

**PROVIDING FACILITY MANAGEMENT
SERVICES IN THE BUS STAND AT
METTUPALAYM ROAD IN COIMBATORE**

REQUEST FOR PROPOSAL

October 2010

**COIMBATORE CITY MUNICIPAL CORPORATION (CCMC)
COIMBATORE - 641001, TAMILNADU, INDIA**

**REQUEST FOR PROPOSAL (RFP)
PROVIDING FACILITY MANAGEMENT SERVICES
IN THE BUS STAND AT METTUPALAYAM ROAD IN COIMBATORE**

Section - I	Instructions to Bidders
Section - II	Technical Specifications
Section - III	Formats for Bid Submission
Section – IV	Draft Concession Agreement

**PROVIDING FACILITY MANAGEMENT SERVICES IN
THE BUS STAND AT METTUPALAYAM ROAD IN
COIMBATORE**

SECTION- I INSTRUCTION TO BIDDERS

**COIMBATORE CITY MUNICIPAL CORPORATION (CCMC)
COIMBATORE - 641001, TAMILNADU, INDIA**

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1 INVITATION FOR BIDS (LETTER)

To

Sir:

1. Coimbatore City Municipal Corporation (CCMC) has constructed a Bus Stand in Mettupalayam Road near Saibaba Colony and the Bus Stand is functioning from June 2010. Now CCMC is desirous to carry out the Operation & Maintenance activities of the Bus Stand in an efficient manner for providing better amenities to the passengers. The CCMC along with Tamil Nadu Urban Infrastructure and Financial Services Limited (TNUIFSL) envisages implementation of the aforementioned project through a suitable PPP contract by way of a well structured concession agreement and incorporating a suitable and applicable revenue generation model.
2. CCMC (Coimbatore) hereby issues this request for proposal document (RFP) document and invites sealed bids comprising of Technical and Financial bids from interested bidders for Providing Facility Management Services of the Bus Stand in Mettupalayam Road in accordance with the terms and conditions set out in this document. The RFP Document for the Project Comprises the following-

Section – I	Instruction to Bidders	
Section – II	Technical Specifications	
Section – III	Appendices (Formats for Bid Submission)	
	Part-A	Formats for Bid Submission
	Part-B	Formats for Technical Bid
	Part-C	Formats for Financial Bid
Section - IV	Draft Concession Agreement	

3. The Bidder can be an Individual entity/Joint Venture/Consortium/ SPV. A Concession Agreement would be executed between the Owner and the Successful Bidder. The broad scope of work for the Concessionaire includes marketing, managing, operating, maintaining and transferring the proposed Project in accordance with the terms of the Concession Agreement. Salient features of the proposed Project are given in the Bid Summary of the RFP. The Concessionaire shall be required to operate & maintain the Project and its facilities as per the best industry practices and in accordance with the mentioned specifications and performance standards in Section II of this RFP, during the specified Concession Period.
4. The RFP can be obtained from 13.10. 2010 in the address given in paragraph 7 of this section on payment of a non-refundable fee of **Rs 5,000 (Rupees Five Thousands only)** by way of demand draft drawn on a Nationalised/ Scheduled (except Co-operative) bank in favour of "**The Commissioner, Coimbatore City Municipal Corporation (CCMC) Coimbatore - 641001, Tamil Nadu, India** and payable at Coimbatore.
5. Alternatively, the Bidders can download the RFP documents from the websites of www.tenders.tn.gov.in, www.coimbatore-corporation.com and www.tnuidf.com. A

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non- refundable fee of **Rs 5,000 (Rupees Five thousands only)**, by way of demand draft shall be enclosed with the downloaded applications at the time of its submission.

6. The Bids comprising Technical Bid and Financial Bid in two separate envelopes, placed in an outer envelope along with Bid Security and fee for downloaded applications, as specified in the RFP, shall be delivered at the address given below:

The Commissioner
Coimbatore City Municipal Corporation (CCMC)
Coimbatore - 641001,
Tamilnadu, India
Telephone: 0422-2396026 & 0422-2305238.
Facsimile number: 0422-2390167
Email:commr.coimbatore@tn.gov.in

7. The Bids should reach not later than 15:00 Hrs (IST) on 19.11.2010. In the event that the Due Date for the Bid submission is a holiday, the bid shall be submitted in the next working day at the time already specified. Interested Bidders may obtain further information from the office of:

The Commissioner
Coimbatore City Municipal Corporation (CCMC)
Coimbatore - 641001,
Tamilnadu, India
Telephone: 0422-2396026 & 0422-2305238.
Facsimile number: 0422-2390167
Email:commr.coimbatore@tn.gov.in

8. A Bid Security of Rs.5.00 lakhs (Rupees Five Lakhs only) in the form of irrevocable and unconditional Bank Guarantee from a Nationalised / Scheduled (excluding Cooperative) Bank payable in Coimbatore in favour of "The Commissioner, Coimbatore City Municipal Corporation (CCMC)" shall accompany the Bid.
9. The Bids shall be filled in English and all entries must be typed or written in blue/ black ink. Initials of the authorized representative of the Bidder must attest all erasures and alterations made while filling the Bids. Over-writing of figures in Financial Bid is not permitted. Failure to comply with any of these conditions may render the Bid invalid.
10. The CCMC shall not be responsible for any costs or expenses incurred by the Bidders in connection with the preparation and delivery of bids, including costs and expenses related to visits to the sites. CCMC reserves the right to cancel, terminate, change or modify this procurement/Bid process and/or requirements of bidding stated in the RFP, without assigning any reason or providing any notice and without accepting any liability for the same.
11. A Pre-Bid Meeting will be held at 16.00 Hrs (IST) on 25.10.2010 at the Conference hall in the Corporation Main office of CCMC. Questions, if any, proposed to be raised at the Pre-Bid Meeting should be submitted to CCMC in writing, at least 2 working days before the date of the Pre-Bid Meeting and a soft copy of the same shall be e-mailed to CCMC on the mail ids mentioned in para 7 above.
12. The interested bidding firms/ Organisations may contact the City Engineer or the Executive Engineer (West) for further information in the address given in paragraph 7

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of this section during office hours on all working days from 14-10-10 to 18-11-2010. The CCMC reserves the right, without any obligation or liability, to accept or reject any or all the proposals at any stage of the process, to cancel or modify the process or change/ modify/amend any or all provisions of this proposal document, at any time, without assigning any reason whatsoever.

13. The Bid Evaluation process is detailed in Section 7.4 of Instructions to Bidders (Section I of the RFP Document).
14. The date & time of opening of FINANCIAL BID will be communicated in writing to the Bidders who have qualified technically, at a later date.

Date: 13.10.2010

For COIMBATORE CITY MUNICIPAL CORPORATION (CCMC)

MUNICIPAL COMMISSIONER

Coimbatore City Municipal Corporation (CCMC)

[Designation and seal]

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BID SUMMARY

No.	Key Information	Details
PROJECTS DETAILS		
1	Project	Providing Facility Management Services of the Bus stand In Mettupalayam Road At Coimbatore
2	Owner	Coimbatore City Municipal Corporation (CCMC)
3	Project Site	<ul style="list-style-type: none"> • Site is located on Survey No.158/a, 159/a • Area of the site earmarked for development is approximately 2.74 acres. • Proposed site is located along NH-67 (Mettupalayam Road)
4	Developments to be made by the operator (Facilities To Be Designed And Installed to facilitate O&M operations other than the infrastructure already provided)	<ol style="list-style-type: none"> 1. Electrical/Lighting 2. Air Conditioning 3. Seating Arrangements 4. Signages 5. Information Systems (LCD Monitors/Audio Systems) 6. Passenger Amenities 7. Luggage trolleys and Lockers 8. Advertisements 9. CCTV for surveillance 10. Security - Watch & ward 11. Help desks 12. Measures for implementation of Safety including Fire safety to all those inside the premises
4	Project Components (Facility To Be Operated & Maintained)	Bus bays & related facilities Water supply Underground Drainage Storm Water Drainage Solid Waste Collection, Removal & its frequency Public Conveniences Vehicle Parking Space House keeping Safety Operations including Fire Safety Fish Tanks Automatic Clock fitted in Clock Tower Lifts 13. Wind Mill & solar System (3.2 KVA) for availing uninterrupted Power supply for components such as Fish Tanks Automatic Clock in the Bus Stand premises.
5	Development Guidelines/ Controls	As per the applicable guidelines/controls of Directorate of Town & Country Planning/ Corporation of Coimbatore any applicable guidelines.

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6	Technical Specification	<ul style="list-style-type: none"> ▪ Provisions of the most recent version of the Manual of the Central Public Works Department and Tamil Nadu PWD and international codes wherever applicable ▪ Norms, Standards and Guidelines as specified in Motor Vehicles Act.,
7	Other Obligations by Concessionaire	As and when demand arises, the concessionaire shall provide for adequate space and support facility related to Bus stand operation, as a priority, in order to meet the needs of the project during the concession period. An office space for CCMC at no additional cost shall be provided at a later date at a mutually accepted location and extent
IMPLEMENTATION FORMAT		
8	Concession Format	Finance, Operate, Maintain & Transfer
9	Concession Period	10 (Ten) Years From the date of signing of Concession Agreement. At the end of Concession Period, the facility shall be transferred back to CCMC as per the terms and conditions specified in the Concession Agreement.
ELIGIBILITY CRITERIA FOR BIDDERS		
10	Financial Criteria	The Bidder should have: Annual Turnover of Rs. 10.00 Crore (Rupees Ten crores only) in each year of the past three financial years (2007-08, 2008-09, 2009-10) as per the Audited Annual Accounts
11	Experience Criteria	<p>The Bidder should have:</p> <p>Implemented at least one (1) PPP/ DBOT/ Operation & Maintenance of Bus Stand / Commercial complexes and related facilities of more than Rs. 7 crores value in the past 3 years</p> <p style="text-align: center;">or</p> <p>Developed at least one (1) project providing engineering services involving transportation, environmental/ urban infrastructure facilities of value not less than Rs. 7 crores in the past 3 years</p> <p><i>Engineering services shall include anyone or all of the following activities such as Planning, Financing, O&M services, Project Management etc.,</i></p>
12	Qualification through Affiliates (if any)	The Bidding Company (in case of Joint Venture/Consortium) can draw upon the Experience and Financial Capability of one or more of its Affiliates. In either case, the ownership relation between the Bidder and the Affiliate(s) must be clearly indicated in addition to explicitly specifying the contribution to the project and a declaration of joint and several liabilities, which will be as part of the MOU between the partners. For purposes hereof, "Affiliate" means a Company that directly or indirectly controls, through one or

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		<p>more intermediaries, or is directly controlled by, or is under the common control of the Bidding Company, 'Control' as used here, means ownership by one company of more than 50% of the voting rights of the other company.</p> <p>MOU drawn between the affiliates can be submitted as part of the Bid submission; However, at the time of signing concession agreement, the agreements between the JV partners shall be enclosed.</p>
13	Special Conditions for a Consortium (if any)	<ol style="list-style-type: none"> 1. Based on the requirements for expertise, the lead firm of the bidder can associate with any number of affiliates. The lead firm is duly responsible for the Operation & Maintenance of the project. 2. The above Financial Criteria shall apply to the Consortium, as a whole, and the lead member shall fulfill a minimum of 50% of the financial criteria as mentioned above, and each other constituent member of the Consortium shall individually fulfill at least 10% of the Financial Criteria. 3. The Experience Criteria can be met by any one member of the Consortium, If any one of the partners of consortium leaves during the concession period the Concessionaire is liable for Termination 4. For evaluation of Experience Criteria, projects which have been listed in the eligibility criteria in clause 4.5.3 of Section I of the RFP would be considered for evaluation
BID CONDITIONS & EVALUATION		
14	Bid Parameter	<p>Revenue Share offered to CCMC as Annual Concession Fee during the Concession Period is the Bid Parameter. The Annual Concession Fee shall be paid within the first 10 days of each Concession year as per the terms indicated in clause 8.3 section I of the RFP document and shall be compounded annually at the rate of 7.5% every year over and above the amount of the previous year during the entire Concession period.</p> <p>The Annual Concession Fee for the First year, shall not be less than Rs.57 Lakhs (Rupees Fifty Seven Lakhs only). Any bid(s) received with quotes less than the minimum amount specified or accompanied by any conditions shall be summarily rejected.</p>
15	Bid Validity	90 days from the date of Bid submission
16	Bid Security	<p>A Bid Security of Rs.5.00 Lakhs (Rupees Five Lakhs only) in the form of a Demand Draft or unconditional irrevocable Bank Guarantee from a Nationalized/ Scheduled Bank in favour of "The Commissioner, Coimbatore City Municipal Corporation" Payable At Coimbatore, Tamil Nadu, shall be submitted along with the Bid. The Bid security of the successful bidder shall be returned on signing of the concession agreement and the Bid Security of unsuccessful Bidders, except the</p>

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		Bidder (H2) next to the Preferred Bidder (H1), will be returned promptly, but not later than 60 days after the expiry of the Bid validity period, or within 15 days of issue of Lol to the Preferred Bidder, whichever is earlier. The Bid Security of H2 will be returned within 15 days of signing of Concession Agreement with the Preferred Bidder.
17	Validity for Bid Security	210 days from the Bid submission date
18	Bid Evaluation	Outer Envelope: Mandatory Compliance Envelope 1: Technical Envelope 2: Financial
19	Performance Security	Demand Draft or a Bank Guarantee in the specified format for the amount of Rs.50.00 lakhs (Rupees Fifty lakhs only) shall be submitted to CCMC at the time of signing of the Concession Agreement. The Performance Security (Bank Guarantee) shall be valid for a period of Ten years from the date of signing of the concession agreement. Performance security will be returned to the concessionaire after successful completion of O & M operations for 10 years. Performance security will be forfeited at any time by CCMC on unsatisfactory performance by the Concessionaire ascertained by CCMC
20	Signing of Concession Agreement	The following are the pre-conditions for signing of Concession Agreement, within 30 days from the date of issue of Lol: 1. Payment of Annual Concession Fee as approved. 2. Submission of irrevocable & unconditional Performance Security for Rs. 50.00 lakhs (Rupees Fifty lakhs only).
IMPORTANT DATES		
21	Issue of RFP	The Documents can be purchased from CCMC office between 11:00 hrs to 17:00 hrs (IST) on all working days, from 13.10.2010 – 18.11.2010 or can be downloaded from the websites www.tender.tn.gov.in , www.coimbatore-corporation.com , www.tnudf.com , up to 18.11.2010
22	Pre-bid Meeting	15.30 Hrs (IST) on 25.10.2010 at the Conference hall of CCMC Main office ;
23	Due Date for receipt of Bids	15:00 Hrs (IST) on 19.11.2010
24	Date and Time of Opening of Bids	15:30 Hrs (IST) on 19.11.2010 and if the date happened to be a holiday, the bids will be opened in the next working day at the venue and the time specified above.

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3 DEFINITION AND INTERPRETATION

3.1 DEFINITIONS

'Affiliate' means a Company that directly or indirectly controls, through one or more intermediaries, or is directly controlled by, or is under the common control of the Bidding Company, 'Control' as used here, means ownership by one company of more than 50% of the voting rights of the other company.

'CCMC' shall mean Coimbatore City Municipal Corporation (Grantor)

'Annual Lease Rental' means the lease rental payable annually by the Concessionaire to the Grantor pursuant to the Land Lease Deed.

'Concession Agreement' shall mean the agreement entered into by and between Coimbatore City Municipal Corporation and the Concessionaire.

'Concession Period' shall mean the period of 10 years from the 'Date of Signing Concession Agreement.

'Annual Concession Fee' means the Annual Concession Fee payable by the Preferred Bidder to CCMC in accordance with the provisions hereof in consideration for the grant of the Authorization.

'Concessionaire' shall mean the preferred bidder who has been selected and nominated by the 'CCMC' to implement the Project on the terms and conditions stipulated in the Concession Agreement.

'Bid or Proposal' shall mean the Bid (Technical and Financial Bids) submitted by the Bidder in response to the RFP including clarifications and/or amendments to RFP, if any.

'Bid Security' shall mean the security furnished by the Bidder in the form as stipulated in the RFP document.

'Bidder' shall mean applicant who has been issued with the RFP and submitted his Bid in response to the RFP.

'Capability Statement' shall mean all the statement along with all the necessary supporting documents submitted by the Bidder as part of the Technical Bid in Envelope I to substantiate the Eligibility Criteria of the Bidder.

'Commercial Operation Date' or 'COD' means the commencement of the operational date issued by the Grantor on signing the agreement

'Completion Certificate' means the certificate issued by the Grantor in the manner set out as per terms of RFP/Concession Agreement.

'Condition Precedent' means the conditions that are to be fulfilled by both, the Concessionaire and the Grantor as detailed out in the RFP document / Concession Agreement;

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'Consortium' shall mean the group of legally constituted entities, who have come together and have agreed or have formed an understanding (in writing) for implementing the Project, subject to the terms of this RFP.

'Consortium Agreement' shall mean an agreement to be entered into amongst all the Members of the Consortium and forming part of their Bid.

'Constituent Member' shall mean any member of the Bidding Consortium, whose financials and/or project related experience have been taken into account in the Capability Statement to meet the Eligibility Criteria.

'Developer' shall have the same meaning as ascribed to the term Preferred Bidder.

'Eligibility Criteria' shall mean the criteria stipulated in the RFP , which is required to be met by the Bidder based on his Capability Statement and documents to become eligible for opening and evaluation of his Technical Bid.

'Financial Year' shall mean year starting from 1st April to 31st March. In case Bidder's financial/accounting years are different from the above, the immediate past financial/ accounting years of the Bidders as per their annual reports shall be applicable for the evaluation.

'Firm/Company' shall mean a single legal entity, which is a Registered Body, Government Agency or Statutory Body.

'Grantor' - Coimbatore city Municipal Corporation (CCMC) shall be the grantor

'Lead Member' shall mean in case of a Consortium, the firm nominated to act as Lead Member of the Consortium at the RFP stage, which qualifies as per the Eligibility Criteria, and which shall continue to be the leader and be authorized as such for submission of Bid. The Lead Member will represent the Consortium on all matters pertaining to the bid and they are answerable to the Grantor on all matters related to the implementation of the project through out the contract period.

'Letter of Intent' or 'LoI' shall mean the letter to be issued by CCMC to the Preferred Bidder conveying intention of award of the Project/Concession, in accordance with the terms of this RFP.

'Member' shall mean any firm other than the Lead Member, which is part of the Consortium submitting Bid for the Project.

'Minimum Development Obligations' or "Essential Facilities" shall mean Minimum development Obligations and Requirements to be met by the Preferred Bidder/Concessionaire in implementation of the Project; the details of the Minimum Development Obligations are given in the RFP.

'Operations Period' means the period commencing from COD and ending on the expiry or prior termination of the Concession Agreement/Concession Period.

'Performance Security' shall mean the irrevocable & unconditional bank guarantee furnished by the Preferred Bidder prior to the signing of Concession Agreement in terms of the RFP.

'Power of Attorney' shall mean the Power of Attorney in the format provided in RFP,

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to be furnished by the Bidder/Consortium, Authorizing a person to sign the Bid and act for and on behalf of the Bidder/Consortium during the Bidding process.

‘Preferred Bidder’ / Successful Bidder shall mean the successful Bidder, selected as a result of the Bid evaluation process as set forth in this RFP document.

‘Project’ means Operation and Maintenance of the Bus stand in Mettupalayam road at Coimbatore and subject to the provisions of this RFP and Concession Agreement, (i) Financing, at the site, Commissioning, Marketing, Management, Operation and Maintenance and commercial use of the Project facilities, and all activities incidental thereto, by the Concessionaire during the Concession Period; (ii) the demanding, charging, collecting, retaining and appropriating and revision of tariff by the Concessionaire at market driven rates and (iii) the transfer of the Project/Project Facilities by the Concessionaire to Grantor at the end of the Concession Period by efflux of time or prior termination;

‘Project Agreements’ shall mean Concession Agreement and any other legal documents as mutually agreed to between the CCMC and the Concessionaire, necessary for implementing the Project.

‘Project Development Fee’ shall mean the non-refundable fee to be paid by the Preferred Bidder to CCMC in accordance with the provisions contained in this RFP.

‘Request for Proposal or RFP’ shall mean the Bid documents comprising Sections I to IV and any other addenda issued thereon.

‘Special Purpose Vehicle or SPV’ shall mean the company to be set up by the Preferred Bidder/Developer, if required, for the purposes of implementing the Project under Companies Act, 1956.

‘Taxes and Duties’ shall mean all taxes (including Property taxes), duties, fees etc. payable as per applicable laws in India in connection with the development, operation and management of the Project.

‘Technical Criteria’ shall mean the criteria stipulated in the RFP, which is required to be complied by the Bidder based on his Technical Bid to become eligible for opening and evaluation of his Financial Bid.

3.2 INTERPRETATION

In the interpretation of this RFP, unless the context otherwise requires:

- i. The singular of any defined term includes the plural and vice versa, and any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;
- ii. A reference to any gender includes the other gender;
- iii. Unless otherwise stated, a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Exhibit, Attachment, Schedule or Recital is a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Appendix, Exhibit, Attachment, Schedule or Recital of this RFP;
- iv. A reference to any agreement is a reference to that agreement and all appendices, attachments, exhibits, schedules, appendices and the like

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- incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended, from time to time, in accordance with the terms thereof;
- v. The terms “include” and “including” shall be deemed to be followed by the words “without limitation”, whether or not so followed;
 - vi. Any reference to a person shall include such person’s legal heirs and permitted assignees;
 - vii. A reference to a “writing” or “written” includes printing, typing, lithography and other means of reproducing words in a visible form;
 - viii. Any date or period set forth in this RFP shall be such date or period as may be extended pursuant to the terms of this RFP;
 - ix. A reference to “month” shall mean a calendar month, a reference to “week” shall mean a calendar week and a reference to “day” shall mean a calendar day, unless otherwise specified.
 - x. The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this RFP mean and refer to this RFP and not to any particular Article, Clause or Section of this RFP. The terms "Article", "Clause", "Paragraph" and "Schedule" mean and refer to the Article, Clause, Paragraph and Schedule of this RFP so specified;
 - xi. In the case of any conflict, discrepancy or repugnancy between the provisions of RFP documents, provisions of the Concession Agreement/ Land Lease Deed shall prevail over and supersede the provisions of other documents.
 - xii. The descriptive headings of Articles and Sections are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of content thereof and shall not be used to interpret the provisions of this Agreement;
 - xiii. All capitalized words and expressions used in RFP document but not defined therein shall have the same meaning as ascribed to them in the Concession Agreement.

4 GENERAL INFORMATION AND INSTRUCTIONS

4.1 CONTENT OF THE RFP DOCUMENT

4.1.1 The RFP documents are those stated below, and should be read in conjunction with any Addenda issued in accordance with Sub-clause 4.15

Section I: Instruction to bidders
Section II: Technical Specifications
Section III: Formats for Bids Submission (Appendices)
Section IV: Draft Concession Agreement

4.2 INTRODUCTION TO RFP

4.2.1 The words and expressions, which are defined in the Instructions to Bidders (ITB), have the same meaning when used in the other sections of RFP, unless separately defined.

The ITB sets out the bidding procedure and provides necessary details for the Bidders to prepare their Bid for the proposed Project. The prescribed formats for submission of Bids are annexed to the RFP as Section-III.

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- 4.2.2** The Bidders are advised to submit their Bids complying with the requirements stipulated in the RFP document. The Bids may be rendered disqualified in case of receipt of incomplete Bids and/or the information is not submitted as per the prescribed formats.

4.3 SUBMISSION OF BID

The Bidders are expected to submit their Bids in two separate envelopes:

- (a) **Technical Bid** (Refer Technical Specifications in Section II and Formats for Submissions in Section III of this RFP)
- (b) **Financial Bid** (Refer to Section III for the Formats).

Both technical and financial bids are to be covered by an Outer Envelope along with other bid submission requirements as mentioned in clause 6.0 of the Section I of the RFP Document

4.4 BIDDER'S RESPONSIBILITY FOR DATA IN THE RFP

- 4.4.1** While preparing the Bid, the Bidder shall consider the information provided in this RFP, in totality.

- 4.4.2** The technical details given in Section - II of the RFP are based on the preliminary studies and surveys carried out by CCMC or its Consultants/Advisors. However, the Bidders shall be wholly responsible for all the details of their Bids, the physical and site conditions, the execution methodology, etc. In essence, after the Bid is submitted, the Bidder shall be the 'owner' of all the data, which forms the basis of the Bid and shall have no claims whatsoever on CCMC or its agencies regarding the accuracy of the data or designs, drawings & concept plans etc furnished in this RFP.

- 4.4.3** Bidder shall carry out any surveys, investigations etc. at its own cost and risk.

4.5 BIDDER'S ELIGIBILITY CRITERIA

4.5.1 General Eligibility

- (a) This invitation of Bid is open to all interested Bidders, who may either be a Single entity /Joint Venture /Consortium / SPV coming together to implement the Project.
- (b) Bids submitted by a Consortium of two or more entities as members shall comply with the following requirements:
 - (i) MOU duly signed by all the members of the Consortium shall be submitted along with the Bid. The other members shall nominate one of the members of the Consortium thereof as the Lead Member (subject to fulfilling the conditions stipulated in the RFP.)
 - (ii) MOU shall clearly state the roles & responsibilities, proposed to be shared, among the members of Consortium during project execution and implementation.
 - (iii) The Lead Member shall be authorized by all members of the Consortium to

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- act for and on behalf of the Consortium including interacting with CCMC, receive instructions and furnishing Bid Security etc.
- (iv) The Lead Member and other Consortium members shall be jointly and severally liable for the implementation of the Project in accordance with the terms of the Concession Agreement, and a statement to this effect shall be included in the Consortium Agreement.
 - (v) All the information as per the requirements of the RFP shall be provided to the lead member of the Consortium.
 - (vi) The Bid shall be legally binding on all the members of the Consortium.
 - (vii) No member of the Consortium shall be changed after submission of the Bids/Signing of the Concession Agreement. If any one of the partners of consortium leaves during the concession period the Concessionaire is liable for Termination.
 - (viii) The Bids would be evaluated based on the details and data furnished.
 - (ix) CCMC decision regarding a Bidder's eligibility or otherwise shall be final and binding.
- (c) The Bidders shall provide evidence of their continued eligibility in a manner that is satisfactory to CCMC and CCMC may request the Bidders for the same till the period of signing of the Concession Agreement.
- (d) Bidders may be required to periodically update (at times to be notified by CCMC) the information submitted in their Capability Statement with regard to the following:
- Evidence of availability of financial resources;
 - Audited Balance sheets including the effect of known commitments;
 - Commitments of other works awarded since submitting the Bid;
 - Any other information that might be requested;
 - Any information known to the Bidder that may affect its ability to perform the contractual obligation.
- (e) A Bidder may be disqualified if it is determined by CCMC, at any stage of the bidding process that the Bidder fails to continue to satisfy the Eligibility Criteria and Technical Criteria. Supplementary information or documentation regarding the criteria may be sought from the Bidders at any time and the same shall be provided within 15 days from the date of request by CCMC.

4.5.2 Financial Criteria

The Bidder should have:

- Annual Turnover of Rs. 10.00 Crore (Rupees Ten Crores only) in each year of the past three financial years (2007-08, 2008-09, 2009-10) as per the Audited Annual Accounts
- The single currency for evaluation is Indian Rupee (INR.). The conversion rate of Foreign Currencies shall be the State Bank of India Bill Selling Rate of exchange as on the date of opening of financial bids.

4.5.3 Experience Criteria

The Bidder should have

- Implemented at least one (1) PPP/ DBOT/ Operation & Maintenance, for Bus Stand / Commercial complexes and related facilities of more than 7 crores value in the past 3 years or

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- Developed at least one (1) project providing engineering services involving transportation, environmental/ urban infrastructure facilities of value not less than Rs. 7 crores (Rupees Seven crores only) in the past 3 years
Engineering services shall include anyone or all of the following activities such as Planning, Financing, O&M services, Advertisement agencies, Project Management etc.,

4.5.4 Special Conditions for a Consortium

For evaluation of Financial Capability, the following conditions shall additionally apply:

- The Lead Member shall fulfill a minimum of 50% of the Financial Criteria as mentioned above, and each other constituent member of the Consortium shall individually fulfill at least 10% of the Financial Criteria as stipulated in Clause 4.5.2 of the Section I of the RFP document
- For evaluation of Experience Criteria as stipulated in Clause 4.5.3 of the Section I of the RFP document, only such projects would be considered for evaluation, which have been developed/ operated by any one constituent member of the Consortium either on its own or as a lead member of a Consortium/SPV.

4.6 NON-COMPLIANCE WITH RFP

4.6.1 CCMC reserves the right to terminate a Bidder's participation in the bidding process at any time, should CCMC consider that a Bidder has, without the prior consent, failed to comply with the procedures and requirements prescribed in the RFP.

4.7 COST OF BIDDING

4.7.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, including site visits, field investigations, data gathering, analysis, design etc. as also any discussions/negotiations. CCMC shall not be responsible or liable for any such costs.

4.8 COST OF THE RFP DOCUMENT

- 4.8.1 The prospective Bidders can purchase the RFP document from CCMC, from the address given in paragraph 7 of Invitation to Bidders in Section I of the RFP on payment of a non-refundable fee of **Rs 5,000 (Rupees Five Thousands only)** by way of demand draft drawn on a Nationalised/ Scheduled (except Co-operative) bank in favour of The Commissioner Coimbatore City Municipal Corporation (CCMC) Coimbatore - 641001, Tamilnadu, India and payable at Coimbatore.
- 4.8.2 Alternatively, the Bidders can download the RFP documents from the websites of www.tenders.tn.gov.in, www.coimbatore-corporation.com & www.tnuidf.com. The downloaded applications are to be accompanied with a non-refundable fee of **Rs 5,000 (Rupees Five Thousand only)** by way of demand draft and submitted along with the Bid.

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4.9 POWER OF ATTORNEY

- 4.9.1 Power of Attorney, duly notarized and on a non judicial stamp paper worth Rs.100 (Rupees One Hundred only), issued and signed by each member of the bidding consortium appointing the Lead Member to act on its behalf in such capacity as its representative for the implementation of the Project shall be submitted as per the format provided in Appendix A8 of Section III of this RFP.
- 4.9.2 Power of Attorney duly notarized and on a non judicial stamp paper worth Rs.100 (Rupees One Hundred only) issued and signed by the Bidder/Lead Member of the Bidding Consortium in favour of a specified person to act as the official representative of the Bidder/Bidding Consortium for the purpose of signing documents, making corrections/modifications and interacting with CCMC and acting as the contact person shall be submitted as per the format provided in Appendix A9 of Section III of this RFP.

4.10 VALIDITY OF BID

- 4.10.1 The Bids submitted shall remain valid for 90 days from the Due Date of submission.
- 4.10.2 In exceptional circumstances, prior to the expiry of the original bid validity period, CCMC may request the Bidders to extend the period of validity for a specified additional period. The request for the extension shall be made in writing. Bidder will not be permitted to modify its Financial Bid, but will be required to extend the validity of the Bid Security for the period of extension, and in compliance with Clause 4.10 hereof.

4.11 BID SECURITY TO BE SUBMITTED BY BIDDERS

- 4.11.1 The Bidder shall furnish, along with the Bid, a Bid Security of Rs. 5.00 Lakhs (Rupees Five Lakhs Only) in the form of unconditional and irrevocable Bank Guarantee from any Nationalised/ Scheduled (excluding Co-operative) Bank in favour of "The Commissioner, CCMC (Coimbatore)" payable in Coimbatore.
- 4.11.2 Any Bid not accompanied by an acceptable Bid Security in the manner stated above shall be rejected by 'CCMC' as non-responsive and the Technical envelope shall not be opened for evaluation.
- 4.11.3 The Bank Guarantee towards Bid Security shall be valid for 210 days from the Due Date of submission or extension of any in accordance to Clause 4.10. of Section I of the RFP document.
- 4.11.4 The Bid Security of unsuccessful Bidders, except the Bidder (H2) next to the Preferred Bidder (H1), will be returned promptly, but not later than 60 days after the expiry of the Bid validity period, or within 15 days of issue of Lol to the Preferred Bidder, whichever is earlier. The Bid Security of H2 will be returned within 15 days of signing of Concession Agreement with the Preferred Bidder.
- 4.11.5 The Bid Security of H1 & H2 shall be extended beyond the original validity period in case the signing of Concession Agreement is delayed due to any reason.
- 4.11.6 The Bid Security shall become liable for forfeiture in the event of the following:
- (a) If the Bidder withdraws his Bid during the period of Bid Validity

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- (includes Bid processing time) or modifies his Bid within the validity period; or
- (b) If the Bidder refuses to accept the correction of errors in his Bid; or
 - (c) If the Bidder submits a conditional Bid which would affect unfairly the competitive provision of other Bidders who submitted substantially responsive Bids and/or is not accepted by CCMC; or
 - (d) If the Preferred Bidder fails to pay the Performance Security Bank Guarantee
 - (e) If the Preferred Bidder fails to sign the Concession Agreement as stipulated in the RFP.

4.12 MISCELLANEOUS INSTRUCTIONS

- 4.12.1 All communication and information shall be provided in English language only.
- 4.12.2 All financial data shall be furnished (converted) in Indian Rupees only.
- 4.12.3 All communication and information provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words. In case of conflict between amounts stated in figures and words, the amount stated in higher numerical value will prevail.
- 4.12.4 No change in, or supplementary information to a Bid shall be accepted once submitted. However, CCMC or any of its advisors/ agencies/consultants reserves the right to seek additional information and/ or certification from the Bidders, if found necessary, during the course of evaluation of the Bid. Non-submission, incomplete submission or delayed submission of such additional information and/ or clarifications sought by CCMC or any of its agencies/consultants/, may be a ground for rejecting the Bid.
- 4.12.5 If any claim made or information provided by the Bidder in the Bid or any information provided by the Bidder in response to any subsequent query by CCMC /or their advisors/agencies/consultants, is found to be incorrect or is a material misrepresentation of facts, then the Bid shall be liable for rejection. Mere clerical errors or bonafide mistakes may be treated as an exception at the sole discretion of CCMC or any of its advisors/ agencies/ consultants and if CCMC or any of its advisors/ agencies/ consultants is adequately satisfied.

4.13 BID RESPONSIVENESS

- 4.13.1 A Bid shall be deemed as "non-responsive" if it does not satisfy any of the following conditions:
 - a. Bids that are incomplete in any respect or those that are not consistent with the requirements as specified in this RFP might be considered non-responsive and may be liable for rejection.
 - b. Adherence to formats, wherever prescribed, is required. Non-adherence to formats will be declared as a non-responsive bid
 - c. It is not received by the Due Date and time
 - d. It does not include sufficient information/ details for it to be evaluated and/or is not in the formats specified in this RFP.
 - e. It is not signed and/or sealed in the manner or accompanied by the Power of Attorney as specified in this RFP.
 - f. Bank Guarantee towards Bid Security for specified amount does not accompany it.

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g. Any Material Deviation in the submitted Bid that affects the Evaluation as outlined in Clause 7.4.2 (C)

4.13.2 Non-responsive Bids shall be liable for rejection at any stage during the Bid evaluation process and the decision of CCMC in this regard is final and binding.

4.14 PRE-BID MEETING

4.14.1 A Pre-Bid Meeting will be organized at 15.30 Hrs (IST) on 25.10.2010. **The venue of the meeting will be the Conference Hall in CCMC Main office.** The Bidder/ Bidder's designated representative(s) would be invited to attend the same.

4.14.2 Bidders are advised to indicate CCMC in context to the number (attendees), names, designation etc regarding the Pre Bid Meeting.

4.14.3 The purpose of the Pre-Bid Meeting will be to clarify queries of the Bidders related to the Project and RFP documents, if any.

4.14.4 The Bidders are advised, as far as possible, to submit the queries in writing or by fax or E-mail and the same should reach CCMC at least two (2) working days before the Pre-bid Meeting.

4.14.5 Minutes of the Meeting will be kept on the websites of CCMC and will be sent to all Bidders who have purchased the RFP document from CCMC.

Any modification in the Bidding documents listed in Sub-Clause 4.1.1, if required becomes necessary, as a result of the Pre-Bid Meeting, shall be issued by CCMC through an Addendum pursuant to Clause 4.15 and not through the minutes of the Pre-Bid Meeting.

4.15 CLARIFICATION & AMENDMENT OF RFP DOCUMENTS

4.15.1 The Bidders shall note that reliance upon information/ clarification that is provided by any other source shall be at the risk of the Bidders.

4.15.2 At any time prior to the Bid Due Date, CCMC may amend the RFP document by issuing an Addendum.

4.15.3 Any Addendum thus issued shall be part of the RFP document and shall be communicated by mail or by fax to all who have purchased the document and will also be posted to the websites of CCMC.

4.15.4 The Bidders shall promptly acknowledge receipt of each addendum in writing to CCMC. Non-acknowledgement of receipt of the Addendum cannot be considered as not received by the Bidders.

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5 BIDDING PROCESS

5.1 OVERVIEW OF BIDDING PROCESS

- 5.1.1 The Bidders are required to submit their Bids in two parts/envelopes (i) Technical Bid, and (ii) Financial Bid, all the two placed inside an Outer Envelope.
- 5.1.2 The Bidders qualified/passed the first stage of Technical evaluation will only be eligible for opening & evaluation of their Financial Bid. Evaluation of the Financial Bids will be second & final stage of evaluation.
- 5.1.3 In order to accomplish a comprehensive, expeditious and fair Bid evaluation process, Bidders are requested to study the contents of the RFP documents completely and carefully. The Bidders may obtain clarifications, if required from CCMC in this regard.

6 PREPARATION AND SUBMISSION OF BIDS

6.1 GENERAL SUBMISSIONS

- 6.1.1 The Bid shall be submitted in three separate envelopes as under, placed in an Outer Envelope.
 - (a) ENVELOPE I : Technical Bid
 - (b) ENVELOPE II : Financial Bid
- 6.1.2 The following shall be submitted in the Outer Envelope of the Bid, in Original:
 - (a) Covering Letter/Application as per **Appendix A1** of Section III, of this RFP.
 - (b) Checklist of submissions as per **Appendix A2** of Section III, of this RFP
 - (c) Covering Letter & Bank Guarantee towards Bid Security for Rs. 5.00 Lakhs (Rupees Five Lakhs only) as per **Appendix A3** Section III, of this RFP.
 - (d) Letter of Undertaking that the Bidder is not barred by Government of Tamil Nadu/any State Government/ Government agency or the Central Government of India from participating in such projects as per **Appendix A4** Section III, of this RFP
 - (e) Project Undertaking as per **Appendix A5** of Section III of this RFP.
 - (f) In case the Bidder is a Consortium, Power of Attorney and nominating one member as Lead Member of the Consortium as per **Appendix A6** of Section III, of this RFP.
 - (g) Power of Attorney for the Bid Signatory as per **Appendix A7** of Section III, of this RFP.
 - (h) **Appendix A8** - Proof of Purchase of the RFP Document (photocopy), or the non refundable fees for downloading RFP documents
- 6.1.3 All the above submissions in original shall be placed inside the Outer Envelope along with Envelope I and Envelope II. The Outer Envelope shall be sealed and labeled as "*BID FOR PROVIDING FACILITY MANAGEMENT SERVICES OF THE BUS STAND IN METTUPALAYAM ROAD AT COIMBATORE*"

6.2 INSTRUCTIONS FOR PREPARATION OF TECHNICAL DOCUMENT

6.2.1 General Information of the Bidder

- (a) Details of the place of incorporation, registered office (or its equivalent), current directors, key management personnel and principal shareholders, legal jurisdiction, principal country where assets are located; where the Bidder is a subsidiary company, the details of the Bidder's status as a subsidiary together with the name, registered office (or its equivalent), current directors and principal shareholder of its immediate and all superior holding companies.
- (b) In case of Bidder being a Consortium, the above information should be given for all the members of the Consortium including the role of each member of the Consortium in the implementation of the Project.
- (c) Contact Details comprising name, address, telephone and facsimile numbers, E-mail address of the Bidder (Lead Member and each member in case of Consortium) and the names and titles of the persons who are the principal contact persons shall be provided. This information is to be provided as per Appendix B1 of Section III, of this RFP.

6.2.2 Financial Qualifications (to meet the Eligibility Criteria)

- (a) The Bidders shall submit their Financial Qualifications/Data as per **Appendix B2** of Section III,
- (b) The Bidders shall be required to submit Audited Annual Accounts of Single Entity or all the Consortium Members for past three financial years (FY 2007-08, 2008-09, 2009-10) in support to the above, as attachments to the **Appendix B2**, Section III, of this RFP.

6.2.3 Experience Qualifications (to meet the Eligibility Criteria)

- (a) Development Experience: Details shall be furnished separately for each member of Consortium as per **Appendix B3** of Section III, of this RFP
- (b) Operational Experience Certificates duly attested in support of Operational Experience as per **Appendix B4** including ISO Certificate for Facility Management Services.

6.3 INSTRUCTIONS FOR SUBMISSION OF TECHNICAL BID

- 6.3.1 The Bidders shall be required to submit their Technical Bids as an undertaking in **Appendix C1**
- 6.3.2 The Bidders shall be required to submit their O&M plan along with the Technical Bids to meet the following:

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A . Project Appreciation
<ul style="list-style-type: none">▪ Brief description of the Bidders' understanding of the project▪ Operation & Maintenance Plan detailing the list of activities to be performed▪ Compliance to the requirements as specified in the RFP▪ A detailed note on safety features proposed to be inbuilt into the project complex
B . Operation & Maintenance Plan
<ul style="list-style-type: none">▪ Bidders should submit their detailed plans for Operation & Maintenance along with method statements accenting on the innovative techniques proposed▪ No of Personnel's to be deployed for the maintenance of the facility▪ List of the Spaces to be exploited for advertisements along with the innovative techniques

- 6.3.3 The objective of the above assessment shall not be to "rank" the bids but to establish the inherent technical competence and capability of the Bidders and also to determine whether the bid is fundamentally sound on the above parameters. Towards this end, CCMC reserves the right to seek clarifications, permit discussions / modifications and seek a final resolution on contentious issues. Such exercise will not warrant submission of additional information by the bidder(s), which has not been sought by CCMC. CCMC may summarily reject such information submitted by the bidder, which was not asked for.
- 6.3.4 CCMC would, however, at all times also retain the right to reject the O&M Plan in cases where CCMC (in its sole opinion), considers the bid materially inconsistent, deficient, technically unsound or unacceptable in any other respect.
- 6.3.5 CCMC will return the unopened Financial Bid to the Bidders who's Qualification Proposals is found not acceptable.
- 6.3.6 The Bidders shall prepare and submit one (1) original and two (2) self-attested copies of the Technical Bid in the Envelope I duly marking "ORIGINAL" and "COPIES". This envelope shall be sealed, labeled as "*ENVELOPE I: TECHNICAL BID FOR PROVIDING FACILITY MANAGEMENT SERVICES OF THE BUS STAND IN METTUPALAYAM ROAD AT COIMBATORE*", and placed inside the Outer Envelope.

6.4 INSTRUCTIONS FOR SUBMISSION FINANCIALBID

- 6.4.1 The Bidders shall be required to submit their Financial Bids in the format as provided in the RFP duly filled.
- 6.4.2 Bidders shall prepare and submit **one (1) original and two (2) self-attested copies** of the Financial Bid in Envelope II. The envelope containing the Financial Bid shall be sealed, labeled as ***ENVELOPE II: FINANCIAL BID FOR PROVIDING FACILITY MANAGEMENT SERVICES OF THE BUS STAND IN METTUPALAYAM ROAD AT COIMBATORE*** marked as original and copies and placed inside the Outer Envelope.

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6.5 COMMON INSTRUCTIONS

- 6.5.1 All the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared "late" or "non-responsive" or "non-qualified" as the case may be.
- 6.5.2 If the outer envelope is not sealed and not marked as per Clause 6.1.3, CCMC will not assume any responsibility for the misplacement or premature opening of the bid. If the outer envelope discloses the Bidder's identity, CCMC will not guarantee the anonymity of the bid submission, but this shall not constitute grounds for rejection of the Bid.
- 6.5.3 The Bid must be received by CCMC not later than 15.00 Hrs (IST) on 28.10.2010 at the address mentioned in the RFP.

6.6 SIGNING OF BID

The Authorized Signatory shall sign or initial with seal on each page of the Bid documents.

6.7 LATE BIDS

The Bid received after the Due date & time will not be considered and will be returned unopened to the Bidder. There will be no exceptions to this requirement. It is the Bidder's responsibility to ensure that the bids are received at CCMC office within the Due Date and time.

6.8 MODIFICATION OR WITHDRAWAL OF BIDS

- 6.8.1 The Bidders may either modify technical or financial or withdraw their Bids after submission, but prior to the Due Date & time for submission of bids mentioned in this RFP, provided that written notice of the modification or withdrawal is received by CCMC office in sealed cover. The responsibility of submitting the modified Bid, on or before the Due Date & time will rest solely with the Bidders.
- 6.8.2 The Bidders cannot modify their Bids after the Due Date & Time. In case of modification, it should be clearly indicated as to whether the modification is on technical or financial bid. If the modification is in the financial bid, the same will be opened along with the financial proposal.
- 6.8.3 In the event of withdrawal of a Bid by the Bidder after the opening but within the Bid validity period, the Bid Security of the Bidder shall become liable for forfeiture.

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7 BID OPENING AND EVALUATION

7.1 OPENING OF BIDS

7.1.1 The technical bid envelop will be opened in the presence of the Bidders' designated representatives who choose to attend, at the time, date, and location given below:

Venue: CCMC Main Office

Date: 19.11.2010

Time: 15.50 Hrs (IST)

7.1.2 The Technical Bids of the Bidders who qualify after the evaluation of the contents of the detail of the RFP only would be opened. Bids for which an acceptable withdrawal letter given, will not be opened.

7.1.3 The Financial Bids of the Bidders who qualify after the evaluation of Technical Bids only would be opened. The Financial Bids shall be opened in the presence of the representatives of the technically qualified Bidders, who choose to attend. Technically qualified Bidders will be informed regarding, venue, date and time of opening the Financial Bid.

7.2 PROCESS TO BE CONFIDENTIAL

7.2.1 Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations for the award of a contract shall not be disclosed to other persons not officially concerned with such process until the process is completed and issue of the Lol to the Preferred Bidder has been announced.

7.3 CLARIFICATION OF BIDS

7.3.1 CCMC may utilize services of consultants/advisors/ experts to assist in the examination, evaluation and comparison of Bids.

7.3.2 To assist in the examination, evaluation, and comparison of Bids, CCMC may, at its discretion, ask any Bidder for information/ clarification/ substantiation.

7.3.3 However, clarifications if any required from Bidder, shall be in written form and will be communicated to Bidder by CCMC.

7.4 EVALUATION OF BIDS

7.4.1 Evaluation of Technical Bid

(a) The submissions of the Technical Bid would be evaluated by the Bid Evaluation Committee to check its substantial compliance with the stipulated requirements. If the submission is not in substantial compliance, the submission will be rejected and the Bidder will be eliminated from further evaluation process. The right to determine the 'substantial compliance' or otherwise will rest solely with CCMC and no correspondence and/or representation towards this will be entertained. A Technical Bid that is in substantial compliance is one that is accompanied by the required documents that conforms to the requirements without material deviation or reservation (i.e., which affects in any substantial way the scope, obligations, quality, specifications, standards, rules, controls and performance of the Project).

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- (b) Requirements for Substantial Compliance: A Technical Bid submitted as per the Format indicated in the Section III of the Vol I of RFP, that agrees to the technical requirements mentioned in the RFP shall be considered as substantially compliant.
- (c) The right to determine the 'substantially compliant' Bid or otherwise shall rest solely with CCMC and no correspondence and/ or representation towards the same shall be entertained.
- (d) The evaluation of the Technical Bid is summarized as below:

S. No.	Criterion	Compliance
1	Technical Bid Requirements	Yes/No

- (e) If the answer to the 'Compliance' is 'No', the Bid shall be non-qualifying and hence would not be taken up for opening and evaluation of the Financial Bid. If answer to the 'Compliance' is 'Yes' then the Financial Bid of the Bidder will be opened and evaluated.

7.4.2 Evaluation of Financial Bid

- (a) If the submission is in substantial compliance with the Financial Bid, then, CCMC will review and evaluate the Financial Bid. If the submission does not satisfy the criteria, the submission will be rejected and the Bidder will be eliminated from further evaluation process.
- (b) Requirements for Substantial Compliance: Prior to the detailed evaluation of the Financial Bid, Bid Evaluation Committee will determine whether each Bid or Bidder, as the case may be:
- (i) continues to meet the Eligibility Criteria as given in this RFP;
 - (ii) Is in complete compliance with the Capability Statement and Technical Bid requirements;
 - (iii) Has been properly signed and contains the required representations or commitments;
 - (iv) Is presented in a manner that conforms with the requirements of the RFP;
 - (v) Confirms to all terms, conditions of the RFP without material deviation or reservation.
- (c) Material Deviation: A material deviation or reservation is one
- (i) which affects in any substantial way the requirements of the RFP and performance of the Project; or
 - (ii) which is insubstantially and/or inconsistent with the requirements of the RFP;
 - (iii) which limits in any substantial way, CCMC's rights or the Bidder's obligation under the Concession Agreement;
 - (iv) whose rectification would affect unfairly the competitive provision of other bidders presenting substantially responsive Bids.
- (d) Evaluation: For evaluation of the Financial Bid, the Annual Concession Fee in terms of absolute value/ figures quoted by the Bidder shall form the evaluation parameter.

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- (i) Bidders would be ranked in the descending order of the highest Annual Concession Fee offered by the Bidders. For example, the Bidder offering the highest fee would be ranked "1", the Bidder offering the next highest would be ranked "2" and so on, as set out in the Table below:

Name of Bidder	Bid	Rank
H1	Highest Annual Concession Fee quoted	1
H2	Second highest quoted	2

- (ii) Bidder quoting the Highest Fee (H1) will be considered as the 'Successful Bidder'.

7.5 CORRECTION OF ERRORS

7.5.1 Bid determined to be substantially responsive will be checked by Bid Evaluation Committee for any arithmetic errors. Wherever there is discrepancy between the amounts in figures and in words, the amount stated in higher numerical value will govern.

7.5.2 The corrections made by CCMC, as explained above, shall be considered as binding upon the Bidder.

7.5.3 If the Bidder does not accept the corrections in the Bid, CCMC may reject the Bid and Bid Security shall be forfeited.

7.6 SUCCESSFUL BID

The Financial Bids shall be ranked on the basis of the Bids received. Bidders would be ranked in the descending order of the Concession Fee offered to CCMC. As per the evaluation of the Financial Bids, the Bidder offering the highest Annual Concession Fee would be considered as the Successful Bidder/ Preferred Bidder and would be ranked "1"; and the Bidder offering the second highest Annual Concession Fee would be ranked "2" and so on.

7.7 SPECIAL CONDITIONS RELATING TO SELECTION OF PREFERRED BIDDER

7.7.1 In the event that two or more Bidders offer the same 'Annual Concession fee', CCMC may:

- The firm with better technical responsiveness shall be selected for award of contract.

7.8 CONFIDENTIALITY

The confidentiality of the Technical Bid and Financial Bid of each Bidder will be respected by CCMC and will not be divulged unless required by operation of law. The contents of the Technical Bids and any other non-propriety information, of the Preferred Bidder may be made public at the sole discretion of CCMC.

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8 AWARD OF PROJECT/ SIGNING OF CONCESSION AGREEMENT

8.1 CCMC'S RIGHT TO REJECT ANY OR ALL BIDS

CCMC reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all bids, at any time prior to the award of Concession, without thereby incurring any liability to the affected Bidder or Bidders.

8.2 ISSUE OF LOI AFTER EVALUATION OF THE BIDS AND APPROVAL OF CCMC

Upon completion of the Bid evaluation process, acceptance of the Bid and intention of award of the Project/Concession would be conveyed by CCMC to the Preferred Bidder, who satisfies all other compliance requirements. The above Letter of Intent (Loi) would be communicated to the Preferred Bidder by fax or e-mail confirmed by a letter.

8.3 PAYMENT OF ANNUAL CONCESSION FEE

8.3.1 The Preferred Bidder/ Concessionaire shall pay the 'Annual Concession Fee as approved to CCMC. Payment of the First Annual Concession shall be a pre condition for the signing of Concession Agreement.

8.3.2 The Concessionaire shall also pay applicable taxes on the above amount. The Annual Concession Fee shall be compounded annually (increased) by 7.5% each year over the previous year for the entire duration of the Concession period. The Annual Concession Fee for each current year shall be paid within the first 10 days of the current year as per the terms.

8.4 SUBMISSION OF PERFORMANCE SECURITY

8.4.1 The Preferred Bidder/ Concessionaire shall be required to submit Performance Security to CCMC in the form of an irrevocable & unconditional Bank Guarantee amounting to **Rs. 50.00 Lakhs** (Rupees Fifty Lakhs only) issued by a Nationalised/ scheduled bank having its branch in Coimbatore, Tamil Nadu, before the signing of the Concession Agreement.

8.4.2 Performance security will be returned to the concessionaire after successful completion of O & M operations for 10 years.

8.4.3 Performance security will be forfeited at any time by CCMC on unsatisfactory performance by the Concessionaire ascertained by CCMC

8.5 SIGNING OF CONCESSION AGREEMENT

8.5.1 Within 30 (thirty) days of the issuance of the Loi, the Preferred Bidder/ Concessionaire shall be required to sign the Concession Agreement with CCMC, on payment of the approved Annual Concession Fee plus applicable taxes and on Submission of Performance Security Bank Guarantee, which shall be the preconditions for signing of the Concession Agreement.

8.5.2 If the Preferred Bidder/ Concessionaire fails to sign the Concession Agreement with CCMC within the stipulated time, his Bid Security and all other payments made till that date shall be forfeited. In that event, CCMC shall have the right to award the Project to the next Highest Bidder (H2) if H2 agrees to match the Financial Bid of H1 or otherwise, as decided by CCMC.

8.6 POSSESSION OF SITE TO AUTHORISEE

The Concessionaire upon signing of the Agreement and upon formal intimation to CCMC, can fix a due date mutually agreeable to both parties within 30 days, and take over the premises from CCMC with inventory and records of material / assets in the premises, if any. – list of inventory and records of material / assets should be mutually signed by both the parties

8.7 CONCESSION PERIOD

The Concession Period for the Project is 10 years effective from the date of signing of the Concession Agreement. Additional 2 years of extended period shall be offered to the Developer (Concessionaire) on “Right of First Refusal” basis in its adherence to the Performance Standards outlined in the Section II of the RFP.

8.8 OPERATION AND MAINTANANCE OF FREE OF COST TO CCMC

As and when demand arises, the concessionaire shall provide for adequate, space and support facility related to Bus stand operation, as a priority, in order to meet the needs of the project during the concession period. An office space for CCMC at no additional cost shall be provided at a later date at a mutually accepted spacing norm

9 CORRUPT OR FRAUDULENT PRACTICES

It is required that the Bidders observe the highest standard of ethics during the Bidding process. In pursuance of this policy, CCMC:

9.1.1 Defines, for the purposes of this provision, the terms set forth below as follows:

- (a) “Corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the Bidding process or in the execution of any Agreement with CCMC (Grantor), or bringing political pressure.
- (b) “Fraudulent practice” means a misrepresentation of facts in order to influence the Bidding process or in the execution of any Agreement with Grantor to the detriment of the Grantor, and includes collusive practice among Bidders (prior to or after Proposal submission) designed to deprive the Grantor (CCMC) of the benefits of free and open competition.

9.1.2 Will reject the bid, at any stage, if it determines that the Bidder recommended for selection has engaged in corrupt or fraudulent practices during bidding process.

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10 DISCLAIMER

- 10.1.1 RFP document is not an agreement and is not an offer or invitation by CCMC to any party other than the Bidders.
- 10.1.2 CCMC may in their absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in the RFP. The information that CCMC is in a position to furnish is limited to this RFP and the information available at the contact addresses given in the RFP, along with any amendments/clarifications thereon.
- 10.1.3 The information contained in the RFP or subsequently provided to Bidders, whether verbally or in documentary form by or on behalf of CCMC / Consultants/ any of their employees, is provided to the bidders on the terms and conditions set out in the RFP and any other terms and conditions subject to which such information is provided. The purpose of the RFP is to provide the bidder(s) with information to assist the formulation of their bids. The RFP does not purport to contain all the information each Bidder may require. The RFP may not be appropriate for all persons, and it is not possible for CCMC their employees or Consultants to consider the investment objectives, financial situation and particular needs of each eligible party who reads or uses the RFP.
- 10.1.4 Each Bidder should check the accuracy, reliability and completeness of the information in the RFP and wherever necessary obtain independent advice from appropriate sources. CCMC, their employees make no representation or warranty and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of the RFP. Each Bidder should conduct its own studies and analysis and is advised to collect and obtain any other information that may be necessary for preparing the Bid, at its own responsibility. The Bidder shall be deemed to have satisfied himself before submitting his Bid, as to the risks, contingencies and all other circumstances, which may influence or affect his Bid.
- 10.1.5 Mere submission of a responsive Bid does not ensure selection of the Bidder as Successful Bidder or Concessionaire.

SECTION- II

TECHNICAL SPECIFICATIONS

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DISCLAIMER

The information provided in this part of RFP, is as per the existing byelaws & regulations and it is subjected to change with change in the Regulations/ Development Controls of Directorate of Town and Country Planning, Corporation of Coimbatore and other Statuary or applicable laws from time to time, without any notice. Bidder should check the reliability and completeness of the information given in the RFP, independently. The Bidder should conduct his own studies, analysis, and verification and is advised to obtain any other relevant information that may be necessary for the submission of Bid, on his own responsibility.

1. SPECIFICATIONS AND STANDARDS

1.1 PREAMBLE

The following specifications and standards cover the basic minimum requirements for the operation & Maintenance of the Facility and shall increase on the basis of the in-situ conditions. The developer shall, manage the project of "PROVIDING FACILITY MANAGEMENT SERVICES OF THE BUS STAND IN METTUPALAYAM ROAD AT COIMBATORE" along with allied facilities as per latest guidelines issued by Directorate of Town and Country Planning, GoTN regulations, Bureau of Indian Standards (BIS) specifications, and Transport Authority rules and specifications as applicable.

1.2 SCOPE OF WORK FOR OPERATION AND MAINTANANCE

Scope of work includes annual maintenance contract during the Concession period for operation and maintenance of identified Bus terminal through revenue generated from the Commercial facilities provided for the Commuters, Parking Space and Advertisement hoardings. The tenderer should carry out all work as per Job Specifications like operating and maintaining all the utility services within the bus stand. The scope of work includes providing sufficient manpower for services required for "round - the - clock" maintenance, 365 days in a year. The scope of work also includes providing spares/materials required for the maintenance works as per Job Specifications.

AREAS OF SERVICES

The following are the broad areas which require meticulous attention during maintenance of the Bus Stand related facilities include

- Water supply
- Underground Drainage
- Storm Water Drainage
- Lighting
- Greenery area
- Seating arrangements
- Signages
- Watch and ward
- Information system through LCD monitors / audio systems
- Passenger amenities in waiting area
- Solid waste collection, removal and its frequency
- Luggage trolley
- Public conveniences
- Commercial Areas – Maintenance
- Advertising (posters, illuminated, rolling / chargeable or animated displays)
- CCTV for security / surveillance (optional)
- Vehicle parking space
- Time keeper Cabin & Crew Rest Room

The scope of the works/ activities to be performed under each service head covers the following, generally but not limited to meet the requirement of efficient O & M.:

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Water supply Maintenance

- Water supply source will be provided by the Corporation
- Pumping water to the overhead tanks in the bus terminal by switching on the pump and switching off after filling up the water, in two shifts, or as frequently as required
- Check the availability of water in the water tanks and fill the tanks as when required.
- All the water coolers/ water tanks in the bus terminal have to be cleaned twice in a week by a trained person.
- Filters provided in the water purifiers are to be cleaned as per the instructions of the suppliers.
- Chlorinating the water at overhead tank/ storage tanks as per the requirement and Maintenance of water quality.
- Disconnecting and reconnecting plumbing connection in case of water heaters/ geyser, electrical gadgets, wherever such electrical items are required to be replaced / repaired.
- Arresting leakage through window sills, etc and arresting leakage in sanitary and water lines with sealant / caulking materials.
- Cleaning of drinking water/ pipelines, rain water lines, waste water pipes, bore well water lines including disconnecting and reconnecting the pipes as per requirements. Fittings and pipes are to be replaced if required. It may be mentioned that bore well pipes of the bus terminal frequently clogs and cleaning is necessary on urgent basis. The contractors will be required to employ more workers to clean those pipes in a short time to maintain the water supply, no extra will be paid for this.
- Operating and keeping all equipment, accessories, safety/protection devices etc in healthy condition at all times including cleaning on daily basis
- Attending to breakdowns, failures, faults in the equipment/system, replacement/repair etc and restoration of operation within the shortest possible time
- Repair of faulty spares/items as required
- Checking and maintaining log book for running of pumps and water levels reading in different tanks / sumps.
- Cleaning of pump house, sump & bore well pumps including pumps, motors, starters, panels, pipe racks etc
- Performing periodic water quality sampling/ testing and submit test results to ULB for necessary action.
- Entry of meter reading/ consumption monitoring on a day to day basis and reporting to ULB.
- In addition to the aforementioned works the contractor shall carry out necessary maintenance, renewals, repairs, replacements and relevant works as directed by ULB.

Sewerage & Drainage Maintenance

- Cleaning of manholes, septic tanks, closed drains, gully trap, gutters inside the bus terminal leading and connected with the main sewage line. These areas are to be cleaned once in every two months and as and when situation demands or as advised by the ULB time to time.
- Cleaning and removing the chokes in the sewer lines below / above ground level for smooth functioning of sewerage system and maintenance of the same.
- Operation, maintenance and repairs of suction, delivery and diversion valves provided on the main sewer pipe line for disposal/ diversion of bus terminal sanitary effluent to city/ town main sewer.
- Operation, maintenance and repairs of electrically/ diesel operated portable centrifugal pump for pumping out of effluent (sanitary) water from manhole or from any other place. The job includes shifting of pump etc. from one location to another

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location, removal and fixing of suction/ delivery pipes etc. as per directions of Engineer-in-charge/ his authorized representative.

- Cleaning of major storm water drains flowing inside the bus terminal, at least once in a month and disposing immediately the silts, mud, debris etc. to ULB dumping ground without causing nuisance to any body.
- All minor drains shall be cleaned daily & as required so as to ensure smooth discharge of wastewater. There shall not be any stagnation & over flowing of water.
- In addition to the aforementioned works the contractor shall carry out necessary maintenance, renewals, repairs, replacements and relevant works

Sanitation Maintenance

- Toilets, Bathrooms, wash basins, urinals and fittings to be cleaned with water added with ISI branded disinfectant twice, daily-once in morning and once in the evening. Toilet fittings, glazed tiles, washbasins and floors to be cleaned meticulously and kept spick and span. Toilet floor to be washed with soap and ISI branded Phenyl. Phenyl, which forms sediments at the bottom, should not be used. The floor is to be wiped with cloth.
- Glazed tile walls to be washed with ISI branded soap to maintain the glow of the shining surface of glazed tiles and wipe it with white cloth. Toilet, washbasin, urinals, and bathrooms fittings should be cleaned every Wednesday in order to maintain the original shining by using the chemicals to avoid formation of residues and stains. Putting urinal cakes and naphthalene balls cleaning the soap bowls, as and when required. Perfume to be sprayed around the area.
- There should be a weekly spraying of insecticide/ rodenticide/ pesticide for removal of flies, rodents and pests.

Solid Waste Management Maintenance

- Provide large size containers at their cost, matching with the transportation system of the ULB and their placement be finalized in consultation with the ULB to facilitate easy collection of waste.
- The waste material/garbage collected from designated dustbins have to be transported outside the bus terminal and disposed every day.
- Sweep the bus parking bays, access roads, guide ways and footpaths within the bus terminal as well as collect the wastes in their push carts/ tri-cycles from all the shops and establishments situated within the bus terminal premises on a daily basis.

House Keeping

- Sweeping and collection of garbage at all areas and terrace
- Mopping of covered areas and staircase
- Cleaning of all glass doors, partitions windows, aluminum cladding pillars
- Cleaning and sanitizing all public conveniences in the bus stand area
- Disposal of garbage or solid waste through municipal garbage collection vehicle
- Cleaning of electrical fittings, chairs, etc
- Cleaning of stainless hand rails, granite name boards
- Maintenance of garden and potted plants in landscape area
- Cob removal at all places once a week
- Cleaning of doom, bus parking shelter areas periodically
 - Cleaning, washing all the rooms, (daily) utility rooms, lounges, parking area, corridors, terraces, staircases, bathrooms, toilets, urinals, all plinth area of the Bus terminal and its surroundings up to the adjoining service roads daily, including collection of garbage, dry leaves, twigs, paper and plastic wastes, all organic and non organic material, solid waste, litter etc., over areas specified and depositing in the dustbins.

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- All the rooms have to be cleaned using appropriate type of brooms and washed with water added with ISI branded detergent solution, scented phenyl and hand swabbed with clean cloth, twice in a week as per a Schedule
- Doors, windows & electrical fittings (fan & tube light etc.) to be cleaned once in a month.
- The paved areas and courtyards in the front and surrounding areas and approach road to the bus terminal should be cleaned daily.
- Glass of the window to be cleaned with appropriate ISI branded chemicals meant for cleaning the glass. There should not be any scratch on the glass and the glass should be neat and sparkling. The cleaning of the glass should be done by modern method and the method of using newspaper and old cloth for cleaning the same are not permitted.
- The Bus parking bays, Corridors, Passenger waiting hall and Parking areas has to be mopped once a day with water added with ISI branded detergent solution, scented phenyl and hand swabbing the area with clean cloth. The area (floor and hand rails etc.) has to be washed as per schedule, especially by using ISI branded chemicals (which should not affect the floor and painted surfaces) to maintain the original colour of the floor. After cleaning, floor and railings should look alike. The waste material/garbage collected from designated dustbins has to be transported outside the complex and disposed to identified dustbins/garbage bins every day.
- Dewatering any spaces related to maintenance works and upkeep of premises as necessary.
- Quality of materials to be used for cleaning & maintenance shall be of high standard and after approval by the ULB.
- Safe space to store the cleaning materials shall be provided by the ULB.

Electrical Maintenance

- Electrical maintenance of various type of buildings/ structures within the Bus terminal
- Electrical maintenance of Bore well pump motors, Street lighting and periphery lighting inside Bus terminal
- Electrical maintenance of non operational area in side Bus terminal such as Service complex, meeting rooms, canteen, corridors, toilets as directed.
- Electrical maintenance of operational area in side Bus terminal such as Power stations, AC plants etc., under the supervision of ULB Staff as directed.
- Attending to making good of fuse off complaints
- Replacing of burnt out or damaged switches, sockets, holders, switch boards etc.,
- Temporary wiring and lighting
- Dismantling of burnt pump motors, burnt ceiling fans, burnt chokes of light fixtures and installing the same after repairs, for which materials will be issued by the ULB free of cost
- Fixing of Geysers, boilers, repairing of geysers for the replacement of defective thermostat, rectification of major leaks of the geyser
- Repairing the burnt chokes of street light fixtures and changing of fused bulbs in the fixture
- Periodical maintenance of light fittings, street light fittings, ceiling fans, exhaust fans including repairs like replacement of fused bulbs and tubes, checking of chokes, capacitors, starters, holders, terminals, control gears, regulators etc.
- Periodical checking and maintenance of all electrical installations such as water supply pump motors, garden/ landscape pump motors and starters
- Diagnosing the cable fault and rectifying the defects by providing straight through joints, end terminations etc., as directed.
- Preventive maintenance of above listed installations to be carried out in a well planned manner with periodicity as detailed in general, as directed.

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- Electrical complaints, other than the above mentioned shall also be executed by the contractor, as per the directions.
- The work allotted shall be attended to, within 8 hours and reported to ULB for its progress
- Preventive maintenance shall be effectively carried out in consultation with ULB
- Recording and up-keeping of Log-book for various operations as mentioned in should be strictly followed

- Operation & Maintenance of ozonization equipments for toilets, lifts, automatic clock installed in Clock Tower
- Operation & Maintenance of Non renewable energy sources, both Wind Mill & Solar Systems
- In addition to this any other electrical work allotted by the ULB to be attended.

Street Lighting Maintenance

- Checking of street-lighting within the bus terminal premises.
- Replacement of defective parts of street-light such as holder, bulbs, tubes, chokes etc.
- Regular switching "ON" and "OFF" street-lights.
- Replacement of defective street-light fitting/fitting cover/ lamp, if necessary.
- Painting of street lighting pole if necessary.
- Entry of meter reading/ consumption monitoring on a day to day basis and reporting to ULB.
- Identify and Implement Energy Saving options in Street lighting.

Parking Area Maintenance

- Inspection and maintenance of parking area pavement, side drains, berms, sheltered walk-ways and carrying out necessary renewals and repairs
- Inspection and maintenance of parking area general lighting and carrying out necessary renewals and repairs
- Regulation of parking in designated areas using field personnel
- Conducting regular patrols within parking area to ensure vehicle and passenger safety
- Inlet and exit registry/ timer/ cost scheduler for parking vehicles
- Security scanning systems (deep-scan) for vehicles to ensure safety
- Display board showing parking slot status and relevant user information
- Signage and uni-direction lanes to ensure proper vehicle flow

Landscaping Maintenance

The daily operation and of the landscaping shall include, but not limited to,

- Watering of all plants and lawn.
- De-weeding and cutting and mowing of lawn with necessary machinery.
- Application of fertilizers, manure and pesticides as and when required.
- Replacing of any plants and trees dying during the maintenance period if any. (not due to natural calamities).
- Collection and disposal of all cutting and pruning waste, fallen leaves, cut lawn, dug up soil, surplus earth and all other organic and inorganic waste at appropriate location.
- Operation & Maintenance including frequent cleaning of water cascade, fountain and other water bodies located indoor & outdoor of Bus terminal premises.
- Operation of water fountain, fish tank and cascade (if available).
- Periodic changing and rotation of potted plants inside and outside the premises.

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Security Services

- Providing security services to the bus terminal by employing suitable security guards in the morning and night shift of 12 hours per shift, covering 24 hours on a 24 X 7 basis.
- The specific duties and responsibility of the security agency shall be:
 - Control of entry and exit of buses
 - Traffic management within the bus terminals
 - Control entry and exit of passengers.
 - Guard all the property of the bus terminal.
 - Receives incoming telephone calls after working hour through the office telephone.
 - Verify that all gates, doors and windows are locked.
 - Ensure that unauthorised vehicles are not parked outside the premises.
 - Support investigation of damage, accidents and incidents to determine causes circumstances and participants, prepare reports.

Other Jobs

- Attending to all the Complaints recorded in Registered / received relating to Civil, Water Supply and Sanitary Systems & Plumbing works and Allied works and rectifying the defects wherever necessary including cost of materials replaced in the premises.
- Eradicating weeds, shrubs, etc. and removal of plant growth in external and common areas of buildings and in plumbing lines periodically without any extra cost such as scaffolding, etc. by pouring acid / saturated ammonium sulphate solution periodically.
- Providing all tools, tackles, machines, equipments and other housekeeping/maintenance related consumables etc. Safe custody of all such materials will be contractor's whole responsibility. No extra charge will be paid for the same.
- Procurement & supply of spares in time so that operation and maintenance is not held-up for want of spares
- Procurement & supply of consumables in time so that operation and maintenance is not held-up for want of consumables
- Preventive Maintenance of equipment including planning, drawing-up PM Schedules etc. This would include all checks/works, servicing/overhauling as per manufactures' manuals as available with Engineer
- Co-ordination with other agencies operating at site, statutory authorities etc. for carrying out the work including arrangement for shut-downs etc
- Maintaining daily logbook of events, complaint registers/files, spares consumption registers/files etc
- Any other work required for efficient O&M of the Systems not mentioned above or as directed by the Engineer in-charge.
- Performing daily, weekly, monthly, quarterly, half yearly and annual checks for efficient Operation & Maintenance of the Systems as and when required and as advised by the Engineer in-charge .
- Tenderer to provide adequate MANPOWER - As per sheet enclosed
- Schedules for carrying out each job will be provided by the Engineer in-charge.
- All the workers engaged by the contractor in the Bus terminal, shall have the uniform.
- The Contractor shall provide proper uniform, shoes and other safety gadgets like hand gloves, raincoats etc., for their personnel during Operation and maintenance services at site.
- All staffs of the organization shall bear photo identity card during the period of work, which shall be duly signed by the authorised representative of the contractor.

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- All workmen/manpower to be engaged by the contractor should be covered under the statutory government regulation framed from time to time.

General

In addition to all the above, the operator shall keep personnel at call for various services like plumbing, plastering, electrical works and other small repair works which may be required at lesser intervals.

1.3 FACILITIES WITHIN THE BUS STAND COMPLEX

The operator is required to Operate & Maintain the following Project Facilities within the Project implementation Period and hand over to CCMC upon the Project Completion at the end of the Concession Period in well maintained and operative condition with all the facilities made for O & M except Personnel. Further the operator will be operating and maintaining the built-up space earmarked for the Commercial Facilities as specified in this RFP Document through a License arrangement valid for a period of 10 years from the Date of LOI.

The lists of facilities planned are categorized into the facilities to be Operated & Maintained and the Facilities to be Designed, Installed & operated

FACILITIES TO BE DESIGNED & INSTALLED

RETAIL SPACE: A dedicated Retail Space/ floor area of 2225 Sq. Mtrs. Built up area for locating Commercial & office spaces each along with accesses (ramps, staircases, elevators etc.) circulation areas, all the connected utilities (air conditioning excluded) and other required amenities to render it completely functional preferably located in the 2nd floor.

ELECTRICAL/LIGHTING: The electrical requirement of the various facilities such as the Hotel complex, Commercial Space, Bus Parking Area has to be separately calculated and the electrical layout prepared during the planning stage also to be assessed and the system has to be implemented accordingly. Uninterrupted Power Supply to be maintained through Gensets on breakdown of TNEB Power Supply

HEATING & COOLING SYSTEMS: The requirement /demand of the Air-conditioning system within various facilities such as the Waiting Area; Commercial Space, Administrative area etc., of the Bus Stand complex has to be computed and the suitable plan has to be planned in consensus with the DPR prepared during the planning stage. The plan thus prepared has to be assessed for providing the required Heating & Cooling systems

SEATING ARRANGEMENTS: One of the major integral parts, of the passenger amenities is the seating fixtures, which is to be installed at various locations of the Bus terminals. The type & design of the fixtures will vary according to their position of installation, such as the seating near the bus bays would be different from the seating in the waiting area. Thus the schedule & specifications of the fixtures to be installed has to be developed on par with the architectural standards and specifications. The seating systems should also take care of the disable friendly building fixtures.

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SIGNAGE'S: Sign's & Sign boards form a pertinent component of the Bus Terminal as they are used to relate the space & usage with the public. The signs to be developed are to be done on Illuminated panels, with proper visibility & as per standards specified for them.

INFORMATION SYSTEMS (LCD Monitors/Audio Systems): In addition to the signages, the immediate assistance provided to public/commuters is through the information systems, which may be video/audio enabled. The information systems has to be properly planned in a such a way that the audio should clearly audible to everybody in the Bus terminal and also Monitors are placed in location, which are free of Bus traffic & also their positioning should not cause any chaos.

CCTV FOR SURVEILLANCE: In addition to the watch & ward facility, the CCTV is installed in the Bus terminal as a measure of surveillance. The positioning of the TV cameras is to be planned in such a way, they are not immediately visible, but can cover a larger extent of the terminal. Adequate overlap space has to be provided between the installed cameras to have a contiguous and constant monitoring.

SECURITY – WATCH & WARD: The security cabins are to be placed in close proximity to the CCTV camera rooms and also patrol has to be positioned in such a way that they have control over the backyard of the Bus terminal also in addition to the front entry area.

HELP DESKS: Separate desks for providing assistance to the public has to be planned in the bus terminal as an attempt of providing passenger amenities

FACILITIES FOR PHYSICALLY CHALLENGED PERSONS: The Operator shall provide all the necessary facilities to the entry/ exit, seating and movement of physically challenged persons including wheel chairs, ramps, specially designed seats, toilets, and etc at all appropriate locations in all the buildings. The Developer shall provide the facilities for disabled persons as per the norms.

GREEN BUILDINGS (ALL PROJECT COMPONENTS) The Operator should endeavour to construct/ Install the project components to the maximum extent possible on the principles of "Green Buildings" as per the guidelines laid down by the Indian Green Building Council and as per the Leadership in Energy and Environmental Design (LEED-INDIA) Green Building Rating System for New Construction with the objectives of efficient resource utilization, energy conservation/savings and environmental protection.

And all the other requisite facilities to make the complex intelligent & sustainable

2. MAINTENANCE AND PERFORMANCE STANDARDS

The following section covers minimum standards for Operation and Management of bus stand at Coimbatore conforming to the relevant Indian Standards, and the Best Industry Practices, Directorate of Town and Country Planning, Transport Department GoTN rules and regulations. However the Operator may go for higher standards of Performance, Operations and Management, sufficing to the need of the Passenger at Coimbatore

2.1. GENERAL

During the period of operation, the Concessionaire shall inter-alia maintain all the facilities in accordance with performance standards and maintenance requirements, as mentioned below:

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- (i) Perform periodical maintenance of all facilities, equipment etc. regularly.
- (ii) Provide functional facilities to (a) meet the project requirements; (b) have an environmentally acceptable atmosphere for users of the facility; (c) ensure safety and security of the premises; (d) ensure the safety of the visitors; and, (e) maintain a good environment in the site conducive to running business around the proposed project site
- (iii) Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.

2.2. MAINTENANCE WORKS

The Operator shall perform routine and periodic maintenance activities for the project infrastructure viz, civil, mechanical, electrical works and equipments, Signage, Landscaping, internal service roads etc for meeting the specified performance standards.

Maintenance of Circulation Areas within the Built-up spaces: Circulation Area maintenance shall include the entire house keeping activities, requiring routine and periodic maintenance. Annual maintenance shall be done for accessories like fans, lighting arrangements etc in these areas.

2.3. PERFORMANCE STANDARDS: INTENT

- (i) The performance levels define the level at which the proposed facilities are to be maintained and operated. Performance standards are defined for operation and maintenance of the facilities and the site environment.
- (ii) The obligations of the Operator in respect of Maintenance requirements shall include:
 - Maintaining site environment so as to cause minimum disturbance to the environment;
 - Ensuring that the facilities are operational and rectification of the defects and deficiencies within the minimum time;
 - Ensuring that the fixed parameters provided in this RFP are abided by at any time during the Concession period
- (iii) Notwithstanding anything contrary to specified in this document, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Developer shall be entitled an additional time in conformity with good industry practice. However the Developer shall get prior approval from the Grantor, for such additional requirements of time.
- (iv) Notwithstanding anything to the contrary contained in this document if any defect, deficiency or deterioration in the Project poses danger to the life and property of the users thereof, the Developer shall promptly take all reasonable measures for eliminating or minimising such danger.

2.4. ROUTINE MAINTENANCE - PERFORMANCE STANDARDS

The Performance Standards for routine maintenance shall be as per the Table below:

Table 1: Performance Standards for Routine Maintenance

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Sl. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
1.	Power Supply, Electrical Installations, Electrical Equipments shall be functional	Nil Breakdown	Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours
2.	Boundary Wall shall be without any Damage / Breach	Nil	Any damage / breach to the Boundary wall shall be rectified within three (3) days after their detection.
3.	All Toilets, Urinals, bathrooms shall be clean and functional	A minimum of 95% toilets and urinals shall be functional at any given point of time.	Toilets, Urinals, bathrooms shall be demarked with suitable signboards. These should be kept clean and hygienic and cleaning shall be done at least twice daily.
4.	All drinking water chambers shall be clean and functional	A minimum of 95% drinking water chambers shall be functional at any given point of time	These shall be cleaned daily. Water supply shall be for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards.
5.	Dustbins, spittoons etc. shall be clean and functional	A minimum of 95% Dustbins, spittoons shall be functional at any given point of time	The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell in the neighborhood.
6.	All Information Signage and Display Boards shall be visible, legible and functional	Maximum 2% number of damaged signage and boards at any given point of time	These shall be cleaned once in a week. Damaged signage and boards shall be replaced, repaired within seven days of their detection
7.	Power Supply, Electrical Installations, Electrical Equipments shall be functional	Nil Breakdown	Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Independent Engineer
8.	Staircases shall be clean and functional	Nil	The staircases shall be cleaned atleast twice a day. Damaged handrails, risers or treads shall be repaired within three days after detection.

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Sl. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
9.	Illumination (Lighting) shall be functional	To meet the required illumination level as per national standards	The ventilators, sky-lights, etc serving as source of natural ventilation and other luminaries for artificial lighting shall be cleaned once in seven days to maintain the illumination level.
10.	Fire Fighting Equipments shall be functional	Nil	Any damage to fire fighting equipments installed in the facilities and in public spaces shall be rectified within 2 days of detection. Fire extinguishers shall be replaced before the end of its expiry date. The water tank meant for fire fighting purpose shall remain flooded with water to its capacity at all the times.
11.	Water Tank shall be clean and functional	Nil	Water tank shall be cleaned and disinfected every month (by usage of approved chemicals) to ensure that no inorganic sedimentation takes place.

2.5. PERIODIC MAINTENANCE - PERFORMANCE STANDARDS

In order to maintain the quality and operational standards of high quality, the periodic maintenance/renewal activities are proposed for the Project are in table below

Table 2: Periodic Maintenance/ Renewal Activities

S.N	Periodic Renewal Activities	Time Limit for renewal
1	Repainting of Buildings and all other structures.	Minimum once in Two years
2	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc in the offices, cabins, booths etc.	Minimum once in Two years
3	Mechanical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual
4	Electrical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual

2.6. PERFORMANCE STANDARDS FOR OPERATION

In order to maintain quality standards in the operation of the Project, the following performance standards for operation shall be adhered to.

Table 6: Performance Standards for Operation

Sl.	Parameters	Performance Indicators
1.	Parking Area	To remain operational 24 hours a day throughout the year
2.	Toilets	To remain operational 24 hours a day throughout the year
3.	Water Supply	To remain operational 24 hours a day throughout the year
4.	Electricity Supply	To remain operational 24 hours a day throughout the year
5.	Standby Diesel Generator Sets	Standby diesel generator sets to supply power to the Project facilities must be available 24 hours a day, throughout the year in case of disruption or breakdown in power supply
6.	Security	To remain functional 24 hours a day throughout the year Appropriate fencing of the site with lighting and security shall be provided to ensure that there will be no encroachment on the site.

3. APPLICABLE PERMITS & CLEARANCES INCLUDING CRITICAL CLEARANCES

CLEARANCES, LICENSES & PERMISSIONS REQUIRED FOR THE PERIOD OF 10 YEARS

1. Ministry of Finance
 - Approval for foreign investments & foreign loans if required.
 - Approval for import of equipment & machinery for construction & Operation if required.
 - Exemption of customs / excise duty on construction materials & equipment if required
2. Department of Telecommunication
 - Permission for the use of optical fiber cables of DOT, if required
 - Permission for setting up wireless system, if required.
3. Environmental and Social Safe guards
Environmental and Social Safeguards prescribed by Ministry of Environment & Forests as per Environmental impact notification 2006
4. Electricity (Tamil Nadu Electricity Board)
 - License & approvals for Electrical Safety & D.G. Installation & Commissioning
 - Permission for Electrical connection from Central Electrical Inspectorate
5. Water Supply, Storm Water Drainage, Sewerage & Ground Water through Bore Wells permission & approval from pertinent authorities.
6. Bureau of Energy Efficiency
 - Energy efficiency in buildings
7. Directorate of Fire Services
 - Fire & Safety approval for Buildings
 - Elevators – Installation & Operation
8. Chief Controller of Explosives – Nagpur
 - Clearance under Petroleum Act & Gas Cylinder rules
9. Pollution Control Board
 - Installation & Operation of Diesel Generators
 - Setting up of Batching Plant if required
 - Setting up of Asphaltic Plant if required
10. Gravel, Sand, Metal
 - Permission from concerned agencies.
11. Other Clearances & Building Permits
 - Directorate of Town and Country Planning
 - Coimbatore City Municipal Corporation, If Required
12. Approval from CCMC& TNSTC(CBE) for the circulation & movement of Buses

The above are only indicative and the developed needs to get the approvals of all the other relevant statutory authorities prior to commencement of construction and for obtaining occupation certificate after completion of all the work.

SECTION- III

FORMATS FOR SUBMISSION

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PART A
FORMATS FOR BID SUBMISSION

Appendices	Format for
Appendix A1	Covering Letter
Appendix A2	Checklist of Submissions
Appendix A3	Covering letter for submitting the Bank Guarantee for Bid Security and the Bank Guarantee
Appendix A4	Letter of Undertaking
Appendix A5	Format for Project Undertaking
Appendix A6	Power of Attorney for Appointing the Lead Member - Signed By All Members of the Consortium
Appendix A7	Power of Attorney for the Bid Signatory
Appendix A8	Proof of Purchase of the RFP Document (photocopy), or the non refundable fees for downloading RFP documents

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Appendix A1

Format for
COVERING LETTER

Date:

The Commissioner,
Coimbatore City Municipal Corporation (CCMC)
Coimbatore-641001
Tamil Nadu,
India.

Dear Sir:

Sub: Submission of Bid Comprising, Technical and Financial Bids for providing Facility Management Services of the Bus stand In Mettupalayam road at Coimbatore.

1. We are submitting this Bid (Proposal) on our own. **(Or)**
We are submitting this Bid (Proposal) as the Lead Member of a Consortium / SPC consisting of the following members, for and on behalf of the Consortium

S.No	Names of Consortium Members	Address
1. (Lead Member)	
2. (Member)	
3. (Member)	

As a Lead Member, we understand the obligations of the Concessionaire to implement the Project. We are enclosing Consortium Agreement signed by all the members of the Consortium, nominating and authorizing us to act as 'Lead Member' for implementing the Project.

2. Having examined the RFP Documents, for the execution of the Concession Agreement for the captioned project, we the undersigned offer to operate & maintain the Facilities for the Concession period in conformity with the RFP.
3. This Bid and our written acceptance of it shall form part of the Concession Agreement to be signed between the Concessionaire and the Coimbatore City Municipal Corporation (CCMC). If selected as Concessionaire, we understand that it is on the basis of the technical, financial & organizational capabilities and experience of the Bidder taken together. We understand that the base for our qualification will be as the complete Bid documents submitted along with this letter, and that any circumstance affecting our continued eligibility as per RFP, or any circumstance which would lead or have lead to our disqualification either as Bidder or Concessionaire on signing agreement as successful Bidder, shall result in our disqualification under this Bidding process/ Termination of Contract.
4. We agree that
 - (a) If we fail to permit CCMC or its Authorised Representative for carrying out the inspection of works/ facilities during Concession period or

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- (b) If we fail to meet the minimum development obligations and/or technical specifications and/or the performance standards according to the conditions/stipulations of the RFP/Concession Agreement,
CCMC shall be at liberty to take action in accordance with the RFP/Concession agreement.
5. We undertake, if our Bid is accepted, to complete the Project, commence operations and manage as per the RFP/Concession Agreement.
 6. We agree to abide by this Bid for a period of **90 (Ninety) days** from the Due Date fixed for submitting the same and it shall remain binding upon us and may be accepted at any time before the expiry of that period.
 7. In the event of our Bid being accepted, we agree to enter into a formal Concession Agreement with you incorporating the conditions of the Bid including the draft Concession Agreement thereto annexed and written acceptance thereof.
 8. We agree, if our Bid is accepted, to furnish **Performance Security Bank Guarantee of Rs. 50 lakhs (Rupees Fifty lakhs only)** to CCMC in the forms specified in the RFP as a precondition for signing of Concession Agreement.
 9. We agree, if our Bid is accepted, to remit the first year Concession Fee as approved to CCMC in the forms specified in the RFP as a precondition for signing of Concession Agreement.
 10. We agree that if we fail to fulfill any of the conditions mentioned at para 8 above, CCMC has the right to forfeit the Bid Security being furnished by us along with this Bid together along with any other payments made till such date.
 11. We understand that CCMC is not bound to accept any or all Bids it may receive.
 12. We declare that we have disclosed all material information, facts and circumstances, which would be relevant to and have a bearing on the evaluation of our Bid and selection as Concessionaire and they are True.
 13. We do, also, certify that all the statements made and/or any information provided in our proposal are true and correct and complete in all aspects.
 14. We declare that in the event that CCMC discovers anything contrary to our above declarations, it is empowered to forthwith disqualify us and our Bid from further participation in the Bid evaluation process and forfeit our Bid Security.

Dated this _____ day of _____ 2010

(Signature)

(Name of the person)

(In the capacity of)

Company Seal

(Name of firm)

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Duly authorized to sign Proposal for and on behalf of *(Fill in block capitals)*

Witness

Signature _____

Name _____

Address _____

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APPENDIX A2

Format for
CHECKLIST OF SUBMISSIONS

No.	Enclosures to the Technical & Price Bid	Status (Submitted/ Not Submitted)	Comments, if any
1.	Covering Letter		
2.	Covering letter for submitting the Bank Guarantee for Bid Security and the Bank Guarantee		
3.	Letter of Undertaking		
4.	Letter of Project Undertaking		
5.	Power of Attorney for the Lead Member of the Consortium (In case the Bidder is a Consortium)		
6.	Power of Attorney for the Bid Signatory		
7.	Proof of Purchase of the RFP Document (photocopy), or the non refundable fees for downloading RFP documents		
8.	General Information		
9.	Financial Data		
10.	Audited Financial Statements/ Annual Reports		
11.	Development and Operation Experience Details		
12.	Letters of Undertaking for Technical Bid and Minimum Development Obligations		
13.	Financial Bid		

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Appendix A3

Format for
Covering letter for submitting the Bank Guarantee for Bid Security

Date:

The Commissioner,
Coimbatore City Municipal Corporation (CCMC)
Coimbatore-641001
Tamil Nadu, India.

Dear Sir:

Sub: Submission of Bid Comprising Technical and Financial Bids for providing Facility Management Services of the Bus stand In Mettupalayam road at Coimbatore.

As a part of the Bid for the (Project name) , we hereby submit the Bid Security for Rs. 5.00 Lakhs (Rupees Five lakhs only) in the form of irrevocable and unconditional Bank Guarantee from ----- Bank (Which is a Nationalised/ Scheduled Bank (Not a Co-Operative Bank) in favour of "The Commissioner, Coimbatore. CCMC" and operable at Coimbatore. This Bank Guarantee shall be independent of the validity of the Bid and Authorisation Agreement between CCMC and the Concessionaire and shall be honoured by the issuing banks irrevocably.

We agree that in the event of any breach or non-performance of the following terms and conditions contained in the RFP document:

1. If we withdraw our Bid during the period of Bid validity as specified in the Form of Bid; or
 2. If we refuse to accept the correction of errors in our Bid; or
 3. If we submit a conditional Bid which would affect unfairly the competitive provision of other Bidders who submitted substantially responsive Bids and/or is not accepted by CCMC, or
 4. if we, having been notified of the acceptance of our Bid by the CCMC during the period of Bid validity;
- (a) Fail or refuse to execute the Concession Agreement in accordance with the RFP documents; or
- (b) Fail or refuse to pay Performance Security/ Bank Guarantee for Rs. 1.00 Crore (Rupees One Crore only), in accordance with the RFP documents;

CCMC is empowered to forthwith disqualify us and our Bid from further participation in the Bid evaluation process and forfeit our Bid Security.

Yours faithfully,

(Signature of Authorised Signatory)
(Name, Title, Address, Date)

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Appendix A4

Format for
BID SECURITY (BANK GUARANTEE) (On Requisite Stamp Paper)

This Deed of Guarantee is made on this ___day of ____, 2010 at ___ by _____ a Nationalized/Scheduled Bank (excluding Cooperative Banks) within the meaning of the Reserve Bank of India Act and constituted under the Banking Companies Acquisition and Transfer of Undertakings Act, 1970/1980 and having its Registered Office at ___ and inter alia an operational Branch Office at ____, Coimbatore (hereinafter referred to as "the Bank" or "the Guarantor", which expression shall unless it be repugnant to the subject or context hereof be deemed to include its successors and assigns) in favour of "**The Commissioner , Coimbatore (CCMC)**" having its Office at Coimbatore (hereinafter referred to as "CCMC" which expression shall unless it be repugnant to the subject or context hereof be deemed to include its successors and assignees).

WHEREAS, CCMC undertook the process of competitive bidding in order to select the most desirable firm/company for Facility Management Service of the Bus stand In Mettupalayam Road at Coimbatore. For which purpose CCMC issued a Request for Proposal ("RFP") inviting Bids from the Bidders to execute the Scope of Work specified therein (Project);

WHEREAS, [name of Bidder] (hereinafter called "the Guarantor") has submitted his Bid dated [date] for the implementation of the Project (hereinafter called "the Bid").

In the event of any breach of Contract or non-performance of the terms and conditions contained in the RFP document, including but not limited to the following:

- (1) If the Bidder withdraws his Bid during the period of Bid validity specified in the RFP, as may be extended by CCMC from time to time; or
- (2) If the Bidder refuses to accept the correction of errors in his Bid; or
- (3) If the Bidder submits a Conditional Bid which would affect unfairly the competitive provision of other Bidders who submitted substantially responsive Bids and/or is not accepted by CCMC or
- (4) If the Bidder, having been notified of the acceptance of his Bid by the CCMC during the period of Bid validity;
 - (a) Fails or refuses to pay the Annual Concession Fees in accordance with the RFP document;
 - (b) Fails or refuses to execute the Concession Agreement in accordance with the RFP document;

The Guarantor agrees absolutely, irrevocably and unconditionally guarantees and undertakes to pay to CCMC a sum of Indian Rupees Five Lakhs only, without any protest or demur and upon receipt of first written demand from CCMC. This Guarantee is independent of the terms and conditions of the RFP and shall not be affected in any manner by any amendments made to the RFP and no prior consent or notice to the Guarantor is needed for any amendment to the RFP.

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This Guarantee will remain in force up to and including the date 210 days from the due date for submission of the Bid documents.

The jurisdiction in relation to this Guarantee shall be the Courts at Chennai/Coimbatore and Indian Law shall be applicable. The claim shall be lodged in the same bank, which issues the Bank Guarantee

IN WITNESS WHEREOF the Guarantor has executed this Guarantee on this ____day of _____and year first herein above written.

Signed and delivered by the above named _____Bank by its Authorized

Signatory as authorized by Board Resolution passed on _____/Power of Attorney dated [.....]

Authorized Signatory Name :

Designation:

In the presence of:

1.

2

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Appendix A4

Format for
LETTER OF UNDERTAKING

[To be furnished by the Bidder.]

Date:

The Commissioner,
Coimbatore City Municipal Corporation (CCMC)
Coimbatore-641001
Tamil Nadu,
India.

Dear Sir:

Sub: Submission of Bid Comprising, Technical and Financial Bids for Providing Facility Management Services of the Bus stand In Mettupalayam road at Coimbatore.

We confirm that we are not barred by Government of Tamil Nadu (GoTN), any other State Government in India (SG) or Government of India (Gol), or any of the agencies of GoTN/SG/Gol from participating in any category of infrastructure projects (O&M) as on _____ (Bid Due Date).

Yours faithfully

(Signature of Authorised Signatory)
(Name, Title, Address, Date)

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Appendix A5

Format for
LETTER OF UNDERTAKING
(To be furnished by the Bidder)

Date:

The Commissioner,
Coimbatore City Municipal Corporation (CCMC)
Coimbatore-641001
Tamil Nadu,
India.

Dear Sir:

Sub: Submission of Bid Comprising, Technical and Financial Bids for Providing Facility Management Services of the Bus stand In Mettupalayam road at Coimbatore.

We have read and understood the Request for Proposal (RFP) document in respect of the captioned project provided to us by CCMC.

We hereby agree and undertake as under:

Notwithstanding any qualifications of conditions, whether implied or otherwise, contained in our Proposal we hereby represent and confirm that our Proposal is unconditional in all respects' and we agree to the terms of the proposed Concession Agreement, a draft of which also forms a part of the RFP document provided to us.

Dated this..... Day of..... 2010

Name of the Bidder

Signature of the Authorised Person

Name of the Authorised Person

Note: To be signed by the lead member in case of a Consortium.

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Appendix A6

Format For
POWER OF ATTORNEY FOR APPOINTING THE LEAD MEMBER - SIGNED BY ALL
MEMBERS OF THE CONSORTIUM

{On Rs. 100/- Stamp Paper}

KNOW ALL MEN by these presents that we, ...[name of the company], a company/ Firm /Consortium / SPC incorporated under the relevant acts, having its Registered Office at. ...[Address of the Company] (Hereinafter referred to as "Company")

WHEREAS the Company/ Firm along with _____ and _____ (give name and
and _____ (give name and

registered office address) is forming a Consortium to submit a Bid in response to the Request for Proposal ("RFP") for Operation & Maintenance of the Bus stand In Mettupalayam Road ("Project"), issued by Coimbatore City Municipal Corporation, (Coimbatore) Ltd. (CCMC) and is desirous of appointing an attorney for the purpose thereof.

Whereas the Company deems it expedient to appoint M/s. _____ (name of
Company/ Firm, registered office address) as the Attorney of the Company. _____ (name of

NOW KNOW WE ALL BY THESE PRESENTS, that _____[name of company/ Firm] do hereby nominate, constitute and appoint... [name the lead member company] as its true and lawful Attorney to do and execute all or any of the following acts, deeds and things for the Company in its name and on its behalf, that is to say:

- (a) To act as the Lead Member of the Consortium for the Purposes of the Project;
- (b) In such capacity, to act as the Company's official representative for submitting the Technical and Price Bid for the Project and other relevant documents in connection therewith.
- (c) To sign all papers for bids, offers, Project documents, necessary documents, papers, applications, representations and correspondence necessary and proper for the purpose aforesaid;
- (d) To tender documents, receive and make inquiries, make the necessary corrections and clarifications to the Project documents, as may be necessary;
- (e) To sign and execute contracts relating to the Project, including variation and modification thereto;
- (f) To represent the Company at meetings, discussions, negotiations and presentations with CCMC, Competent Authorities and other Project related

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entities;

- (g) To receive notices, instructions and information for and on behalf of the Company;
- (h) To execute the Concession Agreement for and on behalf of the Company;
- (i) To do all such acts deeds and things in the name and on behalf of the Company as necessary for the purpose aforesaid.

AND the Company hereby covenant with the said Attorney to ratify and confirm all and whatever the attorney may lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF the Company puts its hand and seal to this Power of Attorney on this.....[Day, month & year]

The common seal of [name of the Company] was here unto affixed pursuant to a resolution passed at the meeting of Committee of Directors held on --- Day of -----, 2010 in the presence of [name & designation of the person] and countersigned by [name & designation of the person] of the Company of [name of the company]

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Appendix A7

Format For
POWER OF ATTORNEY FOR FOR THE BID SIGNATORY
(On Requisite Stamp Paper)

KNOW ALL MEN by these presents that we, ...[name of the Company], a company incorporated under the Companies Act 1956, having its Registered Office at. ...[Address of the Company] (Hereinafter referred to as "Company"):

WHEREAS in response to the Request for Proposal (RFP) for Providing Facility Management Services of the Bus stand In Mettupalayam road at Coimbatore. ("Project"), the Company is submitting Bid Comprising Capability Statement, Technical and Price Bids on behalf of the Bidder/Consortium for the Design, Financing, of Bus Stand and Operation and Maintenance of the Project to the The Commissioner, Coimbatore City Municipal Corporation (Coimbatore) Ltd. (CCMC), and is desirous of appointing an attorney for the purpose thereof.

WHEREAS the Company deems it expedient to appoint Mr. _____ son of _____ son of _____ Resident of _____, holding the post of _____ as the Attorney of the Company.

NOW KNOW WE ALL BY THESE PRESENTS, that _____ [name of the lead member company] do hereby nominate, constitute and appoint...[name & designation of the person].....as its true and lawful Attorney so long as he is in the employment of the Company to do and execute all or any of the following acts, deeds and things for the Company in its name and on its behalf, that is to say:

To act as the Company's official representative for submitting the Bid comprising Capability Statement, Technical Bid and Price Bid for the said project and other relevant documents in connection therewith;

To sign all the necessary documents, papers, testimonials, applications, representations and correspondence necessary and proper for the purpose aforesaid;

To tender documents, receive and make inquiries, make the necessary corrections and clarifications to the Bid and other documents, as may be necessary;

To do all such acts deeds and things in the name and on behalf of the Company as necessary for the purpose aforesaid.

The common seal of [name of the company] was here unto affixed pursuant to a resolution passed at the meeting of Committee of Directors held on --- Day of -----, 2010 in the presence of [name & designation of the person]and countersigned by [name & designation of the person] of the Company of [name of the company]

[Name & designation of the person]

[Name & designation of the person]

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Appendix A8

Format For
**Proof of Purchase of the RFP Document (photocopy), or the non refundable fees
for downloading RFP documents**

PART B
FORMATS FOR CAPABILITY STATEMENT

Appendix	Format for
Appendix B1	General Information of the Bidder
Appendix B2	Financial Data
Appendix B3	Development Experience
Appendix B4	Operation Experience (if available)

Appendix B1

Format For GENERAL INFORMATION OF THE BIDDER

S.No	Particulars	Details
1.	Basic Information of Organisation	
a)	Name of the Firm	
b)	Status in the Project	Single Bidder/SPC Lead Consortium Member / Other Consortium Member (Strike out whichever is not applicable)
c)	Country of incorporation	
d)	Address of the corporate headquarters and its branch office(s), if any, in India	
e)	Date of incorporation and / or commencement of business	
f)	Ownership of the Organisation (List of stakeholders / members who own 10% or more stocks & their interest in the company)	1. 2. 3.
g)	List of current directors	
h)	Other key management personnel	
2.	Brief description of the Company including details of its main lines of business.	
3.	Proposed roles and responsibilities of the Company in this project	
4.	Details of individual (s) who will serve as the point of contact/communication within the Company: (a) Name (b) Designation (c) Address (d) Telephone Number (e) E-Mail Address (f) Fax Number	

Note: In case of a Consortium, the information above (1-4) should be provided for all the members of the consortium in separate sheets.

SIGNATURE

NAME
DESIGNATION

COMPANY SEAL

COMPANY
DATE

Appendix B2

Format For FINANCIAL DATA

- 1 Turnover related data (All figures in Rs Lakhs) supported by Financial Statements

Description	Past Three Financial Years		
	2007-2008	2008-2009	2009-2010
Operating Revenue			
(add) Other Revenue			
Total Turnover			

Financial Year: 1st April to 31st March

- 2 2. Net-worth related data(All figures in Rs Lakhs)

Description	As on 31.03.2010
Subscribed Share Capital	
(add) Paid up Share Capital	
(add) Free Reserves	
(Subtract) (Revaluation Reserves + Miscellaneous Expenditure+ Expenditure not written off+ Accrued Liabilities)	
Net-worth	

Note:

1. In case of Bidder being a Consortium, the above data shall be submitted for the Lead Member and all the other members.
2. The Bidder /Consortium shall submit Audited Annual Accounts of the Lead Member and each of the other members in support of the financial data
3. The above data must be submitted for all Consortium Members or Sole Bidder as the case may be duly certified by Statutory Auditor

SIGNATURE

NAME

DESIGNATION

COMPANY SEAL

COMPANY

DATE

Appendix B3

Format For

DETAILS OF EXPERIENCE

A. Experience of Development / Operation & Maintenance / Bus Terminus Supported by work orders and performance certificates from the Client

Name & Location of Experience of Operation & Maintenance / Bus Terminus	Category	Proposed Facilities	Date of Completion of the Project

B. Experience of project providing Engineering Services involving Transportation, Environmental/ urban infrastructure projects

Name & Location of Project	Date of Completion	Type of the Project	Facilities operated & maintained

Note:

1. In case of Bus stand / Bus Terminus the date of commencement of the project needs to be certified by the Statutory Auditor of the Client.
2. In case of Development Experience of the built up area, the date of commencement and completion of the project needs to be certified by the Statutory Auditor of the Company/Client to whom the work was executed.

This is to certify that (Name of the Bidder) has promoted and developed (Title and nature of the Project) with a total built-up area of sq.m. The Project was commissioned, on (Date) and (Name of the Bidder) held % of the equity capital in the Project as on the date of commissioning.

We further certify that total cost of the Project, as on the date of commissioning was Rs.

Signature of the Statutory Auditors

(With seal and registration no)

Signature

Name & Designation
Date

Appendix B4

Format For **OPERATION EXPERIENCE (if available)**

The bidder shall submit a photo copy of the ISO certification for facility Management service (FMS) sector since more than 2 years

Note:

- 1) The Applicant shall provide notarized photo copy

PART C
FORMATS FOR TECHNICAL BID SUBMISSION

Appendix	Format for
Appendix C1	Letter of Undertaking for Technical Bid
Appendix C2	Letter of Undertaking for Minimum Development Obligations
Appendix C3	Information Format for O&M Plan Submission

Format For
LETTER OF UNDERTAKING FOR TECHNICAL BID

Date:

The Commissioner,
Coimbatore City Municipal Corporation (CCMC)
Coimbatore-641001
Tamil Nadu,
India.

Dear Sir:

Sub: Submission of Bid Comprising, Technical and Financial Bids for Providing Facility Management Services of the Bus stand In Mettupalayam road at Coimbatore.

We hereby undertake that if the Project is awarded to us, we will meet all the obligations, as specified by CCMC in the Tender Document, the Performance Standards as specified in the RFP, payment of Annual Concession Fee as stipulated in the RFP.

We also undertake to meet the statutory requirements of the laws of Local Authority, State Government and that of the Government of India, seek all the statutory licenses from time to time as required to operate and Maintain the project for the Concession Period, pay all the statutory taxes, license fees payable to Government from time to time and any other rules and regulations of the both State and Central Government as applicable from time to time during the Concession Period

Yours faithfully,

(Signature of Authorised Signatory)

(Name, Title, Address, Date)

Appendix C2

Format For

LETTER OF UNDERTAKING FOR MINIMUM OBLIGATIONS

Date:

The Commissioner,
Coimbatore City Municipal Corporation (CCMC)
Coimbatore-641001
Tamil Nadu,
India.

Dear Sir:

Sub: Submission of Bid Comprising, Technical and Financial Bids for Providing Facility Management Services of the Bus stand In Mettupalayam road at Coimbatore.

As a part of the Bid for Development of Bus Stand at Mettupalayam road at Coimbatore, We hereby agree to Operate and Maintain the bus stand as per the requirements stipulated in the RFP for the Concession Period of 10 years. We hereby undertake that if the Project is awarded to us, we will meet requirements as specified hereunder and hereby give our compliance for the same:

Sl.	Components	Details
1.	Developments to be made by the operator (Facilities To Be Designed And Installed to facilitate O&M operations other than the infrastructure already provided)	<ol style="list-style-type: none">1. Electrical/Lighting2. Air Conditioning3. Seating Arrangements4. Signage's5. Information Systems (LCD Monitors/Audio Systems)6. Passenger Amenities7. Luggage trolleys and Lockers8. Advertisements9. CCTV for surveillance10. Security - Watch & ward11. Help desks12. Measures for implementation of Safety including Fire safety to all those inside the premises

	Project Components (Facility To Be Operated & Maintained)	<ol style="list-style-type: none"> 1. Bus bays & related facilities 2. Water supply 3. Underground Drainage 4. Storm Water Drainage 5. Solid Waste Collection, Removal & its frequency 6. Public Conveniences 7. Vehicle Parking Space 8. House keeping 9. Safety Operations including Fire Safety 10. Fish Tanks 11. Automatic Clock fitted in Clock Tower 12. Lifts 13. Wind Mill & Solar System (3.2 KVA) for availing uninterrupted Power supply for components such as fish tanks, Automatic clock fitted in the Clock Tower of the Bus Stand premises 14. Fountains in the entry 15. Disable friendly components including wheel chair, etc.,
2.	Other Obligations by Concessionaire	As and when demand arises, the concessionaire shall provide for adequate, space and support facility related to Bus stand operation, as a priority, in order to meet the needs of the project during the concession period. An office space for CCMC at no additional cost shall be provided at a later date at a mutually accepted spacing norms
3.	Development Guidelines/ Controls	As per the applicable guidelines/controls of Directorate of Town & Country Planning/ Corporation of Coimbatore any applicable guidelines/controls for the site and project area.
4.	Technical Specifications	<ul style="list-style-type: none"> • Provisions of the most recent version of the Manual of the Central Public Works Department and Tamil Nadu PWD and international codes wherever applicable • Norms, Standards and Guidelines as specified in Motor Vehicles Act
6.	Performance Standards	As per the Performance Standards specified in Section II, of the RFP and good industry practices.
7.	Environmental Norms	Mandatory Compliance of all Environmental Norms of State and Central Governments as may be applicable for the Project.
8.	Applicable Permits	Obtain and maintain at own cost all Applicable Permits, including all environmental permits, in conformity with the Applicable Laws and be in Compliance therewith.

We hereby assure you and guarantee that in future, from time to time whenever we are required to undertake or follow any specific guidelines / laws, we shall do the needful as

required to ensure that the Project and the Concessionaire comply with the legal requirements.

Yours faithfully,

(Signature of Authorised Signatory)
(Name, Title, Address, Date)

Appendix C3

Format For LETTER OF UNDERTAKING FOR O&M SUBMISSION

1. The Bidder may provide the information in the form of O&M plans, personnel's details, Operation Manual etc. As may best represent the Bidder's O & M Plan.

A . Project Appreciation	
	<ul style="list-style-type: none"> ▪ Brief description of the Bidders' understanding of the project ▪ Operation & Maintenance Plan detailing the list of activities to be performed ▪ Conformance to the requirements as specified in the RFP ▪ A detailed note on safety features proposed to be inbuilt into the project complex
B . Operation & Maintenance Plan	
	<ul style="list-style-type: none"> ▪ Service Bench marks ▪ O&M Methodology & Approach ▪ Bidders should submit their detailed plans for Operation & Maintenance along with method statements accenting on the innovative techniques proposed ▪ Organization Structure ▪ No of Personnel's to be deployed for the maintenance of the facility ▪ List of the Spaces to be exploited for advertisements along the with the innovative techniques
C . Marketing Plan	
	<ul style="list-style-type: none"> 1) Marketing Plan <ul style="list-style-type: none"> ◦ Office Space Renting ◦ Retail Space Renting
D. Details on Key Personnel proposed to be employed their qualification and capabilities	

2. Bidder will be required to make necessary presentation if required by CCMC.
3. The Bidder should also furnish the following as part of their Concept Plan for the Project.

A. Project Appreciation:

Under this item, the Bidders should provide a brief description of their understanding of the Project.

B. Resource Allocation

The Bidders should provide the plan for resource allocation for the Project viz. plant and equipment to be deployed, personnel at site etc.

PART D
FORMAT FOR FINANCIAL BID SUBMISSION

Appendices	Format for
Appendix D1	Financial Bid & Letter

Format For
FINANCIAL BID

We agree to pay a concession fee of IN Rs. _____ (Indian Rupees _____ only) per annum in the first year. The minimum concession fee shall be increased on an annually compounded basis by five percent (5%) in subsequent years till the end of the Concession Period.

(Signature of Authorised Signatory)
(Name, Title, Address, Date)

SECTION- IV
DRAFT CONCESSION AGREEMENT

DRAFT CONCESSION AGREEMENT FOR
Providing Facility Management Services of the Bus stand In
Mettupalayam road at Coimbatore.

THIS AUTHORISATION AGREEMENT (herein after also referred to as "Agreement") is made on this the _____ day of _____ 2010 at Coimbatore

By and among being represented herein by ----- (authorized in this behalf) (hereinafter referred to as the "Grantor" which expression shall, unless it be repugnant to the context or meaning thereof, include its subsidiaries, successors and assigns) of the FIRST PART

And

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

Whereas.,

I. CCMC in Coimbatore region has constructed the Bus Stand along Mettupalayam Road, Coimbatore to meet the requirements of north bound buses operations in Coimbatore. In this event, CCMC to provide better quality services has decided to implement a Project comprising O & M of the Bus Stand under PPP basis.

II. In order to select the private sector agency that would implement the said Project, CCMC undertook a transparent competitive bidding process and issued a Request for Proposal dated ----- inviting Bids including the Capability Documents, Technical and Financial bids for the said Project and selected----- as the Preferred Bidder and issued a Letter of Intent (LoI) reference no. ____dated _____to the Concessionaire

III. The Concessionaire acknowledges and confirms that it has undertaken a due diligence exercise of all aspects of the Project including its technical and financial viability, legal due diligence, and on the basis of its independent satisfaction hereby accepts the Concession and agrees to implement the Project at its own cost, risk and expense in accordance with the terms and conditions of this Agreement.

IV. Following the issuance of LoI, the Preferred Bidder in accordance with the terms and conditions as specified in the RFP Section - I, as being the pre-condition to the execution of this Agreement, has made a non-refundable, irrevocable and unconditional payment of Bank Guarantee No..... dated from Bank, Branch, operable in Coimbatore in favour of "**The Commissioner, Coimbatore City Municipal Corporation (CCMC)**" for an amount of Rs. 50.00 Lakhs (Rupees Fifty Lakhs only) as Performance Security and has remitted the first year Concession Fee of Rs. In light of the compliance by the Concessionaire of the pre-conditions to the execution of the Concession Agreement, CCMC has agreed to enter into this Concession Agreement vesting the rights for the implementation of the Project with the Concessionaire on the terms, conditions and covenants hereinafter set forth in this Agreement.

V. The Preferred Bidder has undertaken to ensure that he shall duly discharge its obligations under this Agreement and implement the Project and agrees to undertake and comply with the terms and conditions hereof as binding terms.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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ARTICLE 1 DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions

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

- a. "Accounting Year" means the financial year commencing on 1st April in each year and ending on 31st March in the next 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 signing of Concession Agreement and Land Lease Deed to the 31st March of next calendar year. In the last year of subsistence of this Agreement, it means the period from 1st April to the Transfer Date; or the date on which the agreement ceases to be in force, whichever ever is earlier.
- b. "Affiliate" or Associate means, in relation to the member of the Consortium, a person who is a control, controlled by, or is under the common control with such member of the Consortium (the "Associate"). As used in this definition, the expression "control" means, with respect to a person, which is a company or corporation, the ownership, directly or indirectly, of more than 51 % (fifty one percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
- c. "Agreement" means this Agreement as of date hereof, including recitals, Appendices and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof;
- d. "Appendix" means any of the schedules, supplements or documents, appended to this Agreement;
- e. "Applicable Laws" means any statute, law, regulation, ordinance, notification, rule, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of GOI, GOTN or by any Government Authority or instrumentality thereof, as may be in effect on the date of this Agreement and during the subsistence thereof;
- f. "Applicable Permits" means any or all permissions, clearances, Concessions, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes contemplated by this Agreement (attached hereto as *Appendix- 9*);
- g. "CCMC" or "Grantor" means COIMBATORE CITY MUNICIPAL CORPORATION and its subsidiaries, and assigns;
- h. "Annual Concession Fee" means the Annual Concession Fee payable by the Preferred Bidder to CCMC in accordance with the provisions hereof in consideration for the grant of the Authorization.
- i. "Annual Lease Rental" means the annual lease rental payable by the Concessionaire to the Grantor pursuant to the Land Lease Deed. This Annual Lease Rentals shall be paid as part of the Annual Concession Fee.
- j. "Concession Period" shall have the meaning specified in Section 2.2;

- k. "Concessionaire" means M/s (XYZ) and shall include its successors and permitted assignees;
- l. "Concession" shall have the meaning set forth in Section 2.1;
- m. "Bank" means any Nationalized/Scheduled (Excluding Cooperative) Banks having operations in Coimbatore, Tamil Nadu.
- n. "Bid Security" means the irrevocable unconditional Bank Guarantee of Rs.5.00 Lakhs (Rupees Five Lakhs only) drawn in the name of The Commissioner, Coimbatore City Municipal Corporation (CCMC) from Bank and operable at Coimbatore, provided by the Preferred Bidder to the Grantor .
- o. "Business Day" means a day on which banks are generally open in Coimbatore for transaction of normal banking business;
- p. "Commercial Operations" means the occupancy and use by third parties of the relevant Project Facility, pursuant to Contractual Arrangements with the Concessionaire User Charges;
- q. "Commercial Operation Date" or "COD" means the date on which the lease agreement is signed with the leases for operation of the Project Facilities;
- r. "Compliance Date" means the date upon which this Agreement becomes unconditional and effective;
- s. "Condition Precedent" means the conditions set out in Article 3 hereof;
- t. "Consortium" or "Preferred Bidder" means the consortium that has been selected as the Preferred Bidder through the competitive bidding process, consisting of the following members: (i) XXXX (ii) YYYY (iii) ZZZZ , who have entered into the Memorandum of Understanding dated —— (attached hereto as *Appendix 2*);
- u. "Lessees" means a reputed Person with whom the Concessionaire has entered into/ may enter into a contract relating to the operation of the commercial facilities and subcontractors, including contractors for management, and maintenance, service providers, suppliers and/or any other contractors and sub-contractors, manufacturers or suppliers of works or part thereof, as the context may admit or require;
- v. "Contractual Arrangements" shall mean and include all and any allotment, leasing, licensing, tenancy, franchising and similar arrangements that may be entered into by the Concessionaire, in accordance with and subject always to the terms and conditions of this Concession Agreement, with such Persons selected by it for enabling such Persons to occupy or use or market the whole or part of the Bus Stand Facilities including built-up commercial areas/spaces, car parking areas and infrastructure facilities. *Provided that* the Concessionaire cannot sell title of the Site or the Bus Stand Facilities;
- w. "Contractual Counter-Parties" shall have the meaning specified in Section 6.3.2 (b)
- x. "Operation & Maintenance Plan" or "O&M Plan" means the detailed plan outlining the means of operations for the Project, as indicated in the Article-6
- y. "O&M Plan" means the Master plans, backup technical information required for the operation & Maintenance of the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by

the Concessionaire from time to time for approval in accordance with the provisions of this Agreement;

z. "Development Controls" means the Applicable Laws, guidelines and controls for operation & Maintenance of the Project Facilities set forth in Appendix-4 ;

aa. "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/directive issued by the CCMC to the Concessionaire and any modification, extension or replacement thereof from time to time in force.

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

cc. "Easement" means all easements, reservations, rights-of-way, utilities and other similar rights as to the use of real property, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project;

dd. "Encumbrances" means any encumbrance such as a Mortgage, Charge, Pledge, lien, hypothecation, Security Interest, assignment, privilege or priority of any kind having the effect of security or other obligation or restriction and shall include physical or legal obstructions or encroachments on the whole or any part of the Site or Third Party claims or rights of any kind attaching to the whole or any part of the Site.

ee. "Event of Default" means an Concessionaire Event of Default or a Grantor Event of Default or both, as the context may require or admit;

ff. "Execution Date" or "Date of Execution" means the date on which this Concession Agreement is signed by the Parties.

gg. "Escrow Account" means the bank account in the Escrow Bank into which all the revenue inflows and outflows of the Concessionaire that accrue or arise under, in connection with or pursuant to the Project (including amounts received from User Charges) shall be credited and debited, as the case may be, in accordance with the provisions hereof and of the Escrow Agreement and shall include the sub-accounts of such account

hh. "Escrow Agreement" means the agreement to be entered into by and among the Grantor, the Concessionaire, the Lenders/Lenders' representative, and the Escrow Bank, in relation to the opening and operation of the Escrow Account;

ii. "Escrow Bank" means the bank, mutually agreed upon by the Grantor, the Concessionaire and the Lenders/Lenders' representative, for the purpose of opening the Escrow Account;

jj. "Financial Assistance" means the aggregate amounts provided by way of loan, advances, guarantees or otherwise by the Lenders to the Concessionaire for the implementation of the Project and shall include all related financial charges, fees and expenses of all kinds under the Financing Documents relating to the Project;

kk. "Financial Closure" means the date on which the Financing Documents providing for Financial Assistance by the Lenders have become effective and the Concessionaire has access to such Financial Assistance;

ll. "Financing Documents" means, collectively, the documents executed in favour of or entered into with the Lenders, by the Concessionaire in respect of the Financial Assistance, including loan agreements, all the security documents (such as mortgage deed, hypothecation deed

etc.) that create security in respect of the Financial Assistance, notes, indentures, or arrangements, guarantees and acceptable letters of credit and other agreements evidencing any obligation of the Concessionaire and other necessary undertakings required pursuant to the respective terms thereof, relating to or securing the repayment of the Financial Assistance or any part thereof (including refinancing) provided by the Lenders to the Concessionaire for the Project;

mm. "Force Majeure Event" shall have the meaning ascribed to it in Section 14.1 of this Agreement;

nn. "Gross Annual Turnover" or "Revenue" means the pre-taxation gross revenues of the Concessionaire for any period including all amounts received (or which would have been received) from the User Charges and all other net amounts which fall (or would fall) to be credited to the profit and loss account of the Concessionaire for the Accounting Year in which the relevant period falls excluding (i) insurance proceeds except insurance indemnification for loss of revenue; and (ii) payments and/or monies collected by the Concessionaire for and on behalf of any Government Authorities under Applicable Laws. It is clarified that the amounts payable to the Grantor under this Agreement shall not be deducted from Revenue/Gross Annual Turn Over

oo. "GoTN" means Government of Tamil Nadu

pp. "Gol" means the Government of India;

qq. "Government Authority" means Gol, GoTN or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project, the Project Assets and the Works or any part thereof or the performance of all or any of the services, obligations or covenants of Concessionaire under or pursuant to this Agreement or any portion thereof;

rr. "Good Industry Practice" means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of engineering, procurement, construction, equipment, safety, operation and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced construction contractor and/or operator, in a Project of the type and size similar to the Project;

ss. "Independent Auditor" means the Independent Auditor that may be appointed as referred to in Section 8.3 (ii) to audit the accounts and records of the Concessionaire to determine the Revenue of the concessionaire for the purpose of revenue sharing.

tt. "CCMC" means COIMBATORE CITY MUNICIPAL CORPORATION

uu. "Land Lease Deed" means the lease deed to be executed between the Grantor and the Concessionaire along with the Concession Agreement, substantially in the form set out in *Appendix 8*, pursuant to which the Grantor shall lease to the Concessionaire the land comprising the Project Site, vesting the Concessionaire with Possession and all rights relating thereto for a period co-terminus with the Concession Period;

vv. "Lenders" means the scheduled banks and/or financial institutions and/or NBFC's, providing long term loan to the Concessionaire for the purposes of enabling implementation of this Concession Agreement and whose identity has been notified to Grantor by the Concessionaire from time to time. It is clarified that "Lenders" for the purposes of this

Agreement, shall not include promoter entity or affiliates of the Preferred Bidder or the Concessionaire.

ww. "Material Adverse Effect" means circumstances which may or do (i) render any right vested in a Party by the terms of this Agreement ineffective or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Agreement or the legality, validity, binding nature or enforceability of this Agreement;

xx. "Material Breach" means a breach of the obligations, terms and conditions of this Agreement or covenants by a Party, which materially and substantially affects the performance of the transactions contemplated by this Agreement or/ has a Material Adverse Effect.

yy. "Nodal Officer" means the Officer/Engineer of CCMC nominated as the "nodal officer" under Section 7.1 of this Agreement.

zz. "Operation" shall have the meaning as described in section 6.3.

aaa. "Operations Period" means, the period commencing from COD and ending on the expiry or prior termination of the Concession Period and in relation to the Project means the period commencing from issuance of the Completion Certificate and ending on the expiry of prior termination of the Concession Period;

bbb. "Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity

ccc. "Performance Security" shall mean the irrevocable and unconditional bank guarantee of Rs 1.0 Crore (Rupees ONE Crore only) provided by the Preferred Bidder from a Nationalized /Scheduled (Excluding Cooperative Banks) Bank having a branch at Coimbatore, substantially in the format set forth in the RFP Document as security for the performance of its obligations in respect of the Project.

ddd. "Performance Standards" or "Maintenance and Performance Standards" means the performance parameters for the operation and maintenance of the Project set out in *Appendix 4*;

eee. "Preferred Bidder" means the Highest Evaluated Bidder/Bidding Consortium, on whom Lol has been placed by the Grantor.

fff. "Prohibited Activities" means the activities not permitted under the Development Control Regulations of Corporation of Coimbatore or as detailed out by Directorate of Town and Country Planning, Government of Tamil Nadu or any other regulating agency/body for the Project Site.

ggg. "Project" or "OPERATION & MAINTENANCE OF BUS STAND AT METTUPALAYAM ROAD" means, subject to the provisions of this Agreement, the (i) financing, construction, commissioning, marketing, operation, management and transfer of the Project Facilities and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period; (ii) the demanding, charging, collecting, retaining and appropriating and revision of User Charges by the Concessionaire in relation to the Project Facilities and (iii) the transfer of the

Project Facilities by the Concessionaire to Grantor or its nominated agency at the end of the Concession Period.

hhh. "Project Assets" shall mean and comprise of all tangible and intangible assets relating respectively to the Project, as the case may be excluding land but including and not limited to (a) rights over the Site in the form of license, right-of-way or otherwise; (b) each of tangible assets comprising the Project Facilities such as pavements, works, subways, drainage facilities, sign boards, equipments, electrical works for lighting, air-conditioning and telephone and communication equipments; (c) financial assets, such as receivables, cash and investments; (d) rights under the Project Agreements and other agreements relating to the Project entered into by the Concessionaire and (e) proceeds from insurance policies taken by the Concessionaire in relation to the Project Facilities.

iii. "Project Contracts" means collectively this Agreement, the Land Lease Deed, Facility Management Contract and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project;

jjj. "Project Facilities" means collectively: (i) the Bus Stand and (ii) the Commercial Facilities which would include: (1) areas in the First & Second Floors, shops around the kiosks (2) infrastructure facilities and services, and (3) external areas within the Project Site like parking spaces, open area and landscaped areas, and (4) all types of works that the Concessionaire is authorized to operate and maintain on the Project Site (*Appendix-3*) "Project Facility" can refer to any one of them, as the context may require

kkk. "Project Site" or "Site" means the site located on Survey No.158/a, 159/a, approximately measuring an area of 2.74 acres along the Mettupalayam Road within the vicinity of Directorate of Town and Country Planning, Tamil Nadu along with the rights (excluding land title) in relation thereto, the Easement rights, right of way, appurtenances, the approaches within the said site and other areas on, into, at, under, over or through which the Project or any other construction relating thereto is situated, located, passes through, sits upon or overlies, more particularly delineated in *Appendix-6*

III. "Proposal" or "Bid" means the entire set of technical, financial, qualifying and other documents that comprise the proposal submitted by the Preferred Bidder in response to the RFP.

mmm. "Request for Proposal" or "RFP" means the Request for Proposal dated issued by the Grantor as part of the competitive bidding process inviting proposals from the Bidders for implementing the Project on a PPP basis, and includes any addendum / clarifications issued in respect thereof by the Grantor;

nnn. "Right of First Refusal" shall have the meaning specified in Section 2.3 of this Agreement.

ooo. "Security Interest" means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;

- ppp. "Specifications and Standards" means collectively or singularly, as the context may admit or require, the Development Controls, the Technical Specifications and the Performance Standards;
- qqq. "Tax" means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions including property tax, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levies of any nature whatsoever, whether by Gol, the Grantor or Government Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it;
- rrr. "Technical Specifications" or "Specifications & Standards" mean the technical specifications for the construction and implementation of the Project as set forth in *Appendix 4*
- sss. "Termination" means prior termination of this Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;
- ttt. "Termination Period" shall have the meaning specified in Section 16.1
- uuu. "Tests" means the tests to be carried out pursuant to this Agreement and include the test to determine the completion of the Construction Works and certification thereof by the Grantor/Consultant prior to Commercial Operations;
- vvv. "Third Party" means any Person, real or legal, or entity other than the Parties to this Agreement;
- www. "Transfer Date" means either: (i) the date of expiry of Concession Period, including extension thereto or (ii) in the event of an earlier termination thereof, the date on which the Project Facilities are transferred to the Concessionaire in accordance with the provisions of Article 16;
- xxx. "Transaction Documents" means collectively the Project Contracts and the Financing Documents;
- yyy. "Vacant Possession" means delivery of possession of the land comprising the Site, free from all Encumbrances, restrictions or impediments and the grant of all Easements and all other rights appurtenant or in relation thereto;
- zzz. "Vesting Certificate" shall have the meaning specified in Section 16.5
- aaaa. "Year" means a period of 12 consecutive calendar months.
- bbbb. "Works" mean the works under and in accordance with the provisions of this Agreement relating to the operation, management and maintenance, rectifying and remedying of defects therein (the "O&M Works"), collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project/Project Facilities and any other permanent, temporary or urgent works required hereunder.

Section 1.2 Interpretations

In this Agreement, unless the context otherwise requires,

- (a) reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- (b) Words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender;
- (c) The table of contents and headings are for convenience of reference only, and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- (d) Terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the terms and words defined in the Appendices and used therein shall have the meaning ascribed thereto in the Appendices;
- (e) words "include" and "including" are to be construed without limitation;
- (f) Reference to any point in time shall mean a reference to that point according to Indian Standard Time;
- (g) Reference to day shall mean a reference to a calendar day; any reference to month shall mean a reference to a calendar month;
- (h) Appendices to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (i) reference to this Agreement or any other agreement, deed, instrument, Concession or document of any description shall be construed as reference to such agreement, deed, instrument, Concession or other document as the same may from time to time be amended, varied, supplemented, modified, notated or suspended;
- (j) references to recitals, articles, sections, sub-sections, appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, articles, sections, sub-sections, appendices of or to this Agreement;
- (k) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a Business day, then the period shall run until the end of the next Business day;
- (l) references to any date, period or Milestone Dates shall mean and include such date, period or Milestone Date as may be extended pursuant to this Agreement or by mutual consent of the Parties hereto;
- (m) references to "construction" include, unless the context otherwise requires, investigation, design, development of Site, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" shall be construed accordingly;
- (n) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, Concession proposal, communication, information or report or determination by any Party and/or unless otherwise specified, such notice, endorsement, consent, approval, certificate,

agreement, Concession proposal, communication, information or report or determination shall be in writing under the hand of the duly authorized representative of such Party and/or the Independent Engineer/ Consultant/Expert in this behalf;

- (o) unless otherwise provided, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement;
- (p) any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English meaning;
- (q) the damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre- estimated loss and damage/liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

Section 1.3 Measurements and Arithmetic Conventions

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

Section 1.4 Ambiguities within Agreement

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

- a. Between two Articles of this Agreement, the provisions of specific Article relevant to the issue under consideration shall prevail over those in the other Article;
- b. Between the provisions of this Agreement and the Appendices, the Agreement shall prevail, save and except as expressly provided in the Agreement or the Appendices;
- c. Between the written description on the drawings and detailed engineering and the Specifications and Standards, the latter shall prevail; and
- d. Between any value written in numerical and that in words, the latter shall prevail.

ARTICLE 2 CONCESSION

Section 2.1 Grant of Concession

a. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Grantor hereby grants to the Concessionaire, and the Concessionaire hereby accepts the exclusive right, authority and Concession to undertake, during the Concession Period, the operation and maintenance of the Project Facilities at the Site and exercise and enjoy the rights, powers, privileges, authorisations and entitlements as set forth in this Agreement (collectively the "Concession").

b. The Concession granted herein includes, subject to the provisions hereof, the exclusive right of the Concessionaire to:

- i. Implement the Project;
- ii. Finance, market, manage, administer, operate and maintain the Project Facilities;
- iii. Determine, demand, revise, charge, collect, retain and appropriate User Charges;
- iv. Enter into Contractual Arrangements in relation to the Project Facilities
- v. Appoint Contractors/sub-contractors for discharging any of its obligations under this Agreement, carrying on its business of managing, marketing, operating and/or maintaining the Project;

- vi. exercise all rights and remedies available under the Applicable Laws to recover the User Charges in compliance with the requirements of the Applicable Laws, terms of Applicable Permits or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf ; and
 - vii. Carry out such other activities incidental to the foregoing or proper or desirable for the safe, efficient and economic implementation and operations of the Project.
- c. The Concessionaire cannot sell title of the Site or any of the whole or part of the Project Facilities and it shall, on the end date of Concession Period or earlier termination as per terms and conditions of this Agreement, as the case may be, transfer and hand over the Project Facilities and Project Assets to the Grantor or its nominated agency in accordance with the provisions hereof.
- d. The Concessionaire shall not part with or create any Encumbrances on the whole or any part of the Project Site save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors, to enter into Contractual Arrangements or to assign its rights here under and create a Security Interest in favour of the Lenders in accordance with the provisions of this Agreement..
- e. Appoint agents on its behalf to assist the Concessionaire in fulfilling its obligations in relation the Project.
- f. Exercise and/or enjoy the rights, powers, privileges, Concessions and entitlements as set forth in this Agreement.

Section 2.2 Concession Period

The Concession Period shall commence from the date of signing of the Concession Agreement and shall be valid, for a period of 10 (TEN) years from such date or the earlier termination or any extension of this Agreement in accordance with the terms and conditions hereof, during which the Concessionaire is authorized to operate the Project in accordance with the provisions of this Agreement.

Section 2.3 Right of First Refusal for Additional Period

Subject to and in accordance with provisions of this Agreement, and upon completion of the Concession Period by efflux of time, the Grantor shall, in the event it determines to undertake the continued management, operation and maintenance of the Project Facilities through PPP structure, provide the Concessionaire with the right to match and accept the price and terms of the highest Bid / prospective Preferred Bidder, that is obtained by the Grantor through a competitive Bidding Process for a fresh term of Concession of additional 2 Years, ("Right of First Refusal"). If the Concessionaire matches and accepts the price and terms of the highest Bid / prospective Preferred Bidder, then it shall be awarded the Concession for an additional period of 2 years and if it fails to do so, then the said Concession would be awarded to the prospective Preferred Bidder.

Further, this Agreement shall automatically terminate upon expiry of the Concession Period by efflux of time, or termination in accordance with the provisions of Article 16 of this Agreement.

ARTICLE 3 CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent

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

Section 3.2 Conditions Precedent for Grantor

The obligations of the Concessionaire here under are subject to the satisfaction in full of the following Conditions Precedent for the Grantor: The Grantor shall have:

- (a) handed over to the Concessionaire the Bus Stand Complex on "as is where is basis" and executed Land Lease Deed substantially in the form attached hereto in Appendix-8 in accordance with the terms of this Agreement;
- (b) issued necessary notification/government orders, if required, exempting the Concessionaire from the applicability of the relevant Land Reforms Act or any other land holding ceiling under Applicable Law in relation to the Site, which shall be handed over to the Concessionaire

Section 3.3 Conditions Precedent for Concessionaire

The obligations of the Grantor are subject to the satisfaction in full of the following Conditions Precedent for the Concessionaire. The Concessionaire shall have:

- (a) Provided Performance Security to the Authority;
- (b) Executed and procured execution of the Escrow Agreement;
- (c) made all the applications at its cost and procured the Applicable Permits set out in Appendix-9 required for commencing of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect and the Concessionaire is in compliance with the conditions of grant thereof and they are valid and effective;
- (d) provided the Grantor notarized true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- (e) achieved Financial Closure and provided notarized true copies of the Financing Documents to the Grantor along with soft copies;
- (f) prepared, finalized and procured approval of the Grantor for the O&M Plan in accordance with the provisions of Section 6.1 hereof;
- (g) procured consent for establishment /consent for operation etc from the State/Central Agencies/Authorities , as may be required under Applicable Law, after having completed preparation of the O&M Plan as required
- (h) confirmed in writing that all the representations and warranties of the Preferred Bidder/Concessionaire set forth in the Proposal and forming part of this Agreement are true and correct as on the date of execution of this Agreement and the Compliance Date

- (i) Provided that upon request in writing by the Concessionaire, the Grantor may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Section 3.3.

Section 3.4 Obligation to Satisfy Conditions Precedent

- (a) Each Party shall make all reasonable endeavors at its respective cost and expense to comply in full with the Conditions Precedent relating to it within a period of 180 (one hundred and eighty) days from the date of execution of this Agreement or any extension Mutually agreed to between the Parties.
- (b) The date within such 180 (one hundred and eighty) days when the Grantor and the Concessionaire fulfill their respective Conditions Precedent (unless Grantor waives the same for the Concessionaire) shall be the date from which the obligations of the Parties hereunder shall commence (the "Compliance Date").

Section 3.5 Non-fulfillment of Conditions Precedent

- (a) In the event the Conditions Precedent for a Party have not been fulfilled within the stipulated time and the Grantor has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and CCMC shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it.
- (b) In the event that possession of the Bus Stand Complex has been delivered to the Concessionaire prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement, the Bus Stand Complex shall immediately revert to the Grantor, free and clear from any Encumbrances and along with all Easementary Rights, irrespective of any outstanding mutual claims between the Parties.
- (c) In the event this Agreement is terminated due to non-fulfillment of the Concessionaire's Conditions Precedent and the same is not due to Grantor's default, Grantor shall retain the Upfront Annual Concession Fee and forfeit Performance Security as damages.
- (d) In the event this Agreement is terminated due to non fulfillment of the Grantor's Conditions Precedent, the Grantor shall upon such termination return/refund in full the Performance Security along with Upfront Annual Concession Fee received from the Concessionaire, to the Concessionaire without any interest, provided there are no outstanding claims of the Grantor on the Concessionaire unless the Grantor's failure to fulfill its Conditions Precedent is a result of the Concessionaire's default.

ARTICLE 4 BUS STAND COMPLEX

Section 4.1 Lease of Bus Stand Complex

- (a) The Grantor shall on the date of execution of this Agreement sign the Land Lease Deed, thereby granting the Concessionaire access to the Bus Stand Complex.
- (b) The Parties shall, within 15 (fifteen) days of the Grantor's notice in this behalf to the Concessionaire prior to the date of signing of Concession Agreement along with Land Lease Deed, carry out through their duly authorised representative, a joint inspection and verification of all the structures, land, buildings and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Concessionaire in such joint inspection shall be mandatory. The Concessionaire shall carry out at its cost a due diligence of all encumbrances at, on or under the Bus stand Complex and notify the same to the Grantor, which shall take prompt action for removing the same.
- (c) In consideration of the Project the Concessionaire and the payment herein reserved and of other covenants on the part of the Concessionaire, the Grantor shall, upon signing of the Lease Deed, be deemed to have handed lease and delivered to the Concessionaire on an "as is where is basis" the possession of all the Bus Stand complex and its rights, free from Encumbrances, and together with the Easementary Rights and with the full and free right and liberty of way and passage and other rights in relation thereto and the right, authority and license to implement the Project thereat in accordance with the provisions of this Agreement, under a valid and binding Land Lease Deed, in the form attached hereto in Appendix-8, for a period that shall be co-terminus with the Concession Period.
- (d) In consideration for the Lease of the Site, the Concessionaire shall pay the Grantor, the Lease Rental as par of the Upfront annual concession fee.

Section 4.2 Sub- Lease of Project Site

Section 4.2.1 No Sub- Lease of Land

- (a) The Concessionaire shall not sub-lease the whole or any part of the land comprising the Project Site, leased to it by Grantor under the Land Lease Deed, to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute an Concessionaire Event of Default that shall entitle the Grantor to terminate this Agreement in accordance with the provisions of Article 16 hereof.

Section 4.2.2 Sub- Lease of Built-up Area/Space in the Bus Stand Complex

- (a) The Concessionaire shall have the right and title to the Project Facilities and it shall have the right, subject to the provisions of this Agreement, to enter into Contractual Arrangements with third parties in relation to of the whole or any part of the Built-up Area or Space in the Bus stand complex provided the terms and conditions of such Contractual Arrangements shall not be inconsistent or contrary to the provisions of this Agreement and that such Contractual Arrangements shall be coterminous with this Concession Agreement.

Section 4.3 Possession and Use of Bus Stand Complex

- I. Upon the Concessionaire observing and performing its obligations, the several covenants, conditions and agreements herein contained and on the part of the Concessionaire to be observed and performed, the Concessionaire shall remain in peaceful possession and enjoyment of the Bus Stand Complex during the Concession Period.

- II. The Concessionaire shall not without prior written consent or approval of the Grantor use the Bus Stand Complex for any purpose other than for the purposes of undertaking the Project in accordance with the provisions of this Agreement and purposes incidental thereto or as may otherwise be approved in writing by the Grantor. The Concessionaire acknowledges, accepts, confirms and agrees that this is an essential condition of this Agreement.
- III. The Concessionaire shall maintain vigil over the Bus Stand Complex during the Concession Period to prevent encroachments or occupation of the Site and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform the Grantor thereof.
- IV. The Concessionaire shall shift the utilities at, on, over or under the ground at the Project Site to an appropriate location or alignment. Such shifting of the utilities shall be carried out only if and to the extent according to the Grantor the non- shifting thereof materially obstructs the implementation of the Project. The cost of such shifting shall be borne by the Concessionaire with a right to seek set off from the owner of such utilities as may be available under the Applicable Laws or contract. In the case of any delays in shifting of the utilities due and attributable to the owner of the utility or the Grantor and provided such delay is not due to any default or negligence on the part of the Concessionaire or Persons claiming through or under it, there shall be a commensurate extension of the Concession Period as certified by CCMC.
- V. The Concessionaire shall promptly use the site for the Project or remove at its cost from the Site in accordance with Good Industry Practice all surplus structures at, on, over or under the ground at the Project Site, construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris and dispose them in conformity with the Applicable Laws and Applicable Permits.
- VI. The Concessionaire shall be solely liable for all hazardous, dangerous and other goods, materials, creatures and substances brought, kept, stored or handled at the Site.

Section 4.4 Access to Site

- (a) Following the delivery of Bus Stand Complex "as is where is basis" by the Grantor to the Concessionaire. The Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site to,
- The Grantor, or the Independent Engineer/Consultant, or the Experts and their duly authorised personnel and representatives so as to carry out their respective functions and obligations hereunder.
 - The representatives of or Persons duly authorised by the relevant Government Authority concerned with safety, security or environmental protection to inspect the Bus Stand complex carry out their respective duties and functions and to investigate any other matter within their authority.
- (b) The Persons obtaining access to the Site shall conduct their activities and operations at their own risk, cost and expense and in such manner so as to cause minimum disruption to the operation and maintenance of the Project consistent with the purpose of the Person gaining such access.

Section 4.5 Information about Project Site

- (a) The Concessionaire acknowledges that before entering into this Agreement, they had sufficient opportunity to investigate the Site, and

- accepts full responsibility for its condition (including but not limited to its geological condition, any toxic contamination, the adequacy of the road connectivity links to the Site and the availability or unavailability of adequate supplies of water and electricity); and
- agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site (or part thereof) or for any other reason pertaining to the Site.

Section 4.6 Grantor's Property at Project Site

- (a) All articles of value or antiquity found on the Project Site shall be the property of the Grantor. The Concessionaire shall take reasonable precautions to prevent its labour and personnel and that of its Contractors from removing or damaging any such article or thing. The Concessionaire shall immediately upon discovery of such article or thing, inform the Grantor, which may issue instructions for dealing therewith

Section 4.7 Reservation

- (a) The Grantor accepts and reserves unto itself all the mines, minerals, coals, gold, etc. in, over, on or under the Site and full right and power at all times to undertake, with reasonable prior notice to the Concessionaire, all acts and things which may be necessary for searching, removing, appropriating or enjoying the same without providing or leaving any vertical support for the surface of the land at the Site or for any structure or building thereat; provided always the Grantor shall be obligated to pay reasonable compensation to the Concessionaire for all damage directly resulting from the exercise of the rights hereby reserved or any of them.

ARTICLE 5 ADDITIONAL OBLIGATION OF PARTIES

Section 5.1 Obligations of Concessionaire

Section 5.1.1 Shareholding Lock-In

The Preferred Bidder/Consortium, as a whole, shall hold a minimum 51% of the paid-up equity share capital at all times for a period that shall not be less than TEN (10) years from the date of signing of this Agreement. [In case of Preferred Bidder being a Consortium, the Lead Member (M/s_XXXX) shall hold at least 26 % of the paid-up equity share capital till such time that shall not be less than TEN (10) years from the date of signing of this Agreement and each of the other constituent member of the Consortium shall hold at least 10% of the paid-up equity share capital till such time that shall not be less than TEN (10) years from the date hereof. No change in composition of the Preferred Bidder/Consortium shall be made for a period of TEN (10) years (the "Lock-in Period") from the date hereof]. Any transfer of such share capital during the concession period shall require the prior written approval of the Grantor, which shall not be unreasonably denied. Provided, nothing contained in this sub-section shall preclude or prevent pledge of the Preferred Bidder's/Consortium's shares in favour of Lenders as security for the Financial Assistance and enforcement thereof in accordance with this Agreement and/or the Financing Documents.

Section 5.1.2 Funding Obligation

The Concessionaire shall ensure that he has, at all times, sufficient funds to ensure the due discharge of its payment obligations to the Grantor under this Agreement. In the event the Concessionaire is not able to discharge its payment obligations to the Grantor under this Agreement on account of lack of funds, the Grantor shall have the right to claim and recover from the concessionaire, who shall have the obligation to pay, all such amounts that are due to the Grantor under this Agreement.

Section 5.1.3 Obligations in Respect of the Concessionaire

The Preferred Bidder shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of the Concessionaire's activities such that the experience and expertise becomes available to the Concessionaire on an on-going basis:

- i. Preparation of Operation & Maintenance plan
- ii. Arranging the financing for the Project, including mobilization of debt and equity;
- iii. Procurement of Applicable Permits for operating & Maintaining the Project;
- iv. Execution of Project management, Operation/or and Maintenance of Project/Project Assets.
- v. Timely implementation of the Project in accordance with the provisions of this Agreement, including the Specifications and Standards, the Applicable Laws, the terms of the Applicable Permits and Good Industry Practice.
- vi. Marketing of the Project;
- vii. Compliance with the provisions of this Agreement relating to liability and indemnification; and Implementation of measures for safety, security and protection of the works, property, life and materials at the Site and the environment.
- viii. Bank Guarantee towards Performance Security within 30 days from the date of issue of Lol.

Section 5.2 Additional Obligations of the Concessionaire

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

Section 5.2.1 Project Implementation

- (a) The Concessionaire shall Operate & Maintain the Project Facilities in accordance with the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practices. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- (b) Concessionaire shall plan, finance, market, administer, manage and operate and maintain the Project Facilities, including without limitation, the necessary infrastructure, services and facilities, during the Concession Period in accordance with the provisions hereof, including the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practices. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- (c) In performing the Project, the Concessionaire shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including environmental laws, and the terms of Applicable Permits and the Concessionaire shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Grantor from and against all liabilities and costs in this behalf.
- (d) The Concessionaire may appoint Contractors to perform its obligations under this Agreement in accordance with Section 5.1.4 below; provided that the Concessionaire shall ensure that the Contractors function in accordance with the terms and conditions of this Agreement and do not violate or cause of breach of this Agreement. The Concessionaire shall indemnify and keep indemnified the Grantor from and against all liabilities and costs in this behalf in accordance with Section 13.2 below.

Section 5.2.2 Applicable Permits

- (a) The Concessionaire shall obtain and maintain at its cost all Applicable Permits, including all environmental permits, in conformity with the Applicable Laws and be in compliance therewith. Subject to the Concessionaire complying with the Applicable Laws and Good Industry Practice, the Grantor shall facilitate the securing of such consents, clearances and Applicable Permits.
- (b) The Concessionaire shall expeditiously make the necessary applications to the relevant Government Authorities for all Applicable Permits to meet the stipulated time frames in this Agreement, for completion of the Works, to achieve various performance milestones, if any, and to perform all of its other obligations under this Agreement. The Concessionaire shall supply the appropriate particulars and details to such Government Authorities as may be necessary to confirm that the Concessionaire fulfills the eligibility criteria to enable such authority reasonably to consider the request for the grant of the relevant Applicable Permits and, following the grant of any such Applicable Permits, the Concessionaire shall maintain such Applicable Permits in full force and effect so long as it is necessary in order for the Concessionaire to perform its obligations hereunder

Section 5.2.3 Personnel and Labour

- (a) The Concessionaire shall
 - (i) be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and

costs incidental thereto, health, hygiene, safety etc. and all taxes, charges, levies, duties payable under Applicable Laws arising from the respective terms and conditions of employment of all labour and personnel employed by the Concessionaire, its Contractors, agents and representatives on or in connection with the Works or the Project Site under or through whatever legal relationship;

- (ii) make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement and be the principal employer in respect of such labour and personnel. The Concessionaire shall be solely responsible and liable for compliance with all Applicable Laws, including labour (without limitation, The Employee Provident Fund & Misc. Provisions Act 1952, Employees State Insurance Act 1948, Workmen's Compensation Act 1923) and local laws, pertaining to the employment of labour, staff and personnel by it and its Contractors for implementing the Project.
- (iii) The employees of the Concessionaire and its Contractors shall at all times be the responsibility of the Concessionaire and the Grantor shall not be liable in any manner whatsoever in respect of such employees and their employment.

Section 5.2.4 Subcontracting

- (a) The Concessionaire may appoint at its cost and risk, appoint Contractors possessing the requisite skill, expertise, technical & financial capacities and any of its obligations under this Agreement, including the engineering, procurement of mechanical/electrical engineering structures/equipment and/or management and/or operation and maintenance of the Project Facilities or any part thereof provided the Concessionaire shall at all times be solely responsible and liable for any defect, deficiency or delay in management, operation and maintenance of the Project in accordance with the provisions of this The Concessionaire shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement, are incorporated in the terms and conditions under which such Contractor is retained.
- (b) The Concessionaire shall supervise, monitor and control the activities of Contractors under their respective Project Contracts as may be necessary.
- (c) For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a Contractor by the Concessionaire for any of the aforesaid purposes, the Concessionaire shall be liable for the performance of its duties and for the discharge of all its obligations and responsibilities which it shall have towards the Grantor under this Agreement and the appointment of Contractor(s) for any of the aforesaid purposes shall neither release nor exonerate the Concessionaire from its obligations hereunder, including full and timely compliance with the terms of this Agreement. The Concessionaire does hereby also agree and acknowledge that it shall remain responsible for obligations performed or to be performed by the Subcontractors to the same extent as if such obligations were to be always performed by the Concessionaire and shall at all times be solely responsible for any defect, deficiency or delay by the Contractor in the implementation of the Project/execution of Works.
- (d) The Concessionaire further undertakes and covenants that it shall be solely responsible for all payments to be made to the Contractors and shall indemnify the Grantor and keep it indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses that the CCMC may incur, in so far as such losses directly arise out of, in any way relate to, or result from the non-performance by the Concessionaire of its obligations to the Contractors including non-payment of any monies to such Contractors.

- (e) The Concessionaire shall ensure that the Subcontractors are capable of discharging the obligations under this Agreement for and on behalf of and in the name of the Concessionaire and that any of its obligations, which are relevant to the scope of work of a Subcontractor, pursuant to this Agreement, are incorporated in the terms and conditions under which such Subcontractor is retained.

Section 5.2.5 Transaction Documents

(a) The Concessionaire accepts and undertakes to ensure that the terms of all Transaction Documents (including the agreements between the Concessionaire and Contractors and any other Person(s), including vendors of goods and services, or between any of these entities) shall be in conformity with the provisions of this Agreement and not in derogation of or conflict with the provisions hereof. In the event of any conflict or inconsistency between such documents and this Agreement, the provisions of this Agreement shall prevail. The Concessionaire further undertakes that any agreement between itself and the Contractors and any other Person(s), or between any of these entities, shall contain such terms and conditions as may be necessary to ensure that the counter-party thereto is required to perform its part of the agreement(s) in conformity with the Concessionaire's obligations under this Agreement.

(b) The Concessionaire shall

I. Provide to the Grantor notarised true copies of every Transaction Document duly executed, to which the Concessionaire is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements etc. thereof within 15 (fifteen) days of such execution or amendment etc

II. Not make any replacement, modification or amendment to any of the Transaction Documents at any time without the prior written consent of the Grantor if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on the Grantor and in the event any replacement, modification or amendment is made without such consent, the Concessionaire shall not enforce such replacement, modification or amendment nor permit enforcement thereof against the Grantor.

III. Comply with its obligations set out in the Transaction Documents.

IV. Ensure and procure that each Project Contract contains provisions that would entitle Grantor or a nominee of the Grantor to step into such agreement at the Grantor's discretion, in place and substitution of the Concessionaire in the event of termination pursuant to the provisions of this Agreement.

V. Not enter into any material Transaction Document, including without limitation, any Construction Contract or agreement with any affiliated party related to or in connection with the Project unless the principal terms including consideration is reviewed, assessed and approved by the Independent Engineer/Consultant appointed by the Grantor, prior to the execution of any such contract.

Section 5.2.6 Accidents and Safety

(a) The Concessionaire shall

- Develop, implement and administer a surveillance and safety program for the Project and the users thereof and its and the Contractors' labour and personnel engaged in the provision of any services under any of the Project Contracts, including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice.

- Take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims.
- Maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.

Section 5.2.7 Taxes and Charges

(a) The Concessionaire shall

- pay in a timely manner all taxes (excluding Property Tax), duties, levies, cess and charges including but not limited to income tax, sales tax, service tax, excise duty, customs duty and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project.
- pay all charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Concessionaire or its Contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility.

Section 5.2.8 Foreign Exchange Risk

The Concessionaire shall bear any risk on account of fluctuation in foreign exchange rates during the Concession Period.

Section 5.2.9 Contractual Arrangements

The Concessionaire shall undertake development of the Project Facilities thereon and enter into Contractual Arrangements in accordance with the provision of this Agreement,

Section 5.2.10 Marketing

The Concessionaire shall undertake marketing, public relations and brand building of the Project and each of the Project Facilities at its cost and expense.

Section 5.2.11 Others

(a) The Concessionaire shall

- maintain requisite insurance in accordance with the provisions hereof.
- provide all assistance to the Grantor and the Independent Engineer/Consultant /Experts as they may reasonably require for the performance of their duties and services under this Agreement;
- be responsible for safety, soundness and durability of the Project Facilities including all structures forming part thereof and their compliance with the Specifications and Standards.

(b) provide representatives of the Grantor, including those concerned with safety, security or environmental protection, at reasonable time and upon reasonable notice, access to the Project Site to review the operations of the Project and to ascertain compliance with any of the requirements of the Agreement. Provided that any failure on the part of the Grantor to inspect any works shall not, in relation to such works, (i) amount to any

consent or approval of the Grantor or shall the same be deemed to be a waiver of any of the rights of the Grantor under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work.

- (c) provide or arrange at its cost during the Concession Period all on-site infrastructure including power, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal and other utilities and facilities required from time to time in respect of operation and maintenance of the Project/Project Facilities and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.
- (d) The Concessionaire shall, if required, at its cost install meters to measure the consumption of power and water. The Concessionaire shall, at its cost, make alternate and back up arrangement for power, including but not limited to installation of generators and for water, subject to the Concessionaire obtaining Applicable Permits if any.
- (e) Hand over the Project /Project Assets free from encumbrances and encroachments to the Grantor or its nominated agency upon the expiry/ termination of this Agreement.

Section 5.2.12 Obligations related to Operations and Maintenance

(a) The Concessionaire shall

- Operate, maintain, manage and repair the Project Facilities at its cost and risk during the Operations Period in accordance with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice.
- Employ qualified Persons to efficiently implement, operate and manage the Project.
- Make available all necessary financial, managerial, technical, technological and other resources for the operations and, maintenance of the Project to conform with the requirements of this Agreement.
- Replace, repair, replenish or renew, as the case may be, the materials, goods, machinery, equipment, capital components and spares etc. and undertake preventive maintenance at its cost as necessary to carry out efficient operations and maintenance of the Project and to provide adequate service standards and to ensure that the Project/Project Facilities are transferred to the Grantor in a good condition except for the normal wear and tear having regard to their life, construction, use and the period of use, in accordance with the terms of this Agreement.
- Ensure maintenance of proper and accurate records, data and accounts relating to the operations of the Project and the revenues earned there from.
- Comply with all Applicable Law, including those relating to safety, health, sanitation, environment, labour and hazardous and dangerous materials.
- Promptly and diligently repair, replace or restore the Project or part thereof which may be destroyed, lost or damaged.
- Except as provided or authorized under this Agreement, not, without the prior written consent of the Grantor, remove or replace any asset comprised in the Project/Project Facility.

- Ensure timely payments to the Grantor in accordance with the provisions of this Agreement.
- Carry out the commercial operations and provide the services and facilities as per the requirements of this Agreement and make changes therein only with the prior written approval of the Grantor.
- Not undertake, cause or suffer the undertaking of Prohibited Activities by any person at the Site or the Project Facilities or part thereof.

Section 5.3 Obligations of Grantor

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

Section 5.3.1 Applicable Permits

- i. The Grantor shall, at the request of the Concessionaire, grant Applicable Permits with reasonable promptness that are in its authority and capacity to grant and, as the case may be, assist but without guarantees and/or without assuming any responsibility in that behalf and issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits from Government Authorities, Authorizations to import equipment and materials required for the Project and immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project, including renewals thereof; provided that nothing contained in this provision shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Concessionaire (i) provides to the Grantor all necessary relevant details and other information as may reasonably be required by the Grantor and (ii) keeps the Applicable Permits in force and effect throughout the Concession Period.
- ii. Upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, sewerage, electricity and telecommunication facilities at rates and on terms not less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities.

Section 5.3.2 Tax Benefits

In cases found appropriate the Grantor may, at the request of the Concessionaire, issue recommendatory or supporting letters to any Government Authority recommending tax or duty concessions/ benefits to the Concessionaire / the Project.

Section 5.3.3 Off-site Infrastructure

The Off Site requirements (Road, Power and Water) are being provided by different agencies like CCMC, Tamil Nadu Electricity Board (TNEB), Tamil Nadu Water Supply and Drainage Board (TWAD) etc. The Concessionaire is required to apply to the concerned Authorities and obtain the necessary approvals on its own. The Grantor will extend all necessary support to the Concessionaire based on written request of the Concessionaire

Section 5.4 Obligations of the Grantor and the Concessionaire

Section 5.4.1 Compliance with Laws and Regulations

The Parties shall perform their respective obligations under this Agreement in accordance with the Applicable Laws.

Section 5.4.2 Rights to Documents

- **Grantor Documents:** Documents and computer programs or copies thereof, if any, provided by the Grantor to the Concessionaire, shall always remain the property of the Grantor. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Grantor, be returned by the Concessionaire to the Grantor on the Transfer Date.
- **Concessionaire Documents:** Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project Facilities shall be handed over by the Concessionaire to the Grantor free of cost on the Transfer Date.
- **Obligation to Cooperate:** The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

Section 5.5 Others

The Grantor shall provide reasonable assistance to the Concessionaire in procuring the necessary licenses, no-objection certificates and/or Applicable Permits for exercising necessary authority to regulate the law and order situation within the Project / Site subject to and in accordance with the Applicable Laws. However, notwithstanding anything contained herein, the Concessionaire shall be liable to undertake its own assessment of the Applicable Permits required in connection with the Project.

ARTICLE 6 PROJECT IMPLEMENTATION

Section 6.1 OPERATIONS AND MAINTENANCE PLAN

- (a) The Concessionaire, immediately after grant of the Concession, shall at its cost prepare and submit to the Grantor Operation & Maintenance Plan of the Project.
- (b) The O&M PLAN shall, inter alia, set out the full details of the activities proposed to be carried out by the Concessionaire for the O&M of the Project, proposed order, sequence and method of working, the steps, procedures and processes undertaken and to be undertaken by the Concessionaire, including the proposed names of likely Sub-contractors/ vendors etc., plans for mobilization of finances, plans for marketing the Project, proposed arrangements for operating and managing the Project, the organisation chart of the Concessionaire and such other similar details which define and clarify the method and direction of the Concessionaire's plans for the implementation of the O & M Project.
- (c) The Grantor shall review the O & M Plan submitted by the Concessionaire for conformity with the Specifications and Standards and, subject to the provisions of sub-section (d) herein below, communicate its approval immediately. The Grantor may in consultation with the Concessionaire prescribe a schedule for submission, clarifications and approval of such plan.
- (d) In the event that Grantor has any objection to the O&M or any part thereof, it shall promptly notify the Concessionaire of its objections in writing and seek clarifications or suggest changes or modifications or corrections thereto in writing. Thereupon, the Concessionaire shall provide necessary clarification to the Grantor or re-submit revised Operation & Maintenance Plan or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the Grantor.
- (e) If the Grantor does not submit written objections to the O&M Plans submitted to it by the Concessionaire within fifteen (15) days of submission, the Grantor shall be deemed to have approved such O&M Plan and the Concessionaire shall be entitled to proceed with the Project accordingly. However, nothing in this Agreement shall derogate from the Concessionaire's obligation to obtain the Applicable Permits in relation to the operation and commencement of commercial operations/ occupancy of the Project Facilities from the relevant authorities under Applicable Laws and Development Controls.
- (f) Notwithstanding any express or deemed approval or failure to review by or the comments or observation of the Grantor in relation to the O&M Plan the Concessionaire shall be solely responsible for any defect and/or deficiency therein or any part thereof and accordingly the Concessionaire shall at all times remain solely responsible for the technical feasibility, operational capability and reliability of the Project and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (g) The Concessionaire needs to submit O & M Plan and obtain approval from the Grantor within the Compliance Period.

Section 6.2 Marketing of the Project

- (a) The Concessionaire shall be solely responsible for the marketing of the Project. The Concessionaire shall be entitled to commence such marketing at its cost and risk from the Compliance Date and to accept advances, premium, booking amounts and other considerations from such users from such date; provided that Grantor shall not be liable in any manner whatsoever to any Person in this behalf and the Concessionaire shall disclose the same to such Users.

- (b) The Concessionaire shall ensure that the advertising and marketing of the Project is carried out in a manner that is consistent with and not in derogation of or conflict with any terms or provisions of this Agreement and the Applicable Laws.

Section 6.3 Operation and Maintenance of the Project

Section 6.3.1 O&M Works

- (a) Effective from date of Commercial Operations of a Project Facility and until the end of the Concession Period, the Concessionaire shall undertake, at its cost and risk, the operation and maintenance of the relevant Project Facility (and of the Project from Project Completion) including the buildings, the common areas, the landscape and other spaces, the parking lots/spaces, the infrastructure, works, fire-fighting and other systems and the common services and facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards, Good Industry Practice, Applicable Laws and conditions of Applicable Permits, by itself or, subject to the provisions of Section 5.3 through O&M Contractor(s) or through suitable management/service contractors, without in any way relieving the Concessionaire of its responsibilities, obligations and liabilities as set out in this Agreement; provided that the O&M Contractors shall be appointed not less than 2 (two) months before the Scheduled Project Completion or Project Completion, whichever is earlier. Within 2 (two) weeks of the appointment of such contractors, the Concessionaire shall inform the Grantor of their appointment.
- (b) The Concessionaire shall exercise appropriate control over the O&M Contractors and shall manage, direct, administer and supervise their working so as to ensure compliance with the provisions of this Agreement.
- (c) The Concessionaire shall at all times carry out or procure at its cost and expense the O&M Works and maintain (including routine, regular, periodic and preventive maintenance), provide, procure, manage, keep in good operating repair and condition, renew, replace, restore, rectify and upgrade to the extent reasonably necessary the Project, normal wear and tear excepted, with the skill, diligence and expertise of operators of similar facilities and in conformity with the provisions hereof, including the Specifications and Standards and Good Industry Practice. All such maintenance, repair and O&M Works shall be carried out in such a way as to cause least inconvenience to users of the Project.
- (d) The Concessionaire shall carry out the operation and maintenance of the Project with the objective of providing quality service standards and ensuring that the buildings, infrastructure, equipment, systems etc. are maintained in an excellent state perfect operating condition, repair and sanitation and that the Project is transferred to the Grantor upon expiry/termination of this Agreement is in a perfect working condition, normal wear and tear excepted, having regard to its construction, life and use. The operation and maintenance of the Project/Project Facilities so as to keep them in excellent operating condition is an essential condition of this Agreement.
- (e) The Concessionaire shall provide, manage, operate and maintain the Project Facilities in accordance with the Specifications and Standards and Good Industry Practice such that the Project is operated and run efficiently, smoothly, continuously and without any hindrance or inconvenience to the users thereof.
- (f) The Concessionaire shall employ qualified and skilled personnel and manpower to efficiently operate and manage the Project at its cost and consequence.
- (g) The Concessionaire shall make appropriate arrangements for security at the Site and abide by the security regulations/procedures prescribed by the Grantor or any Government Authority from time to time. The Concessionaire may secure assistance of the police force for maintaining security upon payment of routine charges for such services.

- (h) The Concessionaire may charge a lump sum and/or periodic maintenance or service fees for the operation and maintenance services provided by it to the persons/users/entities availing the same.
- (i) The Concessionaire or the Persons claiming through or under it shall be free to determine the User Charges at market driven rates in respect of the use of the Project or the goods, services, facilities or amenities provided thereat and shall have the right to demand, collect, retain and appropriate and revise the User Charges; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.

Section 6.3.2 Contractual Arrangements

- (a) Subject to compliance with the provisions of this Agreement and the Applicable Laws, the Concessionaire shall be entitled to undertake the commercial development and use of the Project Facilities.
- (b) Subject to the provisions of this Agreement, the Concessionaire may enter into such Contractual Arrangements as it may deem fit and, effective from the Commercial Operations Date of a Project Facility, grant in accordance with the terms thereof the possession of the relevant area of the Project Facility/Project Site to such Person (hereinafter the "Contractual Counter Parties"); provided that the use of Project shall not comprise the Prohibited Activities as for the applicable laws for the site jurisdiction and also not in competition with the activities of Grantor.
- (c) The Concessionaire may determine, demand, collect, revise, retain and appropriate the User Charges for such Contractual Arrangements at rates determined by the Concessionaire ;
- (d) All Contractual Arrangements shall be subject to the following terms and conditions:
 - i. Such Contractual Arrangements shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions of this Agreement;
 - ii. the terms and conditions of this Agreement are complied with and as applicable form a part of such Contractual Arrangements and the Contractual Counter Parties , if any, shall be bound by such terms and conditions and be liable and accountable in respect thereof;
 - iii. the duration of such Contractual Arrangements shall be limited to and be co-terminus with/not exceed the Concession Period herein;
 - iv. all such Contractual Arrangements shall be determined and terminated automatically and simultaneously on the expiry, determination or termination of this Agreement/the Concession Period, as the case may be;
 - v. Such Contractual Arrangements shall come into effect and operation only upon the Concessionaire achieving the Commercial Operations Date in accordance with the provisions of this Agreement unless otherwise authorised by the Grantor in writing. Provided that the Concessionaire can collect any advance payments or deposits from the Contractual Counter Party prior to the COD;
 - vi. the Concessionaire shall at its cost carry out or cause the operation and the execution and existence of Contractual Arrangements which shall not relieve the Concessionaire of its liability or obligations as set out in this Agreement;
 - vii. the maintenance of the Project Facilities, including the common areas and common facilities and amenities; provided that the Concessionaire shall be entitled to charge, collect and retain lump sum/monthly/periodic maintenance fees and charges at such rates as it may determine in respect thereof from the Contractual Counter Parties, users and other Persons availing the services and facilities of the Project ;

- viii. the execution of Contractual Arrangements shall not relieve the Concessionaire of its liability or obligations as set out in this Agreement;
- ix. Each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement or the Land Lease Deed on the one hand and the Contractual Arrangement on the other hand, the provisions of Agreement or the Land Lease Deed, as the case may be, shall prevail and such Contractual Arrangement shall stand modified to that extent;
- x. The Concessionaire shall submit to the Grantor for its information and record either a notarised true copy of the agreements/documents or a copy duly certified by Statutory Auditor/ Authorized Representative relating to the Contractual Arrangements within 60 (sixty) days of the date of execution, modification or amendment thereof.
- xi. The Concessionaire's failure to comply with this Section 6.3.2 shall be at its cost, risk and consequence and constitute an Concessionaire Event of Default that shall entitle the Grantor to terminate this Agreement in accordance with the provisions of Article 16 hereof.

Section 6.3.3 No Liability of Grantor for Contractual Arrangements

The Grantor shall not be liable in any manner whatsoever to any Person in respect of or in connection with execution of documents/agreements, matters, understandings and/or disputes relating to the Contractual Arrangements between the Concessionaire and such Person or otherwise or for the Concessionaire's contracts of the Concessionaire with any third parties in relation to the Project. The Concessionaire shall indemnify and keep indemnified the Grantor, its employees, agents, representatives and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.

Section 6.4 No Breach

- (a) The Concessionaire shall not be considered to be in breach of its obligations relating to the Project nor shall it incur or suffer any liability if and to the extent performance of any such obligations is affected by or on account of any of the following:
 - Force Majeure Events, subject to provisions of Article 14;
 - a material delay, impediment, default or prevention due to or caused by the Grantor or any Government Authority;
 - Compliance with the instructions or directions of the Grantor/ any Government Authority other than instructions issued as a consequence of a breach or default by the Concessionaire of any of its obligations hereunder;
 - Extensions granted under the provisions of this Agreement, or specific extensions granted by the Grantor or extensions made by the mutual agreement of the Parties (provided that the payments required to be made by the Concessionaire under this Agreement in respect of the grant of such extensions shall be paid);
 - Measures taken to ensure the safe use of the Project Facilities except when the unsafe conditions have been occasioned by the Concessionaire's failure to perform its obligations under this Agreement.
- (b) In the event of delay due to circumstances set forth in sub-section (a) above, the Concessionaire shall be relieved of its obligations to the extent of such delay and, upon written request, be granted an extension of the time equal to the period of delay, as certified by the CCMC, for fulfilling its obligations relating to the Project Facilities.

(c) Notwithstanding the above, the Concessionaire and the Grantor may, mutually agree to extend the time period mentioned hereinabove for reasons that they may deem expedient in the interest of the Project.

ARTICLE 7 PROJECT MONITORING

Section 7.1 Nodal Officer

The Grantor shall nominate a Nodal Officer from their Engineering Department for monitoring the Progress of the Project, The Nodal Officer, as the case may be, shall monitor the performance of the concessionaire, review and approve on behalf of Grantor, the O&M Plan, conduct on behalf of the Grantor the periodic verification of the works during the concession period. The Nodal Officer shall pursue the Concessionaire for submission of periodic reports (at least once every quarter) in respect of its functions. It is hereby clarified that wherever in this Agreement any certification or verification has been stated to be needed or undertaken by the Nodal Officer.

Section 7.2 Reporting and Inspection

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

Operation Period Reports: The Concessionaire shall provide to the Grantor Independent Engineer, if any, a quarterly operation and maintenance progress report during the Operation Period, which shall contain the following information:

- **Summary of Progress:** summary of operating and financial results for that quarter and explanations of any major variation between actual and projected results;
- **Revenue:** details of the Revenue for the relevant quarter from each source
- **Maintenance Plan:** a maintenance plan for the Project for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan).

Other Project and Financial Information

The Concessionaire will provide the following information to the Grantor/Nodal Officer promptly after becoming aware of it:

- **Force Majeure:** details of any Force Majeure Event which has occurred or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent;
- **Litigation:** details of any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to the Project; and
- **Legislation:** details of contravention of any Applicable Law or with the terms of any Applicable Permit and any fines or penalties that have or may thereby be incurred.
- **Financial Condition:** notification of any adverse material change in the financial condition of the Concessionaire or the Project promptly following such occurrence

Additional Information

The Concessionaire agrees to provide the Grantor/Nodal Officer such further information as any of them may reasonably request in order for them to monitor the performance of the Project.

Inspection

The Grantor / Nodal Officer, the relevant Government Authorities, and their representatives shall at all reasonable times have access to the Bus Stand, the Project and the Works and all related designs, documents, reports, records technology and workmanship, to review progress of the operation and maintenance of Project and to ascertain compliance with any of the requirements of this Agreement, including the Performance Standards and to check the progress of the works or for performing statutory duties and the Concessionaire shall provide the necessary cooperation and assistance to them in this behalf.

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

ARTICLE 8 FINANCIAL COVENANTS

Section 8.1 Financing for the Project

- (a) The Concessionaire agrees and undertakes to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project.
- (b) The Concessionaire may assign its rights, or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including right, and interest under this Agreement, in and to the Project Assets (excluding the land), and its right to receive User Charges in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the lenders are made aware of the same.
- Provided that the Grantor shall be informed by the Concessionaire as to the creation of any Security Interest in favour of the Lenders, together with the Lenders particulars within a period of 14 days from the date such Security Interest comes into existence and provide to the Grantor within such time notarized true copies of documents/agreements relating thereto. Failure to do so shall amount to an event of default on the part of the Concessionaire and any consequential failure or inability on the part of the Grantor to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Agreement, if any required, shall be at the risk and responsibility of the Concessionaire only.
 - Provided further in the event of termination of this Agreement by efflux of time or otherwise, such assignment/Security Interest shall stand extinguished upon payment of compensation by the Concessionaire to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement. The Concessionaire shall primarily be responsible to ensure that the prospective lenders are made aware of this provision and a suitable provision to this effect is incorporated in the financing & security documents to execute between the Concessionaire and the Lenders.
 - Provided further, nothing contained in sub-section (b) of this Section 8.1 shall (i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorise or be deemed to authorise the Lenders to implement and execute Project themselves and (iii) under any circumstances amount to any guarantee from or recourse to the Grantor.
- (c) Except as stated in sub-section (b) above or elsewhere in this Agreement, the Concessionaire shall not assign its rights, interest or obligation or create a Security Interest with respect to its rights under the Agreement or any part thereof in favour of any Person without the prior written consent of the Grantor.
- (d) The Grantor shall assist the Concessionaire as necessary and mutually agreeable, to enable the Concessionaire to achieve Financial Closure. Such assistance shall include discussion in good faith and the obligation of the Grantor to consider reasonable modifications to this Agreement as may be required by the Lenders and execution of such further appropriate documentation or additional writings, in order to facilitate the process of achieving Financial Closure and which do not materially and

adversely affect the rights and interests of the Grantor hereunder or impose additional material liabilities on the Grantor.

- (e) The Agreement entered by the Concessionaire with the lenders will be sub-ordinate to the Concession Agreement entered by the Concessionaire with the Grantor.

Section 8.2 Escrow Account

- (a) The Concessionaire shall within 90 days from the date of execution of this Agreement establish an Escrow Account with a Nationalised or Scheduled Bank , acceptable to the Grantor (the "Escrow Bank"), for a period until the end of Concession Period under an Agreement to which the Escrow Bank, the Grantor and the Concessionaire are parties. The Parties agree to enter in to definitive Escrow Agreement(s) as necessary, with the Escrow Bank for the opening, operation, management and termination of the escrow account. The terms and conditions of the Escrow Agreement shall be agreed between the Parties by mutual consent. The express consent of the Grantor to the terms and conditions of the Escrow Agreement shall be mandatory and is an essential condition of this Agreement.
- (b) All revenues, inflows and outflows of cash and receivables on account of Project or otherwise that accrue or arise to the Concessionaire under, in connection with or pursuant to the implementation of the Project under this Agreement shall be credited to or debited from, as the case may be in Escrow Account. The Escrow Bank shall be instructed to provide monthly statements relating to such account to the parties.
- (c) The Concessionaire shall deposit all cash and receivables from the Project, including collection of User Charges, into Escrow Account, which shall be first used to ensure the payments due and payable to the Grantor in terms of this Agreement and transfer the remaining balances to any of the accounts of the Concessionaire or to the order of the Concessionaire in accordance with the terms for the Escrow Agreement. Provided always, all the payments by the Concessionaire to the Grantor under this Agreement, including the Annual Concession fees in term of share in Annual Gross Revenue, Charges and expenses, shall have priority over all other payments that are due and payable by the Concessionaire on any account whatsoever, excepting the payment of taxes by the Concessionaire to any Government Authority.
- (d) The Concessionaire shall be responsible for ensuring and directing that all collections towards or payments comprising cash and receivables from the Project, including the User Charges are deposited on a daily basis during the Concession Period in the Escrow Account irrespective whether the collection are received by the Concessionaire or its agents, representatives or persons duly authorised by the Concessionaire.
- (e) The Escrow Account shall be opened and operated at Chennai or Coimbatore Branch of any Nationalised / Scheduled bank (the Escrow Bank).
- (f) The Escrow Bank shall hold the Escrow Account and such monies, from time to time, as may be deposited in the said Escrow Account subject to conditions herein contained and/or in the definitive Escrow Agreement.
- (g) The monies held by the Escrow Bank in pursuance of this Agreement shall not be considered as part of the assets of the Escrow Bank, and, being trust property shall not, in the case of a bankruptcy or liquidation of the Escrow Bank, be considered as its assets and shall not be available to the liquidator, bankruptcy trustee or other creditor of the Escrow Bank. The Escrow Bank shall not have any lien or be entitled to exercise claim on the monies in the escrow account.

- (h) The Escrow Bank shall maintain the Escrow Account for the tenor of the Concession Period or until receipt of joint written confirmation from the Parties for the termination thereof. Upon termination of the escrow account the Escrow Bank shall transfer any balances in the account to the Concessionaire or to the order of the Concessionaire; provided there are no outstanding claims of the Grantor on the Concessionaire.
- (i) The Concessionaire shall duly appoint authorized signatories ("Authorized Signatories") for operating the Escrow Account from among its personnel and inform their names to the Escrow Bank and the Grantor. Such Authorized Signatories shall, on or prior to the payment date, issue and sign cheques in favour of the Grantor for payments due and payable by the Concessionaire to the Grantor hereunder, including the Lease Rental, the Revenue Share, the enhancement of the Security Deposit and the Charges and Expenses.

Section 8.3 Payments to Grantor

In consideration for the grant of the Concession, the Preferred Bidder/ Concessionaire shall make the following payments/provide following facilities to the Grantor in the manner and at the times mentioned hereunder:

Annual Concession Fee (ACF)

Effective from the Commercial Operation Date, the Concessionaire shall pay to the Grantor an Annual Concession Fee as quoted in the price bid and which shall be incremented each year throughout the concession period as per Terms and Conditions specified in the Bid document. The lease rental charges also forms part of the Annual Concession Fee.

- i. In the event of delay up to 15 days from the due date (10th day of the first Month of each project operation year) in the payment of the Annual Concession Fee, the Concessionaire shall pay the Grantor, a penal interest on the due amount at the rate of 24% (Twenty Four percent) per annum for the period from the due date until the date of payment.
- ii. In the event, the payments are delayed beyond a period of 15 days from the scheduled date; it shall be construed as a Concessionaire default in payment of ACF. When such a default occurs, the Grantor shall issue a default notice to the Concessionaire requesting to remedy the situation within 15 days. If the situation is not remedied, at the end of 15th day a second notice shall be issued allowing further period of 15 days. In the event that the Concessionaire fails to remedy the situation, the Grantor may, at the end of 45th day (15+15+15 days), appropriate the amount due from the performance security and may also issue, at its discretion, a termination notice under Article 16. The Concessionaire shall reinstate the amount deducted from the performance security deposit within a maximum period of 7 days, failing which the Grantor reserves the right to terminate this Agreement in accordance with Article 16 hereof.
- iii. If the Concessionaire commits three defaults, the Grantor reserves the right to immediately terminate the Concession Agreement without being bound by the cure periods and step-in right provisions under Article-16 of this Concession Agreement and in such circumstances the Transfer Date shall be as specified in the note of termination so issued by the Grantor.

Section 8.4 User Charges for Project Facilities

(a) Effective from COD and during the Operations Period, the Concessionaire shall be:

- entitled to fix at rates fixed/structured at the mutual consent of both the parties from time to time, determine, revise, charge, demand, collect, recover, retain and appropriate the User Charges at market driven rates from users of Facilities / Project for the goods,

services, facilities and amenities etc. relating to the Project/Project Facilities/at the Site that are provided, arranged or procured by the Concessionaire by itself or under or pursuant to Contractual Arrangements;

- provide separate customized service or User Charges packages or differential rates or special or seasonal discounts for specific, bulk, regular users or different category of users or during different parts of the year or for timely or early payment.
- (b) Provided that the Concessionaire shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf.
- (c) The Concessionaire shall have right to demand, collect, retain and appropriate, enforce and revise the User Charges effective from COD and during the Operations Period by itself or through any Person/collection agents appointed by it.
- (d) The Grantor expressly recognizes that if any user fails to pay User Charges, the Concessionaire may exercise all rights and remedies available under the Applicable Laws for recovery thereof, including the suspension, termination or cancellation of provision of the applicable service to the relevant defaulting Contracting Counter Party or user; provided that the same shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf.

Section 8.5 Audit and Account

(a) Appointment of Auditors

- The Concessionaire shall appoint and have during the subsistence of this Agreement, as its statutory auditors, a reputed firm of chartered accountants duly authorised to practice in India. All fees and expenses of the statutory auditors shall be borne by the Concessionaire.
- Any claim or document provided by the Concessionaire to the Grantor relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, in connection with the Project shall be valid and effective only if certified by the Concessionaire's statutory auditors.

(b) Maintenance of Accounts

- The Concessionaire shall, during the subsistence of this Agreement, maintain books of accounts in accordance with standard accounting practices and statutory requirements under the Indian laws recording all its receipts from all sources derived or on account of the Project, income, expenditure, payments and assets and liabilities, in accordance with this Agreement, the Applicable Laws and Good Industry Practice. The Concessionaire shall provide the Grantor 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 120 (one hundred and twenty) days of the close of the Accounting Year to which they pertain.
- The Concessionaire shall establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of data related to the construction and operation of the Project, including all such information which is necessary to verify costs and expenses incurred or revenues earned and to confirm the amount of Gross Annual Turnover/Revenue and to confirm that the Concessionaire is in compliance with its obligations under this Agreement. The Concessionaire shall provide copies of such reports to the Grantor within 10 (ten) days of the end of every Quarter.

ARTICLE 9 PERFORMANCE SECURITY

Section 9.1 Performance Security

- (a) For securing the performance of the obligations of the Concessionaire / Preferred Bidder under the RFP, the Lol, under Section 3.4 of this Agreement and during the Construction Period, the Preferred Bidder along with the execution of this Agreement, deliver to the Grantor an un-conditional and irrevocable bank guarantee for a sum of Rs. 50.00 Lakhs (Rupees Fifty Lakhs Only), valid for Ten years from the date of signing of Concession Agreement. Such Performance security shall be in favour of the Grantor from ----- Bank (a Nationalized/Scheduled (excluding cooperative) Bank), and payable and enforceable within 30 (Thirty) days from the date of issue of Lol in Coimbatore, Tamil Nadu. (The "Performance Security").
- (b) The Preferred Bidder /Concessionaire shall keep the Performance Security valid at all times during the stipulated Project Period/extended period, as the case may be.

Section 9.2 Appropriation of Performance Security

- (a) In the event of the Concessionaire being in default of the due, faithful and punctual performance of its obligations under the RFP, the Lol, under Section 3.4 of this Agreement and until the date of issue of the Completion Certificate after successful completion of defects liability period, as the case may be, or owing any sums whatsoever to Grantor under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Grantor for or against the Concessionaire under this Agreement or against the Grantor in respect of this Agreement, the Grantor shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Security as damages for such default, dues, demands or claims.
- (b) The decision of the Grantor as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire. The Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Grantor under this Agreement is required to be provided in connection with any demand made by the Grantor to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Grantor's written demand as aforesaid.
- (c) In the event of encashment of the Performance Security by the Grantor, in full or part, the Concessionaire shall within 30 (thirty) days of receipt of the encashment notice from the Grantor provide a fresh Performance Security or replenish the existing Performance Security, as the case may be. The provisions of this Article 9 shall apply mutatis mutandis to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute a Concessionaire Event of Default, which shall entitle the Grantor to terminate this Agreement in accordance with the provisions of Article 16 hereof.

Section 9.3 Release of Performance Security

Subject to the provisions hereof, CCMC shall promptly return the Performance Security to the Concessionaire upon Project Completion being achieved & commissioned, and provided that there are no outstanding claims of the CCMC on the Preferred Bidder/Concessionaire.

ARTICLE 10 THE OWNERSHIP AND CERTAIN RIGHTS

Section 10.1 Ownership of Assets

(a) Assets provided by the Grantor

The ownership of the Bus Stand Complex, its buildings and related components shall always remain vested with the Grantor. The rights of the Concessionaire in the Bus Stand Complex shall only be that of a Lessee as provided in this Agreement. It is clarified for the avoidance of doubt that title to the land shall vest exclusively with the Grantor and the Concessionaire shall only have the right to use the same in accordance with the provisions of this Agreement.

(b) Assets created or provided by the Concessionaire

The ownership of all infrastructure assets, buildings, structures, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Concessionaire in, on, over or under the Project pursuant to this Agreement shall, until transfer to the Grantor in accordance with this Agreement, be with the Concessionaire.

ARTICLE 11 INSURANCE

Section 11.1 Insurance Cover

The Concessionaire shall maintain or cause to be maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders.

Operations Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period insurance to cover against Project Facilities/ Project Assets for:

- (a) loss, damage or destruction of the Project/ Project Assets at replacement value or full market value (including fire, burglary, standard and special peril);
- (b) The Concessionaire's general liability arising out of the Concession.
- (c) liability to third parties; and
- (d) Any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

Section 11.2 Evidence of Insurance

The Concessionaire shall, from time to time, furnish to the Grantor copies of all insurance policies in respect of the Insurance Cover (or appropriate endorsements, certification of other satisfactory evidence of insurance) as soon as reasonably practical after they are received by the Concessionaire and furnish evidence to the Grantor that all premiums have been paid and that the relevant policies remain in force, valid and existence. In the event the Concessionaire does not maintain any Insurance Cover pursuant hereto, the Grantor may, at its option, effect such insurance and the Concessionaire shall reimburse all the costs and expenses incurred in this behalf by the Grantors within 15 (fifteen) days of receipt of the Grantor's claim in respect thereof. In case the Concessionaire fails to reimburse such expense, this shall become the Concessionaire's Event of Default and shall be treated as per the provisions laid down under Article 15.

Section 11.3 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall be promptly credited the amount to Escrow Account, in accordance with the terms hereof and thereof, the Concessionaire shall apply such proceeds for the repair, renovation, restoration or re-instatement of the Project or any part thereof, which may have been damaged or destroyed. The Concessionaire may designate the Lenders/ Lenders' Representative the loss payees under the insurance policies or assign the insurance policies in their favour as security for the Financial Assistance provided by the Lenders.

Section 11.4 Insurance Companies and Waiver of Subrogation

(a) The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project through Indian insurance companies of repute and if so permitted by GoI, through foreign insurance companies, to the extent that insurances can be effected with them.

(b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Concessionaire.

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

(d) The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the Grantor and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

Section 11.5 Validity of the Insurance Cover

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

ARTICLE 12 REPRESENTATIONS AND WARRANTIES

Section 12.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- it is duly organized, validly existing and in good standing under the laws of India;
- it has full power and authority to execute, deliver and perform its obligations
- under this Agreement;
- it has taken all necessary action to authorise the execution, delivery and performance of this Agreement and to carry out the transactions contemplated hereby;
- this Agreement constitutes its legal, valid and binding obligation, fully enforceable against it in accordance with the terms hereof;
- It has the financial standing and capacity to undertake the Project;
- It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

Section 12.2 Further Representations and Warranties of Preferred Bidder/Concessionaire

In addition, the Concessionaire represents and warrants to the Grantor that:

- (a) The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with, contravene, violate, result in the breach of, constitute a default under or accelerate performance of any agreement or instrument to which the Concessionaire is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order, injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;
- (b) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Essential Material Adverse Effect;
- (c) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which individually or in the aggregate have or may have Material Adverse Effect;
- (e) No representation or warranty by the Preferred Bidder /Concessionaire contained herein or in any other document furnished by it to the Grantor or to any Government Authority in relation to Applicable Permits or otherwise contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (f) Each Consortium Member/the Preferred Bidder was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to

consent to and has consented to the Concessionaire entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

- (g) Provided that whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Preferred Bidder
- (h) Concessionaire, during the Concession Period, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement, the Concessionaire shall immediately intimate the same to the Grantor;
- (i) In submitting its Proposal the Preferred Bidder/Concessionaire has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which individually or in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project.
- (j) All rights and interests of the Concessionaire in the Project, the Project Facilities and Project Assets shall pass to and vest in the Grantor or its nominated agency on the Transfer Date free and clear of all liens, claims, and Encumbrances, without any further act or deed on the part of the Preferred Bidder/Concessionaire or the Grantor and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a Security Interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement; and
- (k) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Preferred Bidder /Concessionaire to any person by way of commission or otherwise for securing the Concession execution of this Agreement or for influencing or attempting to influence any officer or employee of the Grantor.

Section 12.3 Waiver of Sovereign Immunity

Each Party hereto unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts and that it is subject to the civil and commercial laws of India with respect to this Agreement;
- (b) agrees that any proceedings be brought against it or its assets, other than the assets protected by the diplomatic and consular privileges under the Foreign Sovereign Immunities Act or / any analogous legislation ("Exempted Assets") in any jurisdiction, in relation to this Agreement or any transaction contemplated by this Agreement, no immunity, sovereign or otherwise from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Exempted Assets);
- (c) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings including without limitation the making, enforcement or execution against or in respect of any property irrespective of its use subject to (b) above.

Section 12.4 Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Preferred Bidder/Concessionaire acknowledges that prior to the execution of this Agreement, the Preferred Bidder/Concessionaire has after a complete and careful examination made an independent evaluation of the Project, the legal and contractual framework, the Applicable Laws and Applicable Permits and the technical and financial aspects of the Project, the Specifications and Standards, the Project Site and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Grantor, its consultants or any Government Authority, the market and demand conditions, information relating to users and the cost, risks and liabilities involved in implementing the Project, and has determined to the Preferred Bidder's/Concessionaire's complete satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, land acquisition etc. in respect of the Project Site.
- (b) The Preferred Bidder /Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that the Grantor, its consultants or any Government Authority shall not be liable for the same in any manner whatsoever to the Preferred Bidder/ Concessionaire or Persons claiming through or under the Preferred Bidder/Concessionaire.
- (c) The Preferred Bidder /Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided to the Concessionaire by the Grantor, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.
- (d) The Preferred Bidder /Concessionaire is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

Section 13.1 Liability of Concessionaire

Notwithstanding anything to the contrary contained in this Agreement, in addition to the Concessionaire's liability and obligations, indemnities and the Grantor's remedies provided elsewhere in this Agreement, the Concessionaire shall be solely responsible for any loss of or damage to the Project and the Project Assets, damage to environment, death or injury to Person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Grantor:

- (a) during the Concession Period resulting from any negligent act or omission of the Concessionaire, the Contractors, the Contractual Counter Parties or any other Person and their respective employees, agents, contractors and representatives.
- (b) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Concessionaire, Contractor or Contractual Counter Parties, or non-performance of any term, condition, covenant or obligation to be performed by the Concessionaire, Contractor or Contractual Counter Parties under this Agreement and the Transaction Documents.
- (c) The Concessionaire shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with development control regulations of the relevant local authorities, building bye laws as may be applicable, other Applicable Laws, regulatory requirements of Government Authorities, Specifications and Standards or any other matter) for which the Concessionaire is liable or which is attributable to the Concessionaire and, in turn, the Persons claiming through or under the Concessionaire

Section 13.2 Indemnification

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Concessionaire agrees to indemnify and hold harmless the Grantor and its officers, employees, agents, trustees and consultants (each a "Grantor Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "Losses") to which the Grantor Indemnified Party may become subject, insofar as such Losses arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Concessionaire or (ii) the failure by Concessionaire to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessionaire Person claiming through or under the Concessionaire or (iii) any claim or proceeding by any Third Party against the Grantor arising out of any act, deed or thing done or omitted to be done by Concessionaire or (iv) as a result of failure on the part of the Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Concessionaire to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project or the Concessionaire's Contractors or employees or any Third Party or Government Authority or (vi) as a result of any failure or negligence or default of the Concessionaire or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Concessionaire's use and

occupation of Project Site and/or construction, operation and maintenance of the Project.

or the avoidance of doubt, indemnification of Losses pursuant to this Article 13 shall be made in an amount or amounts sufficient to restore each Grantor Indemnified Party to the financial position it would have been in had the Losses not occurred.

(b) Without limiting the generality of sub-section (a) of this Section 13.2,

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

ii. the Concessionaire shall fully indemnify, and defend the Grantor Indemnified Party harmless from and against any and all Losses which the Grantor Indemnified Party may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Persons claiming through or under the Concessionaire in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for Grantor Indemnified Party, a permission, at no cost to Grantor Indemnified Party, authorising continued use of the infringing work. If the Concessionaire is unable to secure such permission within a reasonable time, the Concessionaire shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

iii. the Concessionaire shall further indemnify, defend and hold harmless the Grantor Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Concessionaire's performance of this Agreement or arising out of any act or omission of the Concessionaire, and in turn of the Persons claiming through or under the Concessionaire.

(c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

Section 13.3 Indirect or Consequential Losses

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to the other Party for any matter arising out of

or in connection with this Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

Section 13.4 Business Risks

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

ARTICLE 14 FORCE MAJEURE

Section 14.1 Force Majeure Event

Section 14.1.1 Force Majeure Event Defined

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances (occurring in Tamilnadu / Coimbatore) set out hereunder or the consequence(s) thereof which affect or prevent the Party (Grantor or Concessionaire) claiming Force Majeure ("Affected Party") from performing its obligations in whole or in part under this Agreement and which event or circumstance which is (a) is beyond the reasonable control of the Affected Party, (b) such party could not have prevented or reasonably overcome with the exercise of due diligence, reasonable efforts, skill and care, (c) does not result from the negligence of such party or the failure of such party to perform its obligations hereunder, (d) is of an incapacitating nature and prevents or causes a delay or impediment in performance that has Material Adverse Effect and (e) is all or any of the following circumstances:

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

Section 14.1.2 Exceptions to Force Majeure

For the Grantor

The Grantor will not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement

(i) the expropriation, confiscation or nationalization of the Project/Project Facilities/Project Assets by the Grantor or any other Government Authorities;

(ii) any delay or difficulty in handing over vacant possession of the Site.

For the Concessionaire

The Concessionaire and/or persons claiming through or under it will not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the nonperformance of its obligations under this Agreement:

- Late delivery of any equipment or materials where such delivery is not attributable to Force Majeure events mentioned in section 14.1.1;
- Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project Facilities;
- Delays in performance by the contractors or sub-contractors or employees, agents and representatives of the Concessionaire
- Economic hardship including insufficiency of funds; or
- General economic slowdown.

Section 14.2 Notice of Force Majeure Event

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event (“the Notice”) as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- (b) The Notice shall inter-alia include full particulars of:
- the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party’s ability to perform its obligations or any of them under this Agreement;
 - the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damages; and
 - any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for under Section 14.2 (b) and such other information as the other Party may reasonably request.

Section 14.3 Period of Force Majeure

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

- expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.4; or
- termination of this Agreement pursuant to Article 14.7 hereof

Section 14.4 Performance Excused

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

Section 14.5 Resumption of Performance

During the Period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall extend all reasonable assistance to the Affected Party in this regard.

Section 14.6 Costs, Revised Timetable

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

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

Section 14.7 Termination Due to Force Majeure Event

If the Period of Force Majeure continues or is in the reasonable judgment of the Parties is likely to continue beyond a period of 180 days, the Parties may mutually decide to continue this Agreement or terminate this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 180 days, be entitled to terminate the Agreement in which event, the provisions of Article 16 shall, to the extent expressly made applicable, apply.

ARTICLE 15 EVENTS OF DEFAULT

Section 15.1 Events of Default

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

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

- i. the Concessionaire commits a Material Breach of this Agreement .
- ii. the Concessionaire's failure to perform or discharge any of its obligations under any other Transaction Documents, which has or is likely to have a Material Adverse Effect.
- iii. any representation made or warranties given by the Concessionaire/Preferred Bidder under this Agreement are found to be false or misleading.
- iv. the Concessionaire passing a resolution for voluntary winding up.
- v. appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- vi. levy of an execution or distraint on the Concessionaire assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 30 days or any authority, regulatory body, court, tribunal or judicial authority passing or issuing any order or direction against the Concessionaire which would have an or likely to have an Material Adverse Effect on the project or the ability of the Concessionaire to comply with or discharge the obligations and responsibilities under this Agreement. .
- vii. amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking (other than transfer of assets in the ordinary course of business) without the Grantor's prior written approval, provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the financial and technical ability demonstrated to the satisfaction of the Grantor, to undertake, perform/discharge the obligations of the Concessionaire under this Agreement, necessary approval shall be granted by the Grantor.
- viii. the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- ix. the Concessionaire repudiates this Agreement or otherwise takes any action or evinces or conveys an intention not to be bound by this Agreement.
- x. the Concessionaire has not rectified the defaults in payments as per the clauses 8.3.3 and 8.3.4 of this Agreement.
- xi. the Concessionaire is adjudged bankrupt or insolvent
- xii. the whole of Project or any part of Project remains closed for an aggregate period of sixty (60) days (except for reasons on account of Force Majeure or Grantors event of default).

- xiii. The Concessionaire is in the breach or non compliance of any terms and conditions of the Land Lease Deed to be executed / executed between the Grantor and Concessionaire in pursuance of the provisions of this Agreement
- xiv. The Concessionaire committing any breach or non compliance of any of the terms and conditions of the financing document executed between the Concessionaire and if all or any of the Lender(s) have recalled their outstanding dues and in pursuance thereto have initiated the exercise of their right to enforce the Security Interest created in their favour under the financing documents, as permitted by this agreement, on the Project Assets and / or the rights and interest under this agreement.
- xv. such events as have been specified as Concessionaire Events of Default under the provisions of this Agreement.

Grantor Event of Default

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

Section 15.2 Parties Rights

(a) Upon the occurrence of the Concessionaire Event of Default, the Grantor shall, subject to the provisions of this Article 15, without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

(b) Upon the occurrence of the Grantor Event of Default, the Concessionaire shall, subject to the provisions of this Article 15, without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement:

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall (i) in terms of Clause 15.3 issue a Consultation Notice and follow the Remedial Process in Clause 15.4, (ii) give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

Section 15.3 Consultation Notice

Either Party exercising its right under Section 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (the "Consultation Notice").

Section 15.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 days or such extended period as they may agree (the "Remedial Period") the Parties shall, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is an Concessionaire Event of Default, with the prior approval of the Grantor and in consultation with the Lenders, the Concessionaire shall endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances;

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

Section 15.5 Obligations during Remedial Period

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

Section 15.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties agree upon any of the measures set out in Section 15.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

Section 15.7 Termination Due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures in accordance with Section 15.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 16 shall, to the extent expressly made applicable, apply.

ARTICLE 16 TERMINATION AND EXPIRY OF AGREEMENT/CONCESSION

Section 16.1 Termination Procedure

Except for termination under the condition of 8.3 ii, the Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("Termination Notice") to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice Period shall not be more than 60 (sixty) days, ("Termination Period") and at the expiry of the Termination Period, this Agreement shall stand terminated.

Section 16.2 Obligations during Termination Period

During Termination Period, the Parties shall subject to the provisions of Article 15 wherever applicable, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

Section 16.3 Condition Survey

- a. The Concessionaire agrees that six months prior to the expiry of the Concession Period by efflux of time or on the service of a Termination Notice, as the case may be, it shall conduct or cause to be conducted by the mutually accepted third party expert (who shall be in the position of an Expert under the Arbitration Act for any disputes in respect of the such survey) under the Grantor's supervision, a condition survey of the Project and the Project Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project.
- b. If, as a result of the condition survey, the Grantor shall observe/notice that the Project Assets and/or the Project or any part thereof have/has not been operated and maintained in accordance with the requirements there for under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions in light of the life of the relevant Project Facility well before the Transfer Date.
- c. In the event the Concessionaire fails to comply with the provisions of this Agreement, the Grantor may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. The Grantor shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project and the Project Assets in good working condition.

Section 16.4 Consequences of Termination

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

- i. **Transfer of Assets:** On the Transfer Date, the Concessionaire shall subject to the provisions of this Agreement:
 1. Transfer, assign and deliver to the Grantor or its nominated agency, free and clear of any Encumbrances, the vacant and peaceful possession of the Project Facilities, Project Assets and the Site along with the buildings, facilities and

structures constructed on, over, at or under it and its right, and interest in and to the Project the Project Assets.

2. transfer all its rights and interest in or over the tangible assets comprised in the Project (including movable assets which the Grantor agrees to take over) to the Grantor or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.

3. hand over to the Grantor or its nominated agency all documents including as manuals, designs, documents, information and records relating to the Project and the Project Assets.

4. to the extent possible assign to the Grantor or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.

5. at its cost remove from the Site all such moveable assets which are not taken over by or transferred/assigned to the Grantor or its nominated agency. In the event the Concessionaire fails to remove such objects within the stipulated time, the Grantor or its nominated agency may remove and transport or cause removal, transportation and storage of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.

6. All proceeds of insurance claims shall be handed over to the Grantor or its nominated agency and the Concessionaire or Persons claiming through or under it shall have no claim thereon or rights thereto.

- ii. The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all leasehold arrangements or licenses in relation to the Site and all such immovable property shall automatically revert to the Grantor or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.
- iii. The CCMC and the Concessionaire shall at least 6 (six) months prior to the expiry of the Concession Period or upon commencement of Termination Period, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets on the Transfer Date. During this period, the designated key personnel of the CCMC shall be associated with the operations of the Project in order to facilitate smooth take over of the same by CCMC on the Transfer Date.
- iv. It is clarified that only the assets of the Concessionaire shall be taken over and not the liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire and the Persons claiming through or under the Concessionaire shall be taken over by the CCMC. All such labour and employees shall be the responsibility of the Concessionaire /such Persons even after the expiry of the Concession Period and they shall have no claim to any type of employment or compensation from CCMC.
- v. On the Transfer Date, the Project and the Project Assets shall be in fair condition, subject to normal wear and tear, having regard for the nature of the asset, the construction and life of the facilities, constructions, structures etc.
- vi. All contracts, agreements etc entered into by the Concessionaire with its suppliers, service providers, O&M contract's including sub-lease of any built-up area or space in the Bus Stand Complex, shall also be liable to be terminated forthwith along with the

termination of this agreement at the sole option and discretion of the Grantor and if so required by the Grantor all monies due and receivable under such agreement shall be recovered and deposited in the relevant Bank Account pending final settlement with the Concessionaire .

(b) Project Contracts

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

(c) Applicable Permits

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

(d) Guarantees

The Grantor shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire, if the termination is on account of a Concessionaire Event of Default.

(e) Transfer of Risk

Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project and the Project Assets unless the loss or damage is due to an act or omission of the Grantor in contravention of its obligations under this Agreement. On and from the Transfer Date all risks in relation to the Project and the Project Assets shall be deemed to lie with the Grantor

Section 16.5 Vesting Certificate

On the Transfer Date the Grantor/Expert shall verify, in the presence of the Concessionaire or of a representative of the Concessionaire's, compliance by the Concessionaire with the requirements of Section 16.5 above. In the event the Grantor/Expert notifies the Concessionaire of shortcomings, if any, in the Concessionaire's compliance with such requirements, the Concessionaire shall forthwith cure the same.

The divestment of all rights and interest in the Project and Project Assets shall be deemed to be complete on the Transfer Date but not later than 30 (thirty) days thereafter, by when all the requirements of Section 16.5 above shall be fulfilled. The Expert shall on such date issue a certificate substantially in the form set forth in Appendix-11 (the "Vesting Certificate"), with a copy thereof endorsed to the Grantor, which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights and interest in the Project and the vesting thereof in the Grantor or its nominee, as the case may be, pursuant hereto.

Section 16.6 Compensation on Termination

Section 16.6.1 Termination Due to Force Majeure Event or an Event of Default

- (a) In the event of termination of this Agreement/Concession due to Force Majeure Event or an Event of Default, the Grantor shall, upon transfer of the Project, Project Assets and the Site by the Concessionaire to the Grantor or its nominated agency in accordance with the provisions hereof, pay to the Concessionaire the following termination payments:

No termination payments shall be payable to the Concessionaire in the event of termination of this Agreement due to a Concessionaire Event of Default or a Force Majeure Event. Upon termination of this Agreement due to: (1) a Concessionaire Event of Default, Grantor shall retain the Annual Concession Fee and all other Payments made up to that date and forfeit the Performance Security, as case may be, as damages; (2) a Force Majeure Event, the Grantor shall retain the Annual Concession Fee and the Bank Guarantee in lieu of Performance Security to the Concessionaire/Preferred Bidder; provided there are no outstanding claims of the Grantor on the Preferred Bidder/Concessionaire

Upon termination by the Concessionaire due to a Grantor Event of Default (by the Concessionaire), compensation payable by the Grantor to the Concessionaire shall be the amount determined as follows: The aggregate Depreciated Historic Cost (DHC), as determined by an Third Party Expert (appointed by mutual consent and who shall be in the position of an expert under the Arbitration and Conciliation Act, 1996), of (x) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Concessionaire and comprised in the Project , which in the reasonable judgment of the said Expert are capable of being put to use/utilized by the Grantor and (y) the moveable assets which the Grantor agrees to take over LESS any amount due to the Grantor from the Concessionaire under this Agreement and the insurance claims claimed or received.

Provided that the compensation shall in no event include the value of the portion of any asset affected by Force Majeure Event or Grantor EOD, to the extent of the insurance claim received or admitted in relation to such Event.

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

- (b) Nothing herein shall prejudice the right of the Grantor to recover from the Concessionaire any amounts due and payable to it by the Concessionaire hereunder.
- (c) Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of a Party, including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of a Party under this Agreement, including without limitation termination payment, shall survive the termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 17 DISPUTE RESOLUTIONS

Section 17.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Grantor and the Concessionaire in connection with interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the Termination of this Agreement, then the

- (a) Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them, period to resolve such dispute should be within 30 days, failing which,
- (b) Per-se the courts of Chennai & Coimbatore only shall have the jurisdiction to decide.

ARTICLE 18 MISCELLANEOUS PROVISIONS

Section 18.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and, subject to the provisions of Article 17, the courts at Chennai & Coimbatore shall have jurisdiction over all matters arising out of or relating to this Agreement.

Section 18.2 Waiver & Remedies

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

Section 18.3 Survival

The Termination/expiry of this Agreement

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

Section 18.4 Entire Agreements and Amendments

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

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

Section 18.5 Mode of Delivery of Notices

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

If to Grantor:

The Commissioner
Coimbatore City Municipal Corporation (CCMC)
Coimbatore - 641001,
Tamilnadu, India
Telephone: 0422-2396026 & 0422-2305238.
Facsimile number: 0422-2390167
Email: commr.coimbatore@tn.gov.in

If to Concessionaire :

----- Fax No. ----- Attn:

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

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

Section 18.6 Severability

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

Section 18.7 No Partnership

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the Provisions of this Agreement.

Section 18.8 Language

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

Section 18.9 Exclusion of Implied Warranties etc.

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

Section 18.10 Counterparts

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

Section 18.11 Further Assurances

At all times after the date hereof the Parties shall execute all such documents and do such acts, deeds and things as may reasonably be required for the purpose of giving full effect to this Agreement.

Section 18.12 Regulatory Framework for Infrastructure Projects

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

Section 18.13 Remedies Cumulative

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

Section 18.14 Intellectual Property Rights and Confidentiality

(a) Intellectual Property Rights

The Concessionaire accepts and agrees that the Grantor shall be the absolute and exclusive owner and proprietor of the all details, plans, specifications, schedules, programs, budget, reports, calculations and other work relating to the Project hereafter referred to as "Proprietary Material", which have been or are hereafter written, originated or made by any of the Concessionaire or the Persons claiming through or under it or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print. The Concessionaire shall not either directly or in-directly uses the trademarks of CCMC.

- The Grantor shall own all the intellectual property rights in or relating to the Proprietary Material and all rights, privileges, entitlements, interests, property and benefits and associated rights whatsoever therein for the full period in accordance with the Applicable Laws and with all the reservations and extensions thereof and together with the exclusive right of the Grantor to use such information and intellectual property/authorize the use thereof by Third Parties in India and abroad in any form, including without limitation the right to reproduce, translate, edit, modify, distribute, sell or assign such rights, with or without consideration.
- The Grantor shall have the exclusive right to apply for/procure registration of the intellectual property rights at its cost with relevant competent authorities in India and abroad.
- The Concessionaire and the Grantor hereby grant to each other an irrevocable, royalty-free, non-exclusive Concession to use all proprietary material owned by any of them or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. Such Concession shall carry the right to use such material for all purposes connected with the Project; however, it shall not be transferable to any Person other than to the permitted assignee under this Agreement. Such Concession shall discontinue on the termination or expiry of this Agreement or the discharge by any Party of its duties hereunder.

(b) Confidentiality

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

- already in the public domain, otherwise than by breach of this Agreement;
- already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;
- obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- disclosed to the Lenders under terms of confidentiality; or

- which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Government Authority.

Section 18.15 Joint and Several Liability of Consortium/Preferred Bidder

In case the Preferred Bidder is a Consortium of two or more Persons/entities, all such Persons shall be jointly and severally liable to the Grantor for compliance with the terms of this Agreement. The Lead Member shall have the authority to bind all the Members of the Consortium. Except as expressly provided herein, the composition of the Consortium shall not be altered without the prior written approval of the Grantor until ten (10) years from the date of signing this Agreement.

Section 18.16 No Liability for Review

Except to the extent expressly provided in this Agreement,

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

(b) In no event CCMC, or its successor would be vicariously liable during Concession Period.

Section 18.17 Depreciation

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

Section 18.18 Assignability

(a) Except as otherwise provided in this Agreement, the Concessionaire shall not assign its rights, or interest in this Agreement in favour of any Persons without prior written consent of the Grantor. Provided the Concessionaire may assign its rights, interests and benefits under this Agreement to the Lenders as security for the Financial Assistance.

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

Section 18.19 Interest and Right to Set Off

a. Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under Law, the Party entitled to receive such amount shall also have the right of set off.

b. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth

therein the Agreement and if no such period is specified, within 10 (ten) days of receiving a claim

- c. demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to the 24% (Twenty Four percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under the Law and this Agreement, including termination thereof.
- d. All Supplemental Agreements executed subsequently to fulfill the objectives of the Project, shall essentially become part of this Agreement and shall be read in conjunction with the provisions of this Agreement.
- e. The Concessionaire shall be at sole responsibility in respect of issues arising out of consumer laws and their compliance.

IN WITNESS WHEREOF the Grantor and Concessionaire, through their respective authorized officials subscribe their respective signatures and seals hereto on this _ day of ___2010:

<p>Signed, sealed and delivered by: The Authorised Signatory For and on behalf of</p> <p>Coimbatore City Municipal Corporation (Grantor)</p> <p>Name Designation Company seal <u>Witness:</u> 1.</p>	<p>Signed, sealed and delivered by: The Authorised Signatory For and on behalf of the</p> <p>XXXX Ltd (Concessionaire)</p> <p>Name Designation Company seal <u>Witness:</u> 1.</p>
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DRAFT LETTER OF INTENT (LOI)

(This will be issued by CCMC to the 'Preferred Bidder' upon completion of Bid evaluation process and acceptance of Bid by the Competent Authority).

[Date]
[Ref Number]

To

[Preferred Bidder]
[Address]

Kind Attention: [Authorized Representative of Preferred Bidder]

Sub: Letter of Intent (LoI) for providing Facility Management Services of the Bus stand In Mettupalayam road at Coimbatore.

Sir,

- [1] This has reference to the Proposal (the capitalized terms used herein shall have the same meaning as set forth in the Request for Proposal and Draft Concession Agreement) submitted by your Firm/ Consortium to Coimbatore City Municipal Corporation, dated, XX, 2010 in response to the Request for Proposal (RFP) issued by CCMC for Operation & Maintenance of the Bus Stand at Mettupalayam Road in Coimbatore on PPP basis.
- [2] CCMC is pleased to inform that your aforesaid Proposal has been accepted and issue this Letter of Intent ("LoI") to nominate you as the Concessionaire for Operation & Maintenance of the Bus Stand at Mettupalayam Road in Coimbatore on PPP basis subject to your firm fulfilling the following requirements within 15 days from the date of issue if this Letter of Intent (LoI).

Furnishing unconditional and irrevocable Performance Security Bank Guarantee for Rs.50.00 Lakhs (Rupees Fifty Lakhs only) within 30 (Thirty) days from the date of issue of LoI, to be valid irrespective of the validity of the Concession Agreement from any Nationalized/ Scheduled Bank (Except Co-Operative Bank) in favour of "Commissioner, Coimbatore City Municipal Corporation" with a validity of three years from the date of signing of Concession Agreement operable at Coimbatore.
- [3] Please note that your firm's failure or inability to fulfill any of the requirements stipulated in para [2] above shall render your Proposal liable for rejection/disqualification and Bid Security furnished by you and any other payments made till such time shall be liable for forfeiture and this Letter of Intent shall stand withdrawn.
- [4] Please note that fulfillment of the above requirements stipulated in para [2] above is a precondition for award of Concession and signing of the Concession Agreement.
- [5] In addition to the above, you shall comply with all the other provisions / requirements of the RFP in their entirety.

We look forward to an early fulfillment of the above-mentioned requirements by you. Kindly acknowledge the receipt of this Lol by signing the duplicate copy.

Yours Sincerely,

[Authorised Signatory – CCMC]

We hereby acknowledge the receipt of this Letter of Intent (Lol)

Authorised Signatory

Consortium Agreement

[As furnished by the Preferred Bidder along with the Bid]

“Project Facilities”

“Project Facilities” means collectively: (i) the Bus Stand and (ii) the Commercial Facilities which would include: (1) areas in the First & Second Floors, shops around the kiosks (2) all attendant infrastructure facilities and services, and (3) external areas within the Project Site like parking spaces, open area and landscaped areas, and (4) all types of works that the Concessionaire is authorised to operate and maintain on the Project Site (*Appendix-3*) “Project Facility” can refer to any one of them, as the context may require

A. “Specifications & Standards”

B “Maintenance and Performance Standards”

C. “Applicable Permits & Clearances including Critical Clearances”

(All the above as specified in the Section II of RFP)

“Project Site” or “Bus Stand Complex “

The site for the new bus stand along the Mettupalayam Road abuts the National Highway NH 67 (near 349/600). The site is in close proximity to the Tamil Nadu Transport Corporation (TNSSTC) Bus Depot. The proposed bus stand is planned to cater the service needs of North bound passengers i.e., Passengers moving towards Ooty.

The site is located in the survey no's:158/A and 159/A with an extent of about 2.74 acres. The designated use of this land parcel as per the Master Plan falls under commercial land use and is owned by Coimbatore city Municipal Corporation. A Muslim Dargah is located in the immediate proximity of the site.



“Scope of Work”

Scope of work includes annual maintenance contract during the Concession period for operation and maintenance of identified Bus terminal through revenue generated from the Commercial facilities provided to the Commuters, Parking Space and Advertisement hoardings. The concessionaire should carry out all works as per Job Specifications like operating and maintaining all the utility services within the bus stand. The scope of work includes providing sufficient manpower for services required for "round - the - clock" maintenance, 365 days in a year. The scope of work also includes providing spares/materials required for the maintenance works as per Job Specifications.

AREAS OF SERVICES

The following are the broad areas which require meticulous attention during maintenance of the Bus Stand related facilities include

1. Water supply
2. Underground Drainage
3. Storm Water Drainage
4. Lighting
5. Greenery area
6. Seating arrangements
7. Signages
8. Watch and ward
9. Information system through LCD monitors / audio systems
10. Passenger amenities in waiting area
11. Solid waste collection, removal and its frequency
12. Luggage trolley
13. Public conveniences
14. Commercial Areas – Maintenance
15. Advertising (posters, illuminated, rolling / chargeable or animated displays)
16. CCTV for security / surveillance (optional)
17. Vehicle parking space

The scope of the works/ activities to be performed under each service head covers the following, generally but not limited to meet the requirement of efficient O & M and is listed in detail in the section II of the RFP Document.

Land Lease Deed

Appendix-8

Vesting Certificate

The divestment of all rights and interest in the Operation & Maintenance of the Bus Stand at Mettupalayam Road in Coimbatore, shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Expert shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Section 16.5 (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights and interest in the Project, and their vesting in the Grantor pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Grantor or its nominee on or in respect of the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

Undertaking on Land Title

**(To be provided by the Concessionaire saying his satisfaction over the land title(s)
and required documents shown by the Grantor)**

Format for

PERFORMANCE GUARANTEE

(On requisite Stamp Paper)

In consideration of the Coimbatore City Municipal Corporation (CCMC) (hereinafter called "the Corporation") having agreed to exempt _____(hereinafter called "the Concessionaire) from the demand, under the terms and conditions of Letter of Intent (LOI) issued in respect of the "Operation & Maintenance of the Bus Stand at Mettupalayam Road in Coimbatore" project and subsequent Concession Agreement being signed between Concessionaire and Corporation for performance of the Agreement to be made (hereinafter called "the said Agreement"), for the due fulfillment by the said Concessionaire of the terms and conditions contained in the said Agreement, on production of a Bank Guarantee for Rs. 1.00 Crore (Rupees One Crore only).

We, _____(hereinafter referred (indicate the name of the bank) to as "the Bank" at the request of the Concessionaire do hereby undertake to pay to the Corporation an amount not exceeding Rs.50.00 Lakhs (Rupees Fifty Lakhs only) against any non fulfillment of the obligations of the Agreement or loss or damage caused to or suffered or would be caused to or suffered by the Corporation by reason of any breach of any terms and conditions contained in the said Agreement by the said Concessionaire of any of the terms or conditions contained in the said Agreement.

We _____(indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, hereby on a demand from the Corporation stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Corporation by reason of breach of any terms and conditions contained in the said Agreement by the said Concessionaire of any of the terms or conditions contained in the said Agreement or by reason of the Concessionaire failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.1.00 Crore.

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

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

We, _____(indicate the name of bank) further agree with the Corporation that the Corporation shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said

Concessionaire from time to time or to postpone for any time or from time to time any of the powers exercisable by the Corporation against the said Concessionaire and to for bear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Concessionaire or for any forbearance, act or omission on the part of the Corporation or any indulgence by the Corporation to the said Concessionaire or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

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

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

The Guarantor agrees absolutely, irrevocably and unconditionally guarantees and undertakes to pay to CCMC a sum of Rs. 50.00 Lakhs (Rupees Fifty Lakhs only) without any protest or demur and upon receipt of first written demand from CCMC. This Guarantee is independent of the terms and conditions of the Concession Agreement and its validity.

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

IN WITNESS WHEREOF the Guarantor has executed this Guarantee on this _____day of _____and year first herein above written.

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

Authorized Signatory
Name :
Designation:

In the presence of:
1.
2.

Appendix-11

Schedule of Payments of Annual Concession Fee

As per the Price Bid of the Preferred
Bidder