thereon) comprising the Site which is described, delineated (the “**Licensed Premises**”), clear and Encumbrance free, to develop, operate and maintain the Project on or above the said Licensed Premises, together with all rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 6.1.2 The license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to the existing rights of way.
- 6.1.3 The Authority shall provide to the Concessionaire clear and unhindered access to the Project Site, free of all Encumbrances earmarked for the Commercial Complex/ Project, for undertaking the work relating to the Project immediately after the fulfillment of all Conditions Precedent. However, the Concessionaire shall be permitted to enter the Project Site for the purpose of surveys, site and geotechnical investigations as required for planning and designing of the Project.
- 6.1.4 It is expressly agreed that the License granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 6.1.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted pursuant to this Agreement at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it.
- 6.1.6 The Concessionaire is required to separately and independently perform due diligence, checks and verification of the site and the Authority is in no way responsible for the same.

### 6.2 Use of the Project Site and Peaceful Possession

- 6.2.1 The Concessionaire, subject to complying with the terms and conditions of this Agreement, shall have the right of use of the Project Site during the Concession Period in accordance with the terms of this Agreement and such right shall be limited for the purposes mentioned in the Concession Agreement. The Concessionaire shall not use the Project Site or the Project Facility for any other purpose.

- 6.2.2 The Concessionaire shall confine its operations to the Project Site by appropriately covering the areas of operations so as to not cause any nuisance or inconvenience to public. The Concessionaire shall take all necessary precautions to keep labor, persons and equipment within such areas and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the neighboring/ public/ private areas or work being carried thereat. Concessionaire has to specifically take note of the fact that utmost care will be required to be taken to ensure safety and un-interrupted movement of commuters at all times and ensuring that nothing is done at any time or caused or permitted to be done, which creates annoyance or disturbance to occupiers of any building etc. (residential or otherwise) in the neighborhood.
- 6.2.3 The Concessionaire is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the premises granted to the Concessionaire.
- 6.2.4 The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement.

### **6.3 Protection of Site from encroachments**

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

### **6.4 Special/ Temporary Right of Way**

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

### **6.5 Right of Access to the Authority, Independent Engineer and Monitoring Committee**

The license, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, the Independent Engineer, Monitoring Committee and any governmental authority and their employees and agents (authorized) for inspection, viewing and exercise of their right and performance of their obligation under this Agreement.

### **6.6 Geological and archaeological finds**

It is expressly agreed that mining, geological and archaeological rights do not form part of the long term license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belongs to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workers or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall

procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

#### **6.7 Shifting of obstructing utilities**

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

## **ARTICLE 6: DETERMINATION OF THE AUTHORITY**

### **6.1 Authority's Determination**

- 6.1.1 When Authority is required to determine value, additional cost or any adjustment (increase or decrease) to the Concession Period/ Concession Fee, if any, it shall consult with the Concessionaire in an endeavour to reach agreement within 30 (thirty) days of the receipt of notice wherein the Authority is required to determine such value, cost or adjustment to the Concession Period/ Concession Fee. The Authority's determination on value, cost and adjustment of the Concession Period/ Concession Fee shall be intimated to the Concessionaire within 30 (thirty) days of the date of receipt of the notice requesting any such adjustment.



**ARTICLE 7: OBLIGATIONS OF THE CONCESSIONAIRE****7.1 Obligations of the Concessionaire**

- 7.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its own cost and expense undertake the designing, engineering, procurement, construction, operation and maintenance of the Project and Project Facilities and fulfill and perform all its obligations set out in this Agreement or arising hereunder.
- 7.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 7.1.3 Subject to the provisions of relevant Articles in this agreement, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent contractor/ developer.
- 7.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (i) take over the possession of the Project Site from the Authority, provided it is being delivered in accordance with the relevant provisions and safeguard and use the Project Site solely for the purpose of discharging its obligations under this Concession Agreement;
  - (ii) make, or cause to be made, necessary applications to the relevant Government authorities with such particulars and details, as may be required for obtaining all Applicable Permits for carrying out developments at the Project Site as specified in this Agreement necessary approvals, clearances and sanctions from the Competent Authority, for building plans, infrastructure facilities including power, water supply, drainage & sewerage, fire-fighting, telecommunications etc., and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
  - (iii) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Facility;
  - (iv) perform and fulfill its obligations under the Financing Agreements;
  - (v) comply and observe at all times with all Applicable Permits, approvals and applicable laws, norms/ standards in the performance of its obligations under this Agreement including those being performed by any of its Contractors;
  - (vi) submit, 4 (four) copies each (soft/ hard) of the detailed design, including Architectural Plans, Structural Drawings, elevations sections, all internal and estate services of the Project to the Authority and also, incorporate the necessary suggestions/ amendments proposed by the Design Approval Committee/ Authority. However, it is clarified here that the Concessionaire shall not start the construction until and unless (a) the Authority, approves the detailed design of the Project Facility again after carrying out necessary

amendments, which shall not be unduly delayed; and (b) the Concessionaire has obtained approval for the design/ drawings/ plans of the Project Facility (as approved by the Design Approval Committee) from the Competent Authority/ies/;

- (vii) make arrangements and procurement of firm commitment for financing the Project and achieve Financial Closure and deliver complete evidence to the Authority that Financial Closure has been accomplished, within a period of 180 days from the date of signing of this Concession Agreement;
- (viii) carry out the Works strictly in accordance with the provisions of this Concession Agreement, approved design and plans, work program, quality controls, Developments Envisaged (Schedule-I), Scope of Work, Technical Requirements and Performance Standards (Schedule-II) and the Project Implementation Schedule, and carry out all such works not expressly mentioned in this Concession Agreement but which may be inferred to be necessary for safe, reliable and efficient construction and operation of the Works;
- (ix) undertake to complete the construction within the specified Construction Period, provided that the Concessionaire shall not be in breach of this sub-clause (x) if any non-fulfilment or the delay in fulfilment of its obligation are caused by (a) the occurrence of an event of Force Majeure or (b) a Authority Event of Default or any other act or omission of the Authority in contravention of its obligations under this Concession;
- (x) to furnish the Authority with the “As Built Drawings” of the Project within 30 (thirty) days of the completion of the Construction of the Project;
- (xi) hand over agreed percentage % built-up space within the Commercial Complex to the Authority free of cost during the Construction Period;
- (xii) shall have the right to sub-license the use of Commercial Complex, during the subsistence of this Concession Agreement only with a clear stipulation that sub-licenses granted shall terminate simultaneously with the termination of this Concession Agreement including on sooner determination of the Concession Period for any reason whatsoever. All contracts, agreements or arrangements with sub-licensees shall specifically stipulate this covenant of termination of the sub-licensees rights and further that the sub-licensee shall not have any claim whatsoever against the Authority for any such termination. The Concessionaire shall prepare a draft standard format of the sub-license deed/ agreement which the Concessionaire will be required to sign with the sub-licensee for the use of the Complex. The Concessionaire shall furnish the draft of such agreement/ arrangement to Authority for modification or suggestion. The Authority shall be entitled to incorporate such clauses as Authority may consider appropriate to protect Authority’s interest. The Concessionaire shall enter into sub-license arrangements as per the standard format with the covenants stipulated by the Authority and the Concessionaire shall not incorporate or change any clause in the arrangement/ agreement that would have adverse effect on the covenants incorporated by the Authority. In case of any deviation from the above mentioned standard draft of the agreement in any particular circumstances, which supersedes or adversely effects Authority’s terms and covenants, the prior written consent of the Authority shall be taken before entering into any such agreement with sub-licensees;
- (xiii) shall ensure that the use of the Project Site is restricted to the Article 2 (Scope of Work), Envisaged Development (**Schedule-I**);

- (xiv) carry out its obligations and duties with regard to the operation and maintenance of the Project in accordance with the provision of this Agreement and Schedules hereof. The obligations shall include all works arising from any obligation of the Concessionaire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project. The Concessionaire shall provide all superintendence, labour, plant, materials, equipment, and all such other things for such operation (including fee collection) and maintenance (including remedying of defects);
- (xv) take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods of construction, operation and maintenance of the Project, irrespective of any approval or consent by Authority;
- (xvi) submit to the Authority certified true copies of each of the Project Agreements and any further replacement, amendment or modifications within 7 (seven) days of their execution;
- (xvii) to be responsible for safety, soundness and durability of the Project, including other structures, services forming part thereof and their compliance with the local building byelaws;
- (xviii) to ensure that no structural damages is caused to the existing buildings and other permanent structures in the immediate vicinity or at the Project Site as a result of Concessionaire's activities or any of its agents, contractors, tenants etc.;
- (xix) submit "Structural Safety Certificate" of the proposed Complex from competent structural engineer before the commencement of commercial activities. The Concessionaire shall ensure that the certificate is also counter certified/ signed by the Independent Engineer;
- (xx) to submit a copy of all the statutory approvals (in the form of completion certificate and/ or occupation certificate and/ or no objection certificate, etc.) required by the Concessionaire under Applicable Laws from Competent Authority/ies in respect of the Construction Works completed at the Project Site and for subsequent operationalizing of the Project Facility;
- (xxi) to pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies including the property tax, GST, stamp duty, registration charges and any other legal documentation charges, if any, in respect of the said Complex, including Project Site, as leviable;
- (xxii) to duly supervise, monitor and control the activities of Contractors, sub-contractors, their employees and agents under their respective Project Agreements as may be necessary and to ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (xxiii) to ensure harmony and good industrial relations amongst the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (xxiv) to obtain and maintain in force all insurance in accordance with the provisions of this

## Agreement and Good Industry Practice;

- (xxv) to take all reasonable precautions for the prevention of accidents on or about the Project Facility and provide all reasonable assistance and emergency medical aid to accident victims;
- (xxvi) not to permit any contractor, sub-contractors or other person, claiming through or under the Concessionaire, to create or place any Encumbrances or security interest over all or any part of Project Site or the Project Assets or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement;
- (xxvii) to ensure that such Project Site remains free from all encumbrances, encroachments and trespass during the entire Concession Period;
- (xxviii) to provide all assistance to the Engineer/ expert/ independent auditor/ arbitrator as it may require for the performance of their duties and services;
- (xxix) at all times, to afford access to the Project Site to the authorised representatives of Authority, to inspect the Complex and to investigate any matter within their authority and upon reasonable notice;
- (xxx) shall be solely and primarily responsible to Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and further on behalf of the sub-Licensee, their employees and agents and any person acting under or for and on behalf of the Concessionaire or the sub-Licensee, the sub-contractor as fully as if they were the acts or defaults of the Concessionaire, its agents or employees;
- (xl) shall be liable for and shall indemnify, protect, defend and hold harmless Authority, Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of Applicable Laws and Applicable Permits;
- (xli) support, cooperate with and facilitate the Authority in the implementation and operation of the Project and Project Facilities in accordance with the provisions of this Agreement;
- (xlii) not to alienate either by way of transfer, sale or mortgage any of the land comprising the Project Site.

The Concessionaire shall acknowledge and recognise that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly.

## 7.2 Minimum Equity requirements

7.2.1 The aggregate shareholding of the Consortium Members (in case of Consortium) in the issued and paid up equity share capital of the Concessionaire (here the term "Concessionaire" connotes only the special purpose vehicle as formed by the Consortium Members) shall be not less than 51% (fifty-one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the COD and thereafter 26% (twenty six) till the Transfer Date/ issuance of Vesting Certificate.

7.2.2 In addition to the above obligations, the lead member of the Consortium i.e., -----

- and all other Members of the Consortium whose experience was evaluated for the purposes of qualification, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and each such member shall, for a period of 2 (two) years from the COD of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost.
- 7.2.3 In case the Selected Bidder is a single entity, then it shall hold shareholding in the issued and paid up equity share capital of the Concessionaire, of not less than 51% (fifty-one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the COD and thereafter 26% (twenty six) till the Transfer Date/ issuance of Vesting Certificate.
- 7.2.4 At no stage shall any change in the aforesaid equity components/ shareholding patterns be made by the Consortium Members/ Selected Bidder without obtaining prior approval from the Authority. On an application made for the purpose, the Authority may permit the change of equity components/ shareholding patterns, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority.
- 7.2.5 In case any such change in composition of Consortium has been agreed upon, the modified Consortium would be required to submit a revised Memorandum of Understanding to the Authority.
- 7.3 Disclaimer**
- 7.3.1 The Concessionaire reaffirms and assumes responsibility for all the data and designs, including survey, soil and water test, traffic data and projections and other data used in formulating its Bid.
- 7.3.2 The Concessionaire shall be deemed to have inspected and examined the Project Site before submitting the Bid, as to:
- (i) The form and nature of the Project Site, including the Project Site levels conditions, adjoining water bodies, local habitats etc.;
  - (ii) The extent and nature of the work and materials necessary for the execution and completion of the works and the remedying of any defects;
  - (iii) The means of access to the Project Site and the accommodation required for labour camps, installation of equipment, etc;
  - (iv) Availability of building materials, water, power etc;
  - (v) The requirements of operation and maintenance;
  - (vi) Any other existing condition, which has a bearing on the working conditions during construction, operation and maintenance periods.
- 7.3.3 The Concessionaire shall, by submitting its Bid, be deemed to have carried out such due diligence, inspection, etc and the Concessionaire assumes full responsibility for the data in its Bid and confirms that its designs reflect the representative nature of the data, applied with sound engineering judgement, consistent with Good Industry Practices. The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances, which may influence or affect the Proposal.
- 7.3.4 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters and hereby acknowledges and agrees that the Authority

shall not be liable for the same in any manner whatsoever to the Concessionaire or the Selected Bidder or any person claiming through or under any of them.

- 7.3.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof to the Concessionaire or any person claiming under or through the Concessionaire.

#### **7.4 Sufficiency of Concession Period**

The Concessionaire shall be deemed to have satisfied itself as to the correctness and sufficiency of the Concession Period as defined in this Concession Agreement. Unless otherwise stated in this Concession Agreement, the Concession Period shall cover all its obligations under this Concession Agreement and all things necessary for the execution and completion of the Works and the remedying of any defects during the construction and also the subsequent Operation and Maintenance Period of this Concession Agreement.

#### **7.5 Obligations relating to Project Agreements**

- 7.5.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 7.5.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by an authorized official of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 7.5.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.
- 7.5.4 The Concessionaire shall procure that each of the Project Agreements executed by the Concessionaire with Third Parties contain provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension.



## **7.6 Concessionaire's Representative**

- 7.6.1 The Concessionaire's Representative shall be the authorized person of the Concessionaire. If at some point of time the Concessionaire is unable to provide the services of the person named as the Concessionaire's Representative, then it shall notify the Authority its reasons for this and thereafter, provide a substitute person who can be the Concessionaire's Representative.
- 7.6.2 The person named as the Concessionaire's Representative under this Concession Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Concessionaire's Representative, the Concessionaire shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience and then obtain the written consent of the Authority to the appointment of the Concessionaire's Representative.
- 7.6.3 The Concessionaire's Representative shall be exclusively employed or engaged by the Concessionaire to give his whole time to directing the preparation of the Construction Documents, the execution of the Works, and operation and maintenance of the Project. Except as otherwise stated in this Concession Agreement, the Concessionaire's Representative shall receive on behalf of the Concessionaire all notices, instructions, consents, approvals, certificates, determinations and other communications under this Concession Agreement. Whenever the Concessionaire's Representative is to remain absent from the Project Site for a continuous period in excess of 14 (fourteen) days, a suitable replacement Person shall be appointed with the Authority's consent.
- 7.6.4 The Concessionaire's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Authority has received prior notice signed by the Concessionaire's Representative, specifying the powers, functions and authorities being delegated or revoked. Concessionaire's Representative shall notify to the Authority the names, duties and scope of authority of such Persons. Any instructions given to any of them shall be deemed to have been given to the Concessionaire's Representative. Any such delegation shall not relieve the Concessionaire's Representative of its obligation and duties under this Agreement.

## **7.7 Work Program**

- 7.7.1 The Concessionaire shall prepare in consultation with the Independent Engineer (if appointed by then) and submit a Project Implementation Schedule to the Authority before the Compliance Date. The programme shall include the following:
- (i) The order in which the Concessionaire proposes to carry out the Works, internal and external services (including each stage of design, procurement, manufacture, delivery to Project Site, construction, erection, testing and commissioning).
  - (ii) All major events and activities in the production of Construction Documents.
  - (iii) The particulars for the pre-construction reviews and for any other submissions, approvals and consents specified in this Concession Agreement.
- 7.7.2 Any alternation/ revision by the Concessionaire in the Project Implementation Schedule shall be intimated to the concerned authorities.

- 7.7.3 If the progress of the Works does not conform to the Project Implementation Schedule, the Independent Engineer may instruct the Concessionaire to revise the Project Implementation Schedule, showing the modifications necessary to achieve completion as per Project Implementation Schedule. The Independent Engineer shall record the reasons for such revision of Project Implementation Schedule.
- 7.7.4 The Concessionaire shall, whenever required by the Authority, provide in writing, for information, a general description of the arrangements and methods, which the Concessionaire proposes to adopt for the execution of the Works.
- 7.7.5 The Project Implementation Schedule shall be developed using PERT charts showing critical activities and milestones for completion of all works and services within the stipulated time period and submitted to Independent Engineer and the Authority.

## **7.8 Total Quality Management**

- 7.8.1 During the Construction Period, the Concessionaire shall adhere to the Performance Standards and Technical Requirements as mentioned in the Schedules to this Concession Agreement. The Concessionaire shall also maintain adherence to such Performance Standards and Technical Requirements throughout the Operation and Maintenance Period of the Project.
- 7.8.2 The Concessionaire shall institute a quality assurance system that shall be followed during the Concession Period. The quality assurance system shall involve testing of materials, equipments and services to ensure compliance of laid down Performance Standards and Technical Requirements, the upkeep of suitable records, charts, samples, photographs, etc, as approved by Authority. Compliance with the quality assurance system shall not relieve the Concessionaire of its duties, obligations or responsibilities under this Agreement. The Authority reserves the right to inspect periodically or at random, the materials, works, records and documents, and to take measurements and tests. The Concessionaire should offer full co-operation to such checks and inspections.
- 7.8.3 During the Construction Period, details of all periodic tests, procedures and compliance documents shall be submitted to Independent Engineer for his information before each design and execution stage is commenced. When any document is issued to Independent Engineer, it shall be accompanied by the signed quality assurance statements for such document in a format approved by Independent Engineer. The Independent Engineer shall be entitled to audit any aspect of the system and recommend corrective action to be taken, if any.

## **7.9 Progress Reports**

- 7.9.1 The Concessionaire shall prepare Monthly Reports on the progress of construction. Concessionaire shall submit one copy of the Monthly Report to the Authority and one copy of the same to the Independent Engineer. The first report shall cover the period up to the end of the calendar month in which the Compliance Date occurred. Reports shall be submitted monthly thereafter, each within 7 (seven) days of the last day of the period to which it relates. Reporting shall continue until the Concessionaire has completed all the Works and the Construction Completion Certificate is issued. Each report shall include:-
- (i) An executive summary;
  - (ii) For the construction of each main item of the Project, the extent of progress as quantity and percent, the actual or expected dates of commencement, anticipated completion date of the activity, Concessionaire's inspections and tests;



- (iii) Copies of quality assurance documents, test results and certificates of materials;
- (iv) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (v) Comparisons of actual and planned progress, with details of any aspects which may jeopardise the completion of construction in accordance with this Concession Agreement, and the measures being (or to be) adopted to overcome such aspects; and
- (vi) Details of unresolved disputes and claims, if any.

## **7.10 Co-ordination**

7.10.1 The Concessionaire shall be responsible for the co-ordination and proper execution of the Works and services, including co-ordination of any other Persons or Contractors to the extent specified in this Concession Agreement. The Concessionaire shall, upon reasonable request by the Authority, co-operate in the co-ordination of the works with the work of any other persons to whose systems the Facilities are to be connected, provided that such co-operation shall not unreasonably interfere with the carrying out of the works. The Concessionaire shall afford all reasonable opportunities for carrying out their work to:

- (a) The workmen of the Authority;
- (b) Any other persons employed by the Authority and their workmen; and
- (c) The workmen of any legally constituted public authorities that may be employed in the execution on or near the Project Site of any work not included in this Concession Agreement, which the Authority may require.

## **7.11 Subcontracting**

The Concessionaire is entitled to subcontract tasks relating to its obligations and responsibilities under this Concession Agreement, including but not limited to tasks relating to construction, installation of services, maintenance and operation of the Complex, the Concessionaire shall be sole and primary person responsible to the Authority for the observance of all the provisions of this Concession Agreement. The Concessionaire shall be responsible for the acts or defaults of any of its Contractor/ subcontractor, its agents or employees, as if they were the acts or defaults of the Concessionaire, its agents or employees. Any subcontracting shall not relieve the Concessionaire of his obligations and liabilities under this Concession Agreement.

## **7.12 Plant and Equipment**

- 7.12.1 The Concessionaire shall arrange for all machinery, plant and equipment necessary to complete the Works. All its Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the works.
- 7.12.2 The Concessionaire shall maintain an adequate inventory of consumable and spare parts, and undertake periodic and preventive maintenance as required for the relevant equipments. The Concessionaire shall ensure continuous work flow as required under the program. Breakdown of machinery or equipment shall not be a valid reason for any delay, extension in the Concession Period or addition of cost, towards the Project.

**7.13 Access for Supervision**

- 7.13.1 The Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site following grant of Vacant Possession thereof to the representatives of or Persons duly authorised by the Competent Authority concerned with safety, security or environmental protection to inspect the Project Site and the facilities thereon and to investigate any other matter within its authority and the Concessionaire shall further afford such Persons reasonable access to the Project Site necessary to carry out their respective duties and functions.
- 7.13.2 The Persons obtaining access to the Project Site shall conduct their operations at their own risk, cost and expenses and in such manner so as to cause minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose of the Person gaining such access.

**7.14 Materials of Construction**

- 7.14.1 All materials used in construction shall confirm to the Technical Requirements & Performance Standards mentioned in the Schedules. However, the Concessionaire shall have freedom to choose best quality building materials of the standard desired for a state of the art Commercial Complex.
- 7.14.2 The Concessionaire shall at its own cost and responsibility arrange for construction materials such as bricks, cement, steel, aggregates, soil, bituminous and asphaltic materials, and any other materials and fixtures used in the works, as well as ancillary materials such as shuttering and scaffolding, bearings, joint filers and similar materials.

**7.15 Supply of Power, Water and Other Consumables**

- 7.15.1 The Concessionaire shall be solely responsible, at its own cost, for the total supply of electricity, water, fuel, consumables and any other services required for the purposes of the Works, in the Project, for the Concession Period.
- 7.15.2 The Authority shall if requested by the Concessionaire use all reasonable endeavours to assist the Concessionaire in obtaining the supply of such services, provided that the Concessionaire shall reimburse the Authority for the cost of providing the same and further provide that no such supply or assistance, or failure to do, by the Authority shall relieve the Concessionaire of its obligations under Article 8.15.1 above. The Authority shall notify the cost to the Concessionaire. The Concessionaire shall, at its risk and cost, provide any apparatus necessary for such determination and for its use of these services.

**7.16 Safety**

Within 1 month from the Effective Date, the Concessionaire shall provide to the Authority details of its safety plans and procedures for the Works, buildings, services and construction. The Concessionaire shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Concession Agreement, the Concessionaire shall, from the commencement of work on the Project Site until the expiration of this Concession Agreement or upon termination of this Agreement, provide fencing, lighting, guarding and watching of the works and facilities. The Concessionaire shall be responsible in the operation of machinery and equipment, use of explosives and any other work and to take all precautions to ensure safety of the staff, labourers and public.

**7.17 Environmental Measures**

- 7.17.1 The Concessionaire shall take all reasonable steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property resulting from construction operations.
- 7.17.2 The Concessionaire shall ensure that surface discharges and effluent from the Project Site during the Concession Period shall not exceed the permissible limits as prescribed by law.
- 7.17.3 The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, its officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable.

**7.18 Hazardous Materials**

The Concessionaire shall be responsible for the removal of hazardous materials from the Project Site, and the works, in accordance with applicable Indian laws and directives and any other materials generated or released by the Concessionaire during its construction activities, which are toxic or similarly hazardous to the health or safety of persons.

**7.19 Treasures/ Fossils**

In the event of discovery by the Concessionaire or his employees during the progress of the work of any treasure, fossils, minerals or any articles of value or interest, the Concessionaire shall give immediate intimation of such treasure or things to the Authority and the same shall be a property of the Authority.

**7.20 Project Site Clearance**

- 7.20.1 During the execution of the Works, the Concessionaire shall keep the Project Site free from all unnecessary obstruction and shall store its Equipment or surplus materials in a manner that causes least inconvenience or dispose of such Equipment or surplus materials. The Concessionaire shall clear away and remove from the Project Site any wreckage, rubbish or Temporary Works no longer required.
- 7.20.2 Within 30 (thirty) days of issue of the Construction Completion Certificate, the Concessionaire shall clear away and remove, from the Project Site, all Concessionaire's Equipment, surplus materials, wreckage, rubbish, other debris and Temporary Works. The Concessionaire shall leave such areas and works in a clean and safe condition to the satisfaction of Authority. Except that the Concessionaire shall be entitled to retain on any Project Site, until the expiry of the Concession Period, such Concessionaire's Equipment, materials and Temporary Works as required by it for the purpose of fulfilling its obligations under this Concession Agreement in respect of operation and maintenance of the Project.
- 7.20.3 Within 30 (thirty) days of the expiry of the Concession Period, the Concessionaire shall clear away and remove, from the Project Site all the Concessionaire's Equipment, surplus material, wreckage, rubbish, other debris and Temporary Works. The Concessionaire shall leave the Project Site in a clean, functional and safe condition to the satisfaction of Authority. Provided that if the Concessionaire fails to remove, at the end of the 30 day period, any remaining Concessionaire's Equipment, surplus material, wreckage, rubbish and Temporary Works, the

Authority may sell or otherwise dispose of such items at risk and cost of Concessionaire. The Authority shall be entitled to retain, from the proceeds of such a sale, or from any other amounts due to the Concessionaire, a sum sufficient to meet the costs incurred in connection with such sale or disposal. If the amounts due to the Concessionaire are insufficient to meet the Authority's costs, the outstanding balance shall be recoverable from the Concessionaire by the Authority.

## **7.21 Project Site Security**

The Concessionaire shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all Plant and Machinery, Materials, Concessionaire's Equipment and other things required for the completion of the Works, services and operation and maintenance of the Complex.

Unless otherwise stated in this Concession Agreement:

- (i) The Concessionaire shall be responsible for keeping unauthorised persons off the Project Site and prevent encroachment on the Project Site during the Construction Period.
- (ii) Authorised persons during the Construction Period shall be limited to the employees of the Concessionaire, employees of its Subcontractors and employees and persons authorised by the Authority.

## **7.22 Obligations relating to employment of foreign nationals**

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/ or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

## **7.23 Obligations relating to employment of trained personnel**

The Concessionaire 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.

## **7.24 Sole purpose of the Concessionaire**

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

## **7.25 Facilities for differently abled and elderly persons**

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a user friendly and conducive environment for the differently abled and for elderly persons using the Project.

## 7.26 Project Asset and Project Facilities Register

The Concessionaire shall prepare and maintain register (the “**Project Asset and Project Facilities Register**”) of all the Project Asset and Project Facilities constructed by it. The Project Asset and Project Facilities Register shall be prepared as soon as each of the Project Asset and Project Facilities provided for in the approved plan are completed. The Concessionaire shall update the Project Asset and Project Facilities Register as and when any additional asset or facility is added at the Site or any one of them is replaced by the Concessionaire as part of the Maintenance Requirements. The Concessionaire shall provide one copy each of the Project Asset and Project Facilities Register to the Authority.

## ARTICLE 8: DRAWINGS AND SPECIFICATIONS

### 8.1 Design Obligations

- 8.1.1 The Concessionaire shall have the complete responsibility at its own cost and risk to plan and design the Complex, subject to approval of detailed design of the Concept Plan and drawings prepared as per Applicable Laws including Building Bye Laws, Developments Envisaged (Schedule-I), Scope of Work, Technical Requirements and Performance Standards (Schedule-II), by the Design Approval Committee. The selection of appointment of Architect, Consulting Engineer if any, Structural Engineers for internal and estate services and other specialists and constructing agencies etc. shall be the permitted domain of the Concessionaire. Nevertheless, the Concessionaire undertakes to submit to the Authority the names of Architects, Consulting Engineers etc. and other specialists as and when required by the Authority and Independent Engineer.
- 8.1.2 The Concessionaire holds itself, its designers and design sub-consultants, specialists as having the requisite experience and capability necessary for the preparation of the detailed structural design and planning and design of services. The Concessionaire undertakes that the designers/ engineers/ specialist shall be available to attend discussions with the Authority, the Independent Engineer or with members of the Maintenance Board at all reasonable times during the Concession Period.
- 8.1.3 The Concessionaire shall submit a “**Structural Safety Certificate**” of the proposed Complex from competent structural engineer before commencement of the Commercial Operations. However, the certificate shall also be counter certified/ signed by the Independent Engineer.

### 8.2 Construction Documents

- 8.2.1 The Concessionaire shall prepare Construction Documents in sufficient detail to satisfy all regulatory approvals, to provide suppliers and construction contractor and subcontractors sufficient instruction to execute the Works, and to describe the operation of the completed Works. The Independent Engineer and the Authority shall have the right to review and inspect the Construction Documents.
- 8.2.2 Each of the Construction Documents shall, when considered ready for use, be submitted to the Independent Engineer and the Authority for pre-construction review. In this Article, “**Review Period**”, means the period required by Independent Engineer and the Authority, which unless otherwise stated shall not exceed 14 (fourteen) days, calculated from the date on which the Independent Engineer receives the Construction Documents and the Concessionaire's notice that it is considered ready, both for a pre-construction review in accordance with this Article, and for use. If the Independent Engineer, within such Review Period, notifies the Concessionaire that a Construction Document fails (to the extent stated) to comply with some Technical Requirements, it shall henceforth be rectified, resubmitted and reviewed in accordance with this Article, at the Concessionaire’s cost.
- 8.2.3 If the Concessionaire wishes to modify any design or document, which has previously been submitted for such pre-construction review, the Concessionaire shall immediately notify and shall subsequently submit revised documents for pre-construction review.
- 8.2.4 Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Construction Documents and the Works that have been implemented following the defective Construction Documents shall be rectified by the Concessionaire at its own cost.

### 8.3 Design Warranty

The Concessionaire warrants to the Authority that the Works, services, facilities, infrastructure will be designed, constructed, tested and commissioned as per Performance Standards and that it will otherwise perform its obligations under this Concession Agreement:-

- (i) Using all due skill, care and diligence expected of a Concessionaire in executing a work of this nature and magnitude;
- (ii) In a proper workmanlike and careful manner with properly equipped facilities and non-hazardous materials and in accordance with Good Industry Practices;
- (iii) So that the Works when completed shall be in accordance with Performance Standards and all relevant requirements of this Concession Agreement unless agreed otherwise in writing by the Authority;
- (iv) So that the Works when completed shall be capable of being used, operated and maintained in accordance with the requirements of the Project and Good Industry Practices;
- (v) So that the Works when completed shall comply with the provisions of any Applicable Laws in effect during the Concession Period; and
- (vi) There shall be no design defects in the structure and serviceability of the Complex for the duration of the Concession Period.

### 8.4 Technical Requirements/ Performance Standards

- 8.4.1 The structural design of buildings, design of internal and estate services/ utilities/ infrastructure, the Construction Documents, the execution, the completed Works and services, the operation and maintenance shall comply with technical standards and specifications, building bye laws, construction and environmental regulations, regulations applicable to the Project or its components, Good Industry Practices and the Performance Standards specified in the Schedules and the Technical Requirements (which are minimum applicable) or as defined by law. References in this Concession Agreement to Technical Requirements, building bye laws, construction and environmental regulations, regulations applicable to the Project or its components and Good Industry Practices shall be understood to be references to the edition applicable on the Effective Date, unless stated otherwise.
- 8.4.2 The Concessionaire shall be liable for and shall indemnify, protect and hold harmless at all times, the Authority, the Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the Concessionaire's failure to comply with the applicable laws in relation to execution of Works and construction, operation and maintenance of the Complex.

### 8.5 Test Certificates and Samples

The Concessionaire shall submit the following samples and relevant information to Independent Engineer and Authority before its use in the Construction or Maintenance of the Project:-

- (i) Manufacturer's standard samples of Materials;

- (ii) Samples (if any) specified in the Authority's and Independent Engineer's requirements;
- (iii) Samples (if any) specified by the Concessionaire, to be of best quality;
- (iv) Additional samples instructed by the Authority or the Independent Engineer;
- (v) Each sample shall be labelled as to origin, make and manufactures and its intended use; and
- (vi) Test certificate or samples for building materials such as cement, steel, bituminous materials, or any other materials proposed to be used.

## **8.6 Execution Drawings**

The Concessionaire shall prepare and keep up-to-date, a complete set of Execution records of the execution of each section of the Works, showing the exact locations, sizes and details of the Works, internal and estate services/ utilities/ infrastructure as executed with cross references to all relevant requirements and data sheets. These records shall be kept on the Project Site and shall be used exclusively for the purposes of this Article. The Concessionaire shall prepare and submit to the Authority and the Independent Engineer one copy each of the Execution drawings for inspection. The Concessionaire shall obtain the consent of Independent Engineer as to their size, the referencing system, and other pertinent details. However, it shall neither relieve the Concessionaire of its obligations and liabilities under this Concession Agreement nor shall the Independent Engineer or the Authority be liable for the same, in any manner whatsoever.

## **8.7 Final Drawings**

- 8.7.1 The Concessionaire shall submit to the Authority and the Independent Engineer one detailed and legible copy each of "Final" records and drawings of the execution of each section of the Works, showing the exact final locations, sizes and details of the Work as executed and completed with cross references to all relevant requirements and data sheets.
- 8.7.2 The Concessionaire shall ensure that the Authority has the right to use and protect the design from infringement and to further enforce such right against any person, in accordance with the terms of this Concession Agreement.
- 8.7.3 This Article shall also be applicable if any new Works, strengthening, rehabilitation of any part of the Complex are carried out during the Operation and Maintenance Period. The Concessionaire shall keep one set of Final Drawings at Project Site for the entire Concession Period.

## **8.8 Patents/ Copy Right**

If the Concessionaire desires to use any designated device, materials or any process covered by letters of "Patents" or "Copyrights", the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Patents owner. A copy of the agreement shall be filed with the Authority.

## **8.9 Levies**

Except where otherwise stated in this Concession Agreement, the Concessionaire shall pay all tonnage, levies, cess, royalties, rent and other payments or compensation, if any, for Plant and Machinery or other materials required for the Works.



## **ARTICLE 9: LABOUR**

The Concessionaire shall be solely responsible for the liability, cost, and responsibility for all the laws relating to labour employed by Concessionaire and for their conditions under this Article.

### **9.1 Engagement**

The Concessionaire shall make its own arrangements for the engagement of all its staff and labour, local or otherwise and for their wages/ payment, boarding, lodging, health, safety, food arrangement, transport, etc. as per Applicable Laws.

### **9.2 Information on Labour and Equipment**

The Concessionaire shall furnish, if required by the Authority or the Independent Engineer, a detailed return in such form and at such intervals as may be prescribed, showing the details of the staff, labour, plant and equipment deployed on the Project by the Concessionaire.

### **9.3 The Authority's Staff**

The Concessionaire shall be under no obligation to recruit any or part of the staff and labour from amongst persons in the service of the Authority.

### **9.4 Labour Laws**

The Concessionaire shall ensure that all labour laws, rules and regulations will be followed and the Concessionaire shall be the primary employer of labour employed by it for the Project. The Concessionaire shall keep the Authority indemnified and harmless in this regard in the event of any claim, fine, action or suit brought against the Authority for non-compliance by the Concessionaire with any of the applicable labour laws.

## **ARTICLE 10: MATERIALS AND WORKMANSHIP**

### **10.1 Execution**

All Works shall be executed in the manner set out in this Concession Agreement. Where the manner of execution is not set out in this Concession Agreement, the Works shall be executed under the instructions of the Independent Engineer during the Construction Period and the Authority during the Operation and Maintenance Period, in a proper, workmanlike and careful manner and as per Good Industry Practice, with properly equipped facilities and non-hazardous materials.

### **10.2 Inspection**

- 10.2.1 The Authority shall be entitled, during fabrication, construction or preparation at any places where Works are being carried out, to inspect, examine and test the materials and workmanship, and to check the progress thereof of all Works under this Concession Agreement. The Concessionaire shall give the Authority full opportunity to inspect, examine, measure and test any Works on Project Site or wherever being carried out.
- 10.2.2 The Concessionaire shall give due notice to the Authority whenever such Work is ready, before packaging, covering up or putting out of view, including foundation works. The Independent Engineer and the Authority shall then respond to the Concessionaire with its intention to either carry out the inspection, examination, measurement or testing within 14 (fourteen) days, or notify that it is considered unnecessary. If the Concessionaire fails to give such notice, it shall, when required by the Independent Engineer, uncover such work and thereafter reinstate and make good at Concessionaire's own cost.

### **10.3 Testing during Construction Period**

- 10.3.1 If the Authority requires Tests at any time during the Construction Period, the Concessionaire shall provide all documents and other information necessary for testing and other such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as are necessary to carry out such tests efficiently. The Concessionaire shall provide engineering support and technical know-how as the Authority shall reasonably request for the purpose of the Tests.
- 10.3.2 The Concessionaire shall provide sufficient and suitably qualified and experienced staff to carry out such Tests. The Independent Engineer and the Authority shall attend all such Tests.
- 10.3.3 If Authority do not attend at the time and place agreed the Concessionaire may proceed with the Tests, unless the Independent Engineer or Authority instructs the Concessionaire otherwise. In such a situation, such Tests shall be deemed to have been made in the presence of the Authority and the Independent Engineer.
- 10.3.4 The Concessionaire shall promptly forward to the Authority duly certified reports of the Tests. the Authority has not attended the Tests, he shall accept the readings as accurate. When the specified Tests have been passed, Independent Engineer shall endorse the Concessionaire's Test certificate, or issue a confirmation to it to that effect and intimate Authority forthwith.

- 10.3.5 The Authority is entitled to insist for the Concessionaire to carry out any Tests of any type, as it deems fit. If such Tests are not carried out in accordance with general Good Industry Practises, then the Authority may carry out the tests and the Cost of which shall be borne by the Concessionaire.

#### **10.4 Rejection**

- 10.4.1 If, as a result of inspection, examination or testing, the competent authority decides that any plant, materials, design or workmanship is defective or otherwise not in accordance with this Concession Agreement, the Competent authority may reject such plant, materials, design or workmanship and shall notify the Concessionaire within 7 (seven) days recording clearly his reasons thereof.
- 10.4.2 The Concessionaire shall then, within the time permitted by the Competent Authority, make good the defect and ensure that the rejected item or work complies with this Concession Agreement. If the Competent requires such plant, materials, design or workmanship to be re-tested, all such Tests shall be repeated at the cost of the Concessionaire.

#### **10.5 Ownership**

Each item of Plant and Machinery and the Materials shall be the property of the Concessionaire till the expiry of the Concession Period or upon the premature termination of this Concession Agreement. The Concessionaire shall assume full responsibility for the Plant and Machinery, Materials and Works at the Project Site.

#### **10.6 Suspension of unsafe Construction Works**

- 10.6.1 Upon recommendation of the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the pedestrians, neighbouring areas and public at large.
- 10.6.2 The Concessionaire shall, pursuant to the notice, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the public.
- 10.6.3 All reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire.
- 10.6.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Concessionaire shall give notice to the Authority. After receipt of such notice,

**ARTICLE 11: COMMENCEMENT TIME AND DELAYS****11.1 Commencement**

- 11.1.1 The rights and obligations of the Parties under this Concession Agreement shall commence from the Effective Date. Any Works of whatever nature, which the Concessionaire elects to carry out prior to the Effective Date including investigations, surveys, design, etc shall be entirely at the risk and Cost of the Concessionaire.
- 11.1.2 Any delay on the part of the Authority (unless such delay is contributed by the Concessionaire) in the completion of the Conditions Precedent shall be deemed to be a delay in commencement of the Project.

**11.2 Time for Completion**

The construction of the Multi-Storey Parking-cum-Commercial Complex shall be in accordance with the “**Scheduled Date of Construction Completion**”, provided that this period, as stated, may be extended subject to the approval of Competent authority.

- 11.2.1 In the event that construction completion is not achieved by the Scheduled Date of Construction Completion for any reason other than Force Majeure or solely as a result of the Authority being in default of any of its obligations under this Agreement or reasons attributable to any Competent Authority, the Concessionaire shall pay to the Authority Damages for delay beyond the Scheduled Date of Construction Completion to the extent of 0.5% (zero point five percent) of the Construction Performance Security for each day of delay or part thereof until Construction Completion Date is achieved. Provided that nothing contained in this agreement shall be deemed or construed to authorize any delay by the Concessionaire in achieving Construction Completion Date. In such an event, the duration of the Concession Period shall not be adjusted and the Concessionaire shall be solely responsible for the corresponding reduction of the period for which the Project Facility/ Complex is used for Commercial Operations and any reduction in revenue as a consequence thereof.

**11.2.2 Commercial Operations Date (COD)**

The Project Facility or any part thereof shall be deemed to be completed when the Construction Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of this Agreement, and accordingly the date of commercial operations of the Project shall be the date on which such Construction Completion Certificate or the Provisional Certificate is issued (the “COD”). The Project Facility or any part thereof shall enter into Commercial Operations/ commercial services on COD whereupon the Concessionaire shall be entitled to demand and collect User Charges in accordance with the provisions of this Agreement.

**ARTICLE 12: OPERATIONS AND MAINTENANCE PERIOD****12.1 Commencement and Duration**

The Operation and Maintenance Period of the Project shall commence from the date of issue of Construction Completion Certificate (Commercial Operations Date) and in its absence, from the date of Provisional Certificate and terminate at the Transfer Date.

**12.2 Obligations of the Concessionaire during Operations and Maintenance Period**

12.2.1 During the Operations and Maintenance Period (“**O&M Period**”), the Concessionaire shall be responsible for performing all the obligations and complying with the Performance Standards laid down in **Schedule II** of this Concession Agreement.

12.2.2 In the event of failure to perform the obligations or comply with the Performance Standards laid down in **Schedule II**, the Concessionaire shall be liable to a penalty which shall not exceed the Operation & Maintenance Performance Security and for the enforcement of which the Performance Security can be used. The amount of penalty payable by the Concessionaire for a default under this provision shall be determined by the Maintenance Board.

12.2.3 The Concessionaire recognizes and acknowledges the fact that the Project is intended to provide a public facility, and the Concessionaire shall have no right to prevent, impede or obstruct any bona fide Users from using the Complex, save and except for regulating such usage under the terms of this Concession Agreement. Under exceptional circumstances, if the Concessionaire apprehends any detriment to the Complex it shall seek instructions from the Authority, whose decision in this regard shall be final.

**12.3 Scope of Work during Operations and Maintenance Period**

12.3.1 In addition to what is provided elsewhere in this Concession Agreement, the Concessionaire shall have the following obligations and responsibilities during the Operations and Maintenance Period:-

- (i) The Concessionaire shall be responsible, at his own cost, for all the maintenance and repairs of the Complex and all its components, including roads, buildings, all services and allied works. The Concessionaire shall also carry out rectification of any defects in the design or construction of any component of the Works.
- (ii) The Concessionaire shall monitor the traffic movement at the entrances to and exits from the Complex to prevent traffic jams, obstruction to movement of pedestrians, accidents and emergencies, put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary.
- (iii) The Concessionaire shall deploy adequate trained staff to manage complete operations of the Car Parking and the other components of the Project as per Performance Standards detailed in Schedules of this Concession Agreement. The Concessionaire shall bear the entire responsibility and liability for operation of the Project.
- (iv) The Concessionaire shall be entitled to levy, demand, collect, retain and appropriate the User Charges as per Article 16 of this Concession Agreement.

- (v) The Concessionaire shall at its cost, carry out such periodic inspections, as well as assist Authority or its nominee to carry out any (reasonable) random or periodic inspections or checks of any part or component of the Works, the cost of any Test shall be borne by the Concessionaire.
- (vi) The Concessionaire shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations of the Complex.
- (vii) The Concessionaire shall ensure general upkeep of the Project Area in accordance with the development envisaged.
- (viii) Installation and Operation of CCTV

The Concessionaire shall install and operate a closed circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof.

**ARTICLE 13: FORCE MAJEURE****13.1 Force Majeure Event**

13.1.1 In this Concession Agreement, "Force Majeure" means an event occurrence in India of any or all of the Non-Political Force Majeure Event, Indirect Political Force Majeure Event and Political Force Majeure Event described below respectively hereinafter which prevents the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Concession Agreement and which act or event:-

- (i) Is beyond the reasonable control of and not arising out of the fault or negligence of the Affected Party or the failure of such Party to perform its obligations hereunder;
- (ii) The Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care and
- (iii) Has a Materially Adverse Effect on the Project

**13.2 Non-Political Force Majeure Events**

13.2.1 For the purposes, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- (i) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, extreme adverse weather or environmental conditions, lightning, earthquakes, heavy rains, cyclones, tempest, landslides, storms, floods, volcanic eruptions or fire (to the extent originating from a source external to the Project Site or not designed for in construction Works);
- (ii) Radioactive contamination or ionising radiation;
- (iii) Strikes or boycotts (other than those involving the Concessionaire, Contractors, or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 21.3;
- (iv) Notified or declared as a pandemic or epidemic by the Government of West Bengal or Government of India which leads to any lockdowns or suspension of all business or construction activities at and/ or disruption of supply chains to the Project Facility;
- (v) Any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (vi) Any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for the reason other than failure of the Concessionaire to comply with any Applicable Law or Clearances or on account of breach thereof, or of any contract, or enforcement of this Concession Agreement or exercise of any of its rights under this Concession Agreement by the Authority; or

- (vii) Any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Concessionaire will ensure that it has insured itself against such risks.
- (viii) or of the Contractors; or
- (ix) Any unlawful or unauthorised or without jurisdiction, revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent, the obtaining of which is a condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such consents or permits.
- (x) Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project Facility.



**ARTICLE 14: TERMINATION FOR DEFAULT****14.1 Concessionaire Event of Default**

14.1.1 In addition to the events or circumstances specified elsewhere in the Agreement, each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure and if not cured within the “Cure Period” which shall be 15 (fifteen) days from the date of notice of default (the “**Default Notice**”) from the Authority, shall be considered for the purpose of this Concession Agreement as Event of Default of the Concessionaire (“Concessionaire Events of Default”):

- (i) The Concessionaire is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Authority or the Project; The Concessionaire is in breach of any representation or warranty made under this Concession Agreement or it repudiates this Concession Agreement;
- (ii) The Concessionaire fails to meet the progressive milestones set forth in the Project Implementation Schedule or amendments thereto as provided for in this Concession Agreement;
- (iii) The Concessionaire abandons the Project or any of its material obligations as provided under this Concession Agreement;
- (iv) The Concessionaire not issuing, renewing, replacing or providing the Performance Security in accordance with the terms of this Concession Agreement;
- (v) The Concessionaire fails to pay balance Project Development Fee and/ or Upfront Premium and/ or Annual Concession Fee, as applicable, in the manner as specified;
- (vi) The Concessionaire does not comply with its Minimum Equity Requirements
- (vii) The Concessionaire fails to achieve Financial Close within the stipulated time period of 180 days from the Effective Date, unless expressly extended by the Authority;
- (viii) The Concessionaire has defaulted on its obligations to the Senior Lender under the Financing Documents;
- (ix) The Concessionaire creates any Encumbrances, charges or lien over the Project Site or the Project in favour of any Lenders or Person, save and except as otherwise expressly permitted in this Concession Agreement;
- (x) The Concessionaire fails to complete the construction of structural framework and exteriors/ façade of the Commercial Area within the Construction Period;
- (xi) The Concessionaire has committed an Escrow Default and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (xii) Any transfer pursuant to law of either (a) the rights and/or obligations of the Concessionaire under this Concession Agreements and/ or (b) all or material part of the assets or undertaking of the Concessionaire; except (i) to the extent permitted by this Concession Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Concessionaire to perform its obligations under this Concession Agreement;
- (xiii) In the event a resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;

- (xiv) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- (xv) The Concessionaire fails to comply with the provisions laid down in Article 7.1(xiv) to 8.1(xxi);
- (xvi) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by court, *except* if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Concession Agreement and Project Agreements, and provided that:
  - (a) The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under this Concession Agreement and Project Agreements;
  - (b) The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Concession Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Concessionaire as on the Compliance Date and
  - (c) All the Project Agreements remain in full force and effect;
- (xvii) The Concessionaire commences operation of Commercial Area before operationalizing the Car Parking component of the Project or commences collection of Parking Fees before issuance of Construction Completion Certificate;
- (xviii) The Concessionaire assigns this Concession Agreement or any of its rights or obligations under the Concession Agreement, where such assignment is not in accordance with the terms and conditions of the Concession Agreement.
- (xix) The Concessionaire has defaulted to hand over the agreed quantum of Built-Up Spaces within stipulated time'.

## 14.2 Termination by Authority

- 14.2.1 Without prejudice to any other right or remedies which the Authority may have under this Concession Agreement, upon occurrence of a Concessionaire Event of Default, the Authority subject to the provisions of the Substitution Agreement shall be entitled to terminate this Concession Agreement by issuing a Termination Notice to the Concessionaire. The Termination Notice shall grant the Concessionaire 30 (thirty) days (the “Termination Period”) to make a representation and if during the Termination Period the Concessionaire takes suitable steps to remedy the default/ situation, the Authority shall be entitled to withdraw the Termination Notice.
- 14.2.2 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of

- 14.2.3 Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:
- (i) Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire;
  - (ii) Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

**ARTICLE 15: SUSPENSION OF CONCESSIONAIRE'S RIGHTS****15.1 Suspension upon Concessionaire Default**

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fee, and other revenues pursuant hereto, and

(ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

**15.2 Authority to act on behalf of Concessionaire**

15.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all User Charges and revenues under and in accordance with this Agreement.

15.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period.

**15.3 Revocation of Suspension**

15.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

15.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

**15.4 Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold the Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 15.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

**15.5 Termination**

15.5.1 At any time during the period of Suspension under this Article 15, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 15.4, the Authority

shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 22.

- 15.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 15.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

**ARTICLE 16: LIABILITY AND INDEMNITY****16.1 Indemnity**

- 16.1.1 The Concessionaire shall indemnify, defend and hold harmless (the “Indemnifying Party”) the Authority (the “Indemnified Party”) during the Term of this Agreement from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgments, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys’ fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it or due to such Party’s representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Permits or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it; or (iv) as provided elsewhere herein.
- 16.1.2 The Concessionaire shall be responsible for executing, performing and completing the Works in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the execution of the Works by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold harmless the Authority and its advisors in this behalf.
- 16.1.3 The Authority shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, and consequential financial or economic loss for any reason whatsoever.
- 16.1.4 The Concessionaire shall keep the Authority indemnified during the Term of this Agreement against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Competent Authority, Government Instrumentality, NGT, Courts or Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Site(s) or in the employment of labour and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Applicable Laws and Applicable Permits even after the Termination or expiration of this Agreement by efflux of time or otherwise.
- 16.1.5 Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Transfer Date.
- 16.1.6 The provision of this Article shall survive Termination.

**16.2 Limitation of Liabilities**

The Concessionaire shall in no event be liable to the Authority, by way of indemnity or by reason of any breach of this Concession Agreement or in tort or otherwise, for loss of use of any part (or all) of the Works or for loss of production, loss of profit or loss of any other contract or for any indirect special or consequential loss or damage which may be suffered by the Authority in connection with this Concession Agreement.

**ARTICLE 17: DISPUTE RESOLUTION****17.1 Dispute Resolution**

Any dispute, difference or controversy of whatever nature regarding the validity, interpretation, implementation or the rights and obligations arising out of, or in relation to, or howsoever arising under or in relation to this Concession Agreement between the Parties, and so notified by either Party to the other Party (the “**Dispute**”) shall be subject to the dispute resolution procedure set out in this Article 17. It is specially clarified here that in case of any ambiguity regarding the Works, the practices existing at the time of submission of the proposal as per Good Industry Practice would prevail.

**17.2 Direct discussion between Parties**

The Parties agree that any Dispute that may arise between them shall be first submitted for direct discussion between the Parties. For this purpose, the notice of Dispute (the “**Notice of Dispute**”) sent by one Party to the other Party under Article 17.1 shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for the conducting of negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute and the amount claimed. In the direct discussion proceedings, each Party shall be represented by their representatives/officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order for the discussion to be meaningful. At the discussion proceedings, the Party that has given the Notice of Dispute shall present an offer of a settlement, which may form the starting point of discussions between the two Parties during the discussion proceedings.

**17.3 Arbitration or Adjudication**

17.3.1 In the event that the parties are unable to resolve the Dispute through Direct Discussion under Article 17.2, the Parties shall submit the Dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996 (as amended from time to time). The arbitration proceedings will be done through Court as per provision of the Act.

17.3.2 The arbitration proceedings shall be conducted in the English language and in Kolkata.

17.3.3 The cost incurred on the process of arbitration including *inter alia* the fees of the Sole Arbitrator and the cost of the proceedings shall be borne by the Parties in equal proportions. Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 17.

**17.4 Performance during Dispute**

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Article 17. The provisions for dispute settlement shall be binding upon the successors, assigns and any trustee or receiver of either the Authority or the Concessionaire.

**ARTICLE 18: CONFIDENTIALITY**

Neither of the Parties shall, at any time, before the expiry or termination of this Concession Agreement, without the consent of the other Party, divulge or suffer or permit its officers, employees, or agents to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them to properly to carry out their duties), any information relating to the negotiations concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party or any proprietary information of the other Party.

**18.1 Exceptions to Confidentiality**

18.1.1 The restrictions imposed by Article 18.1 shall not apply to the disclosure of any information:

- (i) which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtained with no more than reasonable diligence from sources other than the Parties;
- (ii) which is required by law to be disclosed to any Person who is authorised by law to receive the same;
- (iii) which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in;
- (iv) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a Party;
- (v) to any consultants, banks, financiers or advisers to the disclosing Party; or
- (vi) In accordance with this Concession Agreement.

IN WITNESS whereof the Parties have executed and delivered this Concession Agreement as of the date first above written.

**SIGNED SEALED AND DELIVERED**

For and on behalf of

**The Authority by:**

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

**SIGNED SEALED AND DELIVERED**

For and on behalf of

**Concessionaire by:**

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

**SIGNED SEALED AND DELIVERED**

For and on behalf of



**Selected Bidder by:**

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

**In the presence of**

1. \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

2. \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

**VOLUME III**

**SCHEDULES TO DRAFT CONCESSION AGREEMENT**

## **SCHEDULE-I**

### **DEVELOPMENTS ENVISAGED**

The Concessionaire shall be required to develop the following at the “**Project Site**” and hereinafter be called as “**the Project**”:-

- **A MARKETING HUB FOR SHGs/ ARTISANS at the Complex**
- **Value Added Services like locker facility, valet service etc. (Optional)**

The selected bidder will be responsible for the end-to-end development of the SHGs / ARTISANS Marketing Hubs, including designing, financing, constructing, and handing over functional infrastructure in line with approved standards and specifications.

The infrastructure should be developed in line with the following activities:

1. Kiosks and Stalls:
  - a. Modular, aesthetically designed kiosks/stalls to showcase and sell SHG / ARTISANS products, ensuring easy accessibility for both sellers and buyers.
  - b. Each kiosk must have adequate space, ventilation, display shelves, and electrical provisions.
  - c. Provision for flexible stall layouts to accommodate diverse SHG / ARTISANS product categories such as handicrafts, textiles, food products, and household goods.
2. Display Areas:
  - a. A dedicated and well-organized exhibition space for product displays to facilitate branding and visibility.
  - b. Strategically designed areas for rotating exhibits and seasonal products to enhance footfall and customer engagement.
  - c. Space for interactive displays that tell the story of SHGs / ARTISANS, their products, and local heritage.
3. Common Amenities:
  - a. Inclusion of common service areas for visitors and vendors, such as restrooms, drinking water facilities, seating zones, and food courts.
  - b. Provision for Wi-Fi connectivity and basic charging stations to enable digital transactions and better convenience.
  - c. Parking spaces for two-wheelers and four-wheelers to encourage customer visits.
4. Storage Facilities:
  - a. Adequate storage units or warehouses to allow SHGs / ARTISANS to stock their products securely.
  - b. Facilities for cold storage or refrigeration for SHGs / ARTISANS dealing in perishable items such as fresh food products or dairy.
  - c. Secured storage provisions for goods awaiting display or shipment.
5. Training and Capacity-Building Halls:
  - a. Multi-purpose training halls or meeting rooms to conduct workshops, capacity-building programs, and SHG / ARTISANS member interactions.
  - b. Equipped with audio-visual aids for seminars, skill enhancement programs, and promotional events.
  - c. Spaces for business coaching and mentoring of SHG / ARTISANS entrepreneurs on quality improvement, product diversification, and financial literacy.
6. Accessibility and Aesthetics:
  - a. Design the hubs to be disabled-friendly with ramps, handrails, and proper signage.
  - b. Use eco-friendly materials for construction and include landscaped spaces to enhance visual appeal.
  - c. Maintain cultural relevance in design to reflect the heritage of West Bengal.

➤ **Commercial Area (For the selected bidders)**

- Any Commercial activity except Housing.

The Concessionaire shall ensure that proportionate Car Spaces within the Project Facility shall be for public use and additional adequate number for visitors to the commercial facility

The area available for the development of Commercial Area will be restricted to FAR as specified in the West Bengal Municipal Building Rules and/ or as may be approved by the respective local authorities, as applicable.

## **SCHEDULE-II**

### **SCOPE OF WORK, TECHNICAL REQUIREMENTS**

#### **1. Broad Scope of Work**

The scope of work includes but not limited to:

- (i) Taking over of the clear and encumbrance free site to Plan, Design, Finance and establish the facility, including Construction, Marketing, provision of relevant assets, equipment, faculty, Clearances/approvals, ancillary services and amenities related to the Parking component at the Complex and Commercial Area conforming to Building Bye-Laws and regulations and as per terms of the Agreement and Schedules hereof.
- (ii) Site clearance and cordoning off the site; providing and deputing of Security including dismantling of incorrect work, removal of debris to specified debris disposal sites (shall be property of Concessionaire) etc.
- (iii) Construction of the Complex as per the design in conformity to the standards set forth in this schedule including, providing installation of all internal and external services.
- (iv) Provisioning of utilities, Project Facilities, equipments, etc. for the implementation of Project during the Concession Period.
- (v) Operate, maintain and manage the Complex facility.
- (vi) Meet the requirements laid down by the Competent Authorities.
- (vii) Provide Value Added Services
- (viii) Provision of sufficient number of stairs and lifts in the commercial area at the Complex for smooth and vertical movement of users.
- (ix) Performance and fulfillment of all obligations of the concessionaire in accordance with the provisions of the Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all the obligations of the Concessionaire under the Agreement.
- (x) All the open spaces in and around the Complex shall be landscaped.
- (xi) Concessionaire shall undertake routine, periodic and preventive maintenance activities of the Project Facility including civil, electrical and mechanical works.
- (xii) Any disruption in power supply shall be rectified in shortest possible time. Standby power supply shall be ready to be operated and should be available 24 hours. Standby power source shall be operational secure and tested regularly.
- (xiii) The Concessionaire shall program inspections/monitoring of the project Facility for its good upkeep and smooth operations. The inspections/ monitoring shall cover all the elements of Project Facility including building structure, electrical and mechanical systems, signages, service standards, etc.
- (xiv) The Concessionaire shall always maintain Fire safety systems complaint with statutory regulations and service standards, Fire extinguisher and fire-fighting equipment shall be maintained as per IS code.
- (xv) The Concessionaire shall Ensure utility infrastructure like water supply, drainages, communication system is maintained in fully functioning conditions.

#### **2. SPECIFICATIONS FOR DESIGN, ENGINEERING AND CONSTRUCTION**

All buildings shall be planned and designed as Reinforced Cement Concrete frame structures/Steel Structure with suitable located shear wall in case of high rise towers conforming to requirement of relevant Indian Standards and providing the areas and spaces as detailed in the Agreement to make the buildings structurally stable, durable and fully functional. The construction of building shall be governed by the building rules provided in the local building bye laws. On the points where such rules are silent and stipulate no conditions or norms, National Building Code of India published by the Bureau of Indian Standards shall be followed.

All construction shall be strictly as per the provisions made in IS Specifications and standards, CPWD/PWD specifications etc.

All electrical installations to comply with IS codes, each stall for the SHG should have minimum 2 KW load capacity.

The installed plant and equipment shall be inspected, checked and tested to verify that it is correct, complies with specification and has been installed in accordance with designed drawings and / or manufacture's recommendations, by the Concessionaire.

### **3 PREPAREDNESS AND PREVENTION**

The preparedness and prevention standards are intended to minimize and prevent emergency situations at the Complex. Concessionaire shall ensure that facility is operated and maintained in a manner that minimizes the possibility of a fire, explosion, and theft. Concessionaire shall provide and maintain requisite equipment including fire-fighting and adequate water supply, internal communication system and alarms, minimum aisle space, and provisions for contacting local authorities.

## **SCHEDULE-III**

### **FORMAT OF PERFORMANCE SECURITY**

### **BANK GUARANTEE**

**Note :Value of the performance security shall be 50 lakh.**

Bank Guarantee No.:

Dated: \_\_\_\_\_

**Issuer of Bank Guarantee:**

Name of the Bank

(hereinafter referred to as the “Bank”)

**Beneficiary of Bank Guarantee:**

The West Bengal Small Industries Development Corporation Limited

**Nature of Bank Guarantee:**

Unconditional and irrevocable Bank Guarantee.

**Context of Bank Guarantee**

Performance during Operation & Maintenance Period in respect of Concession Agreement dated..... (hereinafter referred to as the “Agreement”) between the WBSIDCL (hereinafter referred to as the “**Authority**”) and \_\_\_\_\_ (hereinafter referred to as the “**Concessionaire**”) for the Development of Commercial Complex at ..... under PPP mode on design, build, operate and transfer basis (hereinafter referred to as the “**Project**”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee, i.e. “**Performance Security**” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and the Authority and is not dependent upon execution or performance of any Agreement between the Authority and \_\_\_\_\_ (name of the Concessionaire).

**Operative part of the Bank Guarantee:**

1. At the request of the Concessionaire, we \_\_\_\_\_, \_\_\_\_\_ (name and address of the bank), hereinafter referred to as the “**Bank**”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. \_\_\_\_\_ Lakhs (Rupees \_\_\_\_\_ Lakhs Only), such sum being payable by us to the Authority immediately upon receipt of first written demand from the Authority.
2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from the Authority and without

any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. Lakhs (Rupees \_\_\_\_ Lakhs Only).

3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to pay to the Authority, any amount so demanded not exceeding Rs. \_\_\_\_\_ Lakhs (Rupees \_\_\_\_\_ Lakhs Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until \_\_\_\_\_.

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. \_\_\_\_\_Lakhs (Rupees \_\_\_\_\_ Lakhs Only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. \_\_\_\_\_to \_\_\_\_\_.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the AUTHORITY serves upon us a written claim or demand on or before \_\_\_\_\_.

\_\_\_\_\_  
Authorized Signatory for Bank



## **Annexure -I**

### **GENERAL SPECIFICATIONS FOR PROPOSED COMPLEX**

ITEM NO.	DESCRIPTION	SPECIFICATION
<b>1.0</b>	<b>FOUNDATION</b>	As per structural design based on soil investigation.
<b>2.0</b>	<b>SUPER STRUCTURE</b>	
2.1	Structure	R.C.C. framed construction with filler walls with fly ash bricks /brick work/ ACC blocks or load bearing construction in /brick work/fly ash bricks/ stone masonry with intermediate columns as per design.
2.2	Internal partitions.	
2.2.1		Light weight auto claved aerated concrete blocks.
2.2.2		Gypsum Blocks.
2.2.3		Non asbestos double skin cement boards.
2.2.4		Fly ash bricks.
<b>3.0</b>	<b>DOORS &amp; WINDOWS</b>	
3.1	Frames	
3.1.1	Door frames	Door frames of 2nd class Indian teakwood or equivalent in officer's room. Anodized / Powder coated/ Polyester powder coated Aluminium sections/
3.1.2	Window frame	Standard sections of UPVC window frame members/Extruded Aluminium tubular sections
3.2	Door Window Shutters	
3.2.1	Door Shutter	Panelled type in 2nd class teak wood or flush door with teak veneered ply/ commercial ply as per CPWD Specifications/as per design.
3.2.2		Anodized/powder coated/ Polyester powder coated Aluminium shutters with toughened glass glazing/paneling where required.
3.2.3	Frame and shutters in wet area	PVC/FRP door frames & shutters in wet areas.
3.3	Window shutters	Factory made Anodised/ powder coated/ Polyester powder coated 'Z' section aluminium shutters/ standard UPVC section for windows with toughened glass glazing
3.4	Fittings	Anodized aluminium /stainless steel or equivalent.
3.5	Fire check door	As per fire safety specifications
<b>4.0</b>	<b>FLOORING</b>	
4.1	Main entrance hall	Pre polished granite flooring.
4.2	Corridors	Matt finished vitrified tiles/Granite flooring/combination of marble and granite
4.3	Rooms	Granite tiles/Vitrified tiles/Engineered wood flooring (in officers chambers)
4.4	Lavatory Blocks	Granite flooring.
4.5	Flooring in basement	Vacuum dewatered concrete.
4.6	Rest of the area	Kota Stone flooring.
<b>5.0</b>	<b>STAIRCASE</b>	
5.1	Internal staircases	Single piece Granite or marble flooring in treads & risers with dado of matching permanent finish specifications.
5.2	Fire escape staircase	Single piece Kota stone flooring in treads & risers with dado of matching permanent finish specifications.
<b>6.0</b>	<b>RAILING</b>	Stainless steel railings.
<b>7.0</b>	<b>TOILETS</b>	Granite flooring. Glazed tiles of size not less than 300 x 450/400 x 600 mm in dado upto ceiling height. Granite counters. Rimless counter sunk basins/Stainless steel sinks. Mirrors with moulded PVC frame. FRP/PVC doors with frames.

<b>8.0</b>	<b>ROOFING</b>	
8.1	Roof treatment	Coba treatment/over deck insulation with Puf slab.
8.2	False ceiling	False ceiling in office area & toilets to cover the services as per design requirement.
<b>9.</b>	<b>FINISHING</b>	
9.1	External	Dry stone cladding/washed grit plaster/water proof weather coat paints/ Structural Glazing/ ACPcladding conforming to Energy Conservation Building Code.
9.2	Internal	
9.2.1		Gypsum plaster in dry areas.
9.2.2		Cement plaster in wet areas
9.2.3		Dry acrylic distemper in service area & basement.
9.2.4		Acrylic emulsion paint/ Textured paint (low V.O.C)
9.2.5		Wall panelling as per approved Architecture Design upto sill level/1.2 meter, height or ceiling height.
9.3	Painting	Doors & windows – Painting/polishing on wood work as per design requirement.
<b>10.0</b>	<b>PROVISION FOR BARRIER FREE BUILDING</b>	Ramps, toilets for physically challenged, chequered tiles use of Braille signages & lifts etc.GRC (Glass reinforced concrete) tiles in Ramp area.