

**DEVELOPMENT OF CIRCULAR SHAPE AUTOMATIC/ROBOTIC TYPE
MULTI LEVEL CAR PARKING, INCLUDING ROOF TOP RESTAURANT,
COMMERCIAL UNITS, DRIVE IN RESTAURANT, CHILDREN'S PARK
AND BUS PARKING BAY, AT SIRUSERI NEAR SIPCOT JUNCTION
IN OMR, CHENNAI**

**On
Design, Build, Finance, Operate and Transfer
(DBFOT) Basis**

February 2016

VOLUME – II - Draft Concession Agreement

This section is a draft of the legally binding document to be signed between the Concessionaire (SPV), the selected bidder and Tamil Nadu Road Development Company (The Authority) for the project



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THIS CONCESSION AGREEMENT (hereinafter referred to as the "**Agreement**") is mutually agreed and entered into on this ____ day of ____, 2016 ("**Effective Date**") at Chennai

BETWEEN

Tamil Nadu Road Development Company Ltd. (TNRDC), acting through the Chairman & Managing Director, Tamil Nadu Road Development Company Ltd., having its main office at 171, Tamil Nadu Maritime Board Building, 2nd Floor, South Kesavaperumal Puram, Pasumpon Muthuramalingam Road (Greenways Road), Raja Annamalai Puram, Chennai – 600 028. Tamil Nadu, India. (hereinafter referred to as "**TNRDC**" or "**Authority**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and assigns/nominees) of the **FIRST PART**;

AND

_____, a company incorporated under the provisions of the Indian Companies Act, 2014, having its registered office at _____, duly represented through its director Shri. _____ who has been authorized to sign this document through a board resolution dated _____ (hereinafter referred to as the "**Concessionaire**" or "**SPV**" or "**Special Purpose Vehicle**", which expression shall unless repugnant to the context include its successors and permitted assigns) of the

SECOND PART;

AND

_____, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at _____

_____, [please insert address];

_____, a company incorporated under the Companies Act, 1956 and having its registered office at _____, [please insert address] and _____, a company incorporated under the Companies Act, 1956 and having its registered office at _____

_____, [please insert address] (hereinafter referred to as the "**Successful Bidder**" / "**Confirming Party**", which expression shall unless repugnant to the context or meaning thereof shall include its representatives, successors and permitted assigns)

THIRD PART.

TNRDC, Concessionaire and the Successful Bidder/ Confirming Party are hereinafter collectively referred to as the "**Parties**" and individually referred to as the "**Party**".

WHEREAS:

- A. TNRDC is desirous of promoting real estate market at the site area, more specifically described in Schedule A ("**Project Site**" or "**Site**"). In order to enable more efficient use of public resources, TNRDC has taken the decision to support the development at the Site through public-private-partnership (PPP) route. In pursuance of this objective, TNRDC intends to Develop a Circular Shape Automatic / Robotic Type Multi Level Car Parking, Including Roof Top Restaurant, Commercial Units, Drive in Restaurant, Children's Park and Bus Parking Bay on plot admeasuring 4.91 acres at Siruseri near SIPCOT Junction, in OMR, Chennai on Design, Build, Finance Operate and Transfer (DBFOT) basis (the "**Project**" or "**MLCP & its Components**" or "**Complex**") in compliance with Applicable Laws for the Site.

- B. TNRDC had accordingly invited proposals by its Tender Notice No. _____ (the "Tender Notice")/Request for Qualification cum Request for Proposal dated _____ (the "RFQ-cum-RFP") for short-listing of Bidders to undertake the Project.
- C. After evaluation of the Bids received, TNRDC had accepted the Bid of the Successful Bidder and issued its Letter of Intent No. _____ dated _____ (hereinafter called the "LoI") to the Successful Bidder requiring, *inter alia*, the acceptance of the same within a period of 7 days from the date of its issuance.
- D. The Successful Bidder has since promoted and incorporated M/s (name of the Concessionaire) as a limited liability company under the provisions of the Companies Act, 2013, and has requested TNRDC to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder under the LoI, including the obligation to enter into this Agreement pursuant to the LoI for undertaking the execution of the Project.
- E. By its letter dated _____, the Concessionaire has also joined in the said request of the Successful Bidder to TNRDC to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder including the obligation to enter into this Agreement pursuant to the LoI. The Concessionaire has further represented to the effect that it has been promoted by the Successful Bidder for the purposes hereof.
- F. Accordingly TNRDC has agreed to enter into this Agreement with the Concessionaire for execution of the Project for construction of the Complex on "Design, Build, Finance, Operate and Transfer (DBFOT) Basis", subject to and on the terms and conditions set forth hereinafter.
- G. The Concessionaire shall undertake Development of the MLCP on the Project Site, as per the Applicable Law. The Concessionaire will be given development rights of the Project Site for a period of **20 years** from the Appointed Date (the "Agreement Period" or "Concession Period") inclusive of a 24 month construction period. The Concessionaire shall be given the Project Site on a license basis to undertake the Project.
- H. Authority has executed this Agreement to grant to the Concessionaire, the development rights and stating its obligations with regard to designing, engineering, financing, construction, operation and maintenance of the Complex.
- I. TNRDC confirms the receipt of an amount of **INR 9,36,30,000/- (Rupees Nine Crores Thirty Six Lakhs Thirty Thousand Only)** as Performance Security for the Project Site valid for a period of at least 2 years, vide bank guarantee ("the **Bank Guarantee**") bearing BG No. _____ dated _____ from a Scheduled Bank, as a pre-condition for the execution of this Agreement.

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

THIS AGREEMENT WITNESSETH AS FOLLOWS:

Article 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

1.1.1 In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

"Accounting Year" or "Financial Year" shall mean the year commencing from 1st of April to 31st March every year.

"Affected Party" shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 26.

"Agreement" shall mean this Concession Agreement with its recitals and schedules, and includes any amendments hereto made in accordance with the provisions hereof.

"Agreement Period" shall have the same meaning set forth in Article 3.1.2 (b).

"Applicable Law" means and includes any statute, law, bye-law, rule, regulation, ordinance, judgment, order, decree, injunction, writs or orders of any court of record, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter.

"Applicable Permits" shall mean all clearances, licenses, permits, authorizations, no objection certificates, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the construction and maintenance of the Complex during the subsistence of this Agreement.

"Appointed Date" means the date on which the Conditions Precedent as per Article 4 of this Agreement are achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Agreement Period;

"Approved Drawings" shall mean the drawing selected by TNRDC among the drawings submitted by the Concessionaire for the development of the MLCP.

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

"Authority" means Tamil Nadu Road Development Company Ltd.;

"Authority's Engineer" shall have the meaning set forth in Article 20.1.1 of the Concession Agreement.

"Bank Guarantee" shall have the meaning set forth in Recital I of this Agreement (Above);

"Bid" means the documents in their entirety comprised in the bid submitted by the Bidders in response to the Tender Notice in accordance with the provisions thereof;

"Bid Value" shall mean the highest amount of Bid Variable offered by the Successful Bidder in the Financial Proposal at the RFQ cum RFP Stage payable to TNRDC for the Purpose of developing the Project Facilities at the Site.

"Change in Ownership" means the transfer of equity in part or whole of the Concessionaire.

"Change of Scope" shall have the meaning set forth in Article 16.1.1 of this Agreement.

"Change of Scope Notice" shall have the meaning set forth in Article 16.2.1 of this Agreement.

"Change of Scope Order" shall have the meaning set forth in Article 16.2.4 of this Agreement.

"Completion" in relation to the Project shall mean completion of 100% of the floor area ratio of the project as per the approved DPR in all respect, which shall *inter-alia* include the completion of the building civil Works (in accordance with the Applicable Laws) including completion of utilities such as electricity, water supply, sewerage, HVAC, lifts & elevators, fire fighting services and other common amenities, duly certified by the competent authority, competent to grant the occupancy certificate; and further shall be detailed in this agreement.

"Complex" or "MLCP & its Components" shall have the meaning ascribed to it in Recital A.

"Concessionaire" shall mean M/s_____.

"Concessionaire Default" shall have the meaning set forth in Article 29.1.2 of the Concession Agreement.

"Conditions Precedent" shall have meaning as ascribed under Article 4;

"Contractor" shall mean any Person with whom the Concessionaire has entered into / may enter into any material contract in relation with the Construction, Operation and Maintenance of the Project Facilities.

"Construction Period" shall have the meaning set forth in Article 3.1.2 of this Agreement.

"Construction Works" shall mean all the works at the Project Site, required to be undertaken by the Concessionaire, in conformity with the specifications, the Development Control Regulations and such other applicable law which need to be complied by the Concessionaire.

"Covenant" shall have the meaning set forth in Article 5.2.4 of the Concession Agreement.

"Designated Bank" shall have the meaning set forth to it in Article 23.1.1.

"Development Control Regulations (DCR)" shall mean the Development Control Rules/Regulations in Siruseri as framed by the Local Planning Authority.

"Development Rights" shall have the meaning set forth in Article 3.1.1 of the Concession Agreement.

"Dispute Resolution Procedure" shall mean the procedure as mentioned Article 32.

"Divestment Requirements" shall have the meaning assigned to it in Article 29.1.

"DPR" shall have the meaning set forth in Article 4.1.2 (f);

"Effective Date" shall be the date of signing of this Agreement between the Concessionaire and TNRDC;

"Encumbrance" shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Site

"Equity" shall mean the equity shares of the subscribed and paid up capital of the Concessionaire and shall include any other instrument granting voting rights to the holder thereof.

"Escrow Agreement" shall have the meaning set forth to it in Article 23.1.2.

"Fee" shall mean the sub-lease fee collected by the Concessionaire from the Users.

"Financial Year" shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

"Force Majeure" or **"Force Majeure Event"** shall mean an act, event, condition or occurrence as specified in Article 26 of this Agreement.

"Good Industry Practice" shall mean the exercise of that degree of skill, diligence, prudence, integrity and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project similar to that of the Project.

"Government Agency" shall mean Government of India (GoI), Government of TN, Authority/TNRDC 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 Parties, the Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire/Successful Bidder under or pursuant to this Agreement.

"Inspection Report" shall have the meaning set forth in Article 13.2.1 of this Agreement;

"Insurance Cover" shall have the meaning set forth in Article 24.1.1 of this Agreement.

"Letter of Intent" shall mean the letter issued by TNRDC to the Successful Bidder as per the terms and conditions of the RFQ cum RFP Document.

"License Fee" shall have the meaning set forth in Article 10.2.2 of this Agreement.

"Licensed Premises" shall have the meaning set forth in Article 10.2.2 of this Agreement.

"Maintenance Manual" shall have the meaning set forth in Article 17.3.1 of this Agreement.

"Maintenance Programme" shall have the meaning set forth in Article 17.4.1 of this Agreement.

"Maintenance Requirements" shall have the meaning set forth in Article 17.2.1 of this Agreement.

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

"Material Breach" shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

"Non-Political Event" shall have the meaning ascribed to it in Article 26.2.

"O&M Contractor" shall have the meaning set forth in Article 5.2.5 of the Concession Agreement.

"O&M Inspection Report" shall have the meaning set forth in Article 19.2.1 of the Concession Agreement.

"Operations and Maintenance Security" shall have the meaning as ascribed to it in Article 9.1.1(v).

"Operation Period" shall cover the period between the commencement of business of the Concessionaire after the completion of Construction Period till the date of expiry of the Agreement Period.

"Parties" shall mean the parties to this Agreement and "Party" shall mean either of them, as the context may admit or require.

"Person" shall mean (unless otherwise specified or individual, required by the context), company, Authority, partnership, trust, government or any unincorporated government body or any other organization / legal entity.

"Political Event" shall have the meaning ascribed to it in Article 26.4.

"Project" shall mean designing, engineering, procuring, construction, operation and maintenance of the MLCP along with its components on the Project Site in accordance with the provisions of this Agreement.

"Project Assets" shall mean and include the Complex and such other movable or immovable, vacant and unencumbered land, buildings, structures, road works, trees and any other movable or immovable property on or attached to the Site.

"Project Agreements" means collectively this Agreement, construction contracts, operations and maintenance contracts and any other material contract entered into or may be entered into by the Concessionaire/Successful Bidder in connection with the Project.

"Project Completion Schedule" shall have the meaning set forth in Schedule F;

"Project Milestone(s)" shall have the meaning set forth in Schedule F;

"Project Site/ Site" shall mean plot of land admeasuring 4.91 acres at Siruseri, OMR Road, Chennai.

"Proposals/ Request for Qualification cum Request for Proposal (RFQ cum RFP)" shall mean the Request for Qualification cum Request for Proposal Document, issued by Authority dated _____, to the interested bidders, and the amendments and modifications made thereto from time to time together with all Annexures, Schedules, Maps along with such corrigendum, addendum, amendments as made from time to time.

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

"Safety Consultant" shall have the meaning set forth in Article 18.1.2 of the Concession Agreement.

"Safety Requirements" shall have the meaning set forth in Article 18.1.1 of the Concession Agreement.

"Scheduled Completion Date" shall mean date of completion of the construction of the Complex within **24 months** from the Appointed Date or an extension thereof as may be approved by TNRDC.

"Scope of the Project" shall have the meaning set forth in Article 2.1.1 of the Concessionaire Agreement.

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

"Standards of Reasonable and Prudent Concessionaire" means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions including the conditions as contemplated herein.

"Statutory Auditor" shall mean the statutory auditor appointed by the Concessionaire in accordance with the provisions of the Companies Act, 2013.

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project, charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" shall mean termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement.

"Termination Date" shall mean the date specified in the Termination Notice as the date on which Termination occurs.

"Termination Notice" shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

"Termination Payment" shall mean the payment to be made by either party to this Agreement upon Termination in accordance with the terms of this Agreement.

"Transfer Date" means the date on which this Agreement and the Development Rights hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"Users/ occupants/potential buyers" or "Sub-licensee" shall be the person/s with whom the Concessionaire enters or has entered into an agreement for sub-lease of the units contained in the Complex as per the terms herein.

"Vesting Certificate" shall have the meaning set forth in Article 29.3.1 of this Agreement.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- d) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- e) references to "construction" or "building" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;
- f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g) any reference to day shall mean a reference to a calendar day; references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Chennai are generally open for business; any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- h) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- i) 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;
- j) the words importing singular shall include plural and vice versa;
- k) references to any gender shall include the other and the neutral gender;
- l) "lakh" means a hundred thousand (100,000) and "Crore" means ten million (10,000,000);
- m) "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- n) references to the "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in

which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

- o) any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-article shall not operate so as to increase liabilities or obligations of TNRDC hereunder or pursuant hereto in any manner whatsoever;
- p) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, in this behalf and not otherwise;
- q) the Schedules and Recitals 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;
- r) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a paragraph of this Agreement or of the Schedule in which such reference appears; and
- s) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages").

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire/Successful Bidder to TNRDC and/or any of its authorized representative shall be provided free of cost and in three copies, and if TNRDC is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

1.3.1 All measurements and calculations shall be in the 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.

1.4 Priority of Agreements and errors/discrepancies

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

- a) This Agreement; and

- b) RFQ cum RFP.
- 1.4.2 In case of ambiguities or discrepancies within this Agreement, the following shall apply:
- a) Between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Clauses;
 - b) Between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexures, the Schedules shall prevail; and
 - c) Between any value written in numerals and that in words, the latter shall prevail.

Article 2 SCOPE OF THE PROJECT

2.1 Scope of the Project

2.1.1 For the purposes of the construction, development and operation of the MLCP and its components at the Site during the Agreement Period, the scope of the Project (the **"Scope of the Project"**) shall mean and include but not be limited to;

- i. Designing, Engineering, Obtaining of clearances including Environmental / CRZ (if necessary)/PCB/other statutory approvals, Financing and Construction of the MLCP and its components with a life of at least 50 years, on the Site as specified in Schedule A, which shall include the construction & development of the MLCP in the manner specified in Schedule B and in conformity with the Specifications and Standards set forth in Schedule C;
- ii. Operation and Maintenance (O & M) of the MLCP and its components in accordance with the provisions of this Agreement, as per Good Industry Practice and in a professional manner ensuring maximum availability of Project during the Agreement Period.
- iii. Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.1.2 The brief scope of work envisaged for the Concessionaire of the Project is as below:

- Preparing detailed design for the proposed Project in accordance with the approved conceptual plans and design and getting them approved from the Authority or its authorized representative,
- Procuring all applicable approvals, clearances/permits and license for the Project from the applicable authorities, local bodies and other agencies.
- Construction of the MLCP and its components at the proposed Site location as in compliance with terms of this Agreement
- Operation and Maintenance of the proposed MLCP and its components throughout the Agreement Period of this Agreement.
- Sub-Licensing of the built up area to the third party with prior written approval from the Authority.
- Collection of rent amount and depositing the same in the Escrow Account
- Preparation and Maintenance of the financial accounts for the Project and submitting a copy of the same to the Authority every month for the entire duration of the Agreement Period.
- Vacate and deliver the Project Assets to the Authority on the expiry of the Agreement Period which shall be free from all encumbrances of any nature whatsoever

2.1.3 The Concessionaire shall preferably construct a service road all along the Project Site and shall also provide provision for merging of the traffic with the main road in the front & Side of the Project Site as per the requirement of the Project and including entry as well as exit.

2.2 Special Conditions for Circular Type Automatic MLCP

The Concessionaire agrees that it will follow the following special conditions for the Circular Type Automatic MLCP,

- a) The MLCP will be circular in shape of automatic/robotic type single or multiple units.
- b) The capacity will be approximately 632 car spaces over multiple floors of parking as a single or multiple units.
- c) The allowed size of the vehicles shall be approximately 2.10 (Width) x 5.20 m. (length max) x 2.05m (Height)
- d) A machinery room to be located on the top.
- e) Multiple Entrances & Exits shall be provided to & from the MLCP.
- f) Traffic intersections shall be avoided.
- g) The average cycle time for an Entrance or an Exit cycle input will be approximately 90 sec. while filling or emptying time of the whole system will be less than 5 hours.

The Concessionaire also agrees that there will be no deviation from the same unless any prior written approval is obtained from the Authority i.e. at the time of proposal presentation.

[The above said approvals must be document here at the time of signing of the agreement]

Article 3 GRANT OF DEVELOPMENT RIGHT

3.1 The Development Right

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the TNRDC hereby grants to the Concessionaire the Development Right set forth herein including the exclusive right, license and authority during the subsistence of this Agreement to undertake the Project and deliver the Project Assets to the Authority upon the expiry of the Agreement Period of this Agreement (the "**Development Right**").

3.1.2 The Project is proposed to be developed on Design, Build, Finance, Operate and Transfer (DBFOT) Basis whereby:

- a) The Concessionaire shall develop the MLCP and its components as per the Applicable Laws. The MLCP and its components shall be designed, built and constructed within a maximum period of **24 (Twenty Four) months** from the Appointed Date or such other extensions as permitted by the Authority ("**Construction Period**") and operated and maintained till the expiry of the Agreement Period. The Concessionaire shall get the license rights over the MLCP and its components only after the Concessionaire has procured occupancy certificate from the competent authority in respect of the MLCP and its components and/or any other conditions stipulated in this Agreement.
- b) The Concessionaire shall maintain and operate the MLCP and its components for a period of **20 (Twenty) years** commencing from the Appointed Date subject to the terms of this Agreement and shall be inclusive of the Construction Period (hereinafter referred to as the "**Agreement Period**")
- c) In consideration of construction, operation and maintenance of the MLCP and its components for the Agreement Period, the Authority shall provide land of about 4.91 acres on 20 (Twenty) years commencing from the Appointed Date in the form of license substantially upon fulfillment of Conditions Precedent mentioned in Article 4.1.

3.1.3 The Concessionaire hereby accepts the Development Right and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.4 Subject to and in accordance with the provisions of this Agreement, the Development Right hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- a) Land Area, access and license for the Site and the constructed floor area for the purpose of rent collection and to the extent conferred by the provisions of this Agreement;
- b) investigate, study, design, engineer, procure the Project ;
- c) develop and construct the Project ;
- d) manage, operate and maintain the Project and regulate the use thereof by third parties;
- e) ensure optimal management, operation, development and maintenance of the Project throughout the Agreement Period, either by performing the operation and maintenance itself, or by making durable, effective and permanent arrangements for due performance of the operation and maintenance obligations by third party(s);

- f) Sub-License, part or whole of the MLCP and its components and appropriate the proceeds of such license in accordance with the terms of this Agreement. All revenue and expenditure for MLCP and its components shall accrue to the Concessionaire.
 - g) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - h) Not assign, transfer or create any lien, charge or Encumbrance on this Agreement or the Development Right hereby granted or on the whole or any part of the MLCP and its components nor transfer, license, lease or part possession thereof, save and except as expressly permitted by this Agreement.
- 3.1.5 During the Construction Period, the Concessionaire may have the right to permit/allow and charge for advertisement/hoarding on the Project Site as per applicable laws but only after receiving a prior approval from the Authority in writing.
- 3.2 Sub-Licensing**
- 3.2.1 The Concessionaire shall be entitled, during the subsistence of this Agreement, to allow the use, possession, occupation and enjoyment of the Project through a sub-license arrangement to sub-licensees, in accordance with the terms and conditions contained in this Agreement and subject to all Applicable Laws.
- 3.2.2 The Concessionaire shall be entitled to sub-license the MLCP and its components, either in whole or any part of it, in accordance with Article 3.2.1 of this Agreement, during the subsistence of this Agreement with a clear stipulation that the sub-license granted shall terminate simultaneously with the termination of this Agreement including early termination for any reason whatsoever. **All contracts, agreements or arrangements with sub-licensees shall specifically stipulate the heads of terms as specified in Schedule M** specifically the covenant of termination of the sub-licensees rights and further that the sub-licensees shall not have any claim whatsoever against the Authority for any such termination.
- 3.2.3 The Concessionaire shall prepare a draft standard format of the sub-license agreement or arrangement which shall include the heads of terms set out at **Schedule M**, which the Concessionaire will be required to sign with the sub-licensees for the use, possession, occupation and enjoyment of any part of the MLCP and its components. The Concessionaire shall furnish the draft of such agreement to the Authority for confirmation and approval. The Authority shall be entitled to incorporate such provisions, as the Authority may consider appropriate to protect the Authority's interest. The Concessionaire shall not incorporate any provision in the sub-license agreement that would have any adverse effect on the Authority. In case of any deviation from the above mentioned approved and confirmed draft of the sub-license agreement in any particular circumstance, which supersedes or adversely affects the Authority's terms and covenants, the Authority reserves the right to take necessary action against the Concessionaire for breach of this Agreement.

Article 4 CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 The Concessionaire may, upon providing the Performance Security to TNRDC in accordance with Article 9, at any time after the Effective Date, by notice require TNRDC to satisfy any or all of the Conditions Precedent set forth in this Article 4.1 within a period of 90 (ninety) days of the notice, or such longer period not exceeding 150 (one hundred and fifty) days as may be specified therein, and the Conditions Precedent required to be satisfied by TNRDC prior to the Appointed Date shall be deemed to have been fulfilled when TNRDC shall have:

- a) provided to the Concessionaire the Site for the Project in accordance with the provisions of Article 10.3;
- b) Provide a certificate regarding clearance of all taxes, levies and other financial liabilities including but not limited to property & municipal taxes etc. for period before the Effective Date; and
- c) Provided a letter stating that the Conditions Precedents as mentioned herein have been provided to the Concessionaire in writing.

4.1.2 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 150 (one hundred and fifty) days from the Effective Date shall be deemed to have been fulfilled when the Concessionaire has:

- a) executed and procured execution of the Escrow Agreement and opened the Escrow Account;
- b) procured all the Applicable Permits specified in Schedule D unconditionally or if subject to conditions then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- c) design of entire Project for MLCP and its components conforming to the provisions of concerned development authorities, Bye-laws, requirements of all statutory/regulatory bodies in respect of fire hazard, ventilation & lighting requirement, safety, security, evacuation, alarm etc. during disaster. The Project shall conform with the norms of the National Disaster Management Authority for the seismic zone in which the Project falls.
- d) obtain all approvals from local bodies, statutory & regulatory authorities in respect of Building Plan of the MLCP and its components and/or its facilities to be constructed by it.
- e) delivered to TNRDC 2 (two) true copies of the Financial Model, duly attested by a Director of the Concessionaire, along with 2 (two) soft copies of the Financial Model in MS Excel version or any substitute thereof;
- f) Prepared, submitted and got approved by TNRDC, a Detailed Project Report ("DPR") in accordance with Article 12.3 of this Agreement. The DPR shall inter-alia provide:
 - i. Details of MLCP and its components along with the details proposed to be constructed

- ii. Detailed break-up of the project cost
- iii. Lay out plan of the Site
- iv. PERT / Gantt chart for development of the Project.

4.1.3 In addition to the above, the Concessionaire may be required to provide any further information as may be reasonably required by TNRDC:

- a) delivered to TNRDC a confirmation, in original, of the correctness of its representations and warranties set forth in Sub clauses (k), (l) and (m) of Article 7.1 of this Agreement; and
- b) delivered to TNRDC a legal opinion from the legal counsel of the Concessionaire with respect to TNRDC of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

4.1.4 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Approval of DPR

4.2.1 The Concessionaire shall submit the DPR to TNRDC within 75 (seventy five) days of the Effective Date. On receipt of the DPR, TNRDC shall review the DPR submitted by the Concessionaire and provide its comments/observations and suggestions on the same within 30 (thirty) days from the date of the receipt of such DPR from TNRDC.

4.2.2 In the event that TNRDC has observed that the DPR is not in conformity with the Scope of the Project, the Concessionaire shall promptly but not later than 15 (fifteen) days and without any undue delay revise and resubmit the DPR or satisfy TNRDC with regards to its compliance.

4.2.3 On review and finalization of the DPR, TNRDC shall approve the DPR.

4.2.4 The Concessionaire shall not change the DPR reviewed and approved by TNRDC under this Agreement, without submitting such revised DPR for the review of TNRDC.

4.2.5 The Concessionaire shall not be entitled to any extension of time for developing the Project or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR

4.2.6 Notwithstanding the review by TNRDC, the Concessionaire shall be solely responsible for any defect and/or deficiency in the DPR relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

4.2.7 The Concessionaire shall in no way represent to any Person that, as a result of any review by TNRDC, TNRDC have accepted responsibility for the technical or soundness of any work

relating to the Project or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project or any part thereof.

4.3 Damages for delay by TNRDC

- 4.3.1 In the event that (i) TNRDC does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.1.4 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, TNRDC shall extend the period of Development Right for a period reckoned on a day to day basis, equivalent to number of days of delay attributable to TNRDC.

4.4 Damages for delay by the Concessionaire

- 4.4.1 In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.1.3 within a period of 150 (one hundred fifty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Article 4.1.2 or other breach of this Agreement by TNRDC, or due to Force Majeure, the Concessionaire shall pay to TNRDC Damages in an amount calculated at the rate of 1% (one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of the Performance Security.

Article 5 OBLIGATIONS OF THE CONCESSIONAIRE AND SUCCESSFUL BIDDER

5.1 Obligations of the Concessionaire

- 5.1.1 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 design, build, finance, operate and maintain the MLCP and its components during the Agreement Period in accordance with the approved DPR and the provisions of this Agreement, including the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to Articles 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project
 - c) Design, Build, Finance, Operate and Maintain the MLCP and its components and the Project Assets to TNRDC.
 - d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - f) ensure optimal operation and maintenance of the MLCP and its components throughout the Agreement Period, either by performing the operation and maintenance itself, or by making durable, effective and permanent arrangements for due performance of the operation and maintenance obligations by third party(s);
 - g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of the Agreement;
 - h) support, cooperate with and facilitate TNRDC in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - i) Concessionaire shall be allowed to sub- license the premises in the MLCP and its components for a maximum period of 6 years and a minimum of 6 months, in one go.
 - j) Deposit all the Fees/rental income and any such revenue accumulated within the month in the Escrow Account mandatorily failure to which the Authority shall at its discretion

consider the situation an Concessionaire's Event of Default (EOD) and may initiate suspension/terminate the agreement in accordance with the Articles 27 & 28.

- 5.1.5 In addition to the above mentioned obligations, responsibilities of Labour Laws and other such labour enactment including ESI, EPF, Building & Construction Workers Cess Act, etc. shall always be with the Concessionaire and TNRDC shall not be liable in this regard in any manner whatsoever.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to TNRDC the drafts of all Project Agreements including a template for sub-license of the shops, offices etc. in the MLCP and its components to the User, or any amendments or replacements thereto for its review and comments, and TNRDC shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 15 (fifteen) days of execution of any Project Agreements or amendment thereto, the Concessionaire shall submit to TNRDC a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. No review and/ or observation of TNRDC and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall TNRDC be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle TNRDC to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the **"Covenant"**). For the avoidance of doubt, it is expressly agreed that in the event TNRDC does not exercise such rights of substitution, the Project Agreements shall cease to be in force and effect on the Transfer Date without any liability whatsoever on TNRDC and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to TNRDC an acknowledgment and undertaking, in a form acceptable to TNRDC, from the counter party(s) of each of the Project Agreements, where under such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from TNRDC in the event of Termination or Suspension.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor for Project shall be subject to the prior approval of TNRDC, the decision of TNRDC in this behalf being

final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of TNRDC. It is also agreed that TNRDC shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The shareholding of the Concessionaire shall be subject to lock-in as specified in this Agreement and shall be subject to any change only after the prior written approval of TNRDC. Accordingly, the Concessionaire shall not undertake or permit any Change in Ownership, whether directly or indirectly, except with the prior approval of TNRDC

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
- b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

shall be subject to prior approval of TNRDC from national security and public interest perspective, the decision of TNRDC in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of TNRDC. It is also agreed that TNRDC shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

5.3.3 For the purposes of this Article 5.3.2:

- a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on

the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

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

5.5 Employment of trained personnel

5.5.1 The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.6 Obligations relating to aesthetic quality of the Project

5.6.1 The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Project and achieve integration of the Project with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects and town planners of repute for ensuring that the design of the Project meets the aforesaid aesthetic standards.

5.7 Sole purpose of the Concessionaire

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

5.8 Obligations of the Successful Bidder

5.8.1 The Successful Bidder shall in accordance with and subject to the provisions of this Agreement, undertake the following:

- i to keep the Performance Security valid and subsisting in the manner provided in Section 9.1 of this Agreement;

- ii to provide required manpower at a Site office for managing the Project during the implementation phase;
 - iii provide capital contributions in the manner provided in this Agreement; and
 - iv compliance with the provisions relating to liability and indemnification under this Agreement.
- 5.8.2 The Successful Bidder shall, in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of activities such that the experience of Successful Bidder will be available to the Concessionaire to ensure due implementation of the Project:
- i arranging the financing for the Project;
 - ii obtain and maintain at its cost all Applicable Permits in conformity with the Applicable Laws and be in compliance therewith, including without limitation the obtaining and maintaining of approval and continuing compliance of the concerned Government Authorities for establishment of the Industrial Estate under and in accordance with the requirements of the Applicable Laws.
 - iii timely implementation of the Project in accordance with the provisions of this Agreement, including the Specifications;
 - iv compliance with the provisions of this Agreement relating to liability and indemnification; and
 - v implementation of measures for safety, security and protection of the works, property, life and materials at the Site and the environment.

Article 6 OBLIGATIONS OF THE AUTHORITY (TNRDC)

6.1 Obligations of the Authority

- 6.1.1 The Authority shall, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation, development, operation and maintenance of the Project; however the responsibility for obtaining the Applicable Permits shall always be that of the Concessionaire;
 - b) the Authority shall provide support to the Concessionaire in performing the land use conversion, if required any.
 - c) monitor the construction as well as the operation and maintenance of the Project by appointing Authority's Engineer / an independent Auditor.
 - d) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
 - e) support and cooperate with the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.
 - f) upon written request from the Concessionaire and subject to the provisions of Article 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

Article 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

7.1.1 The Concessionaire represents and warrants to the Authority that:

- a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or, where applicable, those of any member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h) there are no actions, suits, proceedings, or investigations pending or, to its 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 this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

- k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.3 and that the *Successful Bidder* holds not less than 100% (hundred per cent) of the Concessionaire's issued and paid up equity as on the date of this Agreement and the *Successful Bidder* shall continue to hold the same till the 8th (eighth) anniversary of the Appointed Date, in the ratio as proposed by it in the Consortium for the bidding purpose. Further, the Concessionaire acknowledges and undertakes that Successful Bidder, shall continue to hold at least 54% (fifty four per cent) of the Concessionaire's issued and paid up Equity throughout the Agreement Period;
- l) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.3 and that the *[insert name of lead member of the consortium]* holds highest but not less than 34% (thirty four per cent) shareholding of the Concessionaire's issued and paid up equity as on the date of this Agreement. Further, the Concessionaire acknowledges and undertakes that *[insert name of lead member of the consortium]* shall continue to hold highest but not less than 34% (thirty four per cent) shareholding of the Concessionaire's issued and paid up Equity throughout the Agreement Period;
- m) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.3 and that the *[insert name of Consortium Member whose technical and financial capability credentials have been used as qualification during the bidding process]* holds not less than 10% (ten per cent) of the Concessionaire's issued and paid up equity as on the date of this Agreement. Further, the *[insert name of Consortium Member whose financial capability credentials has been used as qualification during the bidding process]* acknowledges and undertakes that it shall continue to hold at least 10% (ten percent) of the Concessionaire's issued and paid up Equity until the expiry of the Agreement Period under and in accordance with the provisions of the Concession Agreement;
- n) the Successful Bidder has the financial standing and resources to fund the required equity and for undertaking and implementing the Project in accordance with this Agreement;
- o) all its rights and interests in the Project, as the case may be shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be retained by it, save and except as expressly provided in this Agreement;
- p) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty; and
- q) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Development Right or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.

7.2 Representations and Warranties of the Authority

7.2.1 The Authority represents and warrants to the Concessionaire that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- c) it has the financial standing and capacity to perform its obligations under the Agreement;
- d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) there are no actions, suits or proceedings pending or, to its 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- f) 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 Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;
- g) it has complied with Applicable Laws in all material respects;
- h) it has the right, power and authority to grant access and possession of the Site for the Project in accordance with the terms of this Agreement;
- i) it is the true and lawful owner of the Site and has power and authority to grant a license in respect thereto to the Concessionaire; and
- j) Upon the Concessionaire performing the covenants herein, it shall not at any time during the Agreement Period hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, in accordance with this Agreement.

7.3 Disclosure

- ### **7.3.1**
- In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

Article 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Successful Bidder has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposal, Scope of the Project, Specifications and Standards Site, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Article 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the Successful Bidder or any person claiming through or under any of them.

Article 9 PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall pay a **Performance Security INR 9,36,30,000/- (Rupees Nine Crores Thirty Six Lakhs Thirty Thousand Only)** in the form of a Bank Guarantee from a scheduled bank valid for a period of at least 2 (Two) years (the "**Construction Period**"), from a scheduled bank, on or before the signing of the Concession Agreement. The Performance Security has to be submitted in the form of a Bank Guarantee from a scheduled/Nationalized bank in favour of Tamil Nadu Road Development Company at Chennai. The Performance Security shall be provided according to the format set forth in Schedule-E (the "**Performance Security**"). Other conditions related to the submission of the Performance Security are as below:

- i. NOT APPLICABLE
- ii. NOT APPLICABLE
- iii. The Performance Security is to be provided in the form of Bank Guarantee, the format for which has been provided to the Concessionaire in the RFQ cum RFP document.
- iv. The Performance Security submitted by the Concessionaire during the Construction Period shall be retained by the Authority up to third anniversary of the Appointed Date to be called as Defect Liability Period (DLP). Unless otherwise stated by TNRDC, the Concessionaire shall extend the validity of the Performance Security for the entire Defect Liability Period.
- v. 90 days prior to the second anniversary of the Appointed Date, the Concessionaire is required to submit an a Bank Guarantee of **INR 9,36,30,000/- (Rupees Nine Crores Thirty Six Lakhs Thirty Thousand Only)** (the "**Operations & Maintenance Security**") and the Performance Security shall be returned back to the Concessionaire as per Article 9.1.1(v) subject to the receipt of such Operations & Maintenance Security.
- vi. The Operations and Maintenance Security shall be valid for a period of not less than 3 years and renewed every 3 years henceforth until the end of the concession period. This renewal shall be carried out not less than 90 days prior to the expiry of the existing security,
- vii. For the sake of clarity, Performance Security submitted in the form of Bank Guarantee by the Concessionaire/Success Bidder shall have a Validity Period of 2 (Two) Years. 90 (ninety) days before the expiry of such Performance Security the Concessionaire shall provide the Operations and Maintenance Security valid for 3 years and renewed every 3 years since then.

9.1.2 The details of the above Performance Security as submitted are given below:

- | | |
|--|---|
| a) Name of the issuing Bank | : |
| b) Date of Issue | : |
| c) Amount | : |
| d) Validity Period | : |
| e) Name in whose favour bank guarantee is issued | : |
| f) Number of bank guarantee | : |

9.2 Appropriation of Performance Security

- 9.2.1 Upon occurrence of a Concessionaire’s Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke and appropriate the relevant amounts from the Performance Security/Operations and Maintenance Security as Damages for such Concessionaire Default. Upon such encashment, invocation and appropriation from the Performance Security/Operations and Maintenance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security/Operations and Maintenance Security and in case of appropriation of the entire Performance Security/Operations and Maintenance Security provide a fresh Performance Security/Operations and Maintenance Security, as the case may be, as aforesaid failing to which the Authority shall be entitled to terminate this Agreement in accordance with Article 28. Upon replenishment or furnishing of a fresh Performance Security/Operations and Maintenance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash, invoke and appropriate such Performance Security/Operations and Maintenance Security as Damages, and to terminate this Agreement in accordance with Article 28.

9.3 Release of Operations and Maintenance Security

- 9.3.1 The Operations and Maintenance Security shall remain in force and effect till six months following the Termination or expiry of the Agreement Period. At the end of six months after expiry of the Agreement Period, the Operations and Maintenance Security shall be released provided the Concessionaire is not in breach of this Agreement.

Article 10 SITE

10.1 The Site

10.1.1 The site of the Project shall comprise of the land described in Schedule A and in respect of site relating to Project, the Site shall be provided and granted by the Authority to the Concessionaire as a license under and in accordance with this Agreement. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land as set forth in **Schedule A**, required for the Project.

10.2 Access

10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigation, study, design, engineering, procurement, financing, construction, operation and maintenance and all such activities that the Concessionaire may deem necessary during the development period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 Upon payment of the Annual Payment, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, license in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the site for Project (the “**Licensed Premises**”) for the duration of the Agreement Period (i.e. twenty years) with effect from the Appointed Date on an “as is where is” basis, free of any Encumbrances, to operate and maintain the Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, and, for the purposes permitted under this Agreement, and for no other purpose whatsoever. The annual license fee of the Licensed Premises to be payable by the Concessionaire to the Authority shall be Rs. 10/- (Rupees Ten) per sq. m per annum (“**License Fee**”) payable on a yearly basis in advance before 7th day of first month for every year of the agreement period, in addition to the annual payment as per Article 21 of this agreement. Any default in the payment of the License Fee shall attract an interest at the rate of 18% per annum from the date of delay till the date of payment limited to 6 (six) months.

10.2.3 The access and Site granted by this Agreement to the Concessionaire shall always be subject to existing rights of way.

10.2.4 The license, access, possession granted by this Agreement to the Concessionaire shall always be subject to Concessionaire performing its duties and responsibilities at all times during the Agreement Period as per the terms and conditions of this Agreement.

10.2.5 It is expressly agreed that:

- a) trees on the Site, if any, are property of the Authority except that the Concessionaire

- shall be entitled to exercise usufructuary rights thereon during the Agreement Period;
- b) any archaeological discoveries shall belong to and vest in the Authority and the Concessionaire shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof; and
- c) mining rights, excluding mining for the purposes of construction of the Project, do not form part of the lease granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises other than that required for aforesaid construction purposes. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein. Any statutory charges, fees, etc., as may be payable shall be borne by the Concessionaire.
- d) License granted under the provision of this Agreement in favour of the Concessionaire shall not be permanent grant in any circumstances whatsoever.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Article 4.1.1 and upon completion of the Conditions Precedent to be fulfilled by the Concessionaire under Article 4.1.2, the Authority and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall be signed in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties.

10.3.2 On and after signing the memorandum and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.4 Site to be free from Encumbrances

10.4.1 Subject to the provisions of Article 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Agreement Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing Rights of Way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances.

10.5 Protection of Site from encroachments

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

except as otherwise expressly set forth in this Agreement.

10.6 Special/temporary Area

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

10.7 Access to the Authority

10.7.1 The right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Authority's Engineer and other employees and agents of the Authority for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

Article 11 UTILITIES ON THE SITE AND TREES

11.1 Shifting of obstructing utilities

- 11.1.1 The Concessionaire at its own cost shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes a material adverse effect on the construction, operation or maintenance of the Project.

11.2 New utilities

- 11.2.1 The Concessionaire shall approach the Appropriate Authorities for laying telephone lines, water pipes, sewage system, electric cables and other public utilities and shall bear the cost for the same. The Concessionaire shall proceed to obtain the Applicable Permits as specified in Schedule D and the Authority shall assist the Concessionaire in obtaining the Applicable Permits. Any and all utilities shall be in the name of "Tamilnadu Road Development Company Ltd." unless with prior approvals from the Authority.

For the avoidance of doubt, it is agreed that use of the Site under this Article shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

- 11.2.2 The Concessionaire shall interconnect the Project and all other Project Facilities and support systems on the Site through paved roads, as per the approved DPR including the layout drawings, and such connecting roads shall be constructed and maintained by the Concessionaire during the Agreement Period of this Agreement in accordance with Good Industry Practice.

- 11.2.3 For the avoidance of doubt, the responsibility of obtaining the applicable permits lies solely with the Concessionaire and the Authority shall only assist in the said process.

11.3 Felling of trees

- 11.3.1 The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Concessionaire. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate. Further, the responsibility of obtaining the applicable permits for the felling of trees lies solely with the Concessionaire and the Authority shall only assist in the said process.

Article 12 CONSTRUCTION OF MLCP AND ITS COMPONENTS

12.1 Obligations prior to commencement of construction

12.1.1 Prior to commencement of Construction Works, the Concessionaire shall:

- a) submit to the Authority either directly or through the Authority's Engineer its lay out drawings, detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the project completion schedule as set forth in Schedule-F ("**Project Completion Schedule**") for its review and comments;
- b) appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- c) obtain all requisite approvals of the Drawings from the competent authorities;
- d) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits;
- e) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits; and
- f) Have requisite organization and designate and appoint suitable officers / representatives as it may deem appropriate to execute the Project.

12.2 Maintenance during Construction period

12.2.1 During the Construction Period, the Concessionaire shall maintain, at its cost, the Site and shall undertake the necessary maintenance works for this purpose;

12.3 Drawings

12.3.1 In respect of the Concessionaire's obligations with respect to the Drawings of the Project as set forth in Schedule-G, the following shall apply:

- a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Authority for review and comments;
- b) Within 30 (thirty) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project, the Specifications and Standards, and the DPR. For the avoidance of doubt, the Concessionaire shall be obliged to await the observations of the Authority on the Drawings submitted pursuant hereto and the Authority shall not unreasonably withhold its observations beyond 30 (Thirty) days period and may begin or continue Construction Works at its own discretion and risk;
- c) If the aforesaid observations of the Authority indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, and the DPR, such Drawings shall be revised by the Concessionaire and resubmitted to the Authority for review within 15 (Fifteen) days of receipt of such observations. The Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised drawings;

- d) No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner;
- e) Within 90 (ninety) days of the Scheduled Completion Date, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including the built up area illustrating the layout of the MLCP and its components and setback lines, forming part of MLCP.
- f) Any submission of Drawings by the Concessionaire to the Authority under this Agreement or any other contractual arrangement, shall not amount to submission and/or fulfillment of the requirement as laid down under Applicable Law and the Concessionaire shall separately comply with statutory requirements.

12.4 Scheduled Completion Date

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project Facilities as specified in Schedule B. The 730th (Seven Hundred and Thirtieth) day from the Appointed Date shall be the scheduled date for completion of the Project Facilities (the **"Scheduled Completion Date"**) and the Concessionaire agrees and undertakes that the construction of the MLCP and its components shall be completed on or before the Scheduled Completion Date.

Article 13 MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

- 13.1.1 During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Authority.

13.2 Inspection

- 13.2.1 During the Construction Period, the Authority's Engineer shall inspect the Project as and when necessary or at least once in a quarter and make a report of such inspection (the "Inspection Report") stating in reasonable details the defects or deficiencies, if any, with particular reference to the Scope of the Project. Authority's Engineer shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Authority may require the Concessionaire to rectify and remedy any defects or deficiencies. Such inspection or submission of Inspection Report by the Authority's Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

- 13.3.1 For determining that the Construction Works with respect to the MLCP and its components conform to the Specifications and Standards, the Authority's Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Authority's Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed [by the Authority] for the construction works undertaken by the Authority through their contractors.

The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Authority's Engineer to maintain specifications as per Schedule C of this agreement and furnish the results thereof to the Authority's Engineer.

The costs incurred on such tests, and to the extent certified by the Authority's Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

- 13.3.2 In the event that results of any tests conducted under this Article 13.3 establish any defects or deficiencies in the Construction Works with respect to the Project/Schedule C of this agreement, the Concessionaire shall carry out remedial measures and furnish a report to the Authority's Engineer in this behalf. The Authority's Engineer shall require the Concessionaire to carry out or cause to be carried out tests for a maximum of additional 10% of the quantity stated above, to determine that such remedial measures have been made to the Construction.
- 13.3.3 Construction Works with respect to the MLCP and its components shall be in compliance with the Specifications and Standards, and the procedure set forth in this Article 13.3 shall

be repeated until such Construction Works with respect to the Project conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Article 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Authority's Engineer forthwith.

13.4 Delays during construction

13.4.1 If the Concessionaire does not achieve any of the Project Milestones or the Authority shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Scheduled Completion Date.

13.4.2 In the event the Authority shall have reasonably determined that the rate of progress of Construction Works with respect to the Project is not likely to be achieved by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Scheduled Completion Date.

13.5 Video Recording

13.5.1 During the Construction Period of the Project, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of the Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

Article 14 TESTS

14.1 Tests

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Authority's Engineer of its intent to subject the MLCP and its components to Tests. The date and time of each of the Tests shall be determined by the Authority's Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Authority's Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Authority's Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Authority's Engineer.
- 14.1.2 The Authority's Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Authority's Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Authority's Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Authority's Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

Article 15 ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Occupancy Date

15.1.1 The MLCP & its components shall be deemed to be complete when the Concessionaire has procured the occupancy certificate in respect of the MLCP & its components from the competent authority and accordingly the Commercial Occupancy Date of the Project shall be the date on which a copy of such certificate is provided to the Authority.

15.1.2 The MLCP & its components shall enter into commercial service on Commercial Occupancy Date whereupon the Users shall be entitled to use, occupy and possess any part or whole of the MLCP & its components, provided, however, that the entry of MLCP & its components into commercial service shall always be subject to compliance with the provisions of this Concession Agreement and the Applicable Laws in relation to safety of the MLCP & its components and Users.

Article 16 CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project with respect to the Project as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Article 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope. All costs arising out of any Change of Scope under this Article during the Construction Period shall be borne by the Concessionaire.

16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated there under (the "**Change of Scope Notice**").

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary documentation in support of:

- a) the impact, if any, which the Change of Scope is likely to have on the Scheduled Completion Date if the works or services are required to be carried out during the Construction Period; and
- b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Authority's Engineer as reasonable.

16.2.3 Upon receipt of information set forth in Article 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Authority's Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an

agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Concessionaire shall provide the authority with a bank guarantee in the manner set forth in the RFQ-cum-RFP document / Draft Concession Agreement, to the tune of 20% of the cost of Change of Scope as agreed hereunder and in the event of a Dispute for the finalization of costs towards Change of scope, 20% (twenty per cent) of the cost assessed by the Authority's Engineer.

16.3.2 Under written mutual agreement, the concessionaire shall finalize the change of scope of work and the time period for the same. The Concessionaire shall, under mutual written agreement finalize the additional annual payment to be paid to the Authority for the Change of Scope. The Annual Payments and all other clauses including the duration of payments, insurances, etc. under this agreement shall be applicable *mutatis-mutandis*.

16.3.3 In the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.3.4 Notwithstanding anything to the contrary contained in Article 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire.

Article 17 OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the MLCP and its components in accordance with this Agreement either by itself or through any experienced O&M Contractor and if required, modify, repair or otherwise make improvements to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- a) ensuring optimal operation and maintenance of the MLCP and its components, in accordance with the Specifications and Standards prescribed herein, throughout the Agreement Period, either by performing the operation and maintenance itself or by making durable, effective and permanent arrangements for due performance of the operation and maintenance obligations by third party(s);
- b) collecting and appropriating the Fees from the MLCP and its components in accordance with the provisions contained herein;
- c) complying with the Safety Requirements;
- d) carrying out periodic preventive maintenance of the MLCP and its components;
- e) carrying out periodic renovation as required from time to time so that the Complex is always in conformity with the Scope of the Project;
- f) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, structures, buildings, pavement lighting, road signs, electricity lines, telephone lines, water facilities, sewage system and other public amenities on the Site;
- g) undertaking major maintenance such as resurfacing of roads, pavements, repairs to structures and buildings including repairs and refurbishment of the Project Assets;
- h) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Site;
- i) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Site;
- j) protection of the environment and provision of equipment and materials therefor so that the Project is in compliance with Applicable Permits including environmental clearance(s);
- k) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project; and
- l) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;

The Concessionaire shall promptly remove from the Project Site all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site including the MLCP and its components in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, and Standards and Specifications all assets, facilities located on the Site and forming part of the Project.

17.2 Maintenance Requirements

17.2.1 The Concessionaire shall procure that at all times during the Operation Period; the Project conforms to the maintenance requirements set forth in Schedule I (the "**Maintenance Requirements**").

17.3 Maintenance Manual

17.3.1 Not later than 90 (Ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Authority, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance in conformity with the Maintenance Requirements, Safety Requirements, Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Article 17.3 shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision as contained in Article 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of the MLCP and its components with respect to the Project and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the MLCP and its components with respect to the Project, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

17.4.1 Not later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, the Concessionaire shall provide to the Authority, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") in respect of the MLCP and its components to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- a) preventive maintenance schedule;
- b) arrangements and procedures for carrying out urgent repairs;
- c) criteria to be adopted for deciding maintenance needs;
- d) intervals and procedures for carrying out inspection of all elements of the Project;
- e) intervals at which the Concessionaire shall carry out periodic maintenance;
- f) arrangements and procedures for carrying out safety related measures; and
- g) Intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Authority shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Articles 17.4.1 and 17.4.2 shall apply *mutatis mutandis* to such modifications.

17.5 Damages for breach of O & M obligations

17.5.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at 0.2% (zero point two per cent) of the cost of such repair or rectification as estimated by the Authority's Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.5.2 The Damages may be assessed and specified forthwith by the Authority's Engineer. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.6 Authority's right to take remedial measures

17.6.1 In the event the Concessionaire does not maintain and/or repair MLCP and its components or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Authority's Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 30% (thirty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.

Article 18 SAFETY REQUIREMENTS

18.1 Safety Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the MLCP & its components, and shall comply with the safety requirements set forth in Schedule J (the **"Safety Requirements"**).

18.1.2 The Authority may appoint an experienced and qualified firm or organization (the **"Safety Consultant"**) for carrying out safety audit of the MLCP & its components in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements. In such a case, the Concessionaire is obliged to follow the instructions of the Safety Consultant.

18.2 Expenditure on Safety Requirements

18.2.1 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16.

Article 19 MONITORING OF OPERATION AND MAINTENANCE

19.1 Quarterly status reports

19.1.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of a quarter, furnish to the Authority a quarterly report stating in reasonable detail of the condition of the Project Assets including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, as applicable and shall promptly give such other relevant information as may be required by the Authority.

19.2 Inspection

19.2.1 The Authority's Engineer shall inspect the Project Site including the MLCP and its components at least once in a quarter. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

19.3.1 For determining that the Project conforms to the Maintenance Requirements, the Authority shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and furnish the results of such tests forthwith to the Authority.

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Article 19.3 and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Authority shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the MLCP and its components into compliance with the Maintenance Requirements and the procedure set forth in this Article 19.4 shall be repeated until the MLCP & its components conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire as provided in Article 17.

19.5 Reports of unusual occurrence

19.5.1 The Concessionaire shall, prior to the end of each month, send to the Authority and the Authority's Engineer, by e-mail, a report stating accidents and unusual occurrences relating

to the MLCP & its components for the safety and security of the Users. A quarterly summary of such reports shall also be sent within 3 (three) days of the closing of each quarter, as the case may be. For the purposes of this Article 19.5, accidents and unusual occurrences on the Project shall include:

- a) death or injury to any person;
- b) damaged or dislodged fixed equipment;
- c) any obstruction on the MLCP & its components, which results in slow down of the services being provided by the Concessionaire;
- d) disablement of any equipment during operation;
- e) communication failure affecting the operation of the MLCP and its components;
- f) smoke or fire;
- g) flooding affecting the operation of the MLCP & its components; and
- h) Such other relevant information as may be required by the Authority or the Authority's Engineer.

Article 20 AUTHORITY'S ENGINEER

20.1 Appointment of Authority's Engineer

20.1.1 The Authority shall appoint a consulting engineering / architect firm or bodies corporate, constituted by the Authority to be the project management consultant and Authority's engineer under this Agreement (the **"Authority's Engineer"**). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel to be the Authority's Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

20.2 Duties and functions

20.2.1 The Authority's Engineer shall discharge its duties and functions throughout the Agreement Period with respect to MLCP & its components and the Concessionaire shall make sure that the Authority's Engineer is given access to the entire site and all documentation among others things.

20.2.2 The Authority's Engineer shall submit regular periodic reports at least once every month during the Construction period and every six months during the Operation Period to the Authority.

20.2.3 The Authority's Engineer shall act on behalf of the Authority mainly to ensure that the Concessionaire abides to all the provisions set forth in this Concession Agreement. The Concessionaire will have to abide by the recommendations sought out by the Authority's Engineer / the Authority in all cases whatsoever.

20.3 Remuneration

20.3.1 The remuneration, cost and expenses of the Authority's Engineer shall be paid by the Authority and such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

20.4 Termination of appointment

20.4.1 The Authority may, in its discretion, terminate the appointment of the Authority's Engineer at any time, but only after appointment of another Authority's Engineer in accordance with Article 20.1.

20.4.2 If the Concessionaire has reason to believe that the Authority's Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Authority's Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Authority's Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority's Engineer and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Authority's

Engineer is terminated hereunder, the Authority shall appoint forthwith another Authority's Engineer in accordance with Article 20.1.

20.5 Authorized signatories

20.5.1 The Authority shall require the Authority's Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Authority's Engineer, and any communication or document required to be signed by the Authority's Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Authority's Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

20.6 Dispute resolution

20.6.1 If either Party disputes any advice, instruction, decision, direction or award of the Authority's Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Article 21 ANNUAL PAYMENT

21.1 Annual Payment

- 21.1.1 In consideration of the grant of the Development Right, the Concessionaire shall pay to the Authority 20 (Twenty) nos. of yearly amount (hereinafter referred to as the **"Annual Payment"**) as quoted by the Successful Bidder in its Financial Proposal in accordance with the RFQ-cum-RFP at the time of Bidding Process. The concessionaire may pay 8 equal parts of two annual payments within the respective 8 quarters of year 1 & 2 from effective date of concession agreement (Construction Period).
- 21.1.2 The Annual Payment shall be increased by 10% (ten percent) every year after the completion of year 3 (Third year) i.e. at the beginning of year 4 (Fourth year). The schedule for the payment of Annual Payment has been provided at Schedule H. For avoidance of doubt, the annual payment effective from year 4 is to be 10 % (ten percent) more than the previous year i.e. it is cumulative.
- 21.1.3 In case of a delay in payment of the Annual Payment, the Concessionaire shall pay an interest on the outstanding amount at a rate of 12% (twelve percentage) per annum with a maximum allowed delay of 30 (thirty) days.
- 21.1.4 If the Concessionaire fails to pay the Annual Payment to the Authority beyond the 30 (thirty) days grace period, the Authority shall have the right to exercise suspension/termination of this Concession Agreement.
- 21.1.5 The Concessionaire shall in addition to the above mentioned annual payment, pay a license fee of Rs.10 per Sq.m. of site area in the manner mentioned in clause 10.2.2 of this agreement.
- 21.1.6 The Concessionaire may upon obtaining prior permission from TNRDC (in a year to year basis), make the annual payment pursuant to clause 21.1.1, 21.1.2 & 21.1.3 above, in a quarterly fashion within 7 days of the first month of each quarter within the said year.
- 21.1.7 It may make the above quarterly payments by paying an additional fee of 10% plus applicable taxes & levies on the annual payment of that particular year (as mentioned in Schedule H). For avoidance of any doubt, the quarterly payment will be one fourth of the annual payment plus 10% for each of the 4 quarters within the said year.
For example, the 8th annual payment payable as mentioned in Schedule H, works out to 161% of X*.

But the Concessionaire opts to pay this annual payment in a quarterly fashion. Then, upon approval, it will be liable to pay a total of 10% more than 161% of X* = 177% of X*. Thus the concessionaire will be liable to pay 44.25% of X* per quarter payable before the 7th day of the first month of each quarter within the said year. In this case,

Annual Installments	Installment Due Date	Amount Payable
8 nd Annual Payment		
1 st Quarterly Payment	2648 th Day from the Appointed Date	44.25% of X*
2 nd Quarterly Payment	2739 th Day from the Appointed Date	44.25% of X*
3 rd Quarterly Payment	2830 th Day from the Appointed Date	44.25% of X*
4 th Quarterly Payment	2922 nd Day from the Appointed Date	44.25% of X*

Where,

**X = amount quoted by the Selected Bidder in its Financial Proposal plus applicable taxes.*

- 21.1.8 The concessionaire shall not be eligible for paying quarterly payment for the 20th year (last year) of the concession agreement.
- 21.1.9 If at all any discrepancies occur in the calculation of the dates and the amount payable, the Authority has the right to claim for the difference amounts.

Article 22 USER FEE

22.1 Collection and appropriation of Fee

- 22.1.1 The Concessionaire shall be entitled to collect, retain and appropriate fee ("**Fee**") from the Users of the Complex as may be allowed in accordance with the terms of this Agreement.
- 22.1.2 The Concessionaire shall within 30 days of entering into any sub-license agreement in respect of the Complex, submit a copy of the same to the Authority. Notwithstanding anything to the contrary contained herein, any sub license agreement that is inconsistent with the provisions of this Agreement shall be void to the extent of the inconsistency.
- 22.1.3 Any and all payments made for the rental purposes, advertisements, any & all other forms of revenue towards the Concessionaire shall be collected by cheques, RTGS, e-transfer, NEFT, etc. in the name of the Concessionaire payable to the escrow account i.e. for avoidance of doubt no cash should be received from the vendors as part of the revenue collection of sums over Rs.50, 000 (Rupees Fifty Thousand Only). If at all any cash is received this shall be accounted for immediately and deposited in the escrow account. Failure to reporting this, may at the discretion of the Authority lead to the Concessionaire's EOD and further Suspension/Termination of the Concessionaire.

Article 23 ESCROW ACCOUNT

23.1 Escrow Account

23.1.1 The Concessionaire shall, within 60 (sixty) days from the date of this Agreement and in any case prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Designated Bank**") in accordance with this Agreement.

23.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority and the Escrow Bank, which shall be substantially in the form set forth in Schedule-L.

23.2 Deposits into Escrow Account

23.2.1 The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- a) Fees accruing, arising or received with respect to use, sub license by the Concessionaire or any other person acting through or on behalf of the Concessionaire.
- b) all Fee levied and collected by the Concessionaire for use of MLCP & its components
- c) proceeds of any deposits, rentals, capital receipts or insurance claims, etc.; and
- d) all payments by the Authority (if any).

23.3 Withdrawals during Agreement Period

23.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- a) All payments due to the Authority for the month
- b) All taxes due and payable by the Concessionaire for and in respect of the Project;
- c) O&M Expenses arising out of the Project, subject to the ceiling set by the Authority's Engineer in accordance with Good Industry Practice; and
- d) O&M Expenses and other costs and expenses incurred by the Authority for Project in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it.
- e) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement; and
- f) balance, if any, in accordance with the instructions of the Concessionaire

23.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Article 23.3.1 except with the prior written approval of the Authority.

23.4 Withdrawals upon Termination

23.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- a) all pending dues required to be paid to the Authority including the License Fee and the Annual Payment
- b) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement
- c) all taxes due and payable by the Concessionaire for and in respect of the MLCP and its components;
- d) cost of repair and restoration of damages to the MLCP and its components on account of a Non Political Event;
- e) retention and payments relating to the liability for defects and deficiencies;
- f) incurred or accrued O&M Expenses for the MLCP and its components
- g) any other payments required to be made under the Concession Agreement; and
- h) balance, if any, left on expiry of six months from O & M obligations of the Concessionaire shall be transferred to the Concessionaire.

23.4.2 The provisions of this Article 23 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 23.4.1 have been discharged.

Article 24 INSURANCE

24.1 Insurance during Agreement Period

24.1.1 The Concessionaire shall effect and maintain at its own cost but for i.e. ***in the name of the Authority "Tamil Nadu Road Development Company Ltd."***, during the Agreement Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the **"Insurance Cover"**). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period.

24.2 Notice to the Authority

24.2.1 Not later than 15 (fifteen) days after the commencement of the Construction Period, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 24. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

24.3 Evidence of Insurance Cover

24.3.1 All insurances obtained by the Concessionaire in accordance with this Article 24 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 30 (thirty) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

24.4 Remedy for failure to insure

24.4.1 If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall keep in force any such insurance, and pay such premium and recover the costs thereof from the Concessionaire in accordance with the terms of this Agreement.

24.5 Waiver of subrogation

24.5.1 All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 24 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority (TNRDC), and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to 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 or in any way connected with any loss, liability or obligation covered by such policies of insurance.

24.6 Concessionaire's waiver

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

24.7 Application of insurance proceeds

24.7.1 The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Article 23.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation required under the Project, and the balance remaining, if any, shall be submitted to the Authority.

Article 25 ACCOUNTS AND AUDIT

25.1 Audited accounts

25.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including Fee derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditor, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditor, to be provided to the Authority.

25.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter.

25.2 Appointment of auditors

25.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"). All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

25.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

25.2.3 The Concessionaire shall finalize the list of 10 (ten) reputable firms of chartered accountants in consultation with the Authority within 60 (Sixty) days of the start of the Construction Period.

25.3 Certification of claims by Statutory Auditors

25.3.1 Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

Article 26 FORCE MAJEURE

26.1 Force Majeure

26.1.1 As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event (as defined in Article 26.2), Indirect Political Event (as defined in Article 26.3), Political Event (as defined in Article 26.4), if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

26.2 Non-Political Event

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

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) strikes or boycotts (other than those involving the Concessionaire or its employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 7 (seven) days and an aggregate period exceeding 60 (sixty) days in an Accounting Year;
- c) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- d) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- e) any event or circumstances of a nature analogous to any of the foregoing.

26.3 Indirect Political Event

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

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry-wide or State-wide strikes or industrial action for a continuous period of 7 (seven) days and exceeding an aggregate period of 60 (sixty) days in an Accounting Year;
or
- c) any event or circumstances of a nature analogous to any of the foregoing.

26.4 Political Event

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

- a) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire;
- b) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire to perform its obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit; or
- c) any event or circumstance of a nature analogous to any of the foregoing.

26.5 Duty to report Force Majeure Event

26.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 26 with evidence in support thereof;
- b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d) any other information relevant to the Affected Party's claim.

26.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

26.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 26.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

26.6 Effect of Force Majeure Event on the Development Right

26.6.1 Upon the occurrence of any Force Majeure Event before the Appointed Date, the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

26.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- a) the Agreement Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- b) whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Agreement Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee from the Users of the MLCP & its components; provided that in the event of partial collection of Fee, [as mutually agreed between the Parties], the Authority shall extend the Agreement Period of the Project in proportion [to the loss of Fee on a monthly basis].

26.7 Allocation of costs arising out of Force Majeure

26.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date or during the Agreement Period, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof. ;

26.7.2 Save and except as expressly provided in this Article 26, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

26.8 Termination Notice for Force Majeure Event

26.8.1 If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 26, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) day time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

26.9 Termination Payment for Force Majeure Event

26.9.1 Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by the Authority in accordance with the following:

- a) If Termination is prior to Scheduled Completion Date, due to Force Majeure Events including non-political or indirect Political events then no Termination Payment (but insurance proceeds) shall be payable by Authority to the Concessionaire and Authority shall be entitled to take over the control of the Site and the assets.
- b) If Termination is after Scheduled Completion Date, due to Force Majeure Events including non-political or indirect Political events then no Termination Payment (but insurance

proceeds) shall be payable by Authority to the Concessionaire and Authority shall be entitled to take over the control of the Site and the assets.

- c) If the Termination is due a Political Force Majeure prior to Scheduled Completion Date or after the appointed date, then the payment terms will be decided upon the approval from the board of the Authority.
- d) Not Applicable.

26.10 Dispute resolution

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

26.11 Excuse from performance of obligations

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

- a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party a notice to that effect and shall promptly use Article 28 for the Termination of the Agreement.

Article 27 SUSPENSION OF CONCESSIONAIRE'S DEVELOPMENT RIGHTS

27.1 Suspension upon Concessionaire Default

27.1.1 Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fee pursuant hereto, and (ii) exercise such rights itself or authorize any other person to exercise the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

27.2 Authority to act on behalf of Concessionaire

27.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee under and in accordance with this Agreement and deposit the same in the Escrow Account, as the case may be. The Authority shall be entitled to make withdrawals from the Escrow Account, as the case may be for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Article 23.3, as the case may be.

27.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and Authority shall recover all costs incurred during such period and an additional 10% (ten percentage) of such cost incurred as Damages and service charges from the Concessionaire as land revenue.

27.3 Revocation of Suspension

27.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

27.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

Article 28 TERMINATION

28.1 Concessionaire Event of Default (EOD)

28.1.1 As otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 180 (one hundred and eighty) days, the Concessionaire shall cure such default.

28.1.2 Concessionaire shall be deemed to be in default of this Agreement (a "**Concessionaire Default**"), unless the default has occurred solely due to Force Majeure. The defaults referred to herein shall include:

- a) If in a case where the Authority put a penalty on the Concessionaire and has been deducted of a part of the Performance Security or Operation and Maintenance Security, as the case may be, submitted by the Concessionaire and the Concessionaire fails to replenish the same within 30 days.
- b) On every EOD, the Authority shall after deduction of the penalty shall provide the Concessionaire a cure period of 90 days. In the event when the Concessionaire fails to cure the fault/process for which Performance Security or Operation and Maintenance Security, as the case may be, was appropriated then this shall be considered as Concessionaire EOD.
- c) The timeline and Project Milestones have been mentioned in the Schedules of this Concession Agreement. In the event where the Concessionaire does not achieve the outstanding Project Milestone and continues to be in default for 180 days then this shall be considered as the Concessionaire EOD.
- d) If the Concessionaire abandons the construction or operation of the Project without the prior written consent of the Authority.
- e) 90 Days prior to the expected completion time of the project, the Concessionaire shall submit an operations and maintenance manual for the MLCP and its components to the Authority. This manual shall be approved by the Authority and shall be treated as a benchmark document to assess the performance of the Concessionaire in completing the operation and maintenance of the MLCP & its components. In an event where the Concessionaire fails to perform its Operation and Maintenance Obligations then this shall be an EOD for the Concessionaire.
- f) In an event where the Concessionaire fails to collect and/or is unable to deposit Fee in the Escrow Account then this will be treated as an EOD.
- g) In an event where the Concessionaire commits a default with respect to all payments due and payable to the Authority by the Concessionaire.
- h) In an event of breach of any of the clauses or articles of the RFQ-cum-RFP, Project Agreements, Concession Agreement and any Applicable Law by the Concessionaire.
- i) In an event where the Concessionaire fails to maintain the shareholding pattern in the consortium or change the representation without prior notification to the Authority or any of the warranty provided to the authority then this shall be treated as an EOD.
- j) The Maximum Cure Period for all the defaults which shall be provided to the

Concessionaire shall be 180 days. If the Concessionaire fails to manage cure within this specified period then this shall be the EOD.

28.2 Consequences of Termination

28.2.1 Upon Termination, for any reason whatsoever either prior to Appointed Date or afterwards, the Authority shall:

- (a) take possession and control of the Project along with the Project Site on "as is where is" basis. Further on termination of this Agreement the Sub-Licensee Agreement shall also be considered terminated.
- (b) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (c) require the Concessionaire to comply with the Divestment Requirements set forth in Article 29.1; and
- (d) succeed upon election by the Authority but without any obligation to do so, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be recoverable from the Concessionaire.

28.3 Termination Payment

28.3.1 Upon Termination or expiry of the Agreement Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire. Further, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring before the Scheduled Completion Date.

28.3.2 If Termination occurs after Scheduled Completion Date, the Authority shall take the possession and control of the MLCP & its components and pay according to the following priority:

- a. Deduct the dues (if any) to the Authority
- b. Any insurance proceeds which shall be received for the project.
- c. To the Concessionaire:
The Termination Payment shall be paid to the Concessionaire at the approval of the Authority after deducting the above and the following:

- i. Authority Dues
- ii. Insurance Proceeds
- iii. Other Payments as per and in the order of Article 23.4

Article 29 DIVESTMENT OF RIGHTS AND INTEREST

29.1 Divestment Requirements

29.1.1 Upon Termination of this Agreement or expiry of the Agreement Period, as the case may be, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- a) notify to the Authority forthwith the particulars of all the relevant Project Assets;
- b) if Termination occurs prior to Scheduled Completion Date, deliver forthwith the actual and constructive possession of the Project, Project Assets and the Site, free and clear of all Encumbrances;
- c) if Termination occurs after Scheduled Completion Date, deliver forthwith the actual and constructive possession of the Project Assets and Project Site, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- d) upon expiry of the Agreement Period, deliver forthwith the actual and constructive possession of the Project Assets, free and clear of all Encumbrances;
- e) upon expiry of the Agreement Period, deliver forthwith the actual and constructive possession of the entire Project Assets, free and clear of all Encumbrances;
- f) cure all Project Assets and all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- g) deliver relevant records and reports pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- h) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- i) execute such documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- j) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

29.1.2 It is clarified that only the assets of the Concessionaire shall be taken over and not the liabilities, including without limitation liabilities relating to staff and personnel related obligations of the Concessionaire and the Persons claiming through or under the Concessionaire or liabilities related to the commercial area/premises. All such staff and employees shall be the responsibility of the Concessionaire/such Persons even after the expiry of the Agreement Period and they shall have no claim to any type of employment or compensation from Authority or its nominated agency.

29.1.3 Not Applicable

29.2 Inspection and cure

29.2.1 Not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days before the effective date of such Termination, the Authority shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost, in relation to curing of defects or deficiencies under this Article 30.

29.3 Vesting Certificate

29.3.1 The divestment of all rights, title and interest in the Project and Project Assets, as the case may be shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule K (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project and/or Project Assets and their vesting in the Authority 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 Authority or its nominee on, or in respect of, the Project and / or Project Assets, as the case may be on the footing that all Divestment Requirements have been complied with by the Concessionaire.

Article 30 RIGHTS AND TITLE OVER THE SITE

30.1 License rights

30.1.1 For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site only as licensee subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the MLCP & its components by the Authority in accordance with and subject to the provisions of this Agreement.

30.2 Access rights of the Authority and others

30.2.1 The Concessionaire shall allow to the extent required under this Agreement, free access to the Site at all times for the authorized representatives of the Authority and the Authority's Engineer and for the persons duly authorized by any Government Agency to inspect the MLCP & its components or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

30.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility specified in Article 11, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility.

30.3 Property taxes

30.3.1 The Concessionaire shall be liable to pay property taxes for the Site as required under the Applicable Laws.

30.4 Restriction on sub-licensing

30.4.1 The Concessionaire shall not sublicense the whole or any part of the Project Assets, save and except as may be expressly set forth in this Agreement.

Article 31 DISPUTE RESOLUTION PROCEDURE

31.1 Dispute resolution

31.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 31.2.

31.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

31.2 Conciliation

31.2.1 In the event of any Dispute between the Parties, either Party may call upon a mediator to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the mediator or without the intervention of the mediator, either Party may require such Dispute to be referred to the Chairman & Managing Director of Tamil Nadu Road Development Company Ltd. and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 32.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 31.3.

31.3 Arbitration

31.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 31.2, shall be finally decided by reference to arbitration by a Arbitral Tribunal appointed in accordance with Article 31.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, Bengaluru (the "**Rules**"), and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Chennai, and the language of arbitration proceedings shall be English.

31.3.2 Arbitral Tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator, and the third arbitrator shall be appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

31.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 31 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

31.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

Article 32 LIABILITY AND INDEMNITY

32.1 General Indemnity

32.1.1 The Concessionaire (and their respective employees, servants and agents), alone shall bear any responsibility there may be for any cost, expense, loss, liability or damage suffered for or incurred by any user(s) of the Project or any other Person(s) or otherwise and arising out of or in connection with the design, construction, maintenance and operation of the Project and other related commercial activities without recourse to the Authority (or any of its respective employees, agents and/or servants) to the extent that such cost, expense, loss, liability or damage arises as a result of the negligence of the Concessionaire (and its employees, servants and agents).

32.1.2 The Authority shall not under any circumstances be liable for any actions of the Concessionaire.

32.1.3 The Concessionaire and the Authority shall promptly, as soon as reasonably practicable after either party becomes aware of the same, inform each other of any demand, claim, action or proceeding or anticipated demand, claim, action or proceeding against it, in respect of which the other party is entitled to be indemnified under Article 32.1.1, as applicable. They shall give reasonable assistance to one another in the defence of any such demand, claim, action or proceeding.

32.2 Indemnification

32.2.1 Each Party shall indemnify, defend and hold harmless the other Party and their respective officers, directors, employees, agents, successors and assigns, of, from and against all claims, losses, suits, actions or causes of action, including all expenses of litigation, court costs and advocate fees arising as a result of:

- a) any representation or warranty made in connection with this Agreement being found to be materially incorrect or misleading, or
- b) death, injury or damage to any person or property arising directly or indirectly from the improper use of the Site by either Party or otherwise, or
- c) improper possession, use or operation of the Site or part thereof by the Concessionaire, or
- d) any act or omission or breaches of this agreement, breaches of Applicable Law, rules, and regulations by either Party or its employees, agents or representatives, or
- e) Any tax, duties, levies, cess, costs or liability, penalties, which may be demanded from either Party during or after termination of this Agreement which were otherwise the responsibility of the other Party as stated in this Agreement.

32.2.2 Each indemnity in this Article is a separate and independent obligation and shall continue for a period of 3 (three) years after termination of this agreement.

Article 33 MISCELLANEOUS

33.1 Governing law and jurisdiction

33.1.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Chennai shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

33.2 Waiver of immunity

33.2.1 Each Party unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

33.3 Delayed payments

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, and if no such period is specified, within 30 (thirty) days of receiving a 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 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

33.4 Waiver

33.4.2 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

c) shall not affect the validity or enforceability of this Agreement in any manner.

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

33.5 Liability for review of Documents and Drawings

33.5.1 Except to the extent expressly provided in this Agreement:

- a) no review, comment or approval by the Authority or the Authority's Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

33.6 Exclusion of implied warranties etc.

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

33.7 Survival

33.7.1 Termination shall:

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

33.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

33.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no

amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

33.9 Severability

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

33.10 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

33.11 Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

33.12 Successors and Assigns

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

33.13 Notices

33.13.1 Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Chennai/Siruseri may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement

due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

- b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman & Managing Director of TNRDC with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Chennai/Siruseri it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

33.14 Confidentiality

The Concessionaire agrees and undertakes not to share any confidential information related to the Project or otherwise, in any form or by any mean whatsoever, with any person or entity, who is not a party to this Agreement.

33.15 Language

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

33.16 Counterparts

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE

WRITTEN

SIGNED, SEALED AND
DELIVERED For and on behalf of

SIGNED, SEALED AND
DELIVERED For and on
behalf of

SIGNED, SEALED AND
DELIVERED For and on
behalf of

TAMIL NADU ROAD DEVELOPMENT
COMPANY LTD.

CONCESSIONAIRE

SUCCESSFUL BIDDER

by:

by:

by:

(Signature)
(Name)
(Designation)

Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

In the presence of:

1.

2.

3.

SCHEDULE A - SITE OF THE PROJECT

THE SITE

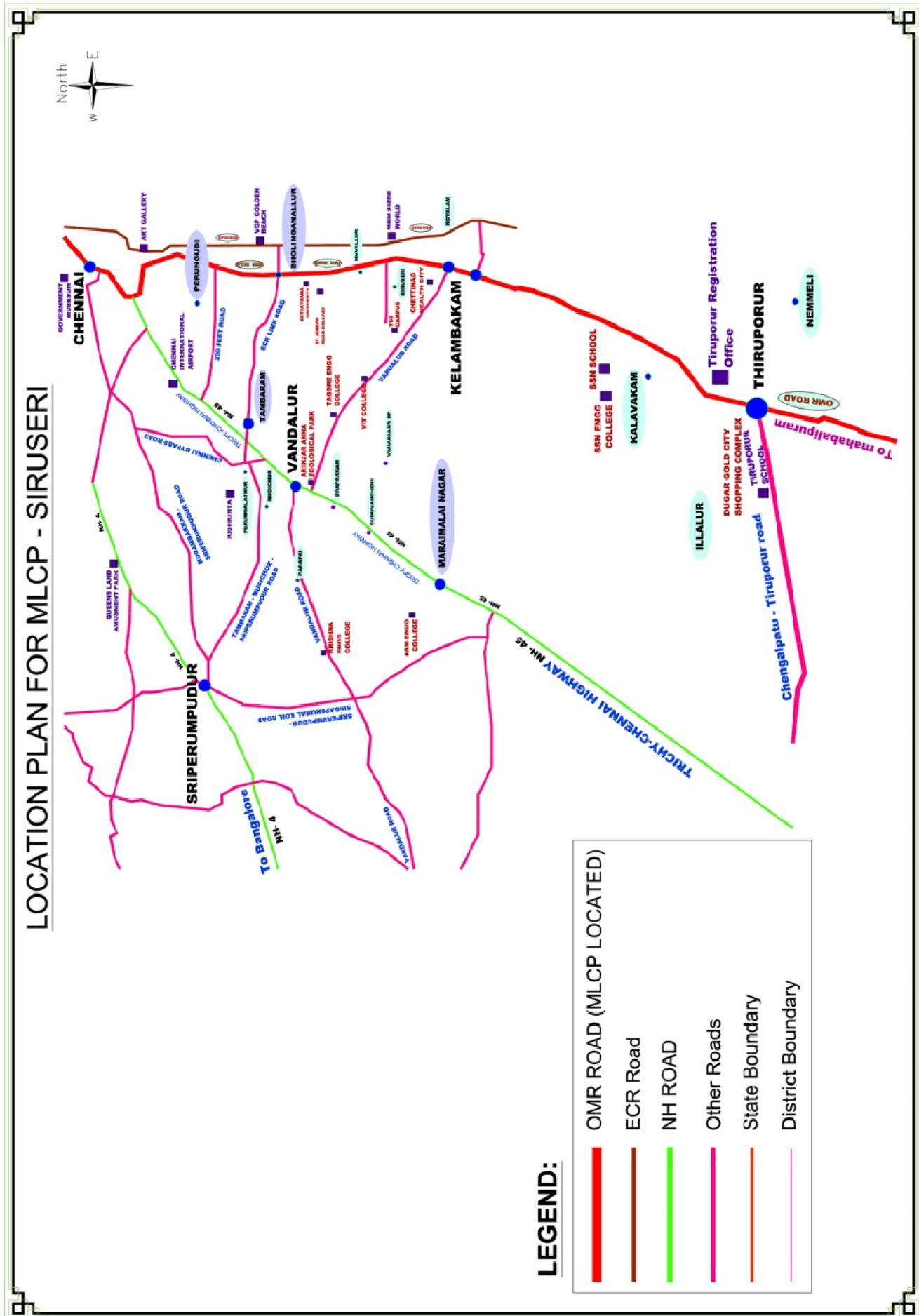
The proposed site for the project is at Siruseri. Siruseri is a south eastern suburb of Chennai, in Kanchipuram district, Tamil Nadu, located around 25 km south of the city, along Old Mahabalipuram Road. The site is located at latitude 12⁰49'56" North and longitude 80⁰13'42" East. It is located between Navalur and Kelambakam. Siruseri roughly marks the end of the IT Corridor of Chennai along Old Mahabalipuram Road. The proposed site (the "**Site**") is at the junction of the OMR and the First Main Road for the SIPCOT IT Park. The site is located at the beginning of the IT Park making it a significant location for the development of such a structure incorporating all the parking needs, bus stop requirement of the Park and making it an attractive commercial destination in the area.

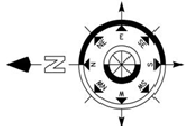
Few temporary sheds a couple of sumps and a pond of nearly 0.45 acres. Many trees and shrubs exist on the rear part of the site (west).

SITE FOR PROJECT

Particulars	Acres
Total Site Area	4.91 acres

An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum of the Agreement.





Proposed Site Location for Multilevel Car Parking

SCHEDULE B - PROJECT FACILITY

1. The Concessionaire shall construct the Project Facilities in accordance with the provisions of the Agreement. The details of works to be executed has been provided in the following table:

S. No.	Item	Description
a)	Area of Land	4.91 Acres
b)	Location	The site is located at latitude 12 ⁰ 49'56" North and longitude 80 ⁰ 13'42" East. The site is at the junction of the OMR and the First Main Road for the SIPCOT IT Park at Siruseri.
c)	Permissible Activities	As per the Zoning Regulations & DCR of Local Planning Authority.
d)	Available Infrastructure	There are few existing structures like, temporary shed, water tank are available in the Site besides that a Pond and trees are also present in this location.
e)	Facility Development	To develop a Circular shape Automatic / Robotic type Multi – level car parking mainly to meet the parking demand along with a Shopping Complex/Mall & other recreational places including Roof Top Restaurant, Commercial Units, Drive in Restaurant, Children's Park and Bus Parking Bay.

2. For avoidance of doubt, the Concessionaire will have to carryout the development of Circular shape Automatic / Robotic type Multi – level car parking for a capacity of 632 cars with the option of proposing multiple smaller circular shape A/R MLCPs for accommodating the same. The Concessionaire shall under no instance deviate/change from the conceptual design pertaining to this MLCP in DBFOT basis.
3. However, the Concessionaire may deviate from the development of the other structures such as Shopping Complex/Mall & other recreational places including Roof Top Restaurant, Commercial Units, Drive in Restaurant, Children's Park and Bus Parking Bay. Apart from the above, ***under no circumstances shall the Concessionaire carryout/use the Site for any Residential Purposes or other purposes*** other than with prior written approval from the Authority. Further, No illegal Activities shall be entertained within the site.
4. The Concessionaire shall construct the project facilities in accordance with the provision of this agreement which are required to adequately and efficiently support the project which includes but not be limited to adequate:
 - a sewage and sanitation facilities;
 - b water supply and distribution;
 - c HVAC Systems;
 - d electricity supply and distribution;
 - e paved interconnecting roads and lanes;
 - f Fire Safety & Fire Fighting Equipment.
 - g Security Systems
 - h toilets;
 - i tree plantation and green areas;
 - j facilities for disabled;

- k parking (Mainly for Shop Keepers);
 - l and such other facilities as may be necessary and required to establish and operate and the Project in accordance with the Specifications and Standards.
- 5. The Project Facilities shall be developed, constructed and commissioned in line with the Project Milestones specified in this Agreement.

SCHEDULE C - SPECIFICATIONS AND STANDARDS

The Concessionaire shall comply with the Specifications and Standards set forth in this Schedule C for the construction part of the Project and shall always adhere to Good Industry Practice.

The Project shall conform to the provisions, principles and guidelines laid down under:

- (a) The regulations of the Tamil Nadu road Development Company and /or any other regulating authority in the area;
- (b) Development Control Rules of the Local Planning Authority
- (c) Regulations and approvals under the Environmental Protection Act, 1986;
- (d) Latest amended National Building Code of India, other relevant IS Codes and practices, Development Control Rules, FSI Limits, statutory requirements, laws of land, the principles of good industry practices and any other norms as applicable.

Guidelines for Design Criteria for Robotic Type Single Shaft – Circular Shape Parking:

❖ Operation Mechanism & Sequence:

The operation mechanism and sequence for automated car parking system controlled is by system software and micro control sensors interfaced with the computer for ticketing and smart card Kiosks.

In this option Entry and Exit terminals are limited to two only. However in general, the parking and retrieval time for one car is limited to 180 seconds (i.e. 3 minutes). During clear period, this is an effective automatic system.

❖ Salient Features:

Apart from the single shaft automatic circular shape car parking, space for driveway, setbacks and smooth flow of traffic have also been planned in the layout.

As per site condition, it is seen that 316 nos of car spaces can be accommodated is Ground + 15 floors accounting for totally 316 Nos of car in Phase – I.

The other salient details are,

- First Floor Level to 15th floor Level
 - 20 Car Spaces Per Floor
 - Area : 605 Sq.m
 - Total Built-up area : 9680 Sq.m
- Number of floors – Ground +15 floors
- Numbers of cars accommodated in Each floor
 - Ground floor – 16 Nos
 - First floor to 15th floor – 20 nos in each floor
 - Total capacity – 316 nos
- Total height of the structure – 43.30 m (Approx.)
- Car bay size shall be min – 2.50 x5.00 m
- Floor clear height shall be min – 2300 mm

❖ System Overview:

The software for the operation of different kind of MLCP is developed by various software development companies worldwide like SIEMENS and are custom made to the requirement of the developer of MLCP. The parking system is based around a micro-controller and U-shaped photo sensors. It is quick and efficient in operation. The micro-controller is interfaced to the PC by serial port through ICL232 which is a dual RS-232 Transmitter / Receiver, Photo sensors, four-phase stepper motor and micro-controller control the entire operation of the car parking system collectively. The seven segment display and serial interface is used to display the number of cars in the parking lot. Block diagram of the system is shown in the Volume-III - TEFR.

SCHEDULE D - APPLICABLE PERMITS

The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in the Agreement:

- a) Permission of the State Government for drawing Ground water or water from river/ reservoir;
- b) Clearance of Pollution Control Board for setting up Batching Plant;
- c) Clearance of Pollution Control Board for Asphalt Plant;
- d) Clearance of Pollution Control board for installation of diesel generator sets;
- e) Fire safety clearance from fire authorities;
- f) Clearances, permissions and approvals required under the building byelaws
- g) Permission of State Government for cutting of trees;
- h) Environment clearances
- i) CRZ Clearances, etc. if necessary
- j) Permission from Tamil Nadu Road Development Company and / or any regulating authority
- k) Permissions from Local Planning Authority / or any regulating authority for building permissions.
- l) Any other permits or clearances required under Applicable Laws at the location of the site.

SCHEDULE E - PERFORMANCE SECURITY/OPERATION and MAINTENANCE

SECURITY (*strikeout whichever is not applicable*)

To,

Tamil Nadu Road Development Company Ltd. (TNRDC),

Corp. Office: 171, Tamil Nadu Maritime Board Building,
2nd Floor, South Kesavaperumal Puram,
Pasumpon Muthuramalingam Road (Greenways Road),
Raja Annamalai Puram, **Chennai – 600 028**, Tamil Nadu, India.

Whereas

- A. **** (the "Concessionaire"), **** (the "Successful Bidder") and the *Tamil Nadu Road Development Company* (the "Authority") have entered into a Concession Agreement dated *** (the "Agreement") whereby the Authority has agreed to the Concessionaire undertaking a Project on Design, Build, Finance, Operate and Transfer ("DBFOT") basis, subject to and in accordance with the provisions of the Agreement.
- B. The Agreement requires the Successful Bidder/Concessionaire (*strikeout whichever is not applicable*) to furnish a Performance Security to the Authority in a sum of [Rs. (Rupees)] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- C. We, ***** through our Branch at ***** (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period/Operation and Maintenance Period (*strikeout whichever is not applicable*), under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand within 12 hours of the receipt of such demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of the Director of the Authority that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period/Operation and Maintenance Period (*strikeout whichever is not applicable*) under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute

- between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
 4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
 5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of relicensing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
 6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
 7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 2 (Two) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
 8. The Performance Security//Operation and Maintenance Security (*strikeout whichever is not applicable*) shall cease to be in force and effect on [.....] provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security/Operation and Maintenance Security (*strikeout whichever is not applicable*) along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security/Operation and Maintenance Security (*strikeout whichever is not applicable*) forthwith.
 9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
 10. Any notice by way of request, demand or otherwise hereunder may be sent by post

addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period not less than of 3 [three] years or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this ** day of ***, 20** at ***.

SIGNED, SEALED AND DELIVERED

For and on behalf of the
BANK by:
(Signature)
(Name)
(Designation)
(Address)

SCHEDULE F - PROJECT COMPLETION SCHEDULE

PROJECT COMPLETION SCHEDULE

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-F for each of the Project Milestones and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

PROJECT MILESTONE-I

Project Milestone-I shall occur on the date falling on the 180th (One Hundred & Eightieth) day from the Appointed Date (the "Project Milestone-I").

Prior to the occurrence of Project Milestone-I, the Concessionaire shall have expended not less than 30% of the Total Project Cost on the Project set forth in the Financial Package.

PROJECT MILESTONE-II

Project Milestone-II shall occur on the date falling on the 365th (Three Hundred & Sixty Fifth) day from the Appointed Date (the "Project Milestone-II").

Prior to the occurrence of Project Milestone-II, the Concessionaire shall have expended not less than 50% of the Total Project Cost on the Project set forth in the Financial Package.

PROJECT MILESTONE-III

Project Milestone-III shall occur on the date falling on the 547th (Five Hundred & Forty Seventh) day from the Appointed Date (the "Project Milestone-III").

Prior to the occurrence of Project Milestone-III, the Concessionaire shall have expended not less than 80% of the Total Project Cost on the Project set forth in the Financial Package.

SCHEDULED COMPLETION DATE

The Scheduled Completion Date shall occur on the 730th (Seven Hundred & Thirtieth) day from the Appointed Date.

On or before the Scheduled Completion Date, the Concessionaire shall have completed the Mandatory Project and the Mandatory Project Facilities in accordance with this Agreement.

Note: The detailed Project Milestones within the Scheduled Completion Date shall be discussed and finalized between the Authority and the Concessionaire before the Appointed Date and the same shall be deemed to form as part of this Schedule.

SCHEDULE G - DRAWINGS

DRAWINGS

In compliance of the obligations set forth in Article 12.3 of this Agreement, the Concessionaire shall furnish to the Authority, free of cost, all Drawings listed in this Schedule.

ADDITIONAL DRAWINGS

If the Authority's Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in this Schedule, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Authority's Engineer, as if such drawings formed part of this Schedule.

Any submission of Drawings made by the Concessionaire to the Authority under this Agreement or any other contractual arrangement, shall not amount to submission and/or fulfillment of the requirement as laid down under Applicable Law and the Concessionaire shall separately comply with statutory requirements.

LIST OF DRAWINGS

- (a) Lay out drawings
- (b) Area Development Plan
- (c) Structure Plan as per Regulations / Urban Development Plan Formulation and Implementation Guidelines / Local Planning Authority's Master Plan applicable

Note: The final list of Drawings shall be finalized between the Authority and the Concessionaire before the Appointed Date and the same shall be deemed to form as part of this Schedule

SCHEDULE – H – SCHEDULE OF ANNUAL PAYMENT

Annual Installments	Installment Due Date	Amount Payable
1 st Annual Payment		
1 st Quarterly Payment	91 st Day from the Appointed Date	25% of X*
2 nd Quarterly Payment	183 rd Day from the Appointed Date	25% of X*
3 rd Quarterly Payment	274 th Day from the Appointed Date	25% of X*
4 th Quarterly Payment	365 th Day from the Appointed Date	25% of X*
2 nd Annual Payment		
5 th Quarterly Payment	456 th Day from the Appointed Date	25% of X*
6 th Quarterly Payment	548 th Day from the Appointed Date	25% of X*
7 th Quarterly Payment	639 th Day from the Appointed Date	25% of X*
8 th Quarterly Payment	731 st Day from the Appointed Date	25% of X*
3 rd Annual Payment	731 st Day from the Appointed Date	100% of X*
4 th Annual Payment	1096 th Day from the Appointed Date	110% of X*
5 th Annual Payment	1461 st Day from the Appointed Date	121% of X*
6 th Annual Payment	1826 th Day from the Appointed Date	133% of X*
7 th Annual Payment	2192 nd Day from the Appointed Date	146% of X*
8 th Annual Payment	2557 th Day from the Appointed Date	161% of X*
9 th Annual Payment	2922 nd Day from the Appointed Date	177% of X*
10 th Annual Payment	3287 th Day from the Appointed Date	195% of X*
11 th Annual Payment	3653 rd Day from the Appointed Date	214% of X*
12 th Annual Payment	4018 th Day from the Appointed Date	236% of X*
13 th Annual Payment	4383 rd Day from the Appointed Date	259% of X*
14 th Annual Payment	4748 th Day from the Appointed Date	285% of X*
15 th Annual Payment	5114 th Day from the Appointed Date	314% of X*
16 th Annual Payment	5479 th Day from the Appointed Date	345% of X*
17 th Annual Payment	5844 th Day from the Appointed Date	380% of X*
18 th Annual Payment	6209 th Day from the Appointed Date	418% of X*
19 th Annual Payment	6575 th Day from the Appointed Date	459% of X*
20 th Annual Payment	6940 th Day from the Appointed Date	505% of X*

Where,

***X = amount quoted by the Selected Bidder in its Financial Proposal plus applicable taxes & levies**

Appointed Date represents the Date as agreed during Contract Signing/Negotiations. This indicates that the Concession Agreement has been enforced.

SCHEDULE I - MAINTENANCE REQUIREMENTS

MAINTENANCE REQUIREMENTS

The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Agreement Period, conform to the maintenance requirements set forth in this Schedule (the **"Maintenance Requirements"**).

The Concessionaire shall repair or rectify any defect or deficiency set forth in this Schedule within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in the Agreement without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

MANUAL OF SPECIFICATIONS AND STANDARDS TO APPLY

Maintenance of the Project shall conform to the following standards (in order of preference):

- a) Manufacturer's Manual and OEM's Standards & Specifications /Manual
- b) PWD maintenance manual

REPAIR/RECTIFICATION OF DEFECTS AND DEFICIENCIES

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in this Schedule within the time limit set forth therein.

OTHER DEFECTS AND DEFICIENCIES

In respect of any defect or deficiency not specified in this Schedule, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.

In respect of any defect or deficiency not specified in this Schedule, the Authority's Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Authority's Engineer.

EXTENSION OF TIME LIMIT

Notwithstanding anything to the contrary specified in this Schedule, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Authority's Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

EMERGENCY REPAIRS/RESTORATION

Notwithstanding anything to the contrary contained in this Schedule-I, if any defect, deficiency or deterioration in relation to the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

PERIODIC INSPECTION BY THE CONCESSIONAIRE

The Concessionaire shall, through its engineer, undertake a periodic visual inspection of the Project and maintain a record thereof in a register to be kept in such form and manner as the Authority's Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Authority's Engineer at any time during office hours.

DIVESTMENT REQUIREMENTS

All defects and deficiencies specified in this Schedule shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the End day of this Development Right.

SCHEDULE J - SAFETY REQUIREMENTS

GUIDING PRINCIPLES

Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Site, irrespective of the person(s) at fault.

Users of the project include staff of the Concessionaire and its contractors working on the Project.

Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

The Concessionaire shall abide by the following in so far as they relate to safety of the Users:

- a) Applicable Laws and Applicable Permits;
- b) Fire safety norms as per Good Industry Practice;
- c) Provisions of this Agreement;
- d) usage of earthquake resistant materials and designs in accordance with Good Industry Practice, in the event the Site is prone to seismic activity
- e) relevant Standards/Guidelines contained in internationally accepted codes; and
- f) Provisions of the Environmental Protection Act, 1986

SAFETY MEASURES DURING CONSTRUCTION PERIOD

The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Authority about such arrangements.

SAFETY MEASURES DURING OPERATION PERIOD

The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

The Concessionaire shall establish a Safety Management Unit (the "SMU") to be functional, and designate one of its officers to be in-charge of the SMU.

SAFETY GUIDELINES

Safe movement - In the design, construction and operation of the Project, particular care shall be taken to ensure safety of Users. This shall include facilities for safe and efficient evacuation in case of emergency.

System integrity - In the design of power supply, circuits and equipment, particular care shall be taken to minimize the likely incidence of failure.

RESTORATION OF SERVICE

The Project shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

SAFETY MANAGEMENT

A safety statement shall be prepared by the Concessionaire once in every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Authority within 15 (fifteen) days of the close of every quarter.

SAFETY EQUIPMENT

The following equipment shall be provided in adequate numbers:

- i. fire extinguishers and fire alarms at the appropriate locations;
- ii. stretchers and standard first aid boxes; and
- iii. such other equipment as may be required in conformity with Good Industry Practice.

EMERGENCY

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a Disaster Management Manual to be prepared and published by the Concessionaire prior to Appointed Date.

FIRE SAFETY

- i. The Concessionaire shall adopt provisions of the National Fire Protection Association (NFPA).
- ii. To prevent fire in the User areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit harmful gases when burning.
- iii. Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the building in case of emergency.
- iv. Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Article, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signage shall be uniform and standardized.

USER SAFETY AND INFORMATION SYSTEM:

- i. The Concessionaire shall provide the SMU with the facilities required for supervising User areas, and shall provide visual information to Users. The Concessionaire shall also provide one way communication to Users through a Public Announcement (PA) system. The User call points should be located at convenient locations to allow Users to contact the SMU in emergencies.
- ii. The User information system shall comprise dynamic visual displays and loudspeakers.

SCHEDULE K- VESTING CERTIFICATE

- A. The Commissioner, TNRDC on behalf of Tamil Nadu Road Development Company (the **"Authority"**) refers to the Concession Agreement dated *** (the **"Agreement"**) entered into among the Authority, **** (the **"Successful Bidder"**) and **** (the **"Concessionaire"**) for Design, Build, Finance, Operate and Transfer (DBFOT) the Project located at [_____] (**"Project"**), and a copy of which is annexed hereto and marked as Annex-A to form part of this Certificate
- B. The Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in Article 29.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- C. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this *** day of ***, 20** at Chennai

AGREED, ACCEPTED AND SIGNED

For and on behalf of AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

SCHEDULE L- ESCROW AGREEMENT

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

AMONGST

- A. Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- B. (name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- C. The Tamil Nadu Road Development Company, TNRDC, acting through its authorized signatory, the Chairman & Managing Director, TNRDC having its principal office at Chennai (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for development of Project and Project, located at Chennai on Design, Build Finance, Operate and Transfer basis ("**DBFOT**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

"Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"Concession Agreement" means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Parties" means the parties to this Agreement collectively and **"Party"** shall mean any of the Parties to this Agreement individually;

"Payment Date" means, in relation to any payment, the date(s) specified for such payment; and

"Sub-Accounts" means the respective Sub-Accounts of the Escrow Account, into which the monies would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2. Interpretation

The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority and the Concessionaire in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as Authority beneficiaries under this Agreement.

2.2. Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the Agreement Period of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3. Establishment and operation of Escrow Account

Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date or issue of Provisional Certificate, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

The Escrow Bank and the Concessionaire shall, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account.

2.5. Rights of the parties

The rights of the Authority and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a) all monies received in relation to the Project from insurance or any other person towards repair, maintenance or damages for the Project;
- b) Fee accruing, arising or received with respect to use, sub license by the Concessionaire or any other person acting through or on behalf of the Concessionaire;
- c) all Fee levied and collected by the Concessionaire for use of Project; and
- d) revenues from or in respect of the Project, including the proceeds of any deposits, rentals, capital receipts or insurance claims; and
- e) all payments received from the Authority.

The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2. Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- a) any monies disbursed by the Authority to the Concessionaire;
- b) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- c) Termination Payments:

3.3. Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. Withdrawals during Agreement Period

At the beginning of every month, Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- a) all taxes due and payable by the Concessionaire to the Authority for and in respect of the Project;
- b) O&M Expenses of the Project, subject to the ceiling set by the Authority's Engineer in accordance with Good Industry Practice; and
- c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement; and
- d) balance, if any, in accordance with the instructions of the Concessionaire

No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Authority, details of the amounts likely to be required for each of the payment obligations provided that such amounts may be subsequently modified, with prior written approval of the Authority, if fresh information received during the course of the year makes such modification necessary.

4.2. Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) all dues payable to the Authority including the License Fee and Annual Payment;
- c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement
- d) cost of repair and restoration of damages to the Project on account of a Non Political Event;
- e) retention and payments relating to the liability for defects and deficiencies;
- f) incurred or accrued O&M Expenses for the Project

- g) any other payments required to be made under the Concession Agreement; and
- h) balance, if any, left on expiry of six months from O & M obligations of the Concessionaire shall be transferred to the Concessionaire.

Provided that the disbursements specified in Sub-clause (i) of this Article shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3. Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in earlier Articles, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4. Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this Agreement and the Concession Agreement.

4.5. Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under this Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2. Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Authority as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3. Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

- b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic; and
- c) shall, within 5 (five) business days after receipt, deliver a copy to the Authority of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith;

5.4.No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5. Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1. Escrow Default

Following events shall constitute an event of default by the Concessionaire (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

- a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

TERMINATION OF ESCROW AGREEMENT

6.2. Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

6.3. Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank and the Authority, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Authority and arrangements are made satisfactory to the Authority for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank in the form similar to this Agreement.

6.4. Closure of Escrow Account

The Project Account shall be operated and maintained till the date of Termination of the Concession Agreement and thereafter, the Concessionaire shall be entitled to discontinue the same and terminate the Project Account Agreement

Subject to the above, the Escrow Bank shall, at the request of the Concessionaire made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement including the payments and upon confirmation of receipt of such payments, close the Escrow Account and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

7. INDEMNITY

7.1. General indemnity

The Concessionaire will indemnify, defend and hold the Authority and Escrow Bank, harmless against any and all proceedings, actions and Authority claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and Authority claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

The Escrow Bank will indemnify, defend and hold the Concessionaire and the Authority harmless against any and all proceedings, actions and Authority claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

7.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a Authority in respect of which it is entitled to the benefit of an indemnity in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not

settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1. Dispute resolution

Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, Bengaluru (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Chennai and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Chennai shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2. Waiver of immunity

The Authority unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

9.3. Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

9.5. Waiver

Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- c) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6. No Authority beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7. Survival

Termination of this Agreement:

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

All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8. Severability

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

9.9. Successors and assigns

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

9.10. Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11. Language

All notices, certificates, correspondence and proceedings under or in connection with this agreement shall be in English.

9.12. Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

9.13. Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of ...,20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorized Officer who has countersigned the same in token.

SIGNED, SEALED AND
DELIVERED

For and on behalf of

The Concessionaire :

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of

ESCROW BANK by :

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of

Tamil Nadu Road Development Company by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

2.

SCHEDULE M- HEADS OF TERMS OF SUB-LICENSE

1. The sub-license agreement is to be signed between the Concessionaire and the sub-licensee, with prior notice to TNRDC/Authority.
2. The term of the sub-license shall not be more than the Agreement Period of this Concession Agreement.
3. The sub-licensee shall pay all taxes, property tax, service tax, cesses, assessments and levies in respect of the Project that the sub-licensee is occupying.
4. Any subsequent arrangement / agreement by the Sub-licensee for use, possession, occupation and enjoyment of the Project to any other party shall be with notice to TNRDC.
5. The sub-license arrangement shall be co-terminus with the Concession Agreement. The Project along with land forming the Site shall automatically get transferred to the Authority at the end of the Agreement Period of this Agreement or the early termination as applicable. If the Authority agrees to withhold the same sub-licensee, it may do so by a new sub-licensee agreement that is to be signed between the Authority and the sub-licensee.
6. In case of an early termination of the Concession Agreement, the Concessionaire shall refund all the costs and expenses that the Concessionaire may have received from the sub-licenses as advance payments.
7. The Authority shall not be liable in any way whatsoever to the sub-licensee. The sub-licensee may recover any such receivables from the Concessionaire.
8. Upon receipt of suspension notice from the Authority (TNRDC), the sub-license agreement between the concessionaire and the sub-licensee shall be considered suspended until further notice.
9. During the period of suspension, the sub-licensee shall liable to deposit all rentals / fees, etc. into the escrow account, failure to which the Authority has all rights to effectively take over the site.
10. Any and all damages/payments due to damages caused by the sub-licensee after the issue of the suspension notice shall be payable to the authority within a period of 30 days upon receipt of such claim by the authority.

Wherein, the Concessionaire, the Authority & the sub-licensee are as defined in the Concession Agreement.