

**Andhra Pradesh  
State Road Transport Corporation**

**Tender ID: MSTC/VZG/APSRTC Commercial/1/  
Vijayawada/23-24/17179**



**Request for Proposal (RFP)**

**For**

**Development of 9 Sites of APSRTC  
Under Build, Operate and Transfer  
(BOT) Scheme**

Development of 9 Sites of APSRTC under BOT Scheme	
Request for Proposal	July 2023

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**Andhra Pradesh  
State Road Transport Corporation**

**Development of 9 Sites of APSRTC  
Under Build, Operate and Transfer  
(BOT) Scheme**

**REQUEST FOR PROPOSAL**

**VOLUME 1- INSTRUCTIONS TO BIDDERS**

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## **1. SCHEDULE OF BIDDING PROCESS**

S.No	Event Description	Schedule Date
1	Tender Notification	20/07/2023
2	Tender Publication	21/07/2023
3	Downloading of RFP Document	From 25/07/2023 to 08/09/2023
4	Pre-Bid Conference (Physical)	15.00 hrs on 01/08/2023 at respective District Head Quarters.
5	Pre-Bid Conference (Virtual)	15.00 hrs on 02/08/2023
6	Last date for receiving queries	04/08/2023
7	Response to Queries by APSRTC	11/08/2023
8	<b>Time for submission of :</b> a) signed copy of RFP along with Addenda & Corrigenda, Response to pre bid queries (signed in all pages) b) proof of payment of Bid Security c) proof of payment of cost of RFP / tender document. d) all Financial documents e) all formats for submission f) Registered Buyer name and ID in MSTC.	From 04/09/2023 up to 08/09/2023 17.00 hrs. in the office of CM (Comm), RTC House, 1 <sup>st</sup> Floor, APSRTC, Vijayawada
9	Finalisation of qualified Bidders in PQ stage	19/09/2023
10	Commercial Bid submission & forward e-auction on MSTC (Bid due Date)	Starting Time: 20/09/2023 from 14.00 hrs. Ending Time : 20/09/2023 up to 17.00 hrs.
11	Bid opening	Generation of bid evaluation sheet after completion of e-auction.

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The above schedule is tentative. APSRTC reserves the right to modify the said schedule of Bidding Process at any time during the Bidding Process at its sole discretion without assigning any reason or being liable for the same in any manner whatsoever.

Further APSRTC reserves the right to hold, in its sole and absolute discretion, more than one pre-bid meeting or hold one or more consultation meetings with the interested parties and in such event the above schedule shall stand modified and amended.

Uploading of any documents in MSTC ecommerce website, required for PQ stage evaluation is dispensed with. Any such clauses, found elsewhere in the RFP document shall be null & void.

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## 1.1 DISCLAIMER

The information contained in this Request for Proposal document (the "RFP") or subsequently provided in writing to Bidder(s) on any media by or on behalf of Andhra Pradesh State Road Transport Corporation (APSRTC / the Authority) or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in preparing their bid ("**Bid**").

This RFP includes statements, which reflect various assumptions and assessments arrived at by the authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidders or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

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The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidders are encouraged to go through the RFP and inspect the Project site to familiarize themselves fully about the nature of Project site, all instructions, forms, terms and conditions of RFP, local condition and any other matters considered relevant by them before submitting their Bid.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to site visits, preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.



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## 1.2 e- TENDER DETAILS

1.	Authority	Andhra Pradesh State Road Transport Corporation
2.	Department & Address for Communication	Commercial Department, BOT Projects Section, Chief Manager (Comm), O/o VC&MD, RTC HOUSE, 1 <sup>st</sup> Floor, PNBS, APSRTC, Vijayawada-13
3.	Tender Notice Number	No. 01/ CM(Comm)/BOT/2023-24, Dt.20.07.2023
	Tender ID	MSTC/VZG/APSRTC Commercial/1/Vijayawada/ 23-24/ 17179
4.	Tender Subject	Development of 9 Sites of APSRTC under Build, Operate and Transfer (BOT) Scheme.
5.	License Period	33 years including construction period.
6.	Tender Type	Open on line Tenders through e-auction platform of MSTC ecommerce website (e-tender cum e-auction).
7.	Bid Security Amount	Bid Security Fee shall be as per Appendix-A10 of volume –II of RFP document.
8.	Cost of RFP (tender document)	Rs.11,800/- (Rupees Eleven Thousand Eight Hundred only) inclusive of GST.
9.	Service charge	Service charge of 0.5% of bid amount or as claimed by MSTC, with applicable GST shall be payable by the successful bidder to MSTC directly.
10.	Bid submission	As per Schedule of Bidding or as amended
11.	Bids opening Date	As per Schedule of Bidding or as amended
12.	Officer inviting Bids	Chief Manager (Comm), APSRTC
13.	Contact Person	Chief Manager (Comm), APSRTC, Vijayawada.
14.	e-mail id	ctmmcap@gmail.com, eecommapsrtcho@gmail.com
15.	Contact Telephone Nos.	9959222746, 9959224533, 9959224535
16.	General Terms & Conditions	As per RFP Document
17.	Procedure for Bid Submission	a) The intending bidders shall register with MSTC at ecommerce web site <b>as buyers in e- Auction platform</b> , duly paying registration charges with applicable GST.

**Bidder**

- b) Shall pay bid security amount, cost of tender documents to APSRTC in time.
- c) The bidders shall submit signed copies of RFP document (signed in all pages) Addenda & Corrigenda (signed in all pages), response to pre bid queries (signed in all pages), proof of payment of Bid Security amount & cost of RFP document, financial capability statements and all other proforma prescribed in Vol-II of this RFP or as amended from time to time. The documents shall be submitted in the office of Chief Manager (Commercial), RTC House, 1st Floor, PNBS, APSRTC, Vijayawada without fail as a pre condition for qualification at PQ Stage, as per timelines stipulated in the schedule of bidding process or as amended from time to time.
- d) The bidders will be evaluated based on the eligibility criteria stipulated in the RFP. The bidders possessing required criteria are eligible to participate in e-tender cum e-auction in the e-auction platform of MSTC ecommerce website.
- e) Price bid once quoted by the bidder cannot be modified / altered.
- f) The bidders are advised to offer their best possible rates over and above the base reserve premium specified at appendix A-10.
- g) The bidder who offers highest initial Annual Premium in the online e-tender cum e-auction shall be selected as preferred bidder.
- h) However, APSRTC reserves the right to negotiate with the highest bidder.
- i) Offline bids are not accepted.
- j) For information on tender procedures & registration, please visit help desk of MSTC or MSTC ecommerce website.
- k) Payment of Service charge to MSTC @ 0.5% of bid amount or as claimed by MSTC with applicable GST.

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### 1.3 INVITATION TO BIDS

To

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Dear Madam / Sir:

- 1) Andhra Pradesh State Road Transport Corporation (APSRTC / the Authority), one of the largest Public Transport Corporations in the world, envisages Development of 9 Sites of APSRTC under BOT Scheme, with private sector participation.

The Authority intends to utilize some of the prime land parcels belonging to it for commercial development to generate resources on a continuous and sustainable basis and envisage providing quality amenity facilities to the passengers/ commuters.

The Authority is issuing Request for Proposal (RFP) document and inviting Bids from interested & eligible Bidders separately for each project site under build, operate and transfer (BOT) scheme as per the terms & conditions specified there on. Development of each site is a separate project but the RFP is common for all the Projects.

- 2) The broad scope of work for the Concessionaire includes designing, financing, constructing, operating and maintaining the Project in accordance with the terms of the RFP & Concession Agreement.
- 3) The Bidder can be a single entity or a group of entities coming together (the "**Consortium**") or firms.
- 4) Lease period of 33 years.
- 5) e-Tenders are invited from eligible bidders through e-auction platform of MSTC ecommerce web site. Tender comprises of both Price bid submission in e-tender and e-auction.
- 6) Bidders have to bid separately for each Project.
- 7) Tender Process, Eligibility Criteria for bidders, Schedule of bidding process, formats for submission by the bidders, layout of Project sites are furnished in the RFP. For online tender process the bidders can contact MSTC through help line.
- 8) The RFP also contains the draft Concession agreement, Development controls, terms & conditions of development of the BOT project.
- 9) RFP (tender document) can also be down loaded from the MSTC e-commerce web site or [www.apsrtc.ap.gov.in](http://www.apsrtc.ap.gov.in).

***Bidder***

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- 10) Before submission of the tender, tenderers are required to make themselves fully conversant with the eligibility, terms and conditions, so that no ambiguity arises at a later date in this respect.
- 11) The Authority reserves the right to accept any tender or reject / cancel any tender or all the tenders received in response to this tender notification at any stage without assigning any reasons whatsoever.
- 12) The Bids should be uploaded on the due date specified in the 'Schedule of Bidding Process' or as specified in the e-auction platform of MSTC ecommerce website under the corresponding tender ID. Any changes to dates specified in the schedule of bidding will be informed through the said web site only.
- 13) The Bids shall be filled as per procedure laid down in the e-auction platform of MSTC ecommerce website. Failure to comply with any of the conditions may render the Bid invalid.
- 14) Neither the authority shall be responsible for any costs or expenses incurred by the Bidders in connection with the preparation and uploading of bids, including costs and expenses related to visits to the sites, submission of signed copies to the Corporation. The Authority reserves the rights to cancel, terminate, change or modify this procurement / bid process and / or requirements of bidding stated in the RFP, without assigning any reason or providing any notice and without accepting any liability for the same.
- 15) Pre-Bid conferences will be held on the dates specified in the 'Schedule of Bidding Process'. During the course of Pre-Bid conferences, the Bidders will be free to seek clarifications and make suggestions for consideration of the authority. The Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 16) Financial documents submitted shall only be checked for its adequacy and the bidders are entirely responsible for the correctness of the documents. RTC has the absolute right and may ask for further proofs and additional documents to evaluate the proposal.
- 17) Tenderers who do not comply with the conditions of RFP, with documentary proof (wherever required) shall be disqualified at PQ stage.
- 18) All entries in the tender should be entered in online Formats without any ambiguity.
- 19) Bidders are requested to check the website regularly before the due date of tender opening to ensure & comply with any Corrigendum / Addendum uploaded against the said tender.

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- 20) No separate intimation in respect of corrigendum to this NIT / RFP (if any) will be sent directly to tenderer (s) who have downloaded the documents from website.
- 21) For any help or technical support on bidding process Bidders may contact helpdesk of MSTC ecommerce website.

**CHIEF MANAGER (Comm)**

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## 2. BID SUMMARY

Sl. No.	Key Information	Details
1.	<b>Project</b>	Selection of developer (Concessionaire) for Development of 9 Sites of APSRTC, proposed through this RFP, under BOT scheme.
2.	<b>Project Site</b>	The details of the Project Sites along with the extent are set out in Data Sheet at Appendix-A5.
3.	<b>Grantor / Authority</b>	Andhra Pradesh State Road Transport Corporation (APSRTC / the Authority), Government of Andhra Pradesh.
4.	<b>Project Facilities</b>	Facilities on the Project Site, any other asset comprised therein and / or forming part thereof as on the Agreement Date as per terms specified and shall include all facilities, services and all assets comprised therein which the Concessionaire shall build, provide or procure within the Project Site, consistent with Good Industry Practice and as per the terms of this RFP.
5.	<b>Project Components</b>	<p>Suggested Project components:</p> <ul style="list-style-type: none"> <li>• Development of Commercial facilities: Commercial Space comprising Hospitality, Retail, Office spaces etc. as per the applicable Development Controls and best use option of the Concessionaire.</li> <li>• Parking as per requirement and the Applicable Byelaws.</li> </ul> <p><b>The Following activities are not allowed in the project site by the concessionaire:</b></p> <ul style="list-style-type: none"> <li>i) Prohibited Activities as per applicable laws and</li> <li>ii) Activities in competition with the main Operations and core business activities of the Authority including Logistics.</li> </ul>
6.	<b>Mandatory facility</b>	1) A minimum of 50% of built up area as per approved DPR shall be constructed by the

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Sl. No.	Key Information	Details
		<p>Concessionaire within two years from the date of commencement of Concession Period.</p> <p>2) The Concessionaire shall Construct at its cost and hand over free of cost, charges and rent for exclusive use of the Authority:</p> <p>a) 200 Sft built up space with toilet facility at a mutually agreed location with internal electrical concealed conduit wiring, painting, flooring, power &amp; water supply connection with sub meters etc.</p> <p>b) 2 car parking bays confined in one location in the cellar/basement. The Built-up area should include internal electrical concealed conduit wiring, painting, flooring, power &amp; water supply connection with sub meters etc.</p> <p>3) Compound wall of required height has to be constructed along the RTC boundary by the Concessionaire at its cost.</p>
<b>7.</b>	<b>Development Guidelines / Controls</b>	As per RFP, Statutes and Good Industry Practice.
<b>8.</b>	<b>Technical Specifications</b>	As per applicable BIS Codes, National Building Codes and other Indian & International Standards.
<b>9.</b>	<b>Implementation Format</b>	Through Build, Operate and Transfer scheme in Public Private Partnership (PPP) format subject to terms and conditions of this RFP.
<b>10.</b>	<b>Institutional Structure for Implementation</b>	Formation of Special Purpose Vehicle (SPV) / Company SPC) / under Companies Act of India, 2013 by the selected Bidder / Consortium is mandatory.
<b>11.</b>	<b>Concession Format</b>	Build (including Design and Finance), Operate (including maintenance and repair) and Transfer (BOT format).

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<b>12.</b>	<b>Scheduled Project Completion Date</b>	24 months from the execution Date of Agreement.
<b>13.</b>	<b>Concession Period</b>	<b>33 years including construction period</b> , from the commencement date as per Concession Agreement. At the end of the Concession Period, the Commercial facilities developed by the Concessionaire on / under the project site shall have to be transferred to the Authority free of cost, as per the terms and conditions specified in the RFP document.
<b>14.</b>	<b>Financial Criteria</b>	The details of the same are set out at Appendix - A11.
<b>15.</b>	<b>Upfront Amount (UA)</b>	The Upfront Amount payable is provided in Data Sheet at Appendix -A10. The Upfront Amount payable to the Authority is as below: The Concessionaire shall pay the 1st installment of 50% of Upfront Amount as a pre-condition for signing of Concession Agreement. The balance 50% i.e., 2nd installment of Upfront Amount shall be payable on the 1st day of second year of commencement of Concession period. Taxes extra as applicable and shall be paid by the Concessionaire / preferred bidder.
<b>16.</b>	<b>Discount on Upfront Amount</b>	8% discount is allowed on 2 <sup>nd</sup> installment of Upfront Amount, if total Upfront Amount is paid on or before commencement of Concession period.
<b>17.</b>	<b>Project Development Fee</b>	The Selected Bidder / Concessionaire shall be required to make a non refundable payment of Project Development Fee as provided in Data Sheet at Appendix - A10 with all applicable taxes. The amount shall be paid as a precondition for signing of Concession Agreement.



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<b>18.</b>	<b>Salvage value or Cost of relocation of Structures</b>	<p>The existing structures in dilapidated condition or structures not in use in the project site will be removed by the Authority and vacant site will be handed over to the successful bidder.</p> <p>In case of existing structures in use in the project site, the successful bidder is required to construct at its cost, an alternate structure to the existing structure in use at a place specified by the Authority, as per standard specifications of the Authority.</p>
<b>19.</b>	<b>Initial Annual Premium (Bid Parameter)</b> (exclusive of all Taxes)	<p>Initial Annual Premium excluding Taxes is the Bid Parameter.</p> <p>Initial Annual premium i.e. the 1st installment of Annual Premium shall be payable by the Concessionaire to the Authority from the 1st day of 3<sup>rd</sup> year of the Concession Period.</p> <p>Holiday Period for payment of initial Annual Premium is 2 (two) years from the date of commencement of Authorisation Period, irrespective of early or late completion of the Project and /or commencement of Commercial operation.</p> <p>GST or any other taxes on Annual Premiums shall be paid by the selected bidder / Concessionaire only.</p> <p>The qualified bidder shall quote their highest amount payable to the Authority in the Price Bid in the MSTC e-auction platform only.</p> <p>Only the Price Bid which is equal to or more than the Base Annual Premium as mentioned in the Data Sheet at Appendix - A10 shall be considered for evaluation.</p> <p>The qualified bidders are required to participate in e-auction on MSTC.</p> <p>The Bidder quoting the highest amount of initial Annual Premium for a Project shall be the preferred bidder.</p>

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Sl. No.	Key Information	Details
		<p>The Authority reserves the right to reject the Bids that are less than the Base reserve Premium.</p> <p>The initial Annual Premium shall be enhanced by</p> <ul style="list-style-type: none"> <li>i) 5% every year over that of the previous year's Annual Premium up to the first 9 years of Concessionaire Period (including the holiday period)</li> <li>ii) 7% every year over that of the previous year's Annual Premium for the next 9 years and</li> <li>iii) 9% every year over that of the previous year's Annual Premium for the balance Concession period.</li> </ul>
<b>20.</b>	<b>Interest free refundable Security Deposit</b>	<p>Interest free, refundable Security Deposit shall be paid to the Authority for an amount equivalent to 50% of initial Annual Premium on the 1<sup>st</sup> day of 3<sup>rd</sup> year from the commencement of Concession Period.</p> <p>The Concessionaire has to pay every year, the difference of amount to make the Security Deposit equal to 50% of Annual Premium for that year.</p> <p>This amount shall be payable along with the Annual Premium of that year, in advance.</p>
<b>21.</b>	<b>Performance Security</b>	<p>Interest Free, refundable Performance Security amount shall be the amount as specified in the Data Sheet at Appendix A10.</p> <p>The Performance Security amount shall be deposited by the Concessionaire / preferred bidder on or before the commencement of Concession Period as a pre condition for entering into the Concession Agreement.</p> <p>The Performance Security will be returned after completion of the construction of the BOT Project facilities by the Concessionaire, as per terms and conditions of this RFP and Agreement.</p>

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Sl. No.	Key Information	Details
22.	<b>Bid Security Amount</b>	The Bidder shall pay Bid Security amount as provided in Data Sheet at Appendix A10.
23.	<b>Bid Validity</b>	180 days from the Bid Due Date as per Schedule of Bidding
24.	<b>Service Charges</b>	The successful bidder shall pay required service charge amount with applicable GST to MSTC directly.
25.	<b>Formats to be submitted in the O/o Chief Manager (Commercial) / Vijayawada</b>	<ul style="list-style-type: none"> <li>a. Proof of payment towards cost of RFP Document.</li> <li>b. Proof of payment of Bid Security Amount.</li> <li>c. Check List of Submissions – Appendix A1.</li> <li>d. Covering Letter in the prescribed format at Appendix – A2 along with Annexes and supporting documents;</li> <li>e. Letter of Under taking – Appendix A3.</li> <li>f. Letter for Project Under taking – Appendix A4.</li> <li>g. Commitment for Payments – Appendix A5.</li> <li>h. Consortium Agreement, if applicable – Appendix A6.</li> <li>i. If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format – Appendix A7.</li> <li>j. Power of Attorney for signing of Bid in the prescribed format – Appendix A8.</li> <li>k. Board Resolution, if applicable – Appendix A9.</li> <li>l. Registered buyer name and ID in MSTC</li> <li>m. In case where the Bidder is: <ul style="list-style-type: none"> <li>A company: Copy of Memorandum and Articles of Association,</li> <li>A registered proprietorship firm - copies of telephone/electricity/mobile bill, PAN, latest income tax return indicating there in the name, residential address, registration certificate from the registrar of the state, and copies of service tax and central excise registration certificate;</li> <li>Copies of single entity's or each Consortium</li> </ul> </li> </ul>

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		<p>Member's duly audited annual reports for the preceding three years.</p> <p>If applicable, the certificate from the Statutory Auditor / Independent Auditor for Associate;</p> <p>n. Anti Collusion Certificate at Appendix –A12</p> <p>o. Anti Blacklisting Affidavit at Appendix –A13</p> <p>p. General information of the bidder provided at Appendix – B1</p> <p>q. Financial Capacity of the Bidder provided at Appendix – B2, along with Certificate from statutory auditor/ independent auditor for Financial Capacity. Certificate from statutory auditor/ independent auditor for Associate provided.</p> <p>r. Letter of undertaking for technical details provided at Appendix – B3</p> <p>s. RFP – signed in all pages</p> <p>t. Corrigenda/ Addenda – signed in all pages.</p> <p>u. Response to pre bid queries - signed in all pages.</p>
<b>26.</b>	Submission of Capability Statements	<p>Bidders are required to submit Capability Statement consisting of Financial eligibility.</p> <p><b>For Financial Criteria :</b></p> <p>As per RFP and as per data sheet at Appendix-A11.</p> <p>Audited Annul Accounts of last three financial years (2019-20, 2020-21 &amp; 2021-22).</p> <p>Statutory Auditor's Certificates for financial details with income tax returns.</p>
<b>27.</b>	<b>Price bid: e-tender cum e-auction</b>	<p>The Bidders shall be required to quote their Price Bids in e-tender and participate in e-auction on e-auction platform of MSTC ecommerce website.</p> <p>No off line bids will be accepted.</p>
<b>28.</b>	<b>Bid Evaluation</b>	<p>First Stage: Evaluation for pre qualification:</p> <p>The bidders satisfying all the pre requisites shall</p>

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Sl. No.	Key Information	Details
		<p>be qualified for participating in e-tenders.</p> <p>Second Stage: Financial evaluation</p> <p>The bidder offering highest amount of initial annual premium through e-tender cum e-auction on e-auction platform of MSTC ecommerce website shall be the preferred bidder.</p> <p>However, the Authority reserves the right to negotiate with the highest bidder.</p> <p>The Price Bids which are less than that specified in RFP will be rejected.</p>
<b>29.</b>	<b>Signing of Concession Agreement</b>	<p>After selection, a Letter of Intent (the "LOI") shall be issued, (as per the format set out at Appendix -1), by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 days of the receipt of the LOI, sign and return the duplicate copy of the LOI in acknowledgement thereof. In the event of a copy of the LOI duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder, and the next eligible Bidder may be considered.</p> <p>After acknowledgement of the LOI as aforesaid by the Selected Bidder, it shall execute the Concession Agreement within 90 days from the date of issue of LOI. The Selected Bidder shall not be entitled to seek any deviation in the Concession Agreement.</p>

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### 3. DEFINITIONS AND INTERPRETATION

#### 3.1 Definitions

**'Advisor'** or 'Project Advisor' shall mean any Consultant or Agency hired by the Authority.

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

**'Annual Premium'** means the Annual Premium payable by the Concessionaire to the Authority pursuant to the Land Lease Deed and Concession Agreement.

**'Advance Annual Premium' or 'Security Deposit'** means the Interest free, refundable Security Deposit, payable by the Concessionaire to the Authority, pursuant to the Concession Agreement and Land Lease Deed. The Concessionaire shall always keep an amount of 50% of Annual Premium of that year with the Authority, as specified in the RFP.

**'Authority' or 'Grantor' or "Lessor" or 'APSRTC'** means Andhra Pradesh State Road Transport Corporation represented by its Administrators, successors and permitted assigns;

**'Authorization Agreement' or 'Concession Agreement'** shall mean the agreement entered into by and between the Andhra Pradesh State Road Transport Corporation (APSRTC / the Authority) and the Concessionaire.

**'Authorization Period' or 'Concession Period'** shall mean the period of **33 years** from the Effective Date of Authorization Agreement, including construction period.

**'Authorizee' or 'Concessionaire'** shall mean the selected Preferred Bidder or Special Purpose Company (SPC) incorporated exclusively by the Bidder / Bidding Consortium under Companies Act, 2013 who has been selected and nominated by the Authority to implement the Project on the terms and conditions stipulated in the Concession Agreement.

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

**'Bid Security' or 'Earnest Money Deposit (EMD)'** shall mean the security amount provided by the Bidder to the Authority along with the Bid in accordance with the Request for Proposal.

**'Bidder'** shall mean applicant who has downloaded / issued the RFP and submitted his Bid in response to the RFP.

**"Bid Evaluation Committee"** shall mean the committee constituted by the Authority for evaluating the Bids.

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**'BOT'** shall mean Build, Operate and Transfer.

**'Built up area'** means the covered area of a building at all floor-levels added together, excluding parking areas.

**'Commercial Operation'** means the use of the Project facilities for commercial purposes by levying, charging, demanding, collecting, realizing, retaining and appropriating of Tariff; Date of completion of RTC facilities mean 2 years from the execution date of agreement or completion of RTC facilities as mentioned in RFP whichever is earlier.

**'Commercial Operation Date' or 'COD'** means the dates on which the Authority issues the Completion Certificate; or scheduled date of completion as per the agreement.

**'Completion Certificate'** means the certificate issued by the Authority in the manner set out as per terms of RFP/Authorization Agreement;

**'Compliance Date'** shall be as defined in the Draft Authorization Agreement.

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

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

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

**'Developer'** shall have the same meaning as described to the term 'Concessionaire' or 'Preferred Bidder'.

**'Due Date'** shall mean the date for submission / receipt of the Bid, as mentioned in the Schedule of bidding process of RFP document.

**'Financial Bid' or 'Price Bid'** shall have the meaning as set forth in the RFP documents.

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

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

**'Land Lease Deed'** shall mean an Agreement / Deed entered into by and between the Andhra Pradesh State Road Transport Corporation (APSRTC / the Authority) as the Lessor, the Concessionaire as the Lessee and the Preferred Bidder.

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**'Lead Member'** shall mean in case of a Consortium, the firm nominated to act as Lead Member of the Consortium at the RFP stage, which qualifies as per the Eligibility Criteria, and which shall continue to be the leader and be authorized as such for submission of Bid. The Lead Member will represent the Consortium on all matters pertaining to the RFP and shall have the primary responsibility of developing and implementing the Project.

**'Lenders'** shall mean any person(s) / firm(s) based in India or abroad providing financial assistance, loans, hire purchase facilities, funds, lease finance or other credit facilities to the Project under any financing agreements.

**'Lessee'** shall mean the Concessionaire entering into the Land Lease Deed with the Authority (Lessor).

**'Lessor'** shall mean the Authority i.e., Andhra Pradesh State Road Transport Corporation.

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

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

**'Off-site Infrastructure'** shall mean external connecting infrastructure (infrastructure up to the project site limits).

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

**'Performance Security'** shall mean the amount paid by the Preferred Bidder prior to the signing of Concession Agreement in terms of the RFP.

**'Power of Attorney'** shall mean a legal document that gives the authority to make decisions and take actions on someone else, in the format provided in RFP, to be furnished by the Bidder / Consortium, Authorizing a person to sign the Bid and act for and on behalf of the Bidder/Consortium during the Bidding process.

**'Preferred Bidder'** shall mean the successful Bidder, selected as a result of the Bid evaluation process as set forth in this RFP document.

**'Project Agreements'** shall mean Authorization Agreement, Land Lease Deed and any other legal documents as mutually agreed to between the Authority and the Concessionaire, necessary for implementing the Project.

**'Project Completion Period'** shall mean the total period in which the construction of the total permissible built-up area (based on development guidelines applicable on the date of signing of Authorization Agreement) and certified by Authority.



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**'Project Company'** shall mean the company to be set up by the Consortium /Preferred Bidder, if required, as one of the purposes of implementing the Project under Companies Act, 1956.

**'Project Facilities'** shall mean all the facilities comprising of Concessionaire facilities and Authority facilities.

**'Request for Proposal or RFP'** shall mean the Bid / tender document comprising Sections I to IV and any other Corrigenda or addenda issued thereon.

**'Taxes and Duties'** shall mean all taxes (including Property taxes), GST, duties, fees etc. or any other taxes imposed by Govt. of AP or Govt. of India or their agencies, local bodies payable as per applicable laws in India in connection with the Construction (development), operation and management of the Project from time to time.

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

### **3.2 Interpretation**

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

- 1) The singular of any defined term includes the plural and vice versa, and any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;
- 2) A reference to any gender includes the other gender;
- 3) Unless otherwise stated, a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Exhibit, Attachment, Schedule or Recital is a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Appendix, Exhibit, Attachment, Schedule or Recital of this RFP;
- 4) A reference to any agreement is a reference to that agreement and all appendices, attachments, exhibits, schedules, appendices and the like incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended, from time to time, in accordance with the terms thereof;
- 5) The terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed;
- 6) Any reference to a person shall include such person's legal heirs and permitted assignees;
- 7) A reference to a "writing" or "written" includes printing, typing, lithography, mails, digital forms and other means of reproducing words in a visible form from time to time;

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- 8) Any date or period set forth in this RFP shall be such date or period as may be extended pursuant to the terms of this RFP by issuance of Corrigendum / Addendum.
- 9) A reference to "month" shall mean a calendar month, a reference to "week" shall mean a calendar week and a reference to "day" shall mean a calendar day, unless otherwise specified.
- 10) The terms "hereof, "herein", "hereto", "hereunder" or similar expressions used in this RFP mean and refer to this RFP and not to any particular Article, Clause or Section of this RFP. The terms "Article", "Clause", "Paragraph" and "Schedule" mean and refer to the Article, Clause, Paragraph and Schedule of this RFP so specified;
- 11) In the case of any conflict, discrepancy or repugnancy between the provisions of RFP and any other documents, provisions of the Concession Agreement and Land Lease Deed shall prevail over and supersede the provisions of other documents.
- 12) The descriptive headings of Articles and Sections are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of content thereof and shall not be used to interpret the provisions of this Agreement;
- 13) All capitalized words and expressions used in RFP document but not defined therein shall have the same meaning as ascribed to them in the Concession Agreement.

#### **4.0 GENERAL INFORMATION AND INSTRUCTIONS**

##### **4.1 Contents of the RFP Document:**

The following are the contents of the RFP / Tender document.

**Volume I : Instruction to Bidders**

**Volume II : Formats for Bids Submission (Appendices)**

**Volume III : Development Controls and Technical Specification**

**Volume IV : Draft Concession Agreement**

The contents of the RFP document shall be read in conjunction with any Corrigenda / Addenda issued from time to time, which shall form integral part of the RFP. The Corrigenda / Addenda shall be uploaded by the Authority in the relevant tender ID in MSTC ecommerce website.

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## **4.2 General instructions**

4.2.1 This section should be read in conjunction with other sections of RFP. The words and expressions, which are defined in this Section of RFP i.e. Instructions to Bidders (ITB), have the same meaning when used in the other Sections of RFP, unless separately defined.

4.2.2 The ITB sets out the bidding procedure and provides necessary details for the Bidders to prepare their Bid. The prescribed formats for submission of Bids are as per the vol-II of the RFP.

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

4.2.4 Each site is a different project. Bidders are allowed to bid for one or more Projects based on the eligibility criteria and evaluation parameters stipulated in this RFP document.

This RFP document is common for all the Projects. It may be noted, however, that for all intents and purposes the Projects are independent of each other and the bidders have to quote separately for each project duly paying the respective bid security amounts as specified in the RFP and separate agreement (hereinafter referred to as the "Concession Agreement") shall be executed by the Authority for each Project with the Selected Bidder.

The Bid submission of the Bidder shall be considered only for the Project(s), for which the Bidder has explicitly submitted its Bid duly fulfilling the pre requisites as per the RFP.

4.2.5 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidder shall carry out any surveys, investigations etc. at its own cost and risk.

4.2.6 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on

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- behalf of the Authority relating to any of the matters referred to in Clause 4.2.5 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 4.2.5 herein above necessary and required for submitting the Bid, execution of the Project in accordance with the Tender Documents and performance of all of its obligations there under;
  - (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 4.2.5 herein above shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement; and
  - (f) agreed to be bound by the undertakings provided by it under and in terms hereof.

### **4.3 Bidder’s Responsibility for Data in the RFP**

4.3.1 While preparing the Bid, the Bidder shall consider the information provided in this RFP, in totality.

4.3.2 The Bidders shall be wholly responsible for all the details of their Bids, the physical and site conditions, the execution methodology, etc. In essence, after the Bid is submitted, the Bidder shall be the ‘owner’ of all the data, which forms the basis of the Bid and shall have no claims whatsoever on the Authority or its agencies regarding the accuracy of the data or designs, drawings & concept plans etc. furnished in this RFP.

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

### **4.4 Bidder’s eligibility criteria**

#### **4.4.1 General eligibility**

- (a) This invitation of Bid is open to all interested Bidders, who may either be a single entity or a group of entities (hereinafter referred to as Consortium) coming together to implement the Project. Registered / unregistered Partnership firms are not allowed to participate in the Bids as they are not eligible to form SPV in accordance with the terms of the RFP and in accordance with companies Act 2013.
- (b) All firms / Companies / Consortia, who have downloaded this RFP document, subject to their meeting the specific pre requisite criteria set forth in the RFP, will be considered.
- (c) A firm / Company cannot participate as a Lead Member or Member of more than one Consortium for the same project.

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- (d) Bids submitted by a Consortium of two or more entities as members shall comply with the following requirements:
- i) The maximum number of members in the Consortium shall be 3 (Three) including the Lead Member.
  - ii) Consortium Agreement duly signed by all the members of the Consortium shall be submitted along with the Bid. The other members shall nominate one of the members of the Consortium thereof as the Lead Member (subject to fulfilling the conditions stipulated in the RFP.)
  - iii) The Consortium Agreement shall clearly state the roles & responsibilities, proposed to be shared, among the members of Consortium during project execution and implementation.
  - iv) The Lead Member shall be authorized by all members of the Consortium to act for and on behalf of the Consortium including interacting with the Authority, receive instructions and furnishing Bid Security etc.
  - v) The Lead Member and other Consortium members shall be jointly and severally responsible for the implementation of the Project in accordance with the terms of the Concession Agreement, and a statement to this effect shall be included in the Consortium Agreement.
  - vi) All the information as per the requirements of the RFP shall be provided to the lead member of the Consortium.
  - vii) The Bid shall be legally binding on all the members of the Consortium.
  - viii) No member of the Consortium shall be changed after submission of the Bids / Signing of the Concession Agreement.
  - ix) The Bids would be evaluated based on the details and data furnished. The Authority's decision regarding a Bidder's eligibility or otherwise shall be final and binding.
- (e) The Bidders shall provide evidence of their continued eligibility in a manner that is satisfactory to the Authority and the Authority may request the Bidders for the same till signing of the Authorization Agreement.
- (f) Bidders may be required to periodically update (at times to be notified by the Authority) the information submitted in their capability statement with regard to the following:
- i) Evidence of availability of financial resources;
  - ii) Audited Balance sheets including the effect of known commitments;
  - iii) Commitments of other works awarded since submitting the Bid;

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- iv) Any other information that might be requested;
  - v) Any information known to the Bidder that may affect its ability to perform the contractual obligation.
- (g) A Bidder may be disqualified if it is determined by the Authority, at any stage of the bidding process that the Bidder fails to continue to satisfy the Eligibility Criteria and Technical Criteria. Supplementary information or documentation regarding the criteria may be sought from the Bidders at any time and the same shall be so provided within the time frame stipulated by the Authority.
- (h) No Bidder shall submit more than one Bid for the same Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid for the same Project either individually or as a member of any Consortium, as the case may be.
- (i) Further the Bids shall be unconditional, unqualified, firm and valid. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

#### **4.4.2 Minimum Equity Commitment:**

The Preferred Bidder shall be required to incorporate a Special Purpose Vehicle / Special Purpose Company under the Companies Act of India, 2013 for signing of Concession Agreement.

The Preferred Bidder / Consortium as a whole shall hold minimum 51% of the paid-up equity share capital of the Concessionaire at all times during a period that shall not be less than 10 years from the date of signing of the Concession Agreement.

In case of Preferred Bidder being a Consortium, the Lead Member shall hold at least 26 per cent of the paid-up equity share capital of the Concessionaire for a period that shall not be less than 10 years from the date of signing of the Concession Agreement and each other constituent member of the Consortium, shall also hold at least 10% of the paid-up equity share capital of the Concessionaire for a period that shall not be less than 10 years from the date of signing of the Concession Agreement.

No change in composition of the Preferred Bidder / Consortium shall be made for a period of **10 years** (the "**Lock-in Period**") from the date hereof.

Any transfer of such share capital after such 10 years shall require the prior written approval of the Authority, which shall not be unreasonably denied.

After the expiry of the lock-in period, another Lead Member may replace the Lead Member, provided that such lead member holds at least 26% of the paid-

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up equity share capital of the Concessionaire. For the avoidance of doubt, the Lead Member shall during the Concession Period, hold at least 26% of the paid up equity share capital of the Concessionaire.

In case of death of a member of Consortium / Preferred Bidder during the concession period, the transmission of share capital shall be in accordance with the provisions of Companies Act 2013. Such change in share capital shall require approval of the Authority.

#### **4.4.3 Financial Capability**

The Bidder should have:

**(a) Average Annual Turn-over** of an amount as specified in **Appendix – A11** in last three financial years (2019-20, 2020-21 & 2021-22) as per the Audited Annual Accounts.

**and**

**(b) Minimum Net-worth:** The Bidder should have minimum Net worth as indicated in **Appendix – A11** for each Project as of the close of the preceding Financial Year i.e. as on **31.03.2022**.

#### **Net Worth shall mean**

##### **( i ) For Companies / Firms :**

{(Subscribed and paid up capital / Share Capital + Reserves and Surplus) – (Revaluation Reserves + Miscellaneous expenditure not written off + Deficit in P & L Account if any)} in the last financial year (as on **31.03.2022**) as per Audited Financial Statements certified by Statutory Auditor / Chartered Accountant.

##### **(ii) For Proprietorship firms / Individuals:**

Total Assets – Total Liabilities as on **31.03.2022** as per Audited Financial Statements certified by Statutory Auditor / Chartered Accountant.

#### **4.4.4 Qualification through Affiliates:**

(a) The Bidding Company (in case of a single bidder) / Consortium Member can draw upon the Financial Capability of one or more of its Affiliates or Associates. In either case, the ownership relation between the Bidder and the Affiliate(s) must be explained.

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

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#### **4.4.5 Special conditions for a Consortium:**

- a) In case the Bidder is a Consortium, the eligibility criteria with reference to Financial capability as stipulated in Sub-clauses 4.4.3 shall apply to the Consortium as a whole.
- b) Provided, however, that for evaluation of Financial Capability the following conditions shall additionally apply:
  - i) In case of a bidding consortium, the lead member shall fulfill a minimum of **50%** of the Financial Criteria as mentioned above, and each other constituent member of the Consortium shall individually fulfill at least **10%** of the Financial Criteria as stipulated in Clause 4.4.3 (Financial Capability).
  - ii) The Consortium as a whole shall be required to commit to hold a minimum equity participation of **51%** in the Project Company / at all times during a period that shall not be less than ten (**10**) years from the date of signing of the Concession Agreement.
  - iii) Minimum equity commitment shall be as per the Clause 4.4.2.

#### **4.4.6 Special condition for a sole bidder:**

In case of Single Bidder, he shall be required to commit to hold a minimum equity participation of **51%** in the Special Purpose Vehicle incorporated, at all times during a period that shall not be less than **10 (Ten)** years from the date of signing of the Concession Agreement. However for any change in the composition of the project Company after completion of lock in period of 10 years, prior approval of the Authority has to be taken.

#### **4.4.7 Non-Compliance with RFP:**

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

#### **4.5 Cost of Bidding**

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

#### **4.6 Cost of RFP Document:**

The prospective Bidder can download the RFP document from the Authority web site [www.apsrtc.ap.gov.in](http://www.apsrtc.ap.gov.in) / Tenders / BOT Tenders (or) from MSTC ecommerce website (e-auction).



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**The prospective bidders shall pay the cost of RFP document for each and every project separately.**

The prospective Bidder shall pay a non-refundable fee of Rupees Rs.11,800/- (Rupees Eleven thousand eight hundred only), inclusive of GST, through NEFT / RTGS / online transfer to the Authority Current Account no: 62472413226, IFSC Code SBIN 0020169, Acc. in Name : FA CAO APSRTC, Bank name: State Bank of India, Gandhinagar, Sitarampuram branch, Vijayawada or through DD towards cost of RFP.

The proof of payment of cost of RFP shall be submitted to the Chief Manager (Commercial), APSRTC within timelines stipulated in the schedule of bidding process or as amended from time to time.

#### **4.7 Power of Attorney for Bid Signatory:**

All the bidders should submit the Power of Attorney in favour of a specified person to act as the official representative of the Bidder / Bidding Consortium for the purpose of signing documents, making corrections / modifications and interacting with the Authority and acting as the contact person.

#### **4.8 Validity of Bid:**

- 4.8.1 The Bids submitted shall remain valid for 180 days from the Due Date of submission.
- 4.8.2 In exceptional circumstances, prior to the expiry of the original bid validity period, the Authority may request the Bidders to extend the period of validity for a specified additional period. The request for the extension shall be made in writing. Bidder will not be permitted to modify its Price Bid, but will be required to extend the validity of the Bid for the period of extension.

#### **4.9 Bid Security to be submitted by Bidders**

- 4.9.1 The prospective bidders shall pay the Bid Security amount, as provided in Data Sheet (Appendix A10) for each and every project separately.

The Bidder shall pay Bid Security amount through NEFT/ RTGS / online transfer to the Authority Current Account no: 62472413226, IFSC Code SBIN 0020169, Acc. in Name : FA CAO, APSRTC, Bank name: State Bank of India, Gandhinagar, Sitarampuram branch, Vijayawada or through Demand Draft.

The proof of payment of Bid Security amount shall be submitted to the Chief Manager (Commercial), APSRTC within timelines stipulated in the schedule of bidding process or as amended from time to time.

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The Bid Security Amount shall not carry any interest.

- 4.9.2 Any Bid not accompanied by an acceptable Bid Security amount in the manner stated above shall be rejected by the Authority as non-responsive and their Financial Capability Statement shall not be evaluated.
- 4.9.3 The Bid Security of unsuccessful Bidders, except the Bidder (H2) next to the Preferred Bidder (H1), will be returned promptly, but not later than 60 days after the expiration of the Bid validity period, or within 15 days of issue of LoI to the Preferred Bidder, whichever is earlier. The Bid Security of H2 will be returned within 15 days of signing of Authorization Agreement with the Preferred Bidder.
- 4.9.4 The Bid Security amount of H1 bidder shall be adjusted towards Upfront Amount to be paid.
- 4.9.5 The Bid Security shall become liable for forfeiture in the event of the following:
- a) If the Bidder withdraws his Bid during the period of Bid Validity (includes Bid processing time) or modifies his Bid within the validity period; or
  - b) If the Bidder refuses to accept the correction of errors in his Bid; or
  - c) If the Bidder submits a conditional Bid which would affect unfairly the competitive provision of other Bidders who submitted substantially responsive Bids and/or is not accepted by the Authority; or
  - d) The Preferred Bidder fails to pay 1<sup>st</sup> instalment of Upfront Amount, Project Development fee, Performance Security, as per the terms and conditions specified in the RFP; or
  - e) The Preferred Bidder fails to sign the Concession Agreement as stipulated in the RFP.

#### **4.10 Miscellaneous Instructions**

- 4.10.1 Bids that are incomplete in any respect or those that are not consistent with the requirements as specified in this RFP might be considered non-responsive and may be liable for rejection.
- 4.10.2 Adherence to formats, wherever prescribed, is required. Non-adherence to formats might be a ground for declaring a Bid as non-responsive.
- 4.10.3 All communication and information shall be provided in writing and in English language only.
- 4.10.4 All financial data shall be furnished (converted) in Indian Rupees only.

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- 4.10.5 All communication and information provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words. In case of conflict between amounts stated in figures and words, the amount stated in words will prevail.
- 4.10.6 No change in, or supplementary information to a Bid shall be accepted once submitted. However, the Authority or any of its advisors/ agencies/ consultants reserves the right to seek additional information and/ or clarifications from the Bidders, if found necessary, during the course of evaluation of the Bid. Non-submission, incomplete submission or delayed submission of such additional information and/ or clarifications sought by the Authority or any of its agencies/consultants/, may be a ground for rejecting the Bid.
- 4.10.7 If any claim made or information provided by the Bidder in the Bid or any information provided by the Bidder in response to any subsequent query by the Authority or any of its agencies/consultants/advisors, is found to be incorrect or is a material misrepresentation of facts, then the Bid shall be liable for rejection. Mere clerical errors or bona fide mistakes may be treated as an exception at the sole discretion of the Authority or any of its advisors/ agencies/ consultants and if the Authority or any of its advisors/ agencies/ consultants is adequately satisfied.
- 4.10.8 The Bidders who qualify after the evaluation of their Technical Bid and meets minimum financial eligibility criteria shall only be eligible for consideration and evaluation of their Financial Bids.
- 4.10.9 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 4.10.10 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 4.10.11 A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, at the sole discretion of the Authority.
- 4.10.12 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

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#### **4.11 Bid Responsiveness**

4.11.1 A Bid shall be deemed as a “non-responsive” if it does not satisfy any of the following conditions:

- a) It is not responded in MSTC by the Due Date and time as per RFP and as stipulated by service provider in respective Tender.
- b) It does not include sufficient information / details for it to be evaluated and / or is not in the formats specified in this RFP.
- c) If all the following documents as specified in the RFP are not submitted to the Authority in time:
  - i) Signed copy of RFP document (signed in all pages)
  - ii) Signed copy of response to pre bid queries (if any, signed in all pages)
  - iii) Signed copy of Addenda & Corrigenda (if any, signed in all pages)
  - iv) Financial capability statements including Income Tax returns.
  - v) All other relevant documents as specified in Vol-II of RFP
  - vi) Proof of payment of Bid Security amount.
  - vii) Proof of payment of cost of RFP document.

(These documents shall be submitted at the location specified at clause 6.1.6 of this RFP, without fail as a pre condition for qualification at PQ Stage, as per timelines stipulated in the schedule of bidding process or as amended from time to time.)

- d) Bid Security for specified amount is not paid.
- e) Cost of RFP document is not paid.

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

#### **4.12 Pre-bid Conference:**

4.12.1 A Pre-Bid Conference will be held on the date specified in the ‘Schedule of Bidding Process’ at respective District Head Quarters where the project sites are located. The intending Bidder / Bidder’s designated representative(s) shall attend the same. Virtual pre-bid conference will be held on the date specified in the ‘Schedule of Bidding Process’. The intending bidders shall obtain the link details from Chief Manager (Comm), APSRTC, Vijayawada.

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Further APSRTC reserves the right to hold, in its sole and absolute discretion, more than one pre-bid meeting or hold one or more consultation meetings with the interested parties.

- 4.12.2 Bidders are advised to indicate the Authority in context to the number attendee names, designation, phone number, email ID etc. during the pre-bid Meeting.
- 4.12.3 The purpose of the pre-bid meeting will be to clarify queries of the Bidders, if any, related to the Project and RFP documents.
- 4.12.4 The Bidders are advised, as far as possible, to submit the queries in writing or e-mail to the Authority before the Pre-bid Meeting or at least before the last date of receiving queries as mentioned in schedule of bidding.
- 4.12.5 Any modification in the RFP documents, if required becomes necessary, as a result of the pre-bid meeting(s), shall be uploaded by the Authority in MSTC through an addendum / corrigendum.

#### **4.13 Clarification & Amendment of RFP Documents**

- 4.13.1 The Bidders shall note that reliance upon information/ clarification that is provided by any other source shall be at the risk of the Bidders.
- 4.13.2 At any time prior to the Bid Due Date, the Authority may amend the RFP document by issuing an addendum / Corrigendum.
- 4.13.3 Addenda / Corrigenda, if any issued shall form integral part of the RFP document and shall be uploaded in the MSTC ecommerce website. The Bidders are requested to verify the same online under the respective tender.

#### **4.14 Fraud and corrupt practices**

- 4.14.1 The Bidders and their respective officers, employees, agents and advisors shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOI and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOI or the Concession Agreement, the Authority shall reject a Bid, withdraw the LOI, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the

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case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

4.14.2 Without prejudice to the rights of the Authority under Clause 4.14.1 herein above and the rights and remedies which the Authority may have under the LOI or the Concession Agreement, if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOI or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

4.14.3 For the purposes of this Clause 4.14, the following terms shall have the meaning hereinafter respectively assigned to them;

- a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOI or has dealt with matters concerning the Concession Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOI or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOI or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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- b) "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
- d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

4.14.4 In pursuance of this clause 4.14, the Authority will reject the bid, at any stage, if it determines that the Bidder recommended for selection has engaged in corrupt or fraudulent practices during bidding process.

#### **4.15 Rejection of bids**

4.15.1 The Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for the Authority to accept any Bid or to give any reasons for their decision.

4.15.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

### **5.0 BIDDING PROCESS**

#### **5.1 Overview**

5.1.1 The bidding process is online on e-auction platform of MSTC ecommerce website, consisting of:

- i) Pre-Qualification Stage and
- ii) Financial Bid Stage: Price bid uploading in e-tender & participation in forward e-auction (collectively referred to as the "Bidding Process").

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- 5.1.2 For the purpose of e-Submission of the Bid, the Bidders are required to register themselves as buyers in the e-Auction platform of MSTC ecommerce website as per procedure stipulated by the service provider.
- 5.1.3 Interested Bidders shall download the RFP document from MSTC ecommerce Web site or from [www.apsrtc.ap.gov.in](http://www.apsrtc.ap.gov.in).
- 5.1.4 PQ stage of the Bid shall mean:  
Submission by bidder signed copies of proofs RFP document (signed in all pages) Addenda & Corrigenda (signed in all pages), Proof of payment of Bid Security amount, Proof of payment of RFP document, Financial capability statements and all other proforma prescribed in Vol-II of this RFP as per timelines specified in schedule of bidding process or as amended from time to time.
- All the original certified hard copies and connected documents shall be submitted in the office of Chief Manager(Comm), 1st Floor, RTC House, PNBS, APSRTC, Vijayawada without fail as a pre condition for qualification at PQ Stage.
- 5.1.5 The e-Submission of the Bid shall mean filling of required fields, Price bid quoting in e-tender and participation in e-auction at the e-auction platform of MSTC ecommerce website as per the procedures explained in the RFP and by the service provider.
- 5.1.6 The documentary proof, as mentioned above, shall comprise of the copies of audited financial statements, annual reports duly certified by the statutory auditors of the Company (in case of Company/ corporate entity)/ practicing Chartered Accountant (in case of non-corporate entity), and copies of any other support documents duly certified by the statutory auditors of the company (in case of Company/ corporate entity) / practicing Chartered Accountant (in case of non-corporate entity), Income Tax returns which shall act as the proof for the capability statement submitted by the bidder as part of the Bid submission.
- 5.1.7 The original documents / certificates of the Documentary Proof shall be produced by the Bidder for verification at the Time & Date as requested by the Authority and would be returned back to the Bidder on the same day after verification.
- 5.1.8 The Copy of the Technical Proposal of the Bid shall comprise of the original documents of the Technical Proposal submitted as e-Submission and in the office of the Chief Manager (Comm).



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- 5.1.9 The Bid documents shall be submitted in English and all entries must be typed and / or written in blue / black ink. The Authorised Signatory of the Bidder shall sign all pages of the Bid documents and sign all erasures and alterations made while filling the Bid. Failure to comply with any of these conditions may render the Bid invalid.
- 5.1.10 The bidder shall pay the cost of RFP document (non refundable) as specified in clause 4.6
- 5.1.11 As part of the e-Submission the Bidder shall register in MSTC ecommerce platform as buyers and pay registration charges and / or any other charges to the service provider as specified by them along with applicable taxes.
- 5.1.12 The bidder shall pay the Bid Security amount as specified in clause 4.9.1
- 5.1.13 The bidders shall follow the schedule of bidding process for time lines on e-auction platform of MSTC ecommerce website under relevant tender ID and for any alterations or modifications made from time to time through Corrigenda / addenda.
- 5.1.15 The Bid shall be valid for a period of not less than 180 days from the date specified in Schedule of Bidding Process for submission of bids (the "Bid Due Date").
- 5.1.16 As part of the Bidding Documents, the Authority is providing information pertaining / relevant to the Project available with it through the RFP prepared by the Authority.
- 5.1.17 Applicants / Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.
- 5.1.18 Any queries or request for additional information concerning this RFP shall be submitted in writing to Chief Manager (Comm), 1<sup>st</sup> Floor, RTC House, PNBS, APSRTC, Vijayawada-13. The last date for receipt of such queries / request for additional information shall be as in Schedule of Bidding Process.
- 5.1.19 For information on tender procedures & registration please visit help desk of MSTC.
- 5.1.20 In case of any discrepancy on the Bid documents submitted as e-Submission, the authenticity of the documents shall be verified by referring to the originals of the documents as part of Bid evaluation.

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- 5.1.21 The first stage, the pre qualification stage, of the process involves qualification (the "**Qualification**") of interested parties / consortia who make a Bid in accordance with the provisions of this RFP (the "**Applicant / Bidder**", which expression shall, unless repugnant to the context, include the Members of the Consortium). In this stage, Applicants / Bidders would be required to upload & furnish all the information specified in this RFP document.
- 5.1.22 The documents submitted by the bidders in PQ stage will be scrutinized by the Authority. The Authority allows the qualified bidders to participate in the Financial bids (Price bid in e-tender & e-auction). The Price Bids which are less than that specified in RFP will be rejected. The bidders not qualified at PQ stage are not allowed to participate in financial bids (Price bid & e-auction).
- The highest bidder in financial bids (Price bid in e-tender & e-auction) will be the preferred bidder. APSRTC reserves the right to negotiate with the H1 bidder.
- 5.1.23 Bids are invited for the Project in the form of highest initial Annual Premium, (the "**Annual Premium**") payable to the Authority for award of the Project. The Concession period is 33 years and is indicated in the draft Concession Agreement forming part of the Bidding Documents. The Initial Annual Premium shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Applicant / Bidder quoting the highest Annual Premium through e-tenders (Price bid in e-tender & forward e-auction).
- 5.1.24 The reserve value of the Initial Annual Premium (Bid Parameter) is provided in Appendix A-10 in Indian Rupees. The Price Bids which are less than that specified in RFP will be rejected.
- 5.1.25 The Authority reserves the right to:
- (i) Negotiate with the Highest Bidder.
  - (ii) The Authority also reserves the right to accept / reject any financial bid and the decision of the Authority in this behalf shall be final and conclusive, which shall be binding on the Applicant / Bidder.
  - (iii) The term "**Highest Bid**" shall mean the Bid that is the highest initial Annual Premium quoted through e-tenders i.e. Price bid in e-tender & competitive bid in forward e-auction, whichever is higher.

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- (iv) The term "**Highest Bidder**" shall mean the Applicant / Bidder who is offering the highest initial Annual Premium through e-tenders (Price bid in e-tenders & forward e-auction).
- 5.1.26 The Highest Bidder amongst those who quotes the highest initial Annual Premium through e-tenders (Price bid & Forward e-auction) shall be the selected Bidder.
- 5.1.27 Other details of the process being followed and the terms thereof are as spelt out in this Bidding Document.
- 5.1.28 The Bidders qualified in the technical evaluation only will be eligible for participation in financial bid.
- 5.1.29 In order to accomplish a comprehensive, expeditious and fair Bid evaluation process, Bidders are requested to study the contents of the RFP documents completely and carefully. The Bidders may obtain formal clarifications, if required from the Authority in this regard.
- 5.1.30 The evaluation of Bids would lead to the selection of a Preferred Bidder. The Preferred Bidder would be required to incorporate a Special Purpose Vehicle/Company (SPV/SPC) under the Companies Act, 2013 (for exclusive implementation of this project only) following which the Concession Agreement would be signed between the Authority and the Project SPC along with the Preferred Bidder as Confirming Party.
- 5.1.31 The bid security is refundable not later than 60 days from the Bid Due Date except in the case of the highest (H1) and the second highest (H2) Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security amount shall not carry any interest.
- 5.1.32 Generally, the Selected Bidder/s shall be the highest (H1) Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in this RFP, the second highest bidder (H2) be invited to match the Bid submitted by the highest (H1) Bidder in case such highest Bidder withdraws or is not selected / considered for any reason. In the event that none of the other Bidders match the Bid of the highest Bidder, the Authority may in its discretion, invite fresh Bids from all Bidders or annual the Bidding Process as the case may be.
- 5.1.33 The successful bidder shall pay required service charge amount with applicable GST to MSTC directly.

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## **5.2 Format and signing of Bid**

- 5.2.1 The Applicant / Bidder shall provide all the information sought under this RFP (tender Document). The Authority will evaluate only those Bid documents that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable for rejection.
- 5.2.2 The Bid shall be submitted as e-Submission on the Due Date as per RFP.
- 5.2.3 The e-Submission of the Bid shall mean submission of Financial Bid on e-tender & forward e-auction on e-auction platform of MSTC ecommerce website.

## **5.3 Bid Due Date**

- 5.3.1 Bids shall be submitted on the Bid Due Date as specified in schedule of bidding process or as may be amended from time to time as indicated at the e-auction platform of MSTC ecommerce website, in the manner and form as detailed in this RFP/ Bidding Document.
- 5.3.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing corrigendum / Addendum.

## **5.4 Late Bids**

Bids cannot be uploaded by the bidder after bid due date.

No offline bids are received by the Authority.

## **5.5 Modifications / withdrawal of Bids**

- 5.5.1 **Bidders can quote their price bid in e-tender only once. Once it is quoted, it cannot be altered / modified.**
- 5.5.2 Any alteration / modification in the Bid documents or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.
- 5.5.3 In the event of withdrawal of a Bid by the Bidder after the Due Date but within the Bid validity period, the Bid Security of the Bidder shall become liable for forfeiture.

## **5.6 EVALUATION PROCESS**

### **5.6.1 Opening and Evaluation of Bids**

- 5.6.2 The Authority will subsequently examine and evaluate the submissions in qualification stage in accordance with the provisions set out in RFP.

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- 5.6.3 Applicants / Bidders are advised that qualification of Applicants / Bidders will be entirely at the discretion of the Authority. Applicants / Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 5.6.4 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant / Bidder if the Project is subsequently awarded to it on the basis of such information.
- 5.6.5 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 5.6.6 If any information furnished by the Applicant / Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Applicant / Bidder.
- 5.6.7 In the event that an Applicant / Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same.

## **5.7 Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicants / Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

## **5.8 BIDDING**

### **5.8.1 Submission of Bids**

The Applicants / Bidders are advised to visit the e-auction platform of MSTC ecommerce website and familiarise themselves with the Project by the time of submission of the Bid. No extension of time is likely to be considered for e-submission of Bids pursuant to this invitation issued by the Authority.

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### **5.8.2 General Information for e-Submission:**

- a) All the interested Bidders shall register themselves with MSTC as buyer duly paying registration charges with applicable taxes in order to make them eligible for e-Submission (Bid Submission).
- b) For registration or for help in bidding process the Bidder shall contact MSTC helpline or MSTC ecommerce website.
- c) In case of Consortium the authorized signatory of the Lead Member of the Consortium shall register under e-auction platform of MSTC ecommerce website.
- d) The Bidders are requested to process & complete the registration procedures well before the Due Date of the Bid Submission.
- e) The registered Bidders shall login into their respective accounts / login page and select the respective Tender ID using the search option provided in the login page.
- f) Once the appropriate Tender ID is selected, the Bidder shall make the e-Submissions for their choice of place.

## **6. PREPARATION AND SUBMISSION OF BIDS**

### **6.1.1 Instructions for submission of documents of the Technical Proposal (Qualification Stage)**

The Technical proposals (Qualification Stage) shall be prepared as per formats provided in the Part II Appendices of this RFP and the same shall be filled and submitted to the Authority on or before the date specified in the 'Schedule of Bidding Process' above or as specified in the e-auction platform of MSTC ecommerce website under the relevant tender ID. Any changes to dates specified in the schedule of bidding will be informed through the said web site only.

- i) Qualification Stage comprises of the following documents:
  - a) Submission of Proof of payment towards cost of the RFP document (RTGS / NEFT/online transfer).
  - b) Submission Proof of payment of Bid Security (RTGS / NEFT/online transfer).
  - c) Submission of financial capability statement.
  - d) Submission of signed copies of Formats in Vol-II.
  - e) Submission of copy of RFP signed in all pages.

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- f) Submission of Corrigenda / Addenda signed in all pages.
- ii) The Bidders shall be required to submit copies of the annual reports and audited financial statements (balance sheet, profit & loss account, profit appropriation account, cash flow statement) for 3 (Three) financial years (FY 2019-20, 2020-21 & 2021-22) certified by their statutory auditors (for Company / Corporate Entity) or practicing Chartered Accountant (for non-Corporate Entity) as Documentary Proof.

**6.1.2 Instructions for submission of the Financial (Price) Bid in e-Tender and e-auction on e-auction platform of MSTC ecommerce website:**

- a) The bidders shall upload their bids not later than the dates specified in the 'Schedule of Bidding Process'.
- b) The Bidders shall upload their Financial Bids in Indian Rupees in e-tenders on bid due date.

**Important Note: Bidders can quote their price bid in e-tender only once. Once it is quoted, it cannot be altered / modified.**

- c) Care shall be taken to upload the Financial Bid as per the format specified in e-auction platform of MSTC ecommerce website.
- d) No off-line bids are accepted.
- e) The Bidders shall be required to participate in forward e-auction on bid due date. The incremental increase in e-auction is ₹1000/-, in the e-auction platform under relevant tender ID.

**6.1.3 Declaration**

The Bidder shall comply with the declaration criteria by selecting the compliance options provided in the Declaration web page.

**6.1.4 Proprietary data**

All documents including this RFP and all attached documents and other information supplied / provided by the Authority (this information is transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance with the RFP) or submitted by an Applicant / Bidder to the Authority shall remain or become the property of the Authority. Applicants / Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

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### **6.1.5 Correspondence with the Applicant / Bidder**

Save and except as provided in this RFP / Bidding Document, the Authority shall not entertain any correspondence with any Applicant / Bidder in relation to the acceptance or rejection of any Bid.

### **6.1.6 Submission of documents to the Authority**

The signed copies of RFP documents (signed in all pages), Corrigenda / Addenda if any, response of Authority to Pre bid queries if any (signed in all pages), proof of payment of Bid Security Amount, Proof of payment of cost RFP document, and all other relevant documents specified in Vol-II of this RFP shall be submitted at the following address:

**Chief Manager (Comm),**

RTC House, 1st Floor, Pandit Nehru Bus Station (PNBS),  
APSRTC, Vijayawada – 520013.

Mobile: 9959222746, 9959224533, 9959224535

### **6.2 Signing of Bid**

The Bidder shall sign or initial with seal on all the pages of RFP document and other Bid Documents as specified in the RFP and submit to the Authority duly accepting the terms and conditions.

### **6.3 Late Bids**

The Bids after the deadline will not be accepted by the system.

It is the Bidder's responsibility to ensure that the bids are uploaded in the MSTC website in time. The bid documents as specified in the RFP shall be submitted to the Authority as per the schedule of bidding process or as amended from time to time.

## **7.0 BID OPENING AND EVALUATION**

### **7.1 Opening of Bids**

7.1.1 The Bid documents received by the Authority will be opened for evaluation for PQ stage qualification.

7.1.2 After the scrutiny of the documents the bidders possessing pre requisite qualifications will be selected and allowed to participate in further tender process.

7.1.3 The qualified bidders shall participate in further bidding process as follows:

- a) e-tender: Offer their quote in e-tender.



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b) e-auction: Participate in forward e-auction.

7.1.4 The Price Bids which are less than that specified in RFP will be rejected.

The highest bidder in e-tender cum e-auction will be the preferred bidder. APSRTC reserves the right to negotiate with the H1 bidder.

## **7.2 Process to be Confidential**

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

## **7.3 Clarification of Bids**

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

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

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

## **7.4 Evaluation of Bids**

### **7.4.1 Evaluation of Capability Statement**

(a) Bid evaluation Committee will determine whether the Capability Statement of Bidder:

- i) meets/conforms to all terms, conditions and stipulations of the RFP including the Eligibility Criteria, without any material deviation;
- ii) has been properly signed and contains any required written representations or commitments;
- iii) is accompanied by the required annual reports, documents, audited statements including income tax returns etc. as stipulated in the RFP documents duly signed.

(b) The evaluation of the Capability Statement is summarised as below:

1	General Eligibility Criteria	Yes/No
2	Financial Criteria	Yes/No

(c) If answer to any one of the above items is 'No' the Bidder shall be non-qualifying and not allowed to participate in further bidding process. The cost

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of RFP paid by such bidders shall not be refunded. If answer to all of the three items is 'Yes' then the Technical Details of the Bidder will be evaluated.

#### **7.4.2 Evaluation of Technical Details:**

- (a) Process: The submissions of the Technical Details would be evaluated by the Bid Evaluation Committee to check its substantial compliance with the stipulated requirements. If the submission is not in substantial compliance, the submission will be rejected and the Bidder will be eliminated from further evaluation process. The right to determine the 'substantial compliance' or otherwise will rest solely with the Authority and no correspondence and/or representation towards this will be entertained. Technical Detail that is in substantial compliance is the one that is accompanied by the required documents that conforms to the requirements without material deviation or reservation i.e., which affects in any substantial way the scope, obligations, quality, specifications, standards, rules, controls and performance of the Project.
- (b) Requirements for Substantial Compliance: Technical Details submitted as per the Format indicated in the Volume II of RFP, that agrees to the technical requirements mentioned in the RFP shall be considered as substantially compliant.
- (c) The right to determine the 'substantially compliant' Bid or otherwise shall rest solely with the Authority and no correspondence and/or representation towards the same shall be entertained.

#### **7.4.3 Evaluation of Price Bid**

- (a) Process: If the submission is in substantial compliance with the RFP, then the bid evaluation committee will review and evaluate the bid. If the submission doesn't satisfy the criteria, the submission will be rejected and the bidder will be eliminated from further tender process.
- (b) Requirements for substantial compliance: Bid Evaluation Committee will determine whether each Bid or Bidder, as the case may be:
  - i) continues to meet the Eligibility Criteria as given in this RFP;
  - ii) is in complete compliance with the Financial Capability Statement and Technical Details requirements;
  - iii) has been properly signed and contains the required representations or commitments;

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- iv) is presented in a manner that conforms with the requirements of the RFP;
- v) conforms to all terms, conditions of the RFP without material deviation or reservation.

If the submission satisfies the criteria, the submission will be accepted and the Bidder will be qualified in PQ stage and is eligible to participate in further tender process.

- (c) **Material Deviation:** A material deviation or reservation is one
- i) which affects in any substantial way the requirements of the RFP and performance of the Project; or
  - ii) which is in substantially inconsistent with the requirements of the RFP;
  - iii) which limits in any substantial way, the Authority's rights or the Bidder's obligation under the Concession Agreement;
  - iv) Whose rectification would affect unfairly the competitive provision of other bidders presenting substantially responsive Bids.

If the submission does not satisfy the criteria, the submission will be rejected and the Bidder will be eliminated from further tender process.

- (d) **Price Bid Evaluation:**
- i) The Bidder shall quote:  
Initial Annual Premium for the project in Indian Rupees only, which shall be equal to or more than the minimum reserved Annual Premium as provided in Data Sheet **(Appendix - A10)**.
  - ii) The Price bids of qualified Bidders in PQ stage evaluation shall be evaluated after e- tender cum e-auction. The Price Bids which are less than that specified at 7.4.3 (c) (i) will be rejected.
  - iii) The bidder who offers highest initial Annual Premium in the online e- tender cum e-auction shall be selected as preferred bidder. However, APSRTC reserves the right to negotiate with the highest bidder.

## **7.4 Correction of Errors**

- 7.4.1 Bid documents, to be determined substantially responsive, will be checked by Bid Evaluation Committee for any arithmetic errors. Wherever there is discrepancy between the amounts in figures and in words, the amount in words will govern and binding upon the Bidder.

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7.4.2 If the Bidder does not accept, the Authority may reject the Bid and Bid Security shall be forfeited.

### **7.5 Preferred Bidder**

The Bidder offering the highest initial Annual Premium in the online e-tender cum e-auction process as per RFP shall be considered as the 'Preferred Bidder'.

### **7.6 Confidentiality:**

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

## **8 AWARD OF PROJECT/ SIGNING OF CONCESSION AGREEMENT**

### **8.1 The Authority's right to reject any or all Bids**

The Authority reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all bids, at any time prior to the award of Authorization, without thereby incurring any liability to the affected Bidder or Bidders and /or any obligation to inform the affected Bidder or Bidders of the grounds for its action.

### **8.2 Issue of LoI after evaluation of the Bids and approval of the Authority:**

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

### **8.3 Fulfilment of LOI Conditions**

The preferred Bidder shall fulfill the following LOI Conditions within 90 days of issue of Letter of Intent (LoI), as precondition for signing of Concession Agreement:

- a) To pay non refundable Project Development Fee for an amount specified in Data Sheet - Appendix-10.
- b) To pay an amount equivalent to 50% of the Upfront Amount (after adjusting the Bid Security) towards 1<sup>st</sup> installment of Upfront Amount, for an amount specified in Data Sheet- Appendix-10. The Upfront amount is non refundable.

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- c) To pay interest free, refundable Performance Security for an amount specified in Data Sheet - Appendix-10.
- d) The preferred bidder / concessionaire is allowed to pay 2<sup>nd</sup> installment of Upfront Amount to the Corporation before entering into the Agreement duly availing the discount as specified in the RFP.
- e) In case of existing structures in use in the project site, the successful bidder is required to construct at its cost, an alternate structure to the existing structure in use at a place specified by the Authority, as per standard specifications of the Authority.
- f) To incorporate Special Purpose Vehicle / Company (SPV/SPC) exclusively for implementation the Project during the Concession Period as per provisions of the Agreement and RFP.

#### **8.4 Signing of Concession Agreement**

- 8.4.1 Within **90 (Ninety) days** of the issuance of the LoI, the Preferred Bidder sign the Concession Agreement (AA) with the Authority. Payment of the First instalment of Upfront Amount, Project Development Fee, Performance Security shall be the precondition for signing of the Concession Agreement.
- 8.4.2 If the Preferred Bidder fails to sign the Authorization Agreement with the Authority within the stipulated time, his Bid Security amount and all other payments made till that date shall be forfeited. In that event, the Authority shall have the right to award the Project to the next Highest Bidder (H2) if H2 agrees to match the Price Bid of H1 or otherwise, as decided by the Authority.
- 8.4.3 In addition to the general and specific obligations of the Concessionaire mentioned in the Concession Agreement, the Concessionaire, during the Concession Period, shall also be liable and under obligation to perform those incorporated in the Request for Proposal.

#### **8.5 Execution of Lease Deed**

The Authority shall on the date of Signing of Authorization Agreement, Lease the Project Site to the Preferred Bidder on an "as is where is basis" under a valid and binding Land Lease Deed for a period coterminous with the Concession Period.

#### **8.6 Possession of Site by Concessionaire**

The preferred bidder shall conduct Joint inspection of the Project Site and conduct a Total Station Survey of the Project Site and submit objections if any

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to the Tender inviting Authority, within 15 days from the date of issue of this LoI. The Cost of survey shall be borne by the preferred bidder only.

The site will be handed over to the Concessionaire on signing of the Agreement and Land Lease Deed on "as is where is" basis.

For all purposes the date of Concession Agreement and Land Lease Deed is the date of handing over of the site to the Concessionaire.

## **8.7 Payment of Annual Premiums**

8.7.1 In consideration of the rights appurtenant thereto in favour of the Concessionaire, the Concessionaire shall, effective from 3<sup>rd</sup> year on the due date of payment and during the Concession Period, shall pay Annual Premiums to the Authority. The 1<sup>st</sup> installment of Annual Premium shall be payable from the 1<sup>st</sup> day of the 3<sup>rd</sup> Year (in advance by 10<sup>th</sup> of the month of the effective date of agreement) as per the quoted rate/ Negotiable rate against each project. Applicable taxes, if any on the above shall also be paid by the Concessionaire.

The initial Annual Premium shall be increased by

- i) 5% every year over that of the previous year's Annual Premium up to the first 9 years of Concessionaire Period (including the holiday period)
- ii) 7% every year over that of the previous year's Annual Premium for the next 9 years and
- iii) 9% every year over that of the previous year's Annual Premium for the balance Concession period.

These Annual Premiums shall be paid every year on advance basis.

8.7.2 The Concessionaire has to pay interest free, refundable **Security Deposit** for an amount (equivalent 50% of initial Annual Premium on the 1<sup>st</sup> day of 3<sup>rd</sup> year of the Agreement along with the Annual Premium (in advance by 10<sup>th</sup> of the month of the effective date of agreement.)

8.7.3 The Annual Premiums payable by the Concessionaire in each year is different and subject to annual increase as mentioned above. The Concessionaire has to ensure at all times during the subsistence of the Concession Agreement that, the Authority shall have Security Deposit equaling to 50% of Annual Premiums of that year, by paying the difference amount every year.

## **8.8 Penalty for Delayed Payments:**

If the Concessionaire fails to make the Upfront Amount, Project Development Fee, Annual Premium payments, Security Deposit and Performance Security to

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the Authority, within the stipulated period, a penal interest @ 24% per annum will be levied on the outstanding amounts effective from and including the due date to excluding the date of payment.

**8.9 Concession Period**

The Concession Period for the Project is **33 years** including construction period effective from the effective date of the Concession Agreement.

\*\*\*\*\*

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## **Andhra Pradesh State Road Transport Corporation**

# **Development of 9 Sites of APSRTC Under Build, Operate and Transfer (BOT) Scheme**

## **REQUEST FOR PROPOSAL**

## **VOLUME II – FORMATS FOR BID SUBMISSION**



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## PART A

### FORMATS FOR BID SUBMISSION

<b>Appendices</b>	<b>Format for</b>
Appendix A1	Checklist of Submissions
Appendix A2	Covering Letter
Appendix A3	Letter of Undertaking
Appendix A4	Format for Project Undertaking
Appendix A5	Commitment for payments
Appendix A6	Consortium Agreement
Appendix A7	Power Of Attorney For Appointing the Lead Member - Signed By All Members of the Consortium
Appendix A8	Power of Attorney for the Bid Signatory
Appendix A 9	Board Resolution
Appendix A 10	Data Sheet (Financial Parameters)
Appendix A 11	Financial Criteria
Appendix A 12	Anti-Collusion Certificate
Appendix A 13	Anti-Blacklisting Affidavit

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**Appendix A1**

***Format for***  
**CHECK LIST OF SUBMISSIONS**

No.	Enclosures to the Technical Bid	Status (Submitted/ Not Submitted)	Remarks
1	Covering Letter		
2	Proof of payment of cost of RFP document		
3	Proof of payment of Bid Security		
4	Registered buyer name & ID in MSTC		
5	Letter of Undertaking – Appendix A3		
6	Letter of Project Undertaking – Appendix A4		
7	Commitment for Payments – Appendix A5		
8	Consortium Agreement – Appendix A6 <i>(In Case the Bidder Being a Consortium)</i>		
9	Power of Attorney for the Lead Member of the Consortium – Appendix A7 <i>(In Case the Bidder Being a Consortium)</i>		
10	Power of Attorney for the Bid Signatory – Appendix A8		
11	Board Resolution – Appendix A9		
12	Anti-Collusion Certificate – Appendix A12		
13	Anti-Blacklisting Affidavit – Appendix A13		
14	General Information – Appendix B1		
15	Financial Data – Appendix B2		
16	Audited Financial Statements / Annual Reports		
17	Letter of Undertaking for Technical Details – Appendix B3		
18	RFP signed in all pages		
19	Signed copies of Corrigenda / Addenda, if any		
20	Signed copies of response to pre bid queries, if any.		

**Appendix A2**

*Format for*  
COVERING LETTER

To  
The Chief Manager (Comm)  
RTC House, 1<sup>st</sup> Floor, PNBS,  
APSRTC, Vijayawada – 520 013

Date:

Dear Sir,

Sub: Submission of Bid Comprising Capability Statement including Technical Details and Price Bids for "Development of vacant site at \_\_\_\_\_, \_\_\_\_\_ District (Project Name) under BOT (Build, Operate and Transfer scheme)"- Reg.

\*\*\*

1. We are submitting this Bid (Proposal) on our own.

**(Or)**

We are submitting this Bid (Proposal) as the Lead Member of a Consortium consisting of the following members, for and on behalf of the Consortium

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

- As a Lead Member, we understand the obligations of the Concessionaire to implement the Project. We are enclosing Consortium Agreement signed by all the members of the Consortium, nominating and authorizing us to act as 'Lead Member' for implementing the Project.
- Having visited the site and examined the RFP documents for the execution of the Authorization Agreement for the captioned project, we the undersigned offer to Design, Finance, Construct, Market, Operate & Maintain the Project for the Authorization period in conformity with the RFP.

***Bidder***

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4. This Bid and written acceptance of it shall form part of the Concession Agreement to be signed between the Concessionaire and the Andhra Pradesh State Road Transport Corporation (APSRTC / the Authority). If selected as Concessionaire, we understand that it is on the basis of the technical, financial & organizational capabilities and experience of the Bidder taken together. We understand that the basis for our qualification will be the complete Bid documents submitted along with this letter, and that any circumstance affecting our continued eligibility as per RFP, or any circumstance which would lead or have lead to our disqualification, shall result in our disqualification under this Bidding process.
5. We agree that
  - (a) If we fail to permit the Authority or its Authorised Representative for carrying out the inspection of works/ facilities during Concession period
  - Or**
  - (b) If we fail to meet the Minimum Development Obligations and/or Other Obligation as stipulated in RFP Document and/or Technical Specifications and/or the Performance Standards according to the conditions/ stipulations of the RFP/Authorization Agreement,  
  
The Authority shall be at liberty to take action in accordance with the RFP/Authorization Agreement.
6. We undertake, if our Bid is accepted, to complete the Project, commence operations and manage as per the RFP/Concession Agreement.
7. We agree to abide by this Bid for a period of 180 (one hundred and eighty days) from the Due Date fixed for submitting the same and it shall remain binding upon us and may be accepted at any time before the expiry of that period.
8. In the event of our Bid being accepted, we agree to enter into a formal Concession / Authorization Agreement with you incorporating the conditions of the Bid including the Draft Authorization Agreement thereto annexed and written acceptance thereof.
9. If our Bid is accepted, we agree to pay the following amounts as specified in Data Sheet (Appendix- A10):  
  
(Within 90 days of issue of Letter of Intent (LoI) or before signing of Concession Agreement as a precondition for signing of Concession Agreement)

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- a) To pay Project Development fee.
- b) To pay an amount equivalent to 50% of the Upfront Amount (after adjusting the Bid Security).
- c) To pay Performance Security.

10. We agree that if we fail to fulfill any of conditions mentioned above, the Authority has right to forfeit the Bid Security being furnished by us along with this Bid.

11. We understand that the Authority is not bound to accept any or all Bids it may receive.

12. We declare that we have disclosed all material information, facts and circumstances, which would be relevant to and have a bearing on the evaluation of our Bid and selection as Concessionaire.

13. We do, also, certify that all the statements made and/or any information provided in our proposal are true and correct and complete in all aspects.

14. We declare that in the event that the Authority discovers anything contrary to our above declarations, it is empowered to forthwith disqualify us and our Bid from further participation in the Bid evaluation process and forfeit our Bid Security.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

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

\_\_\_\_\_  
*(Name of the person)*

\_\_\_\_\_  
*(In the capacity of)*

Company Seal  
\_\_\_\_\_  
*(Name of firm)*

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

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\_\_\_\_\_

\_\_\_\_\_

Witness

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

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**Appendix A3**

***Format for***  
**LETTER OF UNDERTAKING**

{To be furnished by the Bidder. In case of Consortium, all consortium members have to furnish separately}

To  
The Chief Manager (Comm)  
RTC House, 1<sup>st</sup> Floor, PNBS,  
APSRTC, Vijayawada – 520 013

Date:

Dear Sir,

**Sub:** Development of Vacant Site at \_\_\_\_\_, \_\_\_\_\_  
District (Project Name) under BOT (Build, Operate and Transfer  
scheme) – Reg.

\*\*\*

We confirm that we are not barred or blacklisted by by Government of Andhra Pradesh (GoAP), any other State Government in India (SG) or Government of India (GoI), or any of the agencies of GoAP / SG / GoI from participating in any category of infrastructure projects (Construction, BOT or otherwise) as on Bid Due Date.

Yours faithfully,

(Signature of Authorised Signatory)

(Name, Title, Address, Date)

***Bidder***

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**Appendix A4**

***Format for***

**PROJECT UNDERTAKING**

{On the Letterhead of the Bidder (in case of Sole Bidder), or Lead Member (in case of a Consortium)}

Date:

To

The Chief Manager (Comm)  
RTC House, 1<sup>st</sup> Floor, PNBS,  
APSRTC, Vijayawada – 520 013

Dear Sir,

**Sub:** Development of Vacant Site at \_\_\_\_\_, \_\_\_\_\_ District (Project Name) under BOT (Build, Operate and Transfer scheme) – Reg.

\*\*\*

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

We hereby agree and undertake as under:

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

Dated this..... Day of \_\_\_\_ 2023.

Name of the Bidder

Signature of the Authorised Person

Name of the Authorised Person

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

***Bidder***



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**Appendix A5**

*Format For*

COMMITMENT FOR PAYMENTS

{On the Letterhead of the Bidder (in case of Sole Bidder) or Lead Member (in case of a Consortium)}

To

Date:

The Chief Manager (Comm)  
RTC House, 1<sup>st</sup> Floor, PNBS,  
APSRTC, Vijayawada – 520 013

Dear Sir,

**Sub:** Commitment for Payments - Development of Vacant Site at \_\_\_\_\_, \_\_\_\_\_ District (Project Name) under BOT Scheme. (Build, Operate and Transfer scheme). - Reg.

\*\*\*

We \_\_\_\_\_ (the "Member"), / [Our Consortium consisting of the following Members (the "Member")]:

1. [Lead Member]
2. [Member 1]
3. [Member 2]

are submitting our Bid for the "Development of vacant site of \_\_\_\_\_ Sq. Yards of APSRTC at \_\_\_\_\_ (site) at \_\_\_\_\_ (place) in \_\_\_\_\_ (District) under BOT (Build, Operate and Transfer scheme)".

We hereby write to inform you that if we/ [the Consortium] are/ [is] selected as the Preferred Bidder for implementing the project, we shall pay the following amounts to the Authority:

- 1) We agree to pay Annual Premiums, in advance on Yearly basis as follows:
  - a) First installment of Annual Premium i.e. initial Annual Premium as agreed shall be paid by us from the 1st day of the 3rd year of Concession Period.

***Bidder***

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- b) With an increase of 5% every year over that of the previous year's Annual Premium up to the first 9 years of Concession Period (including the holiday period).
  - c) With an increase of 7% every year over that of the previous year's Annual Premium for the next 9 years and
  - d) With an increase of 9% every year over that of the previous year's Annual Premium for the balance Concession period.
- 2) We agree to pay non refundable, irrevocable 1<sup>st</sup> installment of Upfront Amount (50% of upfront amount as specified in Appendix -A10), within 90 days of issue of LoI or on the date of signing of Concession Agreement whichever is earlier.
  - 3) We agree to pay the non refundable, irrevocable 2<sup>nd</sup> installment of Upfront Amount (50% of upfront amount as specified in Appendix -A10), on the 1st day of second year of commencement of Concession period.
  - 4) We agree to pay non refundable, irrevocable Project Development Fee for an amount specified in the Appendix -A10 within 90 days of issue of LoI or on the date of signing of Concession Agreement whichever is earlier.
  - 5) We agree to pay interest free, refundable Performance Security amount specified in the Appendix -A10 within 90 days of issue of LoI or on the date of signing of Concession Agreement whichever is earlier.
  - 6) We agree to construct at our own cost, an alternate structure to the existing structure in use in the project site at a place specified by the Authority, as per standard specifications of the Authority.
  - 7) We agree to pay interest free, refundable **Security Deposit amount equivalent to 50% of Annual Premium**, on the 1<sup>st</sup> day of the 3rd year of Concession Period. We agree to pay the increase in Security Deposit amount, in advance every year to make it 50% of the Annual Premium of that year.
  - 8) We agree to pay Annual Premium and Security Deposit every year in advance by 10<sup>th</sup> of \_\_\_\_\_month, in favour of Accounts Officer, ASPRTC, \_\_\_\_\_ District.
  - 9) We agree to pay GST and other taxes on the amounts payable to the Authority. The amount agreed upon by us shall be paid to the Corporation in to-to, without any deductions, as the Corporation is exempted from TDS.

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- 10) We agree to pay all Taxes including GST, Service Tax, VAT, Duties, Cess, Octroi, Registration charges, Land use conversion Charges etc., as prescribed by the Government of AP or Government of India or its agencies from time to time during the construction, operation and maintenance of the Project.
- 11) We also understand that, in case any differences between the quoted amounts in words and figures, the highest of the amount will be considered as our quote of the Annual Premium offered.

	SIGNATURE	_____
	NAME	_____
	DESIGNATION	_____
COMPANY SEAL	COMPANY	_____
	DATE	_____

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**Appendix A6**

*Format For*

**CONSORTIUM AGREEMENT  
(In case the Bidder being a Consortium)**

**(On Rs.100 Non Judicial Stamp Paper)**

**THIS AGREEMENT** is executed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2023 between \_\_\_\_\_ a Company registered under the Companies Act 1956 / 2013 and having its registered Office at \_\_\_\_\_ (hereinafter referred to as "the Party of the First Part") and \_\_\_\_\_ also a Company registered under the Companies Act 1956 / 2013 and having its registered office at \_\_\_\_\_ (hereinafter referred to as "the Party of the Second Part") and \_\_\_\_\_ also a Company registered under the Companies Act 1956 and having its registered office at \_\_\_\_\_ (hereinafter referred to as "the Party of the Third Part")  
[Depends on the number of consortium members]

**WHEREAS**

- I. All the Parties of the First, Second and Third Part are entitled to enter into joint venture/ partnership with any person or persons including a company for carrying on the business authorised by their respective Memorandum of Association.
- II. The Parties hereto propose to participate as a Consortium for the Bid based on the **Request for Proposal (RFP)** from Andhra Pradesh State Road Transport Corporation (APSRTC / the Authority) for the project of "Development of vacant site of \_\_\_\_\_ Sq. Yards at \_\_\_\_\_ (Site) at \_\_\_\_\_ (place) under BOT (Build, Operate and Transfer scheme)".  
("the Bid") by pooling together their resources and expertise.
- III. If the Parties hereto succeed in the Bid, they propose to incorporate a Project Company, which will undertake financing, designing, construction, commissioning, marketing, operation and management of the Commercial Project of "Development of vacant site of \_\_\_\_\_ Sq. Yards of APSRTC at \_\_\_\_\_ (site) at \_\_\_\_\_ (place) in \_\_\_\_\_ (District) under BOT (Build, Operate and Transfer scheme)".
- IV. The Parties hereto are desirous of recording the broad terms of their understanding as set out here below:

***Bidder***

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NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That the Parties hereto agree to carry on the business in Joint Venture on the broad terms and conditions herein through a Project Company to be incorporated by them with the shareholding commitments expressly stated to domicile the project, prior to the implementation.
2. That the business of the SPC (Special Project Company) will be that of Developing, Financing, Constructing, Operating, Managing and Transferring the Project back to the Authority.
3. That in the event the Parties hereto succeed in the Bid for the Project, the Project Company will execute the Project in accordance with terms and conditions of the RFP document and will execute the Concession Agreement and all the documents / writings / papers with the Authority and construct and commission the project in accordance with the plans / designs sanctioned by the appropriate / concerned authorities.
4. That it shall be ensured that the Consortium as a whole need to maintain minimum 51% of the equity Share Capital in the SPC for a period that shall not be less than 10 years from the date of signing of the Concession Agreement.
5. That it shall also be ensured that \_\_\_\_\_ (“the Lead Member”) holds at least 26% of the capital of the Project Company (SPC) for a period that shall not be less than Ten years from the date of signing of the Concession Agreement, and \_\_\_\_\_ and \_\_\_\_\_ (other constituent members of the Consortium) also hold at least 10% of the capital of the Project Company each, for a period of 10 years from the date of signing of the Concession Agreement.
6. The roles and responsibilities of the Members of the Consortium shall be as follow:
  - (a) The Party of the First Part (Lead Member) shall be responsible for:
    - (i)
    - (ii)
    - (iii)
  - (b) The Party of the Second Part shall be responsible for:
    - (i)
    - (ii)
    - (iii)

(c) The Party of the Third Part shall be responsible for:

- (i)
- (ii)
- (iii)

*(Note: Role & responsibility of all members of the Consortium shall be included in the above para)*

7. Each of the Parties shall be liable and responsible jointly and severally for:
  - a) Compliance of all statutory requirements as may be applicable in respect of the Project.
  - b) Contribute to the joint Venture all of its management and business experience, financial resources, expertise, competence and acumen for the success of the Project.
8. That the minimum equity holding of each Party (Member) (in percentage term) in the Project Company (SPC) shall be as follows:

<b>Name of the Party (Member)</b>	<b>% of equity capital</b>
.....	-----
.....	-----
.....	-----

9. That the responsibility of all the members of the Consortium shall be joint and several at every stage of implementation of the Project.
10. That in case the project is awarded to the Consortium, the Consortium will carry out all the responsibilities as the Concessionaire and will comply with all the terms and conditions of the Concession Agreement as would be entered with the Authority.
11. That this Agreement shall remain in full force and effective till the Project Company is formed and the Concession Agreement is signed.
12. That nothing in this Agreement shall be construed to prevent or disable any Party hereto to carry on any business, which is permitted under the governing law, on their own in terms of their respective Memorandum of Association.

*(Note: The above provisions are mandatory, the Consortium may add any other provision, if required)*

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IN WITNESS WHERE OF the parties have put their respective hands the day and year first hereinabove written.

Signed and delivered for and on behalf)  
 Of the within named M/s..... )  
 ... by its Director, ..... )  
 ...duly authorised in the presence of )  
 ..... )

Signed and delivered for and on behalf )  
 Of the within named M/s..... )  
 ....by it's Director, ..... )  
 \_\_\_\_\_ )  
 duly authorised in the presence of )  
 ..... )

Signed and delivered for and on behalf )  
 Of the within named M/s..... )  
 ....by its Director, ..... )  
 \_\_\_\_\_ )  
 duly authorised in the presence of )  
 ..... )

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**Appendix A7**

***Format For***

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

{On Rs. 100/- Non Judicial Stamp Paper}

KNOW ALL MEN by these presents that this power of attorney is being issued by,

- (i) [Name of the company], a company incorporated under the Companies Act 1956 / 2013, having its Registered Office at. .... [Address of the Company],
- (ii) [Name of the company], a company incorporated under the Companies Act 1956 / 2013, having its Registered Office at. .... [Address of the Company],
- (iii) [Name of the company], a company incorporated under the Companies Act 1956 / 2013, having its Registered Office at. .... [Address of the Company]

here in after collectively referred to as Consortium.

WHEREAS the Consortium is to submit a Bid in response to the Request for Proposal ("RFP") for the Commercial Project "Development of vacant site of \_\_\_\_\_ Sq. Yards of the authority at \_\_\_\_\_ (site) at \_\_\_\_\_ (place) in \_\_\_\_\_ (District) under BOT (Build, Operate and Transfer scheme)" ("the Project"), issued by Andhra Pradesh State Road Transport Corporation (APSRTC / the Authority) and is desirous of appointing an attorney for the purpose thereof.

Whereas the Consortium deems it expedient to appoint M/s. \_\_\_\_\_ (name of Company, registered office address) as the Lead Member of the Consortium.

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

- a) To act as the Lead Member of the Consortium for the Purposes of the Project;

***Bidder***



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- b) In such capacity, to act as the Consortium’s official representative for submitting the Technical and Price Bid for the Project and other relevant documents in connection therewith.
- c) To sign all papers for Bids, offers, Project documents, necessary documents, papers, applications, representations and correspondence necessary and proper for the purpose aforesaid;
- d) To tender documents, receive and make inquiries, make the necessary corrections and clarifications to the Project documents, as may be necessary;
- e) To sign and execute contracts relating to the Project, including variation and modification thereto;
- f) To represent the Consortium at meetings, discussions, negotiations and presentations with the authority, Competent Authorities and other Project related entities;
- g) To receive notices, instructions and information for and on behalf of the Consortium;
- h) To execute the Authorization Agreement for and on behalf of the Consortium;
- i) To do all such acts, deeds and things in the name and on behalf of the Consortium as necessary for the purpose aforesaid.

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

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

The common seal of [name of the company] was here unto affixed pursuant to a resolution passed at the meeting of Committee of Directors held on --- Day of -----, 2023 in the presence of [name & designation of the person] and countersigned by [name & designation of the person] of the Company of [name of the company]	) The common seal of [name of the ) ) )----- ) [Name & designation of the person] ) )
--	---

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**Appendix A8**

***Format For***

POWER OF ATTORNEY FOR THE BID SIGNATORY

{On Rs. 100/- Non Judicial Stamp Paper}

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

WHEREAS in response to the Request for Proposal (RFP) for Design, Finance, Build, Operate, Maintain, Manage and Transfer the Commercial Project "Development of vacant site of \_\_\_\_\_ Sq. Yards of the Authority at \_\_\_\_\_ (Site) at \_\_\_\_\_ (Place) and under BOT (Build, Operate and Transfer scheme)", the Company is submitting Bid Comprising Capability Statement, Technical and Price Bids on behalf of the Bidder/Consortium for the Design, Financing, Construction, Operation and Maintenance of the Project to the CM (Comm), APSRTC, and is desirous of appointing an attorney for the purpose thereof.

WHEREAS the Company deems it expedient to appoint Mr. \_\_\_\_\_ son of \_\_\_\_\_ resident of \_\_\_\_\_, holding the post of \_\_\_\_\_ as the Attorney of the Company.

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

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

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

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

***Bidder***

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

<p>The common seal of [name of the company] was here unto affixed pursuant to a resolution passed at the meeting of Committee of Directors held on --- Day of -----, 2023 in the presence of [name &amp; designation of the person] and countersigned by [name &amp; designation of the person] of the Company of [name of the company]</p>	<p>) ) )----- ) [Name &amp; designation of the person] ) ) )----- ) [Name &amp; designation of the person] )</p>
---	--

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**Appendix A9**

**Format for Board Resolution**

(Board Resolution by the Bidder or each member of the Consortium, in case the Bidder is Consortium, indicating the approval to undertake the Project and authorise a person for signing of necessary documents.)

Resolved that the Company will participate in the Bidding for the Commercial Project "Development of vacant site of \_\_\_\_\_ Sq. Yards of the authority at \_\_\_\_\_ (site) at \_\_\_\_\_ (place) in \_\_\_\_\_ (District) (Project Name) under BOT (Build, Operate and Transfer scheme) Scheme" by forming a Consortium with \_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_ at \_\_\_\_\_.

Further it is resolved that the following person is being nominated for representing the Company and signing the documents on Company's behalf:

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Contact No: \_\_\_\_\_

Contact Address: \_\_\_\_\_

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**Appendix A10**

**Data Sheet (Financial Parameters - Rs.)**

S. No	District	Place	Location	Area Sq. Yards	Cost of RFP /Tender doc. Proc. Fee	Bid Security
1	NTR	Vidyadharapuram, Vijayawada	ZWS	8,440	11,800	55,39,000
2	Guntur	Guntur	OBS	8,364	11,800	84,69,000
3	Bapatla	Repalle	B/S	3,310	11,800	8,12,000
4	Bapatla	Bapatla Bit-2	B/S	2,388	11,800	5,60,000
5	Prakasam	Kanigiri Bit-1	B/S	1,950	11,800	5,48,000
6	Annamayya	Piler	B/D	4,025	11,800	5,28,000
7	Anantha puramu	Ananthapuramu Bit-2	B/S	4,330	11,800	32,48,000
8	Anantha puramu	Ananthapuramu Bit-3	B/S	3,845	11,800	28,84,000
9	SPSR Nellore	Kakatur	ZSTC	2,870	11,800	1,45,000

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Place	Amount – Rs.				
	Project Dev. Fee	Performance Sec.	Upfront Amount	Annual Premium (Base Res. Price for Bid)	Initial Security Deposit
ZWS, Vijayawada, Vidyadharapuram	43,82,000	1,31,46,000	2,21,55,000	2,21,55,000	50% of Initial Annual Premium
Guntur	36,13,000	1,08,38,000	3,38,74,000	3,38,74,000	
Repalle	17,22,000	51,67,000	32,47,000	32,47,000	
Bapatla Bit-2	10,08,000	30,24,000	22,39,000	22,39,000	
Kanigiri Bit-1	10,35,000	31,06,000	21,94,000	21,94,000	
Piler	18,44,000	55,33,000	21,13,000	21,13,000	
Ananthapuramu Bit-2	20,12,000	60,37,000	1,29,90,000	1,29,90,000	
Ananthapuramu Bit-3	17,90,000	53,69,000	1,15,35,000	1,15,35,000	
ZSTC, Kakuturu	16,32,000	48,97,000	5,81,000	5,81,000	

- The initial Annual Premium mentioned above is the base reserve price. The initial Annual Premium is the bid parameter.
- The above amounts are exclusive of all taxes. The Concessionaire shall pay all Taxes including GST, VAT, Duties, Cess, Octroi, Registration charges, Land use conversion Charges etc., as prescribed by the Government of AP or Government of India or its agencies or Local Bodies from time to time.
- The Concessionaire shall arrange payments to the Corporation without any deductions. In other words, the amounts agreed upon shall be paid to the Corporation in to-to as the Corporation is exempted from TDS.
- The existing structures in dilapidated condition or structures not in use in the project site will be removed by the Authority and vacant site will be handed over to the successful bidder.
- In case of existing structures in use in the project site, the successful bidder/ Concessionaire is required to construct at its cost, an alternate structure to the existing structure in use at a place specified by the Authority, as per standard specifications of the Authority

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**Appendix A11**

**Financial Criteria**

The Bidder should have

(a) Average Annual Turn-over of an amount as specified in Column (3) against each Project in the following Table in the last three financial years (2019-20, 2020-21 & 2021-22) as per the Audited Annual Accounts.

**AND**

(b) Minimum Net-worth: The Bidder should have minimum Net worth value as specified in Column (4) against each Project in the following Table as of the close of the preceding Financial Year i.e. as on 31.03.2022.

Place	Financial Criteria Value Rs. Lakhs	
	Avg. Annual Turnover	Net worth
ZWS, Vidyadharapuram, Vijayawada	2,191	1,096
Guntur	1,806	903
Repalle	861	431
Bapatla Bit-2	504	252
Kanigiri Bit-1	518	259
Piler	922	461
Ananthapuramu Bit-2	1,006	503
Ananthapuramu Bit-3	895	447
ZSTC, Kakatur, SPSR NLR Dist.	816	408

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**Appendix A12**

**Anti-Collusion Certificate**

*(Format for Anti-Collusion Certificate)*

We hereby certify and confirm that in the preparation and submission of our Bid for the Project "Development of vacant site at \_\_\_\_\_, \_\_\_\_\_ District (Project Name)" under BOT (Build, Operate and Transfer) scheme, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Bid.

Dated this .....Day of ....., (month/year)

.....  
(Name of the Bidder)

.....  
(Signature of the Authorised Person)

.....  
(Name of the Authorised Person)

Note:

1. On the Letterhead of the Bidder to be executed by all members in case of a Consortium



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**Appendix A13**

**Anti-Blacklisting Affidavit**

**Format for Affidavit certifying that the Entity/Promoter/s /  
Director/s of Entity are not blacklisted**

**(On a Stamp Paper of relevant value)**

**Sub: Development of vacant site at \_\_\_\_\_, \_\_\_\_\_ District  
(Project Name) under BOT (Build, Operate and Transfer scheme)**

I, M/s. .... (Sole Applicant / Lead Member/ Other Member /s), (the names and addresses of the registered office) hereby certify and confirm that we or any of our promoter/s / director/s are not barred by the authority / any other entity of Govt. of Andhra Pradesh or blacklisted by any state government or central government / department / agency in India from participating in Project/s, either individually or as member of a Consortium as on the \_\_\_\_\_ (Bid Due Date).

We further confirm that we are aware that our Bid for the captioned Project would be liable for rejection in case any material misrepresentation is made or discovered with regard to the requirements of this RFP at any stage of the Bidding Process or thereafter during the Concession Period.

Dated this ..... Day of ....., 2023

Name of the Bidder

Signature of the Authorised person

Name of the Authorised Person

*Note: To be executed separately by all the Members in case of Consortium.*

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**PART B**

**FORMATS FOR TECHNICAL BID**

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<b>Appendix</b>	<b>Format for</b>
Appendix B1	General Information of the Bidder
Appendix B2	Financial Data
Appendix B3	Letter of Undertaking for Technical Details.

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**Appendix B1**

***Format For***  
**GENERAL INFORMATION OF THE BIDDER**

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

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

	SIGNATURE	_____
	NAME	_____
	DESIGNATION	_____
COMPANY SEAL	COMPANY	_____
	DATE	_____

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**Appendix B2**

***Format For***  
**FINANCIAL DATA**

1. Turnover related data

***All figures in Rs. Lakhs***

Description	Past Three Financial Years		
	2019-20	2020-21	2021-22
Operating Revenue			
(add) Other Revenue			
<b><i>Total Turnover</i></b>			

2. Net-worth related data:

a). In case of Companies:

***All figures in Rs. lakhs***

Description	As on 31.03.2022
Subscribed and paid up share Capital / Share Capital	
(add) Reserves & Surplus	
(Subtract) ( Revaluation Reserves + Miscellaneous expenditure not written off + Deficit in P & L Account if any )	
<b><i>Net Worth As on 31.03.2022</i></b>	

b). In case of Proprietorship Firms / Individuals:

***All figures in Rs. lakhs***

Description	As on 31.03.2022
Total Assets	
(Subtract) Liabilities	
<b><i>Net Worth As on 31.03.2022</i></b>	

- Note :**
1. Necessary Audited Financial Statements shall be submitted in support of the Net Worth shown above.
  2. The Net Worth beyond 31.03.2022 will not be accepted.
  3. Net Cash Accrual related data.

***Bidder***

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***All figures in Rs lakhs***

<b>Description</b>	<b>As on 31.03.2022</b>
Profit After Tax	
(add) Depreciation	
(add) Other non cash expenditure	
<b><i>Net Cash Accrual</i></b>	

*\* Details of the items included in the non-cash expenditure have to be provided.*

Note:

1. In case of Bidder being a Consortium, the above details shall be submitted for the Lead Member and all the other members separately.
2. The Bidder /Consortium shall submit Audited Annual Reports for the last three years (2019-20, 2020-21 & 2021-22) for the Lead Member and each of the Other Members in support of the financial data.
3. The above data must be submitted for all Consortium members or sole Bidder as the case may be duly certified by Statutory Auditor / Chartered Accountant.

SIGNATURE \_\_\_\_\_  
NAME \_\_\_\_\_  
DESIGNATION \_\_\_\_\_  
COMPANY \_\_\_\_\_  
DATE \_\_\_\_\_

Signature of Statutory Auditor / Chartered Accountant

(Name and Seal)

Date:

Place:

***Bidder***

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### Appendix B3

#### ***Format For***

#### **LETTER OF UNDERTAKING FOR TECHNICAL DETAILS**

[On the Letterhead of the Bidder (in case of Sole Bidder) or Lead Member (in case of a Consortium)]

To

Date:

The Chief Manager (Comm)  
1<sup>st</sup> Floor, RTC House, PNBS,  
APSRTC, Vijayawada – 520 013

Dear Sir,

**Sub:** Development of vacant site at \_\_\_\_\_, \_\_\_\_\_ District under BOT Scheme – Technical Details - Reg.

\*\*\*

As a part of the Bid for the Project "Development of vacant site at \_\_\_\_\_, \_\_\_\_\_ District under BOT Scheme", we hereby agree to develop and operate the Project as per the requirements stipulated in the RFP for the Concession Period of 33 years. We hereby undertake that if the Project is awarded to us, we will meet the mandatory requirements as specified hereunder and hereby give our consent for the same:

Sl. No.	Components	Details
1.	Other Obligation (Mandatory Facility)	1) A minimum of 50% of built up area as per approved DPR shall be constructed by me / us within two years from the date of commencement of Concession Period.  2) We shall Construct at our own cost and hand over free of cost, charges and rent for exclusive use of the Authority:  a. 200 Sft. built up space with toilet facility at a

***Bidder***

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Sl. No.	Components	Details
		<p>mutually agreed location with internal electrical concealed conduit wiring, painting, flooring, power &amp; water supply connection with sub meters etc.</p> <p>b. 2 car parking bays confined in one location in the cellar/basement. The Built-up area should include internal electrical concealed conduit wiring, painting, flooring, power &amp; water supply connection with sub meters etc.</p> <p>3) We shall Construct Compound wall of required height along the RTC boundary at our cost.</p>

Signature of bidder

Name of Bidder



Development of 9 Sites of APSRTC under BOT Scheme	<b>Volume III</b> <b>Development Controls &amp;</b> <b>Technical Specifications</b>
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**Andhra Pradesh State Road Transport Corporation**

**Development of 9 Sites of APSRTC Under Build, Operate and Transfer (BOT) Scheme**

**REQUEST FOR PROPOSAL**

**VOLUME III – DEVELOPMENT CONTROLS & TECHNICAL SPECIFICATIONS**

## **DEVELOPMENT CONTROLS AND SPECIFICATIONS**

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## Disclaimer

The information provided in this part of RFP, is as per the existing byelaws, regulations as per G O Ms No. 119 dated 28.03.2017, issued by Municipal Administration and Urban Development, Government of Andhra Pradesh, and subject to change from time to time as per the policies of Government and other Statuary or applicable laws. Bidder should check the reliability and completeness of the information given in the RFP. The bidder should conduct his own studies, analysis and advised to obtain any other relevant information that may be necessary for the submission of Bid, on his own responsibility.

The site is located at \_\_\_\_\_ of \_\_\_\_\_ District. The extent of the site is \_\_\_\_\_ Sq. Yards. The site plan is placed at Annexure-I

Applicable Height Regulations (Maximum permissible height of construction), Open Spaces, Set Backs Regulations and Parking requirements are as per **GO Ms No. 119 dated 28.03.2017 or as per other applicable GOs amended / issued from time to time.**

For the planning and designing of Multiplex – ***"Andhra Pradesh Rules for Construction and Regulations of Multiplex Complexes, 2007, G.O. Ms No 486, dated 07.07.2007 issued by Municipal Administration & Urban Development"*** shall be followed.

### 1.0 Specifications and Standards

#### 1.1 Preamble

The following specifications and standards cover only some of the minimum requirements for the development. The Concessionaire shall construct, operate, maintain and manage the project as per latest guidelines of Municipal Authorities, Govt. of AP regulations, Bureau of Indian Standards (BIS) specifications, National Building Code (NBC) specifications as applicable.

#### 1.2 Site development related specifications

- a) The Concessionaire shall dismantle all the existing structures within the boundary of the site adhering to applicable standards if any after getting due approval from the Authority.
- b) The site grading shall be done based on applicable standards/ acceptable practices after getting due approval from the Authority.

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### **1.3 Civil and structural requirements**

- i) The buildings shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces. An illustrative list of codes applicable is given below.
  - a) RCC structures shall be designed as per IS 456: 2000.
  - b) Steel structures shall be designed in accordance with the provisions of IS 800:1984.
  - c) Structural steel shall conform to IS 2062:2006.
  - d) Tubular sections would conform to IS- 4923.
  - e) Structural joints shall conform to IS 4000:1992.
- i) Concessionaire is advised to carry out its own tests and investigations related to soil condition, strata, bearing capacity and other characteristics.

### **1.4 Power supply**

The Concessionaire shall ensure:

- a) 24 hours power supply to the Project;
- b) LT panel for appropriate power factor correction;
- c) Adequate earthing provisions for total protection of equipments;
- d) 100 % backup through requisite number of DG sets with 1 no as stand-by

### **1.5 Air conditioning**

The Air Conditioning shall be as per the relevant standards and specifications of NBC, BIS and other recognised international standards.

### **1.6 Fire fighting facilities**

The Concessionaire shall provide the required firefighting equipment and facilities including fire exits, fire proof doors, etc. conforming to the relevant BIS standards, guidelines/ specifications.

The Concessionaire shall provide the required facilities in terms of Lifts and Escalators conforming to the relevant NBC codes of 2005 and other relevant BIS standards & specifications.

Concessionaire shall obtain required approvals from Andhra Pradesh State Disaster Response and Fire Services Department (AP Fire Services).

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### **1.7 Rain water harvesting**

The rainwater harvesting shall be adopted as per the latest rules and regulations of Government.

### **1.8 Signages**

The Concessionaire shall provide signages so as to facilitate necessary information to the visitors regarding amenities and their location. The signages would be provided separately:

- a) Information Signs b) Facility Signs and c) Other Signs

### **1.9 Green Buildings (all Project components)**

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

### **1.10 Facilities for Physically Challenged Persons**

The Concessionaire shall provide all the necessary / required facilities to the entry / exit, seating and movement of physically challenged persons including wheel chairs, ramps, specially designed seats, toilets, etc. in the centre. The Concessionaire shall provide the facilities for disabled persons as per the Rights of persons with Disabilities (RPwD) Act 2016.

### **1.11 Specification for retail Areas**

The Concessionaire may develop Retail Areas providing Retail/entertainment spaces for lifestyle shopping, food courts, etc. The GO Ms. No 669 issued by Municipal Administration and Urban Development Department GoAP dated 06.09.2007 for the development shall be followed by the Concessionaire for developing the above facilities. Separate parking area catering to the needs of the Retail areas shall be followed.

## **2.0 MAINTENANCE AND PERFORMANCE STANDARDS**

The following section covers minimum standards for Operation and Management of Commercial Development, conforming to the relevant Indian standards, and the best industry practices, Govt. of AP rules and regulations. However, the Concessionaire may go for higher standards of Operations and Management, sufficing to the need of the Commercial Development.

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## **2.1 General**

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

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

## **2.2 Maintenance works**

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

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

## **2.3 Performance standards: intent**

- i) The performance levels define the level at which the proposed facilities are to be maintained and operated. Performance standards are defined for operation and maintenance of the facilities and the site environment.
- ii) The obligations of the Preferred Bidder in respect of Maintenance requirements shall include:
- iii) maintaining site environment so as to cause minimum disturbance to the environment;
- iv) ensuring that the facilities are operational and rectification of the defects and deficiencies within the minimum time;
- v) ensuring that the fixed parameters provided in this RFP are abided by at any time during the Authorization period

- vi) Notwithstanding anything contrary to specified in this document, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Concessionaire shall be entitled an additional time in conformity with good industry practice. However, the Concessionaire shall get prior approval from the Authority, for such additional requirements of time.
- vii) Notwithstanding anything to the contrary contained in this document if any defect, deficiency or deterioration in the Project poses danger to the life and property of the users thereof, the Concessionaire shall promptly take all reasonable measures for eliminating or minimising such danger.

#### **2.4 Routine maintenance performance standards**

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

**Table 1: Performance Standards for Routine Maintenance**

<b>Sl. No</b>	<b>Serviceability Indicator</b>	<b>Required Maintenance Level</b>	<b>Permissible Time Limit for repairs/rectifications</b>
1.	Power Supply, Electrical Installations, Electrical Equipments shall be functional	As specified by the DISCOMS for the Transformers and other Electrical equipment	Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours. Permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Nodal Officer.
2.	Boundary Wall shall be without any Damage / Breach	Nil	Any damage / breach to the boundary wall shall be rectified within three (3) days after their detection.
3.	All Toilets, Urinals, bathrooms shall be clean and functional	A minimum of 95% toilets and urinals shall be functional at any given point of	Toilets, Urinals, bathrooms shall be demarked with suitable signboards. These should be kept clean and hygienic and cleaning shall

<b>Sl. No</b>	<b>Serviceability Indicator</b>	<b>Required Maintenance Level</b>	<b>Permissible Time Limit for repairs/rectifications</b>
		time. No clogging or choking, leakages etc. Broken WBC, wash basins shall be replaced immediately.	be done minimum twice daily or as and when required. Any repair work shall be attended at the earliest without causing inconvenience to the customers.
4.	All drinking water chambers shall be clean and functional	A minimum of 95% drinking water chambers shall be functional at any given point of time	These shall be cleaned daily. Water supply shall be for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards.
5.	Dustbins, spittoons etc. shall be clean and functional	A minimum of 95% Dustbins, spittoons shall be functional at any given point of time	The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell in the neighbourhood.
6.	All Information Signage and Display Boards shall be visible, legible and functional	Maximum 2% number of damaged signage and boards at any given point of time	These shall be cleaned once in a week. Damaged signage and boards shall be replaced, repaired within seven days of their detection
7.	Staircases shall be clean and functional	Nil	The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within three days after detection.
8.	Illumination (Lighting) shall be functional	To meet the required illumination level as per national standards	The ventilators, sky-lights, etc. serving as source of natural ventilation and other luminaries for artificial lighting shall be cleaned



Sl. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
			once in seven days to maintain the illumination level.
9.	Fire Fighting Equipments shall be functional & remain operational 24 hours a day throughout the year	As per the industry standards	Any damage to firefighting equipments installed in the facilities and in public spaces shall be rectified within 2 days of detection. Fire extinguishers shall be replaced before the end of its expiry date. The water tank meant for firefighting purpose shall remain flooded with water to its capacity at all the times.
10.	Water Tank shall be clean and functional	As per the industry standards	Water tank shall be cleaned and disinfected every month (by usage of approved chemicals) to ensure that no inorganic and organic sedimentation takes place.

## 2.5 Periodic maintenance performance standards

In order to maintain the quality and operational standards of high quality, the periodic maintenance/renewal activities are proposed for the Project in *Table 2*

**Table 2: Periodic Maintenance / Renewal Activities**

S. No.	Periodic Renewal Activities	Time Limit for renewal
1.	Repainting of Buildings and all other structures.	Minimum once in three years
2.	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc. in the offices, cabins, booths etc.	Minimum once in three years

<b>S. No.</b>	<b>Periodic Renewal Activities</b>	<b>Time Limit for renewal</b>
3.	Mechanical Equipment	As per manufacturers recommendations or minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual
4.	Electrical Equipment	As per manufacturers recommendations or minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual

## **2.6 Performance standards for operation**

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

**Table 3: Performance Standards for Operation**

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

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## **Andhra Pradesh State Road Transport Corporation**

### **Development of 9 Sites of APSRTC Under Build, Operate and Transfer (BOT) Scheme**

#### **REQUEST FOR PROPOSAL**

#### **VOLUME IV - DRAFT CONCESSION AGREEMENT**

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**DRAFT CONCESSION AGREEMENT**

**for Development of vacant Site at ....., ..... District.**

**Agreement No:**

**THIS CONCESSION AGREEMENT** (herein after also referred to as Agreement) is made on this the \_\_\_\_\_ day of \_\_\_\_\_2023 at Vijayawada, Andhra Pradesh.

**By and Among**

**Andhra Pradesh State Road Transport Corporation (APSRTC)**, established under RTC Act 1950, represented herein by **Chief Manager (Commercial)**, having its office at RTC House, 1<sup>st</sup> Floor, Pandit Nehru Bus Station, Vijayawada – 520013, hereinafter referred to as the **"Authority"** or **"APSRTC"** which expression shall unless it be repugnant to the context include its administrators, successors and permitted assigns, of the **ONE PART**

**And**

M/s..... a company incorporated **by the selected bidder** under the Companies Act, 2013, having its registered office at ....., India, represented by..... hereinafter referred to as the **"Concessionaire"** (details of SPV/SPC), which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns and substitutes of the **SECOND PART**

**And**

M/s ....., a company incorporated under the Companies Act, 2013, having its registered office at..... India, (details of the private promoters / members of the Preferred Bidder, to be suitably modified as per the requirement) represented by ..... hereinafter referred to as the "Preferred bidder / Confirming Party", which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns of the **THIRD PART.**

Each singly a **"Party"** and all collectively the **"Parties"**.

**WHEREAS,**

- a) Andhra Pradesh State Road Transport Corporation is one of the largest Public Transport Corporation in the world and is committed to provide consistently high quality services for the utmost satisfaction of its passengers.

***Bidder***

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- b) The Authority intends to utilise some of the prime land parcels belonging to it for commercial development to generate resources on a continuous and sustainable basis and for provision of enhanced amenities and facilities to its commuters/ passengers.
- c) In furtherance of the above objective, APSRTC being the absolute owner of \_\_\_\_\_ Sq. Yards of site at \_\_\_\_\_ (B/S or B/D) \_\_\_\_\_ (Place), \_\_\_\_\_ (Mandal), \_\_\_\_\_ (Dist.) under survey no. \_\_\_\_\_ of \_\_\_\_\_ (Place), intends to undertake development of the property with private sector participation for a period of **33 (Thirty Three) years** under Build Operate and Transfer ("**BOT**") framework ("**Project**").
- d) **The Authority** invited competitive Proposals from interested parties for the Project **through Tender Notice no.\_\_\_\_ dt.\_\_\_\_** and pursuant to evaluation of the proposals that were received, **the Authority** accepted the proposal submitted by \_\_\_\_\_ (details of selected bidder / consortium with \_\_\_\_\_ as lead member) for the BOT Project and a **Letter of Intent (LoI)** bearing No. \_\_\_\_\_ dated \_\_\_\_\_ was issued to the Successful Bidder, *inter alia*, requiring it to incorporate a Special Purpose Vehicle / Company under the Companies Act and execution of this Agreement within 90 (ninety) days of the date of issue thereof.
- e) The Authority has decided to implement the Project through private sector participation on the commercial format - Build, Operate and Transfer basis. The Project comprises, subject to the terms and conditions of this Agreement, the development, design, financing, construction, operation and maintenance of the project facilities by the private sector participant during the Concession Period (33 years), including the right to develop, design, finance, construct and maintain the commercial facility and to undertake the marketing, booking and allotment of built up area therein to demand, charge, collect, retain and appropriate the user charges subject to the terms and conditions of this Agreement. The private sector participant is required to transfer the Project facilities on completion of the Lease period in "as is where is condition" as per terms and conditions of this Agreement.
- f) Pursuant to the LOI, the Preferred Bidder has incorporated a Special Purpose Vehicle / Company under the name and style of M/s.\_\_\_\_\_, to implement the Project as Concessionaire, in accordance with the provisions of the RFP and requested the Authority by its letter dated\_\_\_\_\_, to accept the SPV/SPC as the entity as Concessionaire which shall undertake and perform the obligations and exercise the rights of the selected Bidder/ Consortium including the obligation to enter into this Agreement. The

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Authority has, pursuant to the provisions of the RFP, agreed to grant the Authorization / Concession for implementation of the said Project to the Special Purpose Vehicle / Company as Concessionaire.

- g) The Concessionaire acknowledges and confirms that it has undertaken a due diligence exercise of all aspects of the Project including its technical and financial viability, legal due diligence, and on the basis of its independent satisfaction hereby accepts the Authorization / Concession and agrees to implement the Project at its own cost, risk and expense in accordance with the terms and conditions of this Agreement.
- h) Following the issuance of LoI, the Preferred Bidder in accordance with the terms and conditions as specified in the RFP, as being the precondition to the execution of this Agreement, has made the following payments:
- (i) A non refundable and irrevocable payment for an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) by way of Demand Draft No. \_\_\_\_\_ dt. \_\_\_\_\_ issued by \_\_\_\_\_ Bank drawn in favour of **“Financial Advisor, APSRTC, Vijayawada”** payable at Vijayawada (details of Payment to be incorporated - DD/NEFT/RTGS / online transfer) towards **1<sup>st</sup> instalment of Upfront Amount**. The Bid Security amount of Rs. \_\_\_\_\_/-(Rupees \_\_\_\_\_ only) paid by the preferred bidder at the time of tenders (details of Bid Security amount to be incorporated) is adjusted towards **1<sup>st</sup> instalment of Upfront Amount**. **Thus the preferred bidder / Concessionaire has paid a total amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) towards 1<sup>st</sup> instalment of Upfront Amount.**
- (ii) A non refundable and irrevocable payment for an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) by way of Demand Draft No. \_\_\_\_\_ dt. \_\_\_\_\_ drawn in favour of **“Financial Advisor, APSRTC, Vijayawada”** payable at Vijayawada (details of Payment to be incorporated - DD/NEFT/RTGS / online transfer) towards **Project Development Fee (PDF)**.
- (iii) An interest free, refundable payment for an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) by way of demand draft No. \_\_\_\_\_ dated \_\_\_\_\_ drawn in favour of **“Financial Advisor, APSRTC, Vijayawada”** (details of Payment to be incorporated - DD/NEFT/RTGS / online transfer) payable at Vijayawada towards **Performance Security**.
- i) In light of the compliance by the Concessionaire of the pre-conditions to the execution of the Concession Agreement, Authority has agreed to enter into

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this Concession Agreement vesting the rights for the implementation of the Project with the Concessionaire on the terms, conditions and covenants hereinafter set forth in this Agreement.

- j) The Concessionaire has undertaken to ensure that the Concessionaire shall duly discharge its obligations under this Agreement and implement the Project and is joined in and executing this Agreement as a Confirming Party to the arrangement envisaged and detailed herein under and agrees to undertake and comply with the terms and conditions hereof as binding terms.
- k) In consideration of the promises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Agreement are set out as below.

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

## **ARTICLE 1: DEFINITIONS & INTERPRETATIONS**

### **Section 1.1 Definitions**

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

- a) **"Accounting Year"** means the financial year commencing from **1<sup>st</sup> April** in each year and ending on **31<sup>st</sup> March** in the next year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the compliance date to the 31<sup>st</sup> March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1<sup>st</sup> April to the transfer date; or the date on which the agreement ceases to be in force, whichever is earlier.
- b) **"Affiliate"** or **Associate** means a Company that directly or indirectly controls, through one or more intermediaries, or is directly controlled by, or is under the common control of the Bidding Company, 'Control' as used here, means ownership by one company of more than **50%** of the voting rights of the other company.
- c) **"Agreement"** means this agreement as of date hereof, including recitals, appendices and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof;



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- d) **“Annual Premium”** means the annual premium payable by the Concessionaire to the Authority pursuant to the Concession Agreement/Land Lease Deed. This Annual Premium shall be payable on yearly basis every year (commencing from 3<sup>rd</sup> year) as per the terms and conditions stipulated in the Agreement.
- e) **“Appendix”** means any of the schedules, supplements or documents, appended to this Agreement;
- f) **“Applicable Laws”** means any statute, law, regulation, ordinance, notification, rule, judgment, order, decree, injunction, writs and orders of any Court of record, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of Government of India, , Government of Andhra Pradesh or by any Government Authority or instrumentality thereof, as may be in force and effect on or before the bid date and during the subsistence thereof;
- g) **“Applicable Permits”** means any or all permissions, clearances, Authorizations, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes contemplated by this Agreement (attached hereto as *Appendix-8*);
- h) **“Appointed Date”** shall mean the date on which Financial Close is achieved and the Conditions Precedent are either satisfied and / or waived in accordance with the terms of this Agreement.
- i) **“Authority”** or **“APSRTC”** or **“Lessor”** means Andhra Pradesh State Road Transport Corporation represented by its Administrators, successors and permitted assigns;
- j) **“Authorization”** shall have the meaning of Concession set forth in Section 2.1;
- k) **“Authorization Period”** shall have the meaning of Concession Period specified in Section 2.2;
- l) **“Concessionaire”** shall mean the selected Preferred Bidder or Special Purpose Company (SPC) incorporated exclusively by the Bidder / Bidding Consortium under Companies Act, 2013 who has been selected and nominated by the Authority to implement the Project on the terms and conditions stipulated in the Concession Agreement.

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- m) **"Bank"** means any Nationalized/ Scheduled (Excluding Cooperative) Banks having operations in Andhra Pradesh.
- n) **"Bid"** shall mean the documents in their entirety comprised in the bid submitted by the selected Bidder in response to the Request for Proposal in accordance with the provisions thereof;
- o) **"Bid Date"** shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;
- p) **"Bid Security / EMD"** shall mean the security amount provided by the Selected Bidder to the Authority along with the Bid in accordance with the Request for Proposal, and which is to remain in force until adjusted to Upfront Amount.
- q) **"Built up area"** or **"Floor Area,"** means the covered area of a building at all floors levels added together including the common areas, and excluding the parking.
- r) **"Business Day"** means a day on which banks are generally open in Andhra Pradesh for transaction of normal banking business;
- s) **"Change in Law"** means occurrence of any of the following events after the execution of this Agreement:
- i) enactment of any new Applicable Law;
  - ii) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
  - iii) the change in interpretation or application of any Applicable Law;
  - iv) the imposition of a requirement for an Applicable Permit (s) (other than for cause) not required on the date of this Agreement;
  - v) after the date of grant of any Applicable Permit (s), a change in the terms and conditions attaching to such Applicable Permit (s) (other than for cause) or the attachment of any new terms and conditions to an Applicable Permit (s)(other than for cause); or
  - vi) any Applicable Permit (s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application therefore having been duly made in good time.

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For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk;

- t) **"Commencement date"** means the date of commencement of Concession Period.
- u) **"Commercial Operations"** means the use of the Project Facilities for commercial purposes by the levy, charging, demanding, collecting, realizing, retaining and appropriating of Tariff;
- v) **"Commercial Operation Date"** or **"COD"** means the date on which the Authority issues the Completion Certificate, based on the project implementation either full or part of the facility, upon which the Concessionaire commences Commercial Operations;
- w) **"Completion Certificate"** means the certificate issued by the Authority in the manner set out in Section 5.1.14;
- x) **"Compliance Date"** shall mean as defined in the Concessionaire Agreement;
- y) **"Condition Precedent"** means the conditions set out in Article 3 hereof;
- z) **"Consortium"** means the consortium formed by the Preferred Bidder, consisting of (i) XXXXX (ii) YYYYY (iii) ZZZZZ, formed pursuant to the Consortium Agreement dated ----- entered into by them, for the purpose of Bidding for the Project and in the event of being successful, to implement the Project through a Special Purpose Vehicle/ Company to be formed and incorporated by them in India;
- aa) **"Construction Period"** means the period from the Compliance Date to the date of issue of the Completion Certificate by the Authority for the entire facility;
- bb) **"Contractor"** means a reputed Person with whom the Concessionaire has entered into/ may enter into a contract relating to the Works and subcontractors, including contractors for equipment, procurement and engineering ("EPC Contractors") and contractors for operations and maintenance ("O&M Contractors"), service providers, suppliers and/or any other contractors and sub-contractors, manufacturers or suppliers of Works or part thereof, as the context may admit or require;

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- cc) **“Contractual Arrangements”** and “Contractual Counter-parties” shall have the meaning specified in Section 6.5.2 (b);
- dd) **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding and payable by the Concessionaire to the Lenders under the Financing Documents:
- i) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the principal) which is outstanding as on the Termination Date, excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the Authority; and
  - ii) all accrued interest, financing fees and other charges outstanding and payable on or in respect of the debt referred to in sub-Article (i) above up to the date preceding the Termination Date but excluding any (a) interest or charges that had fallen due one year prior to the Termination Date, and (b) penal interest or charges payable under the Financing Documents to the Lenders.
- ee) **“Debt Service”** means all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Documents;
- ff) **“Demand Draft or DD”** means the instrument issued by any **Nationalized/Scheduled** (Excluding Cooperative) Banks having operations in Andhra Pradesh.
- gg) **“Detailed Project Report”** or **“DPR”** means the detailed design and engineering report for the Project, as indicated in the Article-6.
- hh) **“Designs and Drawings”** means the conceptual and detailed designs, drawings and engineering, project master plans, backup technical information required for the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by the Concessionaire from time to time for approval in accordance with the provisions of this Agreement;
- ii) **“Development Controls”** means the guidelines and controls for development and implementation of the Project Facilities set forth in *Appendix-3* ;
- jj) **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which

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is legally binding or which is notified/directive issued by the Authority to the Concessionaire, and any modification, extension or replacement thereof from time to time in force.

- kk) **"Dispute Resolution Procedure"** means the procedure for resolution of disputes set forth in Article 17;
- ll) **"Document" or "Documentation"** shall mean documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;
- mm) **"Easement"** means all easements, reservations, rights-of-way, utilities and other similar rights as to the use of real property, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project;
- nn) **"Encumbrances"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other obligation or restriction and shall include physical or legal obstructions or encroachments on the Site or Third Party claims or rights of any kind attaching to the Site;
- oo) **"Environment Management Plan" or "EMP"** means the environment management plan to be prepared by the Preferred Bidder as part of DPR and Environmental Impact Assessment (EIA) report, as required;
- pp) **"Event of Default"** means a Concessionaire Event of Default or an Authority Event of Default or both, as the context may require or admit;
- qq) **"Expert"** means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Parties by mutual consent, also referred to as third party expert;
- rr) **"Execution Date" or "Date of Execution"** means the date on which this Concession Agreement is signed by the Parties.
- ss) **"Facility Management Contract"** means one or more contracts that may be entered into by the Concessionaire with a Contractor for undertaking the management and maintenance of one or more or all of the Project Facilities during the Concession Period.
- tt) **"Financial Assistance"** means the aggregate amounts provided by way of loan, lease finance, advances, guarantees or otherwise by the Lenders to

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the Concessionaire for the implementation of the Project and shall include all related financial charges, fees and expenses of all kinds relating to the Project;

- uu) **"Financial Closure"** means the date on which the Financing Documents providing for Financial Assistance by the Lenders have become effective and the Concessionaire has access to such Financial Assistance;
- vv) **"Financing Documents"** means, collectively, the documents executed in favour of or entered into with the Lenders, by the Concessionaire in respect of the Financial Assistance, including loan agreements, lease agreements, hire purchase agreements, notes, indentures, security agreements or arrangements, guarantees and acceptable letters of credit and other agreements evidencing any obligation of the Concessionaire and other necessary undertakings required pursuant to the respective terms thereof, relating to the Financial Assistance or any part thereof (including refinancing) provided by the Lenders to the Concessionaire for the Project;
- ww) **"Force Majeure Event"** shall have the meaning ascribed to it in Section 14.1 of this Agreement;
- xx) **"Gross Annual Turnover" or "Revenue"** means the pre-taxation gross revenues of the Concessionaire for any period including all amounts received (or which would have been received) from the User Charges and all other net amounts which fall (or would fall) to be credited to the profit and loss account of the Concessionaire for the Accounting Year in which the relevant period falls excluding (i) insurance proceeds except insurance indemnification for loss of revenue; and (ii) payments and/or monies collected by the Concessionaire for and on behalf of any Government Authorities under Applicable Laws. It is clarified that the amounts payable to the Authority under this Agreement shall not be deducted from Revenue/Gross Annual Turn Over;
- yy) **"GoAP"** means Government of Andhra Pradesh
- zz) **"GoI"** means the Government of India;
- aaa) **"Government Authority"** means GoI, GoAP or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project, the Project Assets and the Works or any part thereof or the performance of all or any of the services, obligations or covenants of Concessionaire under or pursuant to this Agreement or any portion thereof;

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- bbb) **“Good Industry Practice”** means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of engineering, procurement, construction, equipment, safety, operation and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced construction contractor and/or operator, in a project of the type and size similar to the Project;
- ccc) **“Land Lease Deed”** means the lease deed to be executed between the Authority and the Concessionaire, substantially in the form set out in *Appendix 7*, pursuant to which the Authority shall lease to the Concessionaire the land comprising the Project Site vesting the Concessionaire with Vacant Possession and all rights relating thereto for a period co-terminus with the Concession Period;
- ddd) **“Lenders”** means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes non-banking financial companies, funds, trusts and/or trustees for the holders of debentures/ or other debt instruments/securities issued by the Concessionaire who provide Financial Assistance to the Concessionaire under the Financing Documents;
- eee) **“Material Adverse Effect”** means circumstances which may or do (i) render any right vested in a Party by the terms of this Agreement ineffective or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Agreement or the legality, validity, binding nature or enforceability of this Agreement;
- fff) **“Material Breach”** means a breach of any the obligations, terms, conditions and covenants of this Agreement or covenants by a Party, which materially and substantially affects the performance of the transactions contemplated by this Agreement/and has a Material Adverse Effect;
- ggg) **“Minimum Development Obligations”/ “MDO”** shall mean the list of Project Components / Project facilities and Other Obligations’ as mentioned in Appendix -2.
- hhh) **“Other obligation”** shall have the meaning as described in Section 6.3.
- iii) **“Operation”** shall have the meaning as described in Section 6.5.

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- jjj) **"Operations Period"** means the period commencing from COD and ending on the expiry or prior termination of this Agreement / Concession / Concession Period;
- kkk) **"Person"**; means any individual, company, corporation, Consortium, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity
- lll) **"Performance Security"** shall mean the irrevocable and unconditional bank guarantee provided by the Preferred Bidder/Concessionaire from a Nationalized /Scheduled (Excluding Cooperative) Bank having a branch at Vijayawada, substantially in the format set forth in the RFP Document as guarantee for the performance of its obligations in respect of the Project.
- mmm) **"Performance Standards" or "Maintenance and Performance Standards"** means the performance parameters for the operation and maintenance of the Project Facility set out in *Appendix 3*;
- nnn) **"Preferred Bidder"** means any Firm or Consortium that has been successful in the Bidding process for the Project and incorporated a Special Purpose Vehicle / Company as the Concessionaire for implementation of the Project.
- ooo) **"Prohibited Activities"** means the activities not permitted under the Development Control Regulations of Municipal Authorities or any other regulating agency/ body for the project site.
- ppp) **"Project" or "Commercial Project " Development of vacant site at \_\_\_\_\_, \_\_\_\_\_ District"** means, subject to the provisions of this Agreement, the (i) designing, financing, construction, implementation, completion, commissioning, marketing, operation, management of the Project Facilities and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period; (ii) demanding, charging, collecting, retaining and appropriating and revision of Tariff by the Concessionaire and (iii) transfer of the Project Facilities by the Concessionaire to Authority or its nominated agency at the end of the Concession Period by efflux of time or prior termination.
- qqq) **"Project Assets"** shall mean and comprise of all tangible and intangible assets relating to the Project Facility , as the case may be excluding land but including and not limited to, (a) rights over the Site in the form of license, right-of-way or otherwise; (b) tangible assets such as foundation, buildings, substructures and superstructures, pavements, over-bridges, works, subways,



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drainage facilities, sign boards, equipment, electrical works for lighting of and telephone and communication equipment; (c) financial assets, such as receivables, cash and investments; (d) rights under the Project Agreements and other agreements and (c) insurance proceeds.

- rrr) **"Project Completion"** shall have the meaning specified in Section 6.3 (a);
- sss) **"Project Contracts"** means collectively this Agreement, the Land Lease Deed, the EPC Contract(s), the O&M Contract(s) and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project;
- ttt) **"Project Implementation Schedule"** means implementation schedule for the Project;
- uuu) **"Project Site"** or **"Site"** means entire \_\_\_\_\_ Sq. Yards of land situated at \_\_\_\_\_, \_\_\_\_\_ District, Andhra Pradesh along with the rights (excluding land title) in relation thereto, the easement rights, right of way, appurtenances, the approaches within the site and other areas on, into, at, under, over or through which the Project Facility or any other construction relating thereto is situated, located, passes through, sits upon or overlies, more particularly delineated in *Appendix-5*.
- vvv) **"Proposal"** or **"Bid"** means the documents in their entirety comprised in the proposal or bid submitted by Preferred Bidder (including the technical and financial proposal/ bid) in response to the Request for Proposal, and accepted by the Authority, signed for verification by the authorized representatives of the Parties;
- www) **"Request for Proposal" or "RFP"** means the Request for Proposal issued by the Authority inviting proposals for the Project, and includes any addendum / clarifications issued in respect thereof by the Authority;
- xxx) **"Scheduled Project Completion Date"** shall have the meaning specified in **Section 6.3**;
- yyy) **"Security Interest"** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;

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- zzz) **"Specifications and Standards"** means collectively or singularly, as the context may admit or require, the Development Controls, the Technical Specifications and the Performance Standards;
- aaaa) **"Special Purpose Company"** or **"SPC"** shall be the Concessionaire under this agreement.
- bbbb) **"Tax"** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions including property tax, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levies of any nature whatsoever, whether by GoI, the Authority or Government Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it;
- cccc) **"Tariff"** means the charges, tariffs, prices, fees, rentals, rates, premia, deposits etc. and all sources of revenue or amounts of money by whatever name called that are (i) determined, charged, demanded, collected, retained and appropriated by the Concessionaire under this Agreement, including pursuant to sub-leasing, licensing, franchising, subcontracting or any other arrangement in respect of the Project Facilities, and from the hire, sale, provision etc. of goods and services; and/or (ii) payable at any time and from time to time by any Person to the Concessionaire in respect of the Project Facility.
- dddd) **"Technical Specifications"** or **"Specifications & Standards"** mean the technical specifications for the construction and implementation of the Project Facility as set forth in *Appendix 3*.
- eeee) **"Termination"** means prior termination of this Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;
- ffff) **"Termination Procedure"** shall have the meaning specified in Section 16.1;
- gggg) **"Tests"** means the tests to be carried out pursuant to this Agreement and to determine the quality of Project Works;

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- hhhh) **"Third Party"** means any Person, real or legal, or entity other than the Parties to this Agreement;
- iiii) **"Transfer Date"** means the date of expiry of Concession Period/this Agreement/the Concession, including extension thereto or earlier termination thereof in accordance with the provisions of this Agreement;
- jjjj) **"Transaction Documents"** means collectively the Project Contracts and the Financing Documents;
- kkkk) **"Vacant Possession"** means delivery of possession of the land comprising the Site, free from all Encumbrances, restrictions or impediments and the grant of all Easements and all other rights appurtenant or in relation thereto;
- llll) **"Vesting Certificate"** shall have the meaning specified in **Section 16.5**;
- mmmm) **"Year"** means a period of 12 consecutive months of English Calendar Year.
- nnnn) **"Works"** mean the works under and in accordance with the provisions of this Agreement relating to design, development of Site, construction, completion, testing and commissioning of the Project/Project Facilities (the **"Construction Works"**), and the operation and maintenance, rectifying and remedying of defects therein (the **"O&M Works"**), collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project/Project Facilities and any other permanent, temporary or urgent works required hereunder.

## **Section 1.2 Interpretations**

In this Agreement, unless the context otherwise requires:

- a) any reference to a statutory provision or legislation shall include such provision or legislation as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b) references to Applicable Law shall include the laws, Acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India and as from

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time to time may be amended, modified, supplemented, extended or re-enacted;

- c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- d) terms and words beginning with capital letter and defined in this Agreement shall have the meaning ascribed thereto herein, and terms and words defined in the Schedule and used therein shall have the meaning ascribed thereto in the Schedule;
- e) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- f) the words "include" and "including" are to be construed without limitation;
- g) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction and "**construct**" or "**build**" shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a English calendar day;
- j) any reference to month shall mean a reference to a calendar month as per the English calendar;
- k) reference to an individual shall include his legal representatives, successors, legal heirs, executor and administrator;
- l) the Schedules (appendices) to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- m) 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;
- n) references to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-Clauses and Schedules of or to this Agreement;

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- o) any agreement, consent, approval, authorisation / Concession, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- p) unless otherwise stated, 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;
- q) References to any date, period or Milestone Dates shall mean and include such date, period or Milestone Date as may be extended pursuant to this Agreement or by mutual consent of the parties here to;
- r) The rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply.
- s) 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.
- t) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- u) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

### **Section 1.3 Measurements and Arithmetic Conventions**

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down except in money calculations, which shall be rounded off to nearest Rupee, unless otherwise specified in the Agreement.

### **Section 1.4 Ambiguities and Discrepancies**

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

- a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

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- c) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- d) between any value written in numerals and that in words, the latter shall prevail.
- e) between the Articles of this Agreement and the Schedules, the Articles shall prevail;
- f) between any two Schedules, the Schedule more relevant to the issue under consideration shall prevail;

**Section 1.5                      Priority of Documents**

This Agreement, and all other connected agreements and documents forming part of or referred to in 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 or referred to herein shall, in the event of any conflict between them, be in the following order:

- a) This Agreement
- b) Schedules to this Agreement
- c) Any Supplementary Agreement
- d) Letter of Intent issued to the Successful Bidder
- e) Written addendum / clarifications to the RFP
- f) The RFP (Bid Document)
- g) Proposal (Bid) of the Successful Bidder

**ARTICLE 2: CONCESSION**

**Section 2.1                      Grant of Concession**

2.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, applicable laws and applicable permits the Authority hereby grants and authorises the Concessionaire to design, develop, construct, operate and maintain, lease the Project facilities, to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations / Concessions and entitlements as set forth in this Agreement including the right to collect, retain and appropriate all tariffs, rentals, other fees and

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charges for the facilities and services provided, and to hand back the Project facilities on the Expiry Date or the Termination Date as the case may be (“the **Concession**”).

- 2.1.2 The Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth in this Agreement.
- 2.1.3 The Concessionaire shall perform and fulfill its obligations under and in accordance with this Agreement.
- 2.1.4 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) the Right of Way, access and leave and license rights to use the Project Site for the purpose of developing the Project, to the extent conferred by the provisions of this Agreement;
  - (b) design, finance, construct, operate and maintain, lease the Project facilities during the subsistence of this Agreement;
  - (c) achieve Project COD in accordance with the provisions of this agreement and subsequently, manage, operate and maintain the Project Infrastructure throughout the Concession Period;
  - (d) provide Hospitality Services in accordance with the standards and terms set out in this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;
  - (e) demand, collect and appropriate Revenue from the Users for using the project and availing of the Hospitality Services in accordance with this Agreement;
  - (f) pay Annual Premium, Upfront amount, Project Development Fee, interest free refundable Security Deposit & Performance Security and other payments (if any) to the Authority including all taxes on the amounts payable to the Authority.
  - (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;
  - (h) Pay all taxes to the Government Authorities and local bodies during the subsistence of the Agreement.
  - (i) appoint contractors, sub-contractors, agents, advisors and consultants to

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carry out its obligations under this Agreement in accordance with its terms;

- (j) The Concessionaire shall neither assign, transfer or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Facilities nor transfer thereof, save and except as expressly permitted by this Agreement including the right to further sub-lease / let / sub-let / license or whatever name called, the Project facilities in accordance with the provisions of this agreement.
- (k) upon Termination of the Concession Period transfer the Project to the Authority in accordance with the terms of this Agreement;
- (l) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, development, management, operation or maintenance of the Project and the Project Site, subject only to the terms of this Agreement and in accordance with Applicable Permits, Applicable Laws and Good Industry Practice;
- (l) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to construct, implement, manage, operate and maintain the Project;
- (m) do all things incidental or related thereto or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period.
- (n) Right to enter into Agreements with such persons as it may deem necessary and appropriate for performing its obligations as per the terms of this Agreement.

## **Section 2.2 Concession Period**

The Concession hereby granted is for a period of **33 (Thirty Three) years** commencing from \_\_\_\_\_ (herein after referred to as the commencement date) and ending by \_\_\_\_\_ ("the **Concession Period**").

Further, this Agreement shall automatically terminate upon expiry of the Concession Period by efflux of time, or in the event of earlier Termination.

Provided that in the event of earlier Termination, the Concession Period shall mean and be limited to the period commencing from the \_\_\_\_\_ Date and ending with the Termination Date.



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### **Section 2.3 Acceptance of Concession**

In consideration of the rights, privileges and benefits conferred upon by the Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Authorisation / Concession and agrees and undertakes to perform/ discharge all of its obligations in accordance with the provisions hereof.

## **ARTICLE 3 CONDITIONS PRECEDENT**

### **Section 3.1 Conditions Precedent**

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

Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of this clause, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled.

The Concessionaire may, at any time after 15 (fifteen) days from the Execution Date, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in the Clause 3.2 within a period of 180 (one hundred and eighty) days from the execution date.

The Concessionaire shall within a period of 180 (one hundred and eighty) days from the execution date fulfil of all conditions precedent set forth in the Clause 3.3.

### **Section 3.2 Conditions Precedent for Authority**

The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) handed over to the Concessionaire the vacant possession of the Site on "as is where is basis" and executed Land Lease Deed substantially in the form attached hereto in *Appendix - 7* in accordance with the terms of this Agreement;

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- (b) assisted the Concessionaire for necessary changes in land use to convert the land use of entire Project Site in to the commercial land use, as may be required, to implement the Project.
- (c) procured facilitation for grant of all Applicable Permits. Provided the primary responsibility for applying, fulfilling and meeting all eligibility conditions for the application for permits / permissions / licenses / NOC's etc. shall be that of the Concessionaire exclusively.
- (d) provided that upon request in writing by the Authority, the Concessionaire may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Section 3.2.

**Section 3.3 Conditions Precedent for Concessionaire**

The Conditions Precedent required to be satisfied by the Concessionaire shall be deemed to have been fulfilled when the Concessionaire shall have:

- a) made all the applications at its cost and procured the Applicable Permits set out in *Appendix-8* required for commencing construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect and the Concessionaire is in compliance with the conditions of grant thereof and they are valid and effective;
- b) achieved Financial Closure and provided notarised true copies of the Financing Documents to the Authority along with soft copies;
- c) prepared, finalised and procured approval of the Authority for the Detailed Project Report in accordance with the provisions of Section 6.1 hereof;
- d) procured environmental clearance from the State Agency or Ministry of Environmental and Forests, as the case may be, after having completed preparation of the Detailed Project Report;
- e) confirmed in writing that all the representations and warranties of the Preferred Bidder/Concessionaire set forth in the Proposal and forming part of this Agreement are true and correct as on the date of execution of this Agreement and the Compliance Date;
- f) shall make all payments to the Authority and shall submit the Bank Guarantees (if any) in accordance with terms and conditions of the tender as a pre condition for entering into the Agreement.

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- g) delivered to the Authority the copies (certified as true copies by an authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire.
- h) delivered to the Authority copies (certified as true copies by a Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of the Agreement;
- i) provided proof of its shareholding pattern, which should be in compliance with RFP requirements and bid submitted, evidenced by certificates from the authorised signatory of the Concessionaire.
- j) registered the land lease deed with the relevant Government Authority.
- k) Provided that upon request in writing by the Concessionaire, the Authority may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Section 3.3.

**Section 3.4 Obligation to Satisfy Conditions Precedent**

- a) Each Party shall make all reasonable endeavours at its respective cost and expense to comply in full with the Conditions Precedent relating to it within a period of 6 (six) months from the date of execution of this Agreement or any extension agreed to between the Parties and shall provide the other Party with such reasonable cooperation as may be required.
- b) The later of the date within such 6 (six) months when the Authority or the Concessionaire fulfils its Conditions Precedent (unless the Authority waives the same for the Concessionaire) shall be the "Compliance Date".
- c) The Concessionaire shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority.

**Section 3.5 Non-fulfilment of Conditions Precedent**

- a) In the event the Conditions Precedent for Concessionaire have not been fulfilled within the stipulated time and the Authority has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the Authority and the Authority shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it.

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- b) Upon the termination of this Agreement, the Project Site shall immediately revert to the Authority, free and clear from any encumbrances and along with all Easement Rights, irrespective of any outstanding mutual claims between the Parties.
- c) However, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled.
- d) Instead of terminating this Agreement as provided in this Section 3.5 for nonfulfillment of Conditions Precedent, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent.
- e) **Damages for delay by the Authority:**

In the event that: (i) the Authority does not procure fulfillment or waiver of the Condition Precedent set forth in Clause 3.2 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 Event, the Authority shall pay damages to the Concessionaire of an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment or waiver of such Conditions Precedent, subject to a maximum amount equal to 16.67% of the Performance Security.

- f) **Damages for delay by the Concessionaire:**

In the event that: (i) the Concessionaire does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Clause 3.3 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure Event, the Concessionaire shall pay damages to the Authority of an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfillment or waiver of such Conditions Precedent, up to the maximum amount equal to 50% of the Performance Security. Upon reaching such maximum amount, the Authority, subject to the provisions of this Agreement may terminate the Agreement in its sole discretion. Provided that in the event of delay by the Authority in procuring fulfillment of the Conditions Precedent specified, no damages shall be due and payable by the Concessionaire under this Clause until the date on which the Authority shall have procured fulfillment of the Conditions Precedent specified in Clause 3.2.

- g) In the event this Agreement is terminated due to non-fulfilment of the Concessionaire's Conditions Precedent and the same is not due to Authority's

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default, Authority shall retain & forfeit the Upfront Amount, Annual Premium, Security Deposit and Performance Security etc. towards damages.

- h) In the event this Agreement is terminated due to nonfulfillment of the Authority's Conditions Precedent, the Authority shall upon such termination return / refund the Performance Security amount to the Concessionaire without any interest, provided there are no outstanding claims of the Authority on the Concessionaire unless the Authority's failure to fulfill its Conditions Precedent is a result of the Concessionaire's default.
- i) In any case, the non refundable and irrevocable Project Development Fee (PDF) will not be paid back to the Concessionaire which is the expense incurred towards this project development, till this agreement is signed. That by Bid submission and by entering into this agreement the Concessionaire is deemed to have agreed to forego the PDF in any of the circumstances mentioned in this section.

## **ARTICLE 4 PROJECT SITE**

### **Section 4 The Project site:**

The site comprising the land of \_\_\_\_\_ Sq. Yards at \_\_\_\_\_ (B/S or B/D) \_\_\_\_\_ (Place), \_\_\_\_\_ (Mandal), \_\_\_\_\_ (Dist.) under survey no. \_\_\_\_\_ of \_\_\_\_\_ (Place), more particularly described in the Land Lease Deed of this Agreement in appendix-7 and appendix-5 is leased to the Concessionaire in accordance with the provisions of this Agreement (the "Project Site").

#### **Section 4.1 Lease of Site**

- a) The Authority shall on the date of execution of this Agreement sign Land Lease Deed, thereby granting the Concessionaire access to the Project Site, only for the purpose of implementing the Project in accordance with terms of this Agreement and valid only for the term which shall be coterminous with the Concession Period.

The Project 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 Project Site. For avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the

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Project Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Site.

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

- b) The Parties shall, within 15 (fifteen) days of issue of LoI to the Preferred bidder / Concessionaire, carry out through their duly authorised representative, a joint inspection and verification of all the real estate, structures, land, buildings and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Preferred bidder / Concessionaire in such joint inspection shall be mandatory. The Preferred bidder / Concessionaire shall carry out at its cost a due diligence of all encumbrances at, on or under the Site and notify the same to the Authority, which shall take prompt action for removing the same.

In case of any dispute between the Preferred bidder/ Concessionaire and the Authority in relation to the survey of the Project Site, the decision of the Authority shall prevail and shall be binding on the Concessionaire.

The Parties agree that any additional land required, if available, for the Project by the Concessionaire, in addition to the land allotted under this agreement, may be considered for allotment at the sole discretion of the Authority. The Concessionaire shall have no right to claim compensation, damages or extension of lease period, in the event the Authority declines any such allotment in whole or in part and in such a case the Concessionaire is bound by the provisions of this agreement and the extent of the project site is limited to the allotted area. In case additional land is allotted, the Concessionaire shall have the rights on such allotment of additional land as per provisions of this agreement from the date of such allotment through supplementary Land Lease Deed. The Lease period for such additional land shall be up to the expiry of the Lease period as per Article 2.2 of this Agreement.

- c) The Authority shall bear all the costs of making available the Project Site to the Concessionaire as on the date of Agreement and be liable to remove/ relocate at its cost all Persons that may have to be displaced from the Project Site, including the payment of compensation, if any, to such Persons or

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litigation pursuant thereto and the Concessionaire shall not be liable in this behalf.

- d) In consideration of implementation of the Project by the Concessionaire and the payment herein reserved and of other covenants on the part of the Concessionaire, the Authority shall, upon signing of the Lease Deed, handed over the leased land and delivered to the Concessionaire on an "as is where is basis" subject to curing of the defects and /or clearing of encumbrances by the Authority the possession of land with the Easement Rights and with the full and free right and liberty of way and passage and other rights in relation thereto and the right, authority and license to implement the Project thereat in accordance with the provisions of this Agreement, under a valid and binding Land Lease Deed, in the form attached hereto in *Appendix-7*, for a period that shall be co-terminus with the Concession Period.
- e) In consideration for the Lease of the Site, the Concessionaire shall pay the Authority, all the payments viz. Upfront Amount, Annual Premium, Project Development Fee, interest free refundable Security Deposit and Performance Security etc. and all taxes there on, as specified in detail in Article 8 and the Schedule of Payments.
- f) The Project Land Lease Deed shall be duly registered with the relevant Government Authority by the Concessionaire at its cost (including but not limited to stamp duties, registration charges etc.) as soon as practicable, but in any case within 120 days of the date of execution thereof or as per applicable laws.

## **Section 4.2 Sub- Lease**

### **a) No Sub- Lease of Land**

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

However, the Concessionaire is allowed to sub lease of whole or any part of Project site to Public Sector Oil Companies only for installation of Retail Oil Outlets. The term of such subleases, licenses or similar arrangements shall be restricted to 30 years only from the date of commencement of the Concession

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period. During the last 3 years of the Agreement period, the whole project site shall be free from sub lease in any manner.

Sub leasing of whole or any part of the Project site to others is strictly not allowed. Such sub lease to Public Sector Oil Companies is allowed only on specific request of the Concessionaire and upon submission of an affidavit on a non-judicial stamp paper, subject to prior approval of the Grantor.

**b) Sub- Lease of built-up area / built-up space on the Project Site**

The Concessionaire shall however be allowed the sub- lease of any built-up area or built-up space in the Project Site provided the terms and conditions of such sub leases shall not be inconsistent or contrary and shall be coterminous with the Concession Agreement and Land Lease Deed.

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not create encumbrance on any of the Project Assets.

**Section 4.3 Possession and Use of Project Site**

- a) Upon the Concessionaire observing and performing its obligations, the several covenants, conditions and Agreements herein contained and on the part of the Concessionaire to be observed and performed, the Concessionaire shall remain in peaceful possession and enjoyment of the Project Site during the Concession Period.
- b) The Concessionaire shall design, develop, construct, operate and maintain the Project Facilities, to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations, Concessions and entitlements as set forth in this Agreement including the right to collect, retain and appropriate all tariffs, rentals, other fees and charges for the facilities and services provided, and to hand back the Project Facilities on the Expiry Date or the Termination Date as the case may be.

The Concessionaire shall not without prior written consent or approval of the Authority use the Site for any purpose other than for the purposes of implementing the Project in accordance with the provisions of this Agreement and purposes incidental thereto or as may otherwise be approved in writing by the Authority. The Concessionaire acknowledges, accepts, confirms and agrees that this is an essential condition of this Agreement.

The use of Project Facility shall not comprise the Prohibited Activities as per the applicable laws for the site jurisdiction and also not in competition with



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the main Operations and core business activities of the Authority including Logistics.

- c) The Concessionaire shall maintain vigil over the Site during the Concession Period to prevent encroachments or occupation of the Site and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform the Authority thereof.
- d) The Concessionaire shall shift the utilities at, on, over or under the ground at the Project Site to an appropriate location or alignment. Such shifting of the utilities shall be carried by the Concessionaire at their cost with intimation to the Authority in accordance with the provisions of this Agreement.

The Concessionaire shall promptly use the site for the Project and remove at its cost from the Site in accordance with Good Industry Practice all surplus structures at, on, over or under the ground at the Project Site, construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris (hereinafter collectively referred as "dismantled goods") and keep them in a neat and clean condition and further dispose them at the earliest in conformity with the Applicable Laws and Applicable Permits and Local Body rules and regulations from time to time.

- e) The Concessionaire shall be solely liable for all hazardous, dangerous and other goods, materials, creatures and substances brought, kept, stored or handled at the Site.
- f) The Authority confirms that:
  - i) The Site together with the necessary right of way/ way leaves having been acquired through the due process of law belongs to and is vested with the Authority, and that the Authority has full powers to hold, dispose of and deal with the same consistent, *inter alia*, with the provisions of this Agreement; and
  - ii) The license, access, Right of Way and all other rights to the Project Site are granted to the Concessionaire under the provisions of this Agreement.
  - iii) The Concessionaire shall have no obligation / liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of any Person from whom the Site or any part thereof had been acquired and that the same shall be the sole responsibility of the Authority.
- g) In the event the Concessionaire is obstructed by any Person claiming any right or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of

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receiver or liquidator being initiated by any Person claiming to have any interest in/ charge on the Project Site or any part thereof, Authority shall, if called upon by the Concessionaire, defend such claims and proceedings at its cost and expense and the Concessionaire shall not be liable for the same in any manner whatsoever.

- h) The Concessionaire shall not part with or create any Encumbrances on the whole or any part of the Project Site save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors, to enter into Contractual Arrangements and to assign its rights here under and create a security interest in favour of the Lenders in accordance with the provisions of this Agreement.
- i) It is expressly agreed that the Concessionaire's rights to the Project Site shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Agreement for any reason whatsoever. For avoidance of doubt, the Parties expressly agree that any temporary or permanent structures erected on the Project Site by the Concessionaire or its Contractors, the rights of the Concessionaire in respect of the structures shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- j) It is expressly agreed that trees on the Project Site are the property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.
- k) During the Concession Period, the Concessionaire shall protect the Project 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 Project 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.

**Section 4.4 Access of Site to the Authority**

- a) Following the delivery of vacant possession of the Project Site on “as is where is basis” by the Authority to the Concessionaire, the Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site to,

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- i) the Authority, or the Nodal officer or the Experts and / or their duly authorized personnel and representatives so as to carry out their respective functions and obligations hereunder.
  - ii) the representatives of or Persons duly authorised by the relevant Government Authority or local bodies or their agencies to carry out their respective duties and functions.
- b) The Persons obtaining access to the Site shall conduct their activities and operations at their own risk, cost and expense and in such manner so as to cause minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose of the Person gaining such access.

**Section 4.5 Information about Project Site**

- a) The site map set out in *Appendix-5* is provided by the Authority to the Concessionaire in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site, which the Authority may now possess or may hereafter come to possess. Subject to this, the Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site and the Concessionaire shall accept the Project Site handed over to it by the Authority on an “as is where is basis”.
- b) The Concessionaire acknowledges that before entering into this Agreement, it has had sufficient opportunity to investigate the Site, and
  - i) accepts full responsibility for its condition (including but not limited to its geological condition, any toxic contamination, the adequacy of the road connectivity links to the Site and the availability or unavailability of adequate supplies of water and electricity); and
  - ii) agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site (or part thereof) or for any other reason pertaining to the Site.

**Section 4.6 Authority’s Property at Project Site**

- a) All debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Project Site or generated during the implementation of the Project shall be promptly disposed off by the Concessionaire at its cost. The Concessionaire may if it deems appropriate use the same for the execution of the Works.

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

#### **Section 4.7 Reservation**

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

### **ARTICLE 5: OBLIGATIONS OF PARTIES**

#### **Section 5.1 Obligations of the Concessionaire**

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

##### **Section 5.1.1 Project Implementation**

- a) The Concessionaire shall fulfil the Minimum Development Obligations on or before the Scheduled Completion date, in accordance with 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.

The Concessionaire shall construct at its cost, an alternate structure to the existing structure in use in the project site, at a place specified by the Authority, as per standard specifications of the Authority.

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b) the Concessionaire shall pay the Authority, all the payments viz. Upfront Amount, Annual Premium, Project Development Fee, interest free refundable Security Deposit and Performance Security etc. penalties, penal interests and all taxes there on as specified in Article 8 and the Schedule of Payments.

c) Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project.

The Concessionaire shall design, plan, develop, finance, construct, market, administer, manage and operate and maintain the Project facilities, including without limitation the necessary infrastructure, services and facilities, during the Concession Period in accordance with the provisions hereof, including the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.

The Concessionaire shall exercise and/ or enjoy the rights, powers, benefits, privileges, entitlements as set forth in this Agreement including the right to collect, retain and appropriate all tariffs, rentals, other fees and charges for the facilities and services provided.

d) The Concessionaire shall be free to design, develop, construct, procure all equipment and provide any facility allowed under the permissible land use for the Project Site.

e) In implementing the Project, the Concessionaire shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including environmental laws, and the terms of Applicable Permits and the Concessionaire shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf.

f) The Concessionaire may require sub-lessee/ sub-contractor to perform its obligations under this Agreement without in any way relieving the Concessionaire of its liability in this behalf; provided that the Concessionaire shall ensure that any of its obligations, which are relevant to the scope of work/ terms of engagement/ of a sub-lessee/ sub-contractor, are incorporated in the terms and conditions under which such sub-lessee/ sub-contractor is appointed/ retained. The Concessionaire/ sub-lessee/ sub-contractor shall indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf.

g) All facilities comprising the Project are developed, operated and maintained in accordance with the provisions of this agreement and Good Industry Practice.

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- h) transfer the Project Assets to the Authority upon Termination in accordance with the provisions of this Agreement.
- i) the Concessionaire shall submit to the Authority the draft copies of all Project Agreements and the operation and maintenance contract (if any) or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any,
- j) the Concessionaire apart from fulfilling minimum development obligations shall hand over free of cost, charges and rent 200 Sft. of built up space including toilet facility and 2 car parking bays to the Authority.
- k) Adhere to the timelines for completing the Project.

### **Section 5.1.2 Applicable Permits**

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

### **Section 5.1.3 Personnel and Labour**

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

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

- ii) make efforts to maintain harmony and good industrial relations among the labour and personnel employed or its Contractors in connection with the performance of the Concessionaire's obligations under this Agreement and be the principal employer in respect of such labour and personnel. The Concessionaire shall be solely responsible and liable for compliance with all Applicable Laws, including labour and local laws, pertaining to the employment of labour, staff and personnel by it and its Contractors for implementing the Project
- b) The look out and care of the employees of the Concessionaire and its Contractors shall at all times be the responsibility of the Concessionaire and the Authority shall not be liable in any manner whatsoever in respect of such employees and their employment.

#### **Section 5.1.4 Subcontracting**

- a) The Concessionaire may sub-contract at its cost and risk to Contractors possessing the requisite skill, expertise, capacity and technical and financial qualifications, the designing, engineering, procurement and construction of civil / mechanical / electrical engineering structures / equipment, and / or operation and maintenance of the Project or any part thereof provided the Concessionaire shall at all times be solely responsible and liable for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the operation and maintenance of the Project in accordance with the provisions of this Agreement and provided further that this does not result in the carrying out of the whole or substantially the whole, as determined by the Authority, of the Works by the Contractors. The Concessionaire shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement, are incorporated in the terms and conditions under which such Contractor is retained.
- b) The Concessionaire shall supervise, monitor and control the activities of Contractors under their respective Project Contracts as may be necessary.

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- c) For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a subcontractor by the Concessionaire for any of the aforesaid purposes, the Concessionaire shall be liable for the performance of its duties and for the discharge of all its obligations and responsibilities which it shall have towards the Authority under this Agreement and the appointment of Subcontractor(s) for any of the aforesaid purposes shall neither release nor exonerate the Concessionaire from its obligations hereunder, including full and timely compliance with the terms of this Agreement. The Concessionaire does hereby also agree and acknowledge that it shall remain responsible for obligations performed or to be performed by the Subcontractors to the same extent as if such obligations were to be always performed by the Concessionaire and shall at all times be solely responsible for any defect, deficiency or delay by the Subcontractor in the implementation of the Project/execution of Works.
- d) The Concessionaire further undertakes and covenants that it shall be solely responsible for all payments to be made to the subcontractors and shall indemnify the Authority and keep it indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements), compensations and expenses that the Authority may incur, insofar as such losses directly arise out of, in any way relate to, or result from the non-performance by the Concessionaire of its obligations to the Subcontractors including non-payment to such Subcontractors.
- e) The Concessionaire shall ensure that the subcontractors are capable of discharging the obligations under this Agreement for and on behalf of and in the name of the Concessionaire and that any of its obligations, which are relevant to the scope of work of a Subcontractor, pursuant to this Agreement, are incorporated in the terms and conditions under which such Subcontractor is retained.

**Section 5.1.5 Transaction Documents**

- a) The Concessionaire accepts and undertakes to ensure that the terms of all Transaction Documents (including the agreements between the Concessionaire and Sub-Contractors and any other Person(s), including vendors of goods and services, or between any of these entities) shall be in conformity with the provisions of this Agreement and not in derogation of or conflict with the provisions hereof. In the event of any conflict or inconsistency between such documents and this Agreement, the provisions of



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this Agreement shall prevail. The Concessionaire further undertakes that any agreement between itself and the Contractors and any other Person(s), or between any of these entities, shall contain such terms and conditions as may be necessary to ensure that the counter-party thereto is required to perform its part of the agreement(s) in conformity with the Concessionaire's obligations under this Agreement.

b) The Concessionaire shall

Provide to the Authority true copies of every transaction documents duly executed, which are likely affect the interests of Authority either financially, or subleasing of major areas or conceptually against interests of APSRTC/ State between Authority and Sub-Contractors and any other person(s), including vendors of goods and services, or between any of these entities to which Concessionaire is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto within 15 (fifteen) days of such execution or amendment etc.

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

ii) Comply with its obligations set out in the Transaction Documents.

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

iv) Not enter into any material contract, including without limitation, any EPC contract or agreement with any affiliated party related to or in connection with the Project unless the principal terms including consideration is reviewed, assessed and approved by the Authority prior to the execution of any such contract.

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### **Section 5.1.6 Reporting Requirements**

The Concessionaire shall provide to the Authority and the Nodal Officer reports on a regular basis during the Concession Period in accordance with the provisions of Article 7 and as set forth elsewhere in the Agreement and at all times provide the Authority such information, data and documents as the Authority may reasonably require.

### **Section 5.1.7 Accidents and Safety**

The Concessionaire shall

- i) Develop, implement and administer a surveillance and safety program for the Project and the users thereof and its and the Contractors' labour and personnel engaged in the provision of any services under any of the Project Contracts, including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice.
- ii) At its cost, ensure safe conditions at the Project site for the users and Authority and take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims.
- iii) Maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.
- iv) It is the complete responsibility of the Concessionaire to prevent accidents and to ensure safe conditions at the project site. In case of accidents the Concessionaire shall bear all the costs and pay necessary compensation.

The Concessionaire shall at all times indemnify and keep indemnified Authority, its employees and representatives against all losses, damages, liabilities, suits, action, legal proceedings, claims, demands or otherwise howsoever arising out of any claims made by the Central and / or State Government and/or Municipal, Local and/or other Authorities and/or by all / any users and/or customers of the project facilities and or by any other third party as a result of or in consequence of any act or omission or negligence of whatsoever nature by the Concessionaire, its employees, its agents, including without prejudice to the generality of the foregoing any accident or loss or damage/injury to life and /or property.

### **Section 5.1.8 Taxes and Charges**

The Concessionaire shall

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- i) pay in a timely manner all taxes (including property tax), duties, levies, cess and charges including but not limited to income tax, sales tax, service tax, excise duty, customs duty and Octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project.
- ii) pay all charges, taxes, Stamp Duties, Registration, fines, late fees and other outgoings in relation to the use of utilities and services by the Concessionaire or its Contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility. The Property Tax shall be paid by the Concessionaire in the name of the Authority (APSRTC) and the receipts in original shall be furnished to APSRTC immediately.
- iii) The Concessionaire shall pay in a timely manner the license fee and other fee as specified in Article 8 and schedule of payments to the Authority and taxes thereon, without any deductions, as the Authority is exempted from TDS. In other words, the amount as per agreement to be paid to the Corporation towards the contract shall be paid in Toto.

#### **Section 5.1.9 Foreign Exchange Risk**

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

#### **Section 5.1.10 Contractual Arrangements**

The Concessionaire shall undertake development of the Site and enter into Contractual Arrangements in this behalf in accordance with the provision of this Agreement.

#### **Section 5.1.11 Environment Management Plan**

The Concessionaire shall comply with its obligations under the Environment Management Plan.

#### **Section 5.1.12 Marketing**

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

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### **Section 5.1.13 Others**

- a) The Concessionaire shall
- i) Maintain requisite insurance in accordance with the provisions hereof.
  - ii) provide all assistance to the Authority and/or the Nodal Officer as they may reasonably require for the performance of their duties and services under this Agreement;
  - iii) be responsible for safety, soundness and durability of the Project including all structures forming part thereof and their compliance with the Specifications and Standards.
- b) provide representatives of the Authority, including those concerned with safety, security or environmental protection, at reasonable time and upon reasonable notice, access to the Project Site to review progress of construction and the operations of the Project and to ascertain compliance with any of the requirements of the Agreement. Provided that any failure on the part of the Authority to inspect any works shall not, in relation to such works, (i) amount to any consent or approval of the Authority or shall the same be deemed to be a waiver of any of the rights of the Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work.
- c) provide or arrange at its cost during the Concession Period all on-site infrastructure including power, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal and other utilities and facilities required from time to time in respect of the construction, operation and maintenance of the Project/Project Facilities and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.
- d) if required, at its cost install meters to measure the consumption of power and water. The Concessionaire shall, at its cost, make alternate and back up arrangement for power, including but not limited to installation of generators and for water, subject to the Concessionaire obtaining Applicable Permits if any.
- e) hand over the Project Site and Project Assets free from encumbrances and encroachments to the Authority or its nominated agency upon the expiry / termination of the Concession Period/this Agreement. In the event of non-

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performance of this clause by the Concessionaire, the Authority shall have deemed right to take the position of the said property and perform the require to be in position with all other facilities without any liabilities from that date onwards.

#### **Section 5.1.14 Additional Obligations during the Construction Period**

The Concessionaire shall

- a) promptly commence construction and complete the project in accordance with the provisions of this Agreement, including the Project Implementation Schedule and the Specifications and Standards, the terms of Applicable Permits, the Applicable Laws and Good Industry Practice and achieve the Project Completion.
- b) entrust responsibility for project management and construction to professionally competent Persons;
- c) give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- d) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Nodal Officer and ensure completion of the construction of the Project in all respects in accordance with the provisions of this Agreement;
- e) confine its activities to the Project Site and to any additional areas arranged by the Concessionaire at its cost and not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for its failure to do so;
- f) Commence commercial operations of the Project facilities only upon issuance of the Completion Certificate. Project Completion Certificate shall be issued by Authority upon submission and satisfactory completion of the following by the Concessionaire in respect to the Project Facilities;
  - i) Construction of compound wall in accordance with Construction Requirements and Approved Project Development Plan;
  - ii) Upon completion of construction of the buildings, including toilets, external walls, utilities such as water supply, power, drainage, sewerage etc., and
  - iii) Completion of driveways, walkways, landscaping activities in accordance with the Approved DPR (Detailed Project Report).

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- iv) Obtained no objection certification from Andhra Pradesh State Disaster Response and Fire Services Department and other required permits & licenses for Operating and Maintaining the Project.
- g) The Concessionaire shall, at its cost and expense, purchase and maintain during the construction period such insurances as are necessary.
- h) The Concessionaire shall provide to the Authority for every calendar quarter, one hour digital video recording covering the status and progress of Development Works in that quarter. The first such video recording shall be provided to the Authority within 15 days of the Appointed Date and thereafter, no later than 15 days after the close of each quarter.

**Section 5.1.15 Obligations related to Operations and Maintenance**

The Concessionaire shall

- i) Operate, maintain, manage, repair the Project Facility at its cost and risk during the Operations Period in accordance with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice.
- ii) Upon achieving Project Completion, promptly commence Commercial Operations, with intimation to the Authority.
- iii) Employ qualified Persons to efficiently operate and manage the Project Facility in accordance with applicable laws.
- iv) Make available all necessary financial, managerial, technical, technological and other resources for the operations and, maintenance of the Project to conform to the requirements of this Agreement.
- v) Replace, repair, replenish or renew, as the case may be, the materials, goods, machinery, equipment, capital components and spares etc. and undertake preventive maintenance at its cost as necessary to carry out efficient operations and maintenance of the Project Facility and to provide adequate service standards and to ensure that the Project/Project Facilities are transferred to the Authority in a good condition except for the normal wear and tear having regard to their life, construction, use and the period of use, in accordance with the terms of this Agreement.
- vi) Ensure maintenance of proper and accurate records, data and accounts relating to the operations of the Project Facilities and the revenues earned there from.

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- vii) Comply with all Applicable Laws and applicable permits including those relating to safety, health, sanitation, environment, labour and hazardous and dangerous materials.
- viii) promptly and diligently repair, replace or restore the Project Facility or part thereof which may be destroyed, lost or damaged.
- ix) Except as provided or authorized under this Agreement, not, without the prior written consent of the Authority, remove or replace any asset comprised in the Project Facility.
- x) Ensure timely payments to the Authority in accordance with the provisions of this Agreement.
- xi) Carry out the commercial operations and provide the services and facilities as per the requirements of this Agreement and make changes therein only with the prior written approval of the Authority.
- xii) Not undertake, cause or suffer the undertaking of Prohibited Activities by any person at the Site or the Project Facilities or part thereof.
- xiii) Not to undertake such activities that are competitive to the Operations and activities of APSRTC.
- xiv) The Concessionaire shall, at its cost and expense, purchase and maintain during the operations period such insurances as are necessary.

**Section 5.1.16 Obligations relating to Change in Ownership**

- a) The Concessionaire shall not undertake or permit any Change in Ownership except with the prior written approval of the Authority.
- b) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that during the Concession Period:
  - i) 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 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or
  - ii) 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 constitute a "Change in Ownership" requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this regard

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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 the Authority.

For avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority 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.

## **Section 5.2 Obligations of Preferred Bidder**

### **Section 5.2.1 Shareholding Lock-In**

The Preferred Bidder/ Consortium, as a whole, shall hold a minimum 51% of the paid-up equity share capital of the Concessionaire at all times during a period that shall not be less than Ten (10) years from the date of signing of this Agreement. In case of Preferred Bidder being a Consortium, the Lead Member (M/s \_\_\_\_\_) shall hold at least 26 % of the paid-up equity share capital of Concessionaire till such time that shall not be less than Ten (10) years from the date of signing of this Agreement and each of the other constituent member of the Consortium shall hold at least **10%** of the paid-up equity share capital of Concessionaire till such time that shall not be less than **Ten (10) years** from the date hereof. No change in composition of the Concessionaire shall be made for a period **of Ten (10) years (the "Lock-in Period")** from the date hereof. Any transfer of such share capital after such **Ten (10) years** shall require the prior written approval of the Authority, which shall not be unreasonably denied provided, nothing contained in this sub-section shall preclude or prevent pledge of the Preferred Bidder's/ Consortium's shares in the Concessionaire in favour of Lenders as security for the Financial Assistance and enforcement thereof in accordance with this Agreement and/ or the Financing documents. After the expiry of the lock-in period, the Lead Member may be replaced by another Lead Member, provided that such lead member holds at least 26% of the paid-up equity share capital of the Concessionaire. For the avoidance of doubt, the lead member shall, at all times, during the Concession period, hold at least 26% of the paid up equity share capital of the Concessionaire.



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### **Section 5.2.2 Funding Obligation**

The Preferred Bidder shall ensure that the Concessionaire has, at all times, sufficient funds to ensure the due discharge of its payment obligations to the Authority under this Agreement. In the event the Concessionaire is not able to discharge its payment obligations to the Authority under this Agreement on account of lack of funds, the Authority shall have the right to claim and recover from the Preferred Bidders (jointly and severally) and the Preferred Bidders shall have the obligation to pay, all such amounts that are due and payable by the Concessionaire to the Authority under this Agreement.

### **Section 5.2.3 Obligations of Concessionaire**

The Concessionaire shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of the Concessionaire's activities:

- a) Timely preparation and submission of the DPR and the approved Designs and Drawings;
- b) Arranging finances for the Project, including mobilization of debt and equity;
- c) Procurement of all Applicable Permits for commencing and implementing the Project, and keep in force and comply with the conditions of all Applicable Permits for the development, operation and maintenance of the Project and upon Termination, transfer of the Project to the Authority.
- d) Execution of Project Contracts in respect of engineering, procurement, construction, Operation and Maintenance of Project Facility.
- e) Timely implementation of the Project in accordance with the provisions of this Agreement, including the Specifications and Standards, the Applicable Laws, the terms of the Applicable Permits and Good Industry Practice. Time is the essence of the BOT Project.
- f) Compliance with and implementation of the Environment Management Plan;
- g) Marketing of the Project Facility;
- h) Compliance with the provisions of this Agreement relating to liability and indemnification;
- i) Implementation of measures for safety, security and protection of the works, property, life and materials at the Site and the environment.

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- j) Making payments towards Project Development Fee, First Instalment of Upfront Amount and Performance Security before signing the Concession Agreement and First instalment of Annual Premium, First instalment of Security Deposit on the 1<sup>st</sup> day of 3<sup>rd</sup> year from the effective date of Agreement, to Authority throughout the Concession Period as per the Agreement Conditions. The Concessionaire shall make timely payment of Annual Premiums and Security Deposit to the Authority.
- k) Maintain valid insurance throughout the Construction, Operation & Maintenance period of the project facilities.
- l) The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for the construction, development, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Concessionaire shall obtain all Applicable Permits and comply with the conditions there under for the procurement and use of such infrastructure facilities and utilities.
- m) The Concessionaire shall be free to design, develop, construct, operate and maintain any facility allowed under the provisions of this agreement, subject to applicable laws and applicable permits.
- n) The Concessionaire shall submit a certificate of structural safety issued by any recognized University or authorised agency to the Authority certifying that the newly developed Project Infrastructure is in conformity with safety standards in accordance with applicable Laws and applicable Permits.
- o) The Concessionaire shall levy, charge, demand and collect Fees from the users of the facilities being constructed as an obligation under this agreement
- p) The Concessionaire shall, at its own cost and expense, maintain development obligations.
- q) Transfer the Project Assets to the Authority upon Termination by efflux of time or earlier termination, in accordance with the provisions of this Agreement;
- r) Always act in a manner consistent with all other provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement or Applicable Laws and Applicable Permits;
- s) In addition to the general and specific obligations of the Concessionaire mentioned herein, the Concessionaire, during the Concession Period, shall

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also be liable and under obligation to perform those incorporated in the Request for Proposal.

#### **Section 5.2.4 Obligations relating to management of the Concessionaire**

The Concessionaire shall not, without the prior written approval of the Authority, undertake or cause to be undertaken, any action for all or any of the following or any matter incidental or consequential thereto:

- a) to alter or add to the provisions of the memorandum of association;
- b) to alter or add to the articles of association;
- c) to change the name of the Concessionaire;
- d) to reduce the share capital;
- e) to commence any new lines of business;
- f) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 or to apply to a court to wind-up the Concessionaire or to wind-up the Concessionaire voluntarily or for various other matters pertaining to the winding up of the Concessionaire;
- g) for various other matters pertaining to the winding up of the Concessionaire;
- h) to remove the registered office of the Concessionaire outside the limits of the State where it is located;
- i) to create any mortgage and/ or to sell or transfer any part or whole of the undertaking of the Concessionaire or any of the Project Assets;

#### **Section 5.3 Obligations of Authority**

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 Authority agrees and undertake as under:

##### **Section 5.3.1 Applicable Permits**

- a) The Authority shall, at the request of the Concessionaire, grant Applicable Permits with reasonable promptness that are in its authority and capacity to grant and, as the case may be, assist but without guarantees and/or without assuming any responsibility in that behalf and issue recommendatory letters

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and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits from Government Authorities, Authorizations to import equipment and materials required for the Project and immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project, including renewals thereof; provided that nothing contained in this provision shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Concessionaire (i) provides to the Authority all necessary relevant details and other information as may reasonably be required by the Authority and (ii) keeps the Applicable Permits in force and effect throughout the Concession Period.

- b) Upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, sewerage, electricity and telecommunication facilities at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities.

### **Section 5.3.2 Tax Benefits**

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

### **Section 5.3.3 Off-Site Infrastructure**

The Off Site requirements (Road, Power and Water) are being provided by different Government Agencies. The Concessionaire is required to apply to the concerning Authorities and obtain the necessary approvals on his own. The Authority will extend all necessary support to the Concessionaire based on written request of the Concessionaire.

### **Section 5.4 Change of Land Use**

The Govt. of Andhra Pradesh have issued GO. MS No. 141 of MAUD dated 06.06.2016 regarding change of land use of all vacant lands of APSRTC converting the land use into multiple use Zone. If still any other permissions are needed related with type of project the Authority will make an application to the

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extent needed to the concerned Authorities. The Concessionaire shall obtain any such permissions in connection with land use conversion. In case of refusal of any conversion of land use the Authority is not responsible for the same. Any payments need to be paid to government or local bodies in this connection have to be borne by the Concessionaire only.

## **Section 5.5 Obligations of the Authority and the Concessionaire**

### **Section 5.5.1 Compliance with Laws and Regulations**

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

### **Section 5.5.2 Rights to Documents**

#### **a) Authority Documents**

Documents and computer programs or copies thereof, if any, provided by the Authority to the Concessionaire, shall always remain the property of the Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Authority, be returned by the Concessionaire to the Authority on the Transfer Date.

#### **b) Concessionaire Documents**

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project /the Project Assets shall be handed over by the Concessionaire to the Authority free of cost on the Transfer Date.

#### **c) Obligation to Cooperate**

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

## **Section 5.6 Others**

- a) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Authority, trade union, environmental group or any other Person or organization, which might reasonably be expected to

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materially and adversely affect the Project Assets, the implementation of the Project or the enjoyment by the Concessionaire of its rights and benefits under the Concession granted herein, the Authority shall, if requested by the Concessionaire in writing, on a best effort basis, take such reasonable action as is available to it to challenge and to mitigate such effects.

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

## **ARTICLE 6 PROJECT IMPLEMENTATION**

### **Section 6.1 DPR and Designs**

- a) The Concessionaire, within **4 (four) months** after grant of the Authorisation / Concession, shall at its cost prepare and submit to the Authority draft **DPR** and Designs of the Project.
- b) The DPR shall, *inter alia*, set out the full details of the developmental activities proposed to be carried out by the Concessionaire for implementation of the Project, proposed order, sequence and method of working, the steps, procedures and processes undertaken and to be undertaken by the Concessionaire, the Project Implementation Schedule with the Project Milestones, detailed schedule bar charts / PERT networks with milestone dates, master plan and building plan of the Project Facility, including the site development, proposed construction activities, names of likely Subcontractors/ vendors etc., plans for mobilization of finances, plans for marketing the Project Facility, proposed arrangements for operating and managing the Project Facility, the organisation chart of the Concessionaire, proposed Sub-authorisations and such other similar details which define and clarify the method and direction of the Concessionaire's plans for the implementation of the Project.
- c) The Authority shall review the DPR and Designs submitted by the Concessionaire for conformity with the Specifications and Standards and, subject to the provisions of sub-section (d) herein below, communicate its

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approval immediately. The Authority may in consultation with the Concessionaire prescribe a schedule for submission, clarifications and approval of such plan.

- d) In the event that Authority has any objection to the DPR and Designs or any part thereof, it shall promptly notify the Concessionaire of its objections, seek clarifications or suggest changes or modifications or corrections thereto in writing. Thereupon, the Concessionaire shall provide necessary clarification to the Authority or re-submit revised DPR and Designs or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the Authority.
- e) If the Authority does not object to the DPR submitted to it by the Concessionaire within two months of submission, the Authority shall be deemed to have approved such DPR and the Concessionaire shall be entitled to proceed with the Project accordingly. However, the Concessionaire expressly, agrees and confirms that non-communication of any comments by the Authority in terms of above clause shall not mean or be construed to mean that the Authority's right to notify the objections / comments / or to suggest modifications in DPR is forfeited. The Authority shall be at liberty to notify its objections / observations and comments even after the expiry of the 60 days period and the Concessionaire shall be liable and responsible to address / incorporate to notified objections / observations to the extent feasible in the project implementation.
- f) Notwithstanding any express or deemed approval or failure to review by or the comments or observation of the Authority in relation to the DPR and Designs, the Concessionaire shall be solely responsible for any defect and/or deficiency therein or any part thereof and accordingly the Concessionaire shall at all times remain solely responsible for the technical feasibility, operational capability and reliability of the Project and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- g) The Concessionaire may, with the prior written approval of the Authority, make or permit alterations in or addition to any DPR and Designs, specifications and calculations approved or deemed to be approved by the Authority given in writing under this Agreement.
- h) Any design, drawing or specification provided by the Authority to the Concessionaire shall only be indicative and the Concessionaire shall accept the same at its sole risk, cost and consequence.

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- i) The Authority shall not be responsible or liable in any manner for the accuracy, completeness or otherwise of the DPR and Designs or the construction and implementation of the Project/Works by the Concessionaire on the basis thereof, irrespective of any perusal or review thereof or comment thereon by the Authority, any Government Authority. In any case the Built-up area provided in DPR shall not exceed the applicable permissible area as per the Municipal By-laws
- j) The Concessionaire needs to submit DPR and obtain approval from the Authority within the Compliance Period.

**Section 6.2 Development of Site and Implementation of Works**

- a) The Concessionaire shall commence the Works immediately after taking necessary sanction of the competent authority for the BOT Project and building plans.
- b) The Concessionaire shall, by itself or through its Subcontractors, at its cost and risk undertake the development of the Site, including land filling, levelling, clearing, shifting of utilities, landscaping and demarcation and division of the Site etc. for establishment of the Project Site, in accordance with the provisions of this Agreement, including the Specifications and Standards and Good Industry Practice.
- c) The Concessionaire shall arrange at its cost the infrastructure facilities, including but without limitation, the power and water supply, necessary for carrying out the Construction, Operation and Maintenance of Project Facility
- d) The Concessionaire shall, by itself or through Subcontractors and Sub-Concessionaires, at its cost and risk establish, install, equip, provide, construct, as the context admits or requires, and commission the Facilities and Services in accordance with the requirements of the provisions hereof, including the Specifications and Standards and provide the same to the users/others in an equitable, fair and non-discriminatory manner.
- e) The Concessionaire or the Persons claiming through or under it, as the case may be, shall be responsible for doing all such acts, deeds and things as may be necessary and expedient for establishing the Project Facility , including, without limitation, procuring at its/their own risk and cost all goods, materials, things and services necessary for the development and construction thereof and arranging at its/their cost the construction power, water, materials and labour required for establishing the Project Facility, without in any way relieving the Concessionaire of its obligations as set out in



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this Agreement. Subject to the provisions of Section 6.3 (c) hereof the Concessionaire shall not be entitled to nor shall it seek or raise any demand for any extension of time for completion of construction on account of any shortage of any material or resources or delay in procurement of the same for any reason whatsoever.

- f) The Concessionaire shall on and from the Compliance Date, in accordance with the Specifications and Standards, develop the Site and requisite infrastructure facilities so as to:
- i) efficiently manage, make available, maintain and operate the Project Facility consistent with prudent standards of safety and technical sufficiency;
  - ii) provide the necessary resources for the operations and maintenance of the Project Facility
  - iii) provide non-discriminatory access of the Facilities and Services within the Project Facility to the users and other persons.
- g) The Concessionaire shall complete the construction of 50% of total possible built up area of the Project Facilities (as per approved DPR) within 2 years from the Agreement date, which may be extended under the provisions of this agreement or by mutual agreement of the Parties.
- h) The Concessionaire shall not construct more than the built up area as per approved DPR or Plans approved by Government/ local bodies. The Concessionaire shall be responsible for all consequences if constructs without the approval of Municipal Corporation/ Local bodies and without consent of Authority and liable for termination of agreement.
- i) The Concessionaire shall construct at its cost, an alternate structure to the existing structure in use in the project site, if any, at a place specified by the Authority, as per standard specifications of the Authority.

**Section 6.3 Project Completion / Minimum Obligations /Other Obligations**

- a) As a minimum development obligation the Concessionaire is required to complete construction of a minimum of 50% of the total possible built up area of the Project Facilities as per the approved DPR within 2 years from the execution date of the Agreement.

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The Concessionaire shall construct at its cost, an alternate structure to the existing structure in use in the project site, if any, at a place specified by the Authority, as per standard specifications of the Authority.

- b) The Project shall be deemed to be complete only when **50%** of the total possible built up area of the Project Facilities as per the approved DPR is constructed by the Concessionaire and a Completion Certificate to that extent is issued by the Authority, on request. The Authority shall issue a completion certificate specifying that in the opinion of the Authority a minimum of **50%** of the total possible built up area of the Project Facilities as per the approved DPR are completed/ constructed. The obligation of the Authority here in is limited to certify that the said project facilities are completed/ constructed.
- c) The Completion Certificate shall be issued by the Authority on Concessionaire's request. If the Authority, doesn't respond to within 15 days of receipt of the request from the Concessionaire, then the Completion Certificate is deemed to have been issued by the Authority.
- d) Notwithstanding the foregoing, in the event of any unforeseen delay in the issuance of the environmental clearance from the Ministry of Environment and Forests, GoI, the Authority shall, exercising reasonable and commercial discretion, extend the Construction Period by the period of such delay.
- e) The Concessionaire shall commence Commercial Operations only after issuance of Project completion certificate by the Authority.
- f) In addition to the Minimum Development obligation to Construct the Project Facilities having minimum of 50% of built up area (as per DPR) the Concessionaire shall, Construct and hand over free of cost, a Built up area of **200 Sft.** in the proposed development to APSRTC at a mutually agreed location for its exclusive use, on Project Completion. The said space shall have required **toilet facility** and a parking of **2 Car** bays confined in one location in the cellar/basement. The Built-up area shall include internal electrical wiring, painting, flooring, power & water supply connection with sub metres etc. The interiors and furnishing of the space shall be the responsibility of APSRTC. APSRTC shall bear the power, water and other maintenance charges for the said area. Also the Concessionaire shall construct compound wall of required height along APSRTC boundary at his own cost.
- g) The Concessionaire shall submit a certificate of structural safety issued by any recognized University or authorised agency to the Authority certifying that the

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newly developed Project Infrastructure is in conformity with safety standards in accordance with applicable Laws and applicable Permits.

#### **Section 6.4 Marketing of Project Facility**

- a) The Concessionaire shall be solely responsible for the marketing of the Project Facility. The Concessionaire shall be entitled to commence such marketing at its cost and risk from the Compliance Date and to accept advances, premium, booking amounts and other considerations from such users from such date; provided that Authority shall not be liable in any manner whatsoever to any Person in this behalf and the Concessionaire shall disclose the same to such Users.
- b) The Concessionaire shall ensure that the advertisement and marketing of the Project Facility is carried out in a manner that is consistent with and not in derogation of conflict with any terms or provisions of this Agreement and the Applicable Laws.

#### **Section 6.5 Operation and Maintenance of Project Facility**

##### **Section 6.5.1 O&M Works**

- a) Effective from date of Project Completion and until the end of the Concession Period the Concessionaire shall undertake or cause at its cost and risk the operation and maintenance of the Project Facility including the buildings, the common areas, the landscape and other spaces, the parking lots/spaces, the infrastructure, works, fire-fighting and other systems and the common services and facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards, Good Industry Practice, Applicable Laws and conditions of Applicable Permits, by itself or, subject to the provisions of Section 6.5.1 through O&M Contractor(s) or through suitable management/service contractors, without in any way relieving the Concessionaire of its responsibilities, obligations and liabilities as set out in this Agreement; provided that the O&M Contractors shall be appointed not less than 2 (two) months before the Scheduled Project Completion or Project Completion, whichever is earlier. Within 2 (two) weeks of the appointment of such contractors the Concessionaire shall inform the Authority of their appointment.
- b) The Concessionaire shall exercise appropriate control over the O&M Contractors and shall manage, direct, administer and supervise their working so as to ensure compliance with the provisions of this Agreement.

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- c) The Concessionaire shall at all times carry out or procure at its cost and expense the O&M Works and maintain (including routine, regular, periodic and preventive maintenance), provide, procure, manage, keep in good operating repair and condition, renew, replace, restore, rectify and upgrade to the extent reasonably necessary the Project Facility, normal wear and tear excepted, with the skill, diligence and expertise of operators of similar facilities and in conformity with the provisions hereof, including the Specifications and Standards and Good Industry Practice. All such maintenance, repair and O&M Works shall be carried out in such a way as to cause least inconvenience to users of the Project Facility.
- d) The Concessionaire shall carry out the operation and maintenance of the Project Facility with the objective of providing quality service standards and ensuring that the buildings, infrastructure, equipment, systems etc. are maintained in an excellent state perfect operating condition, repair and sanitation and that the Project Facility is transferred to the Authority upon expiry/Termination of this Agreement is in a good working condition, normal wear and tear expected, having regard to its construction, life and use. The operation and maintenance of the Project/Project Facilities so as to keep them in excellent operating condition is an essential condition of this Agreement.
- e) The Concessionaire shall provide, manage, operate and maintain the On-Site Infrastructure in accordance with the Specifications and Standards and Good Industry Practice such that the Project Facility is operated and run efficiently, smoothly, continuously and without any hindrance or inconvenience to the users thereof.
- f) The Concessionaire shall employ qualified and skilled personnel and manpower to efficiently Operate and Manage the Project Facility at its cost and consequence.
- g) The Concessionaire shall make appropriate arrangements for security at the Site and abide by the security regulations/procedures prescribed by the Authority or any Government Authority from time to time. The Concessionaire may secure assistance of the police force for maintaining security upon payment of routine charges for such services.
- h) The Concessionaire may charge a lump sum and/or periodic maintenance or service fees for the operation and maintenance services provided by it to the persons/users/entities availing the same.

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- i) The Concessionaire or the Persons claiming through or under it shall be free to determine the Tariff at market driven rates in respect of the use of the Project Facility or the goods, services, facilities or amenities provided thereat and shall have the right to demand, collect, retain and appropriate and revise the Tariff; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.

### **Section 6.5.2 Subcontracting, Sub-Leasing, Licensing & Franchising**

- a) Subject to compliance with the provisions of this Agreement and the Applicable Laws, the Concessionaire shall be entitled to undertake the commercial development and use of the Project Facility. For the avoidance of doubt the Concessionaire shall have no right and authority to sub-lease the Project Site to any person, in full or part in any manner, form, arrangement, device whatsoever, provided, however, the Concessionaire may, subject to the provisions hereof, sub-lease or sub-let the built-up areas constructed by it at or on the Project Site.
- b) Subject to sub-section (a) above, the Concessionaire may, effective from the Operations Date, grant subleases (of built-up spaces) or enter into letting, sub-letting, Authorisations/ Concessions, franchising, management, service, subcontracting or other suitable arrangements such as contracts with Advertising Agencies, Cellular Operators etc. on mutually agreed market driven terms and conditions (hereinafter the **“Contractual Arrangements”**) with any Person of its choice (hereinafter the **“Contractual Counter Parties”**) for carrying on its business of managing, marketing and operating and maintaining the Project Facility; provided that the use of Project Facility shall not comprise the Prohibited Activities as per the applicable laws for the site jurisdiction and also not in competition with the main Operations and core business activities of the Authority including logistics.
- c) The Concessionaire may determine, demand, collect, revise, retain and appropriate the Tariff for such Contractual Arrangements at rates determined by the Concessionaire;
- d) All Contractual Arrangements shall be subject to the following terms and conditions:
- i) such Contractual Arrangements shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions of this Agreement;

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- ii) the terms and conditions of this Agreement are complied with and as applicable form a part of such Contractual Arrangements and the Contractual Counter Parties, if any, shall be bound by such terms and conditions and be liable and accountable in respect thereof;
- iii) the duration of such Contractual Arrangements shall be limited to and be co-terminus with/not exceed the Concession Period herein;
- iv) all such Contractual Arrangements shall be determined and terminated automatically and simultaneously on the expiry, determination or termination of this Agreement / the Concession / the Concession Period, as the case may be;
- v) such Contractual Arrangements shall come into effect and operation only upon the Concessionaire achieving project completion in accordance with the provisions of this Agreement unless otherwise authorised by the Authority in writing;
- vi) the Concessionaire shall at its cost carry out or cause the operation and the execution and existence of Contractual Arrangements which shall not relieve the Concessionaire of its liability or obligations as set out in this Agreement;
- vii) the maintenance of the Project Facilities, including the common areas and common facilities and amenities; provided that the Concessionaire shall be entitled to charge, collect and retain lump sum / monthly / periodic maintenance fees and charges at market driven rates in respect thereof from the Transferees, users and other Persons availing the services and facilities;
- viii) the execution of Contractual Arrangements shall not relieve the Concessionaire of its liability or obligations as set out in this Agreement;
- ix) Each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement or the Land Lease Deed on the one hand and the Contractual Arrangement on the other hand, the provisions of Agreement or the Land Lease Deed, as the case may be, shall prevail and such Contractual Arrangement shall stand modified to that extent;
- x) The Concessionaire shall submit to the Authority for its information and record either a notarised true copy of the agreements/documents or a copy duly certified by Statutory Auditor/ Authorised Representative

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relating to the Contractual Arrangements within 60 (sixty) days of the date of execution, modification or amendment thereof.

- xi) The Concessionaire's failure to comply with this Section 6.5.2 shall be at its cost, risk and consequence and constitute Concessionaire Event of Default that shall entitle the Authority to Terminate this Agreement in accordance with the provisions of Article 16 hereof.

### **Section 6.5.3 No Liability of Authority for Contractual Arrangements**

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

### **Section 6.6 No Breach**

- a) The Concessionaire shall not be considered to be in breach of its obligations relating to the Project nor shall it incur or suffer any liability if and to the extent performance of any such obligations is affected by or on account of any of the following:
- i) Force Majeure Events, subject to provisions of Section 14;
  - ii) A material delay, impediment, default or prevention due to or caused by the Authority or any Government Authority;
  - iii) Compliance with the instructions or directions of the Authority or any Government Authority other than instructions issued as a consequence of a breach or default by the Concessionaire of any of its obligations hereunder;
  - iv) Extensions granted under the provisions of this Agreement, or specific extensions granted by the Authority or extensions made by the mutual agreement of the Parties;
  - v) Measures taken to ensure the safe use of the Project Facilities except when the unsafe conditions have been occasioned by the Concessionaire's failure to perform its obligations under this Agreement.

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- b) In the event of delay due to circumstances set forth in sub-section (a) above, the Concessionaire shall be relieved of its obligations to the extent of such delay and, upon written request, be granted an extension of the time equal to the period of delay by the Authority, for fulfilling its obligations relating to the Project Facility.
- c) Notwithstanding the above, the Concessionaire and the Authority may, mutually agree to extend the time period mentioned hereinabove for reasons that they may deem expedient in the interest of the Project.

### **Section 6.7 Damages for delay in implementation of the Project**

The Concessionaire shall complete the construction of 50% of total possible built up area of the Project Facilities (as per approved DPR) within 2 years from the execution date, which may be extended under the provisions of this agreement or by mutual agreement of the Parties. In case of failure, the Concessionaire shall pay damages to the Authority a sum calculated at the rate of **0.2%** (zero point two per cent) of the amount of Performance Security for delay of each day subject to a maximum of **20%** (twenty per cent) of the amount of Performance Security, unless such failure has occurred due to Force Majeure or for reasons solely and directly attributable to the Authority.

## **ARTICLE 7 PROJECT MONITORING**

### **Section 7.1 Nodal Officer**

- a) The Authority shall nominate a Nodal Officer from their Engineering Department for monitoring the Progress of the Project. The concerned DPTO can also co-ordinate and monitor the Progress of the Project. The Nodal Officer shall monitor the implementation of the Project, review the DPR and the Designs and Drawings, conduct periodic verification of the progress in the construction on behalf of the Authority, and assist the Authority in issue of the Provisional and/or the Completion Certificate. The Nodal Officer shall pursue with the Concessionaire for submission of periodic reports (at least once every quarter) in respect of its functions.



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- b) In case any dispute arises in performance of functions of the Nodal Officer, the Authority reserves the right to refer the matter to the Chief Civil Engineer of the Authority.
- c) On the request of the Concessionaire, the Authority shall nominate one or more Officer/s of the Authority as Nodal Officer/s in addition to the Nodal Officer from its Engineering Department for coordination to achieve the objectives of this Agreement. The scope of work for such Nodal Officer/s shall be expressly specified by the Authority.

## **Section 7.2 Reporting and Inspection**

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

### **a) Construction Period Reports**

- i) The Concessionaire shall within 30 (thirty) days after the execution of the Contract provide to the Authority / Nodal Officer, a copy of the construction schedule created using network techniques. A detailed explanation of the construction methodology, outlining the quality assurance, safety and surveillance plan shall also be included.
- ii) The Concessionaire shall provide to the Authority/ Nodal Officer a monthly progress report during the Construction Period, which shall contain the following information

Summary of Progress: summary of the progress of the Project for that month which shall detail:

- 1) any areas of significant concern and the action being taken to resolve any significant difficulties;
- 2) the actual progress made during that month against the construction schedule including a description in reasonable detail of the work carried out;
- 3) any matters which have come to light which are likely materially and adversely to affect the construction of the Project;
- 4) any potential or actual deviations from the construction schedule, the Specifications and Standards and Good Industry Practice or otherwise confirmation that construction is proceeding in accordance therewith;
- 5) a commentary on the progress of construction as against the business plan;

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6) areas of concern or problem or bottlenecks, impact and corrective action plans, revised resource planning, details. The critical path schedules shall be updated and included as part of this report in order of priority.

Completion: details of any changes to the proposed date of completion of construction and the reasons for such changes; and

Government Approvals: written confirmation that all Applicable Permits then required are in full force and effect including a list of such permits.

- iii) The Concessionaire shall promptly carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Authority/Nodal Officer and ensure construction of the Project/Project Facilities is in all respects in accordance with the provisions of this Agreement.
- iv) The Concessionaire shall provide to the Authority for every calendar quarter, one hour digital video recording covering the status and progress of Development Works in that quarter. The first such video recording shall be provided to the Authority within 15 days of the Appointed Date and thereafter, no later than 15 days after the close of each quarter.

**b) Operation Period Reports**

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

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

**c) Other Project and Financial Information**

The Concessionaire will provide the following information to the Authority promptly after becoming aware of it:

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

**d) Additional Information**

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

**e) Inspection**

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

Provided that any impediment on the part of the Authority / Nodal Officer, the concerned Government Authorities to inspect any work, material, equipment and workmanship etc. shall not, in relation to such work etc.

- i) amount to any consent or approval of the Authority nor shall the same be deemed to be a waiver of any of the rights of the Authority under this Agreement; and
- ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work etc.

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## **ARTICLE 8 FINANCIAL COVENANTS**

### **Section 8.1 Financing for Project**

- a) The Concessionaire agrees and undertakes to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project.
  
- b) The Concessionaire may assign its rights, or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including right, and interest under this Agreement, in and to the Project Assets (excluding the land), and its right to receive Tariff in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the lenders are made aware of the same.
  - i) Provided that the Authority shall be informed by the Concessionaire as to the creation of any Security Interest in favour of the Lenders, together with the Lenders particulars within a period of 14 days from the date such Security Interest comes into existence and provide to the Authority within such time notarized true copies of documents/agreements relating thereto. Failure to do so shall amount to an event of default on the part of the Concessionaire and any consequential failure or inability on the part of the Authority to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Agreement, if any required, shall be at the risk and responsibility of the Concessionaire only.
  - ii) Provided further in the event of Termination of this Agreement by efflux of time or otherwise, such assignment/Security Interest shall stand extinguished upon payment of compensation by the Concessionaire to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement. The Concessionaire shall primarily be responsible to ensure that the prospective lenders are made aware of this provision and a suitable provision to this effect is incorporated in the financing & security documents to execute between the Concessionaire and the lenders.

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- iii) Provided further, nothing contained in sub-section (b) of this Section 8.1 shall (i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorize or be deemed to authorize the Lenders to implement and execute Project themselves and (iii) under any circumstances amount to any guarantee from or recourse to the Authority.
- c) Except as stated in sub-section (b) above or elsewhere in this Agreement, the Concessionaire shall not assign its rights, interest or obligation or create a Security Interest with respect to its rights under the Agreement or any part thereof in favour of any Person without the prior written consent of the Authority.
- d) The Authority shall assist the Concessionaire as necessary and mutually agreeable, to enable the Concessionaire to achieve Financial Closure, which do not materially and adversely affect the rights and interests of the Authority hereunder or impose additional material liabilities on the Authority.
- e) The Agreement entered by the Concessionaire with the lenders will be subordinate to the Concession Agreement entered by the Concessionaire with the Authority.

## **Section 8.2 Payments to Authority**

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

### **Section 8.2.1 Project Development Fee**

The Preferred Bidder shall pay to the Authority a one-time irrevocable and non-refundable Project Development Fee of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) plus applicable taxes in the form of a demand draft drawn in favour of Financial Advisor, APSRTC on any Nationalized Bank, payable at Vijayawada, within 90 days of the date of issue of LoI, a pre-condition to the execution of this Agreement.

### **Section 8.2.2 Upfront Amount**

The Upfront Amount is non refundable, irrevocable.

The Concessionaire shall pay the 1<sup>st</sup> installment of 50% of Upfront amount as a pre-condition for signing of Concession Agreement.

***Bidder***

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The balance 50% towards 2<sup>nd</sup> installment of Upfront Amount shall be paid on the 1<sup>st</sup> day of second year of commencement of Concession period.

The Concessionaire shall pay all applicable taxes on the Upfront Amount.

- i) Upfront Amount 1<sup>st</sup> Installment: The Concessionaire shall pay to the Authority the 1<sup>st</sup> instalment of Upfront Amount for Rs. \_\_\_\_\_ **(Rupees \_\_\_\_\_ only)** in the form of a DD/NEFT/RTGS/ online transfer in favour of "**Financial Advisor, APSRTC, Vijayawada**" payable at Vijayawada, as a pre-condition to the execution of this Agreement.
- ii) Upfront Amount 2<sup>nd</sup> instalment: The Concessionaire shall pay to the Authority the 2<sup>nd</sup> instalment of Upfront Amount for Rs. \_\_\_\_\_ **(Rupees \_\_\_\_\_ only)** in the form of DD/NEFT/RTGS/ online transfer in favour of "**Accounts Officer, APSRTC, \_\_\_\_\_ District**" payable at \_\_\_\_\_ on the date specified in schedule of payments.

### **Section 8.2.3 Annual Premium**

- a) The Concessionaire shall pay the initial Annual Premium for an amount of **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only)**, in the form of a DD/NEFT/RTGS/ online transfer in favour of "**Accounts Officer, APSRTC, \_\_\_\_\_ District** " payable at \_\_\_\_\_ on the date specified in schedule of payments, which is exclusive of GST and other applicable Taxes. The Concessionaire shall pay all applicable taxes.
- b) The Annual Premiums are different in each of the year. The Concessionaire shall make payments with respect to the Annual Premium in advance on Yearly basis as specified in schedule of payments. The Annual Premium shall be enhanced by
  - i) 5% every year over that of the previous year's Annual Premium up to the first 9 years of Concession Period (including the holiday period)
  - ii) 7% every year over that of the previous year's Annual Premium for the next 9 years and
  - iii) 9% every year over that of the previous year's Annual Premium for the balance Concession period.
- c) The amount of Annual Premium specified in the Schedule of Payments is exclusive of all Taxes. All applicable taxes shall be paid by the Concessionaire only.
- d) Holiday Period for payment of initial Annual Premium is 2 (two) years from the date of commencement of Authorisation Period, irrespective of early or

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late completion of the Project and /or commencement of Commercial operation.

#### **Section 8.2.4 Security Deposit**

- a) The Concessionaire shall pay Security Deposit for an amount of **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only)**, in the form DD/NEFT/RTGS/ online transfer in favour of **"Accounts Officer, APSRTC, \_\_\_\_\_ District"** payable at \_\_\_\_\_ on the date specified in schedule of payments.
- b) The Concessionaire shall make payments towards interest free, refundable Security Deposit for an amount as specified in schedule of payments. The Concessionaire shall keep 50% of Annual Premium of that year with the Authority towards Security Deposit, throughout the Concession Period. The Security Deposit shall be paid in advance to the Authority along with the Annual Premium.
- c) The Security Deposit amount shall be returned to the Concessionaire without interest, within six months from the Transfer Date after completion of the Concession Period, after adjusting dues / damages / liabilities of the Concessionaire if any to the Authority or on the Project and Project facilities.

#### **Section 8.2.5 Performance Security**

- a) The Concessionaire shall pay interest free Performance Security for an amount of **Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only)**, in the form DD/NEFT/ RTGS/ online transfer in favour of **"Financial Advisor, APSRTC, Vijayawada"** payable at \_\_\_\_\_, as a pre-condition to the execution of this Agreement.
- b) The Performance Security shall be refunded as per provisions of this Agreement.

#### **Section 8.3 Penalty for Delayed Payments:**

- a) If the Concessionaire fails to make the Upfront Amount, Project Development Fee, Annual Premium payments, Security Deposit and Performance Security to APSRTC, within the stipulated period, a penal interest @ 24% per annum will be levied on the outstanding amounts effective from and including the due date to excluding the date of payment.
- b) If the Concessionaire commits a default, the Authority reserves the right to immediately terminate the Concession Agreement without being bound by the

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cure periods and step-in right provisions under Article-16 of this Agreement and in such circumstances the Transfer Date shall be as specified in the note of termination so issued by the Authority.

- c) In the event, the payments are delayed beyond a period of 15 days from the scheduled date; it shall be construed as Concessionaire default in payment of Premium. When such a default occurs, the Authority shall issue a default notice to the Concessionaire requesting to remedy the situation within 15 days. If the situation is not remedied, at the end of 15<sup>th</sup> day a second default notice shall be issued allowing further period of 15 days. In the event that the Concessionaire fails to remedy the situation, the Authority shall at the end of 45<sup>th</sup> day (15+15+15 days) issue a Notice for Termination / Show Cause Notice for Termination (SCN) duly allowing further period of 15 days. In the event that the Concessionaire fails to remedy the situation, the Authority shall appropriate the amount due from the Security Deposit and/ or Performance Security and issue a Termination Order.

#### **Section 8.4 User Charges for Project Facilities**

- a) Effective from COD and during the Operations Period, the Concessionaire shall be
- i) entitled to fix at rates fixed / structured at the discretion of the Concessionaire from time to time, determine, revise, charge, demand, collect, recover, retain and appropriate the Tariff at market driven rates from users of Project Facility and for the goods, services, facilities and amenities etc. relating to the Project / Project Facilities / at the Site that are provided, arranged or procured by the Concessionaire by itself or under or pursuant to Contractual Arrangements;
  - ii) provide separate customized service or tariff packages or differential rates or special or seasonal discounts for specific, bulk, regular users or different category of users or during different parts of the year or for timely or early payment.
  - iii) Provided that the Concessionaire shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf.
- b) The Concessionaire shall have right to demand, collect, retain and appropriate, enforce and revise the Tariff effective from COD and during the



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Operations Period by itself or through any Person/ collection agents appointed by it.

- c) The Authority expressly recognises that if any user fails to pay Tariff, the Concessionaire may exercise all rights and remedies available under the Applicable Laws for recovery thereof, including the suspension, termination or cancellation of provision of the applicable service to the relevant defaulting user; provided that the same shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf.

## **Section 8.5 Audit and Account**

### **a) Appointment of Auditors**

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

### **b) Maintenance of Accounts**

- i) The Concessionaire shall, during the subsistence of this Agreement, maintain books of accounts in accordance with standard accounting practices and statutory requirements under the Indian laws recording all its receipts from all sources derived or on account of the Project, income, expenditure, payments and assets and liabilities, in accordance with this Agreement, the Applicable Laws and Good Industry Practice. The Concessionaire shall provide the Authority 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain.
- ii) The Concessionaire shall establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of data related to the construction and operation of the Project, including all such information

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which is necessary to verify costs and expenses incurred or revenues earned and to confirm the amount of Gross Revenue and to confirm that the Concessionaire is in compliance with its obligations under this Agreement. The Concessionaire shall provide copies of such reports to the Authority within 10 (ten) days of the end of every quarter.

## **ARTICLE 9 PERFORMANCE SECURITY**

### **Section 9.1 Performance Security**

- a) For securing the performance of the obligations of the Concessionaire/ Preferred Bidder under the RFP, the LoI, as per provisions of this Agreement, has along with the execution of this Agreement, paid to the Authority interest free, refundable Performance Security amount as specified in section 8.2.5.
- b) This Performance Security amount shall be refunded to the Concessionaire without interest as per section 9.1(c).
- c) The Performance Security shall remain in force and effect for a period commencing from the Execution Date till the end of 6 (six) months from the Project COD (the "**Performance Security Period**") or 4 years from the execution date whichever is later; provided, however, that the Performance Security shall not be refunded if the Concessionaire is in breach of this Agreement.

### **Section 9.2 Appropriation of Performance Security**

- a) Upon occurrence of a Concessionaire failure to meet any Condition Precedent or failure to make any payment which becomes due and payable to the Authority or on account of Concessionaire Default under and in accordance with the provisions of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the amounts due and payable as damages from the Performance Security.
- b) The decision of the Authority as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire. The Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Agreement is required to be provided in connection with any demand made by the Authority to recover such compensation from the Performance Security under

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this Agreement and that no document or any action shall be required other than the Authority's written demand as aforesaid.

- c) In the event of appropriation of the Performance Security by the Authority, in full or part, the Concessionaire shall within 30 (thirty) days of receipt of the notice from the Authority pay such amount to the Authority. The provisions of this Article 9 shall apply Mutatis Mutandi to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute a Concessionaire Event of Default, which shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 16 hereof.

### **Section 9.3 Release of Performance Security**

Subject to the provisions hereof, the Authority shall promptly refund the Performance Security amount at the end of 6 (six) months from the Project COD (the "**Performance Security Period**") or 4 years from the execution date whichever is later.

## **ARTICLE 10 ASSET OWNERSHIP AND CERTAIN RIGHTS**

### **Section 10.1 Ownership of Assets**

#### **a) Land Area**

The ownership of the Project Site shall always remain vested with the Authority. The rights of the Concessionaire in the Project Site shall only be that of a lessee as provided in this Agreement. It is clarified for the avoidance of doubt that title to the land shall vest exclusively with the Authority and the Concessionaire shall only have the right to develop and use the same in accordance with the provisions of this Agreement.

#### **b) Assets created or provided by the Concessionaire**

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

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## **ARTICLE 11 INSURANCE**

### **Section 11.1 Insurance Cover**

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

#### **a) Construction Period**

The Concessionaire shall, at its cost and expense, purchase and maintain during the Construction Period such insurances as are necessary, including but not limited to the following:

- i) Construction/builders'/contractors' all risk insurance;
- ii) Erection all risk policy
- iii) comprehensive third party liability insurance including injury or death to personnel of the Authority and others who may enter the Project Site;
- iv) workmen's compensation insurance;
- v) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

#### **b) Operations Period**

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

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

### **Section 11.2 Evidence of Insurance**

The Concessionaire shall, from time to time, furnish to the Authority copies of all insurance policies in respect of the Insurance Cover (or appropriate

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

**Section 11.3 Application of Insurance Proceeds**

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

**Section 11.4 Distribution of Insurance Proceeds upon Termination**

Whenever this Agreement is terminated following a Force Majeure Event and insurance proceeds are available in connection with the insurance policies to which the Concessionaire is entitled or should be entitled pursuant to this Agreement with respect to the Project, such proceeds shall, if not used to effect a restoration or to make repairs to the Project, be distributed first, (a) payment of dues / damages / liabilities, if any, to the Authority; and (b) for the payment towards indebtedness (actual or contingent) owing to the Lenders; (c) the residual amount, if any, to the Concessionaire.

**Section 11.5 Insurance Companies and Waiver of Subrogation**

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

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- b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Concessionaire.
- c) All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, *inter alia*, the Authority and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- d) The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, *inter alia*, the Authority and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**Section 11.6 Validity of the Insurance Cover**

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

**ARTICLE 12 REPRESENTATIONS AND WARRANTIES**

**Section 12.1 Mutual Representations and Warranties**

Each Party represents and warrants to the other Party that:

- a) it is duly organized, validly existing and in good standing under the laws of India;

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

**Section 12.2 Further Representations and Warranties of Preferred Bidder / Concessionaire**

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

- a) The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with, contravene, violate, result in the breach of, constitute a default under or accelerate performance of any agreement or instrument to which the Concessionaire is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order, injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;
- b) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Essential Material Adverse Effect;
- c) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;

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- d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which individually or in the aggregate have or may have Material Adverse Effect;
- e) No representation or warranty by the Preferred Bidder /Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government Authority in relation to Applicable Permits or otherwise contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- f) Each Consortium Member/the Preferred Bidder was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

Provided that whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Preferred Bidder /Concessionaire, during the Concession Period, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement, the Concessionaire shall immediately intimate the same to the Authority;

- g) In submitting its Proposal the Preferred Bidder/Concessionaire has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which individually or in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project.
- h) All rights and interests of the Concessionaire in the Project, the Project Facilities and Project Assets shall pass to and vest in the Authority or its nominated agency on the Transfer Date free and clear of all liens, claims, and encumbrances, without any further act or deed on the part of the Preferred Bidder/Concessionaire or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement; and



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- i) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Preferred Bidder / Concessionaire, to any person by way of commission or otherwise for securing the Authorisation / Concession execution of this Agreement or for influencing or attempting to influence any officer or employee of the Authority.
- j) Not barred or blacklisted by Government of Andhra Pradesh (GoAP), any other State Government in India (SG) or Government of India (GoI), or any of the agencies of GoAP / SG / GoI / from participating in any category of infrastructure projects (Construction, BOT or otherwise).

### Section 12.3 Waiver of Sovereign Immunity

Each Party hereto unconditionally and irrevocably:

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

### Section 12.4 Disclaimer

- a) Without prejudice to any express provision contained in this Agreement, the Preferred Bidder/Concessionaire acknowledges that prior to the execution of this Agreement, the Preferred Bidder/Concessionaire has after a complete and careful examination made an independent evaluation of the Project, the legal and contractual framework, the Applicable Laws and Applicable Permits

***Bidder***

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and the technical and financial aspects of the Project, the Specifications and Standards, the Project Site and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Authority, its consultants or any Government Authority, the market and demand conditions, information relating to users and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Preferred Bidder's/Concessionaire's complete satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, land acquisition etc. in respect of the Project Site.

- b) The Preferred Bidder / Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that the Authority, its consultants or any Government Authority shall not be liable for the same in any manner whatsoever to the Preferred Bidder/ Concessionaire or Persons claiming through or under the Preferred Bidder/Concessionaire.
- c) The Preferred Bidder / Concessionaire accepts that it is solely responsible for the verification of any design, data, design, documents or information provided to the Concessionaire by the Authority, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.
- d) The Preferred Bidder / Concessionaire shall be solely responsible for the contents of its Proposal, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Concessionaire for implementing the Project.
- e) The Preferred Bidder / Concessionaire is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it.

## **ARTICLE 13      LIABILITY AND INDEMNIFICATION**

### **Section 13.1      Liability of Concessionaire**

Notwithstanding anything to the contrary contained in this Agreement,

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- a) in addition to the Concessionaire's liability and obligations and the Authority's remedies provided elsewhere in this Agreement, the Concessionaire shall be solely responsible for any loss of or damage to the Project and the Project Assets, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Authority:
- i) during the Concession Period resulting from any negligent act or omission of the Concessionaire, the Contractors, the Contractual Counter Parties or any other Person and their respective employees, agents, contractors and representatives.
  - ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Concessionaire, Contractor or Contractual Counter Parties, or non-performance of any term, condition, covenant or obligation to be performed by the Concessionaire, Contractor or Contractual Counter Parties under this Agreement and the Transaction Documents.
- b) The Concessionaire shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence, riots / bundhs / agitations or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with development control regulations of the relevant local authorities from time to time, building bye laws as may be applicable, other Applicable Laws, regulatory requirements of Government Authorities, Specifications and Standards or any other matter) for which the Concessionaire is liable or which is attributable to the Concessionaire and, in turn, the Persons claiming through or under the Concessionaire.

### **Section 13.2 Indemnification**

- a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Concessionaire agrees to indemnify and hold harmless the Authority and its officers, employees, agents, trustees and consultants (each a "**Authority Indemnified Party**") promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "**Losses**") to which the Authority Indemnified Party may become subject, insofar as such Losses arise out of, in any way relate to, or result from (i) any mis-statement or any

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breach of any representation or warranty made by Concessionaire or (ii) the failure by Concessionaire to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessionaire Person claiming through or under the Concessionaire or (iii) any claim or proceeding by any Third Party against the Authority arising out of any act, deed or thing done or omitted to be done by Concessionaire or (iv) as a result of failure on the part of the Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Concessionaire to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project Facility or the Concessionaire's Contactors or employees or any Third Party or Government Authority or (vi) as a result of any failure or negligence or default of the Concessionaire or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Concessionaire's use and occupation of Project Site and/or construction, operation and maintenance of the Project.

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

- b) Without limiting the generality of sub-section (a) of this Section 13.2,
  - i) the Concessionaire shall fully indemnify and defend the Authority Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Concessionaire and the Persons claiming through or under the Concessionaire to comply with Applicable Laws and Applicable Permits, (2) payments of Taxes relating to the Concessionaire and the Persons claiming through or under the Concessionaire, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Concessionaire/such Persons without reimbursement hereunder, or (3) non-payment of amounts due as a result of materials or services rendered/ provided to the Concessionaire or any Person claiming through or under the Concessionaire, which are payable by the Concessionaire or such Person.

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- ii) the Concessionaire shall fully indemnify, and defend the Authority Indemnified Party harmless from and against any and all Losses which the Authority Indemnified Party may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Persons claiming through or under the Concessionaire in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for Authority Indemnified Party, an Authorisation, at no cost to Authority Indemnified Party, authorising continued use of the infringing work. If the Concessionaire is unable to secure such Authorisation within a reasonable time, the Concessionaire shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.
- iii) the Concessionaire shall further indemnify, defend and hold harmless the Authority Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Concessionaire's performance of this Agreement or arising out of any act or omission of the Concessionaire, and in turn of the Persons claiming through or under the Concessionaire.
- c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

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### **Section 13.3 Indirect or Consequential Losses**

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to the other Party for any matter arising out of or in connection with this Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

### **Section 13.4 Business Risks**

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

## **ARTICLE 14 FORCE MAJEURE**

### **Section 14.1 Force Majeure Event**

#### **Section 14.1.1 Force Majeure Event Defined**

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances (occurring in India) set out hereunder as Non Political Event, and Political Event, as defined in Clauses 14.1.1 (a) and 14.1.1 (b) respectively or the consequence(s) thereof which affect or prevent the Party (Authority or Concessionaire) claiming Force Majeure ("Affected Party") from performing its obligations in whole or in part under this Agreement and which event or circumstance which is (a) is beyond the reasonable control of the Affected Party, (b) such party could not have prevented or reasonably overcome with the exercise of due diligence, reasonable efforts, skill and care, (c) does not result from the negligence of such party or the failure of such party to perform its obligations hereunder, (d) is of an incapacitating nature and prevents or causes a delay or impediment in performance that has Material Adverse Effect and (e) is all or any of the following circumstances:

#### **14.1.1 (a) Non Political Event**

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

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- a) Act of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, flood, landslide, lightning, earthquake, volcanic eruption or exceptionally adverse weather conditions affecting the implementation of the Project.
- b) Chemical or radioactive contamination or ionization radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the project and project infrastructure).
- c) Epidemic, endemic or pandemic.
- d) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings (which are non collusive and/or prosecuted the Concessionaire) for reasons other than failure of the Concessionaire or of any Person claiming through or under it to comply with any Applicable Law or Applicable Permit or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by Authority.
- e) The discovery of geological conditions, toxic contamination or archaeological remains on the project site that could not reasonably have been expected to be discovered through an inspection of the project site.
- f) Any event or circumstances of a nature analogous to any of the foregoing.

#### **14.1.1 (b) Political Event**

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

- a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Section 18.18.
- b) Compulsory acquisition in National interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- c) Unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no-objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not

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result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization no-objection certificate, exemption, consent, approval or permit;

- d) Any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- e) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, nuclear blast / explosion, civil commotion or politically motivated sabotage;
- f) Any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- g) Any event or circumstance of a nature analogous to any of the foregoing.

### **Section 14.1.2 Exceptions to Force Majeure**

#### **For the Authority**

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

- i) The expropriation, confiscation or nationalization of the Project / Project Facilities / Project Assets by the Authority or any other Government Authorities;

#### **For the Concessionaire**

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

- i) Late delivery of any equipment or materials where such delivery is not attributable to Force Majeure events mentioned in section 14.1.1.
- ii) Breakdown or ordinary wear and tear of materials, equipment, machinery or parts relating to the project facilities.



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- iii) Delays in performance by the contractors or sub-contractors or employees, agents and representatives of the Concessionaire.
- iv) Economic hardship including insufficiency of funds.
- v) General economic slowdown.

**Section 14.2 Notice of Force Majeure Event**

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

**Section 14.3 Period of Force Majeure**

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

- a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.4; or

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b) termination of this Agreement pursuant to Article 14.7 hereof.

#### **Section 14.4 Performance Excused**

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

#### **Section 14.5 Resumption of Performance**

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

#### **Section 14.6 Costs, Relief during Force Majeure Event**

##### **a) Costs**

The Concessionaire shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.

##### **b) Relief**

- i) The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. However, concession period remains unaltered.
- ii) In case of occurrence of Force Majeure Event during the license fee holiday period, the Authority may, at its sole discretion, grant the Concessionaire extension of license fee holiday period by such period not exceeding the number of days the performance of the obligations of the Concessionaire are affected by Force Majeure Event.
- iii) In case of occurrence of Force Majeure Event during the license fee

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payment period, the Authority may, at its sole discretion, grant the Concessionaire concession in payment of annual premium in accordance with Government guidelines, if any, or as per procedure followed by other State Transport Undertakings or as per good industry practice followed by normal commercial organizations falling within the area affected by the same Force Majeure Event.

### **Section 14.7 Termination Due to Force Majeure Event**

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

## **ARTICLE 15 EVENTS OF DEFAULT**

### **Section 15.1 Events of Default**

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

#### **a) Concessionaire Event of Default**

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

- i) the Concessionaire's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement or otherwise takes any action or evinces or conveys an intention not to be bound by this Agreement.
- ii) the Concessionaire's failure to perform or discharge any of its obligations under any other Transaction Documents, which has or is likely to have a Material Adverse Effect on the Authority.
- iii) any representation made or warranties given by the Concessionaire under this Agreement are found to be false or misleading.

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- iv) the Concessionaire passing a resolution for voluntary winding up of SPV, Concessionaire's undertaking and / or Project.
- v) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- vi) levy of an execution or distraint on the Concessionaire's Assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 30 days or any authority, regulatory body, court, tribunal or judicial authority passing or issuing any order or direction against the Concessionaire which would have or likely to have Material Adverse Effect on the project or the ability of the Concessionaire to comply with or discharge the obligations and responsibilities under this Agreement.
- vii) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking (other than transfer of assets in the ordinary course of business) without the Authority's prior written approval, provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the financial and technical ability demonstrated to the satisfaction of the Authority, to undertake, perform / discharge the obligations of the Concessionaire under this Agreement, necessary approval may be granted by the Authority at its discretion and in such case it need not be construed as concessionaire event of default.
- viii) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- ix) the Concessionaire's failure to make any payments due and payable to the Authority including Upfront Amount and /or Annual Premium and /or the Security Deposit amount and/or interest on delayed payments or any other payments, within the stipulated period as specified in this Agreement.
- x) the Concessionaire is adjudged bankrupt or insolvent.
- xi) the whole of the Project Facility or any part of Project Facility remains closed / un-operational for an aggregate period exceeding "one hundred and twenty" days in a year (except for reasons on account of force majeure or Authority event of default).

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- xii) the Concessionaire is in the breach or non compliance of any terms and conditions of the Land Lease Deed to be executed / executed between the Authority and Concessionaire in pursuance of the provisions of this agreement.
- xiii) the Concessionaire committing any breach or non compliance of any of the terms and conditions of the financing document executed by the Concessionaire with Lender(s) and if all or any of the Lender(s) have recalled their outstanding dues and in pursuance thereto have initiated the exercise of their right to enforce the security interest created in their favour under the financing documents, as permitted by this agreement, on the Project Assets and / or the rights and interest under this agreement.
- xiv) the Concessionaire's failure to complete construction of 50% of the total possible built up area of the Project facilities as per the approved DPR within two years from the date of agreement.
- xv) the Concessionaire's failure to replenish or provide fresh Performance Security within the cure period.
- xvi) the Concessionaire's failure to ensure the standard maintenance requirements and / or the safety requirements for the project facilities;
- xvii) the Concessionaire creates any Encumbrance in breach of this Agreement;
- xviii) a Change in Ownership has occurred in breach of this Agreement;
- xix) the Concessionaire commits a default in complying with any other provisions of this Agreement and if such default causes or may cause a Material Adverse Effect on the Authority.
- xx) the Concessionaire's failure to comply with conditions precedent, unless waived off by the Authority.
- xxi) the Concessionaire resorting to unauthorized expansion of the project facilities.
- xxii) the Concessionaire or its sub-lessee/s conducting business activities prohibited by law or that against the interests of the Authority.
- xxiii) any such event as has been specified as Concessionaire Event of Default under any of the provisions of this Agreement.
- xxiv) the Concessionaire commencing the project without applicable permits and not maintaining the applicable permits in force and effect during the subsistence of the Concession Agreement.

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- xxv) the Concessionaire not procuring and maintaining in force and effect the Insurance Policies as are necessary.
- xxvi) Concessionaire's failure to indemnify and keep indemnified the Authority, its employees and representatives against all losses, damages, liabilities, suits, actions, legal proceedings, claims, demands etc. consequent to the acts and deeds of the Concessionaire or its representatives.
- xxvii) Concessionaire subleasing the Project Site to any person / firm etc. in full or part in any manner, form, arrangement.

**b) Authority Event of Default**

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

- i) the Authority's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement that has a Material Adverse Effect.
- ii) any representation made or warranties given by the Authority under this Agreement is found to be false or misleading; any defect in the Authority's title, ownership and possession of the site.
- iii) expropriation or compulsory acquisition by any Government Authority of the Project / Project Assets or part thereof or any material assets or rights of the Concessionaire; provided the same has not resulted from an act or default of the Concessionaire; Acquisitions by statutory bodies for the purposes like road widening etc., shall not be construed as Authority event of default.

**Section 15.2 Parties Rights**

- a) Upon occurrence of the Concessionaire Event of Default, the Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement, as per provisions of Article 16.
- b) Upon occurrence of the Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement, as per provisions of Article 16.

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- c) Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall (i) in terms of Clause 15.3 provide an opportunity to the other party to state its position and give explanation in the matter, (ii) give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the obligations of respective Parties under this Agreement and the circumstances in which the same has occurred.

### **Section 15.3 Consultation Notice**

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

If the Party receiving Consultation Notice doesn't respond within 15 days of receipt of the Consultation Notice, the Party entitled to terminate the Agreement may issue a Notice for Termination / Show Cause Notice for Termination in writing, duly allowing 15 days time to the other Party to cure the default or to defend.

### **Section 15.4 Remedial Process**

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

- a) the change of management or control/ownership of the Concessionaire;
- b) the replacement of the Concessionaire by a new Concessionaire ("Substitute Entity") on terms no less favourable than those contained in this Agreement, proposed by either of them or the Lenders and the specific terms and conditions of such replacement which shall include:
  - i) the criteria for selection of the Substitute Entity,

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- ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Substitute Entity,
- iii) handing over/ transfer of the Project Assets and the Project to the Substitute Entity,
- iv) assumption by the Substitute Entity of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets,
- v) assumption by Substitute Entity of any amounts due to the Authority from the Concessionaire under this Agreement.

### **Section 15.5 Obligations during Remedial Period**

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

### **Section 15.6 Revocation of Consultation Notice**

If during the Remedial Period the underlying Event of Default is cured/ waived to the extent expressly applicable in the Agreement, totally or partially by the Authority under Clause 15.4 or any clause of the agreement, the Consultation Notice issued by Concessionaire is deemed to be withdrawn by the Concessionaire and the Concessionaire has to take further remedial measures at his own cost. If no action is taken by the Authority nor replied to Consultation notice then only the notice issued by the Concessionaire is valid and Agreement can be terminated under the provisions of Article - 16.

If the Consultation notice is issued by the Authority for events of defaults of Concessionaire and the Concessionaire fails to take remedy measures or fails to comply the Agreement conditions, Authority shall have right to terminate the Agreement under provisions of Article-16

### **Section 15.7 Step-in-rights**

The Concessionaire agrees that the Authority shall be entitled to operate the Project Facility on the occurrence of a Concessionaire Event of Default. In the event of a Concessionaire Event of Default, the Authority may (but shall not be obliged to) operate, or procure and cause operation of the Project Facility upon the issue of the Termination Notice.



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## **ARTICLE 16 TERMINATION AND EXPIRY OF CONCESSION**

### **Section 16.1 Termination Procedure**

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of two Notices followed by Notice for Termination / Show Cause Notice for Termination in writing, duly allowing 15 days time on each occasion to the other Party to cure the default or to defend. A copy of Show Cause Notice for Termination / Notice for Termination shall also be delivered to the Lenders. The Agreement shall be terminated with a Termination Order. On issue of the Termination Order, this Agreement shall stand terminated.

### **Section 16.2 Obligations during Termination Period**

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

### **Section 16.3 Condition Survey**

- a) The Concessionaire agrees that six months prior to the expiry of the Concession Period by efflux of time or on the service of a Termination Notice, as the case may be, it shall conduct or cause to be conducted by the mutually accepted Third Party Expert under the Authority's supervision, a condition survey of the Project and the Project Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project.
- b) If, as a result of the condition survey, the Authority shall observe / notice that the Project Assets and/or the Project or any part thereof have / has not been operated and maintained in accordance with the requirements therefore under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

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- c) In the event the Concessionaire fails to comply with the provisions of this Agreement, the Authority may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. The Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project and the Project Assets in good working condition.

## **Section 16.4 Consequences of Termination / Expiry of Concession Period**

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

### **1) Transfer of Assets**

The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project / Project assets in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part / whole of the Project Site / Project assets.

- a) On the Transfer Date, the Concessionaire shall subject to the provisions of this Agreement:
- i) transfer, assign and deliver to the Authority or its nominated agency, free and clear of any Encumbrances, the vacant and peaceful possession of the Project, Project Assets and the Project Site along with the buildings, facilities and structures constructed on, over, at or under it and its right, and interest in the Project Site, Project and the Project Assets.
  - ii) transfer the Project Facilities to the Authority in good condition except for the normal wear and tear having regard to their life, construction, use and the period of use, in accordance with the terms of this Agreement.
  - iii) transfer all its rights and interest in or over the tangible assets comprised in the Project (including movable assets which the Authority agrees to take over) to the Authority or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
  - iv) execute such deeds of conveyance, 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 Site,

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Project and Project Infrastructure, and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee.

- v) hand over to the Authority or its nominated agency all documents including as building drawings, manuals, designs, documents, information and records relating to the Project and the Project Assets.
- vi) to the extent possible assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.
- vii) at its cost remove from the Site all such moveable assets which are not taken over by or transferred/assigned to the Authority or its nominated agency. In the event the Concessionaire fails to remove such objects within the stipulated time, the Authority or its nominated agency may remove and transport or cause removal, transportation and storage of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
- b) All proceeds of insurance claims shall be handed over to the Authority or its nominated agency and the Concessionaire or Persons claiming through or under it shall have no claim thereon or rights thereto.
- c) The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all leasehold arrangements or licenses in relation to the Site and all such immovable property shall automatically revert to the Authority or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.
- d) The Authority and the Concessionaire shall at least 6 (six) months prior to the expiry of the Concession Period or upon commencement of Termination Period, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets on the Transfer Date. During this period, the designated key personnel of the APSRTC shall be associated with the operations of the Project in order to facilitate smooth takeover of the same by the APSRTC on the Transfer Date.
- e) It is clarified that only the assets of the Concessionaire shall be taken over and not the liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire and the Persons claiming through or under the Concessionaire shall be taken over by the APSRTC. All such labour and employees shall be the responsibility of the Concessionaire/such Persons even after the expiry of the Concession

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Period and they shall have no claim to any type of employment or compensation from the Authority.

- f) On the Transfer Date the Project and the Project Assets shall be in fair condition, subject to normal wear and tear, having regard for the nature of the asset, the construction and life of the facilities, constructions, structures etc.
- g) All contracts, agreements, arrangement's etc. entered into by the Concessionaire with its suppliers, service providers, O&M contract's including sub-lease of any built-up area or built-up space in the Project Site, shall also be liable to be terminated forthwith along with the termination of this agreement at the sole option and discretion of the Authority and if so required by the Authority all monies due and receivable under such agreement shall be recovered and deposited in the relevant Bank Account pending final settlement with the Concessionaire .
- h) If on the Transfer Date, any Person is found to be occupying the Site or any part thereof, other than in respect of the Site / Plot / built up area / unit that has been sub-leased under the Sub-Lease Deeds and the sub-leases / licenses pursuant thereto, the duration of which have been extended by the Authority upon such expiration / prior termination of this Agreement, as provided herein, it shall be lawful for the Authority to secure summary eviction of such Person in accordance with the Applicable Laws.

## **2) Project Contracts**

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

## **3) Applicable Permits**

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

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#### **4) Guarantees**

The Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire or forfeit the Security Deposit and / or the Performance Security, if the termination is on account of a Concessionaire Event of Default.

#### **5) Transfer of Risk**

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

#### **6) Divestment Costs**

The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project and Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

### **Section 16.5 Vesting Certificate**

- a) On the Transfer Date the Authority / Expert shall verify, in the presence of the Concessionaire or of a representative of the Concessionaire, compliance by the Concessionaire with the requirements of Section 16.4 above. In the event the Authority / Expert notifies the Concessionaire of shortcomings, if any, in the Concessionaire's compliance with such requirements, the Concessionaire shall forthwith cure the same at its cost.
- b) The Divestment of all rights and interest in the Project and Project Assets shall be deemed to be complete on the Transfer Date but no later than 30 (thirty) days thereafter, by when all the requirements of Section 16.5 above shall be fulfilled. The Authority shall on such date issue a certificate substantially in the form set forth in *Appendix-10* (the "**Vesting Certificate**"), which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights and interest in the Project and Project Assets and the vesting thereof in the Authority or its nominee, as the case may be, pursuant hereto.

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## **Section 16.6 Compensation on Termination**

### **Section 16.6.1 Termination on expiry of the Concession Period by efflux of time**

Upon termination of this Concession Agreement on expiry of the concession period by efflux of time, no termination payment shall be due and payable to the Concessionaire.

Nothing herein shall prejudice the right of the Authority to recover from the Concessionaire any amounts due and payable to it by the Concessionaire.

### **Section 16.6.2 Termination due to Concessionaire event of default**

Upon termination of this Agreement on account of a Concessionaire event of default

- i) no other termination payments as compensation, goodwill or otherwise shall be payable to the Concessionaire by the Authority.
- ii) the Authority shall retain the payments made till the date of termination including Project Development Fee, Upfront Amount, Annual Premium, Security Deposit and Performance Security as damages.
- iii) nothing herein shall prejudice the right of the Authority to recover from the Concessionaire any amounts due and payable to it by the Concessionaire.

### **Section 16.6.3 Termination due to Authority event of default**

Upon termination of this Agreement on account of Authority event of default

- i) the Authority shall only return / refund the Performance Security and Security Deposit if any, available with the Authority on this BOT Project to the Concessionaire, provided there are no outstanding claims of the Authority on the Concessionaire and the Authority shall retain the payments made till the date of termination including Project Development Fee, Upfront Amount & Annual Premium. The Annual Premium paid in advance shall be retained on pro-rata basis till the date of termination.
- ii) the compensation payable by the Authority to the Concessionaire shall be the aggregate Depreciated Historic Cost (DHC), as determined by a third party Expert; appointed by mutual consent (a) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Concessionaire and comprised in the Project Facility, which in the reasonable judgment of the said Expert are capable of being put to use / utilized by the Authority and (b) the moveable assets which the Authority

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agrees to take over Less any amount due to the Authority from the Concessionaire under this Agreement and the insurance claim received or admitted in relation to such Event.

- iii) provided that the compensation shall in no event include the value of the portion of any asset affected by the Authority Event of Default to the extent of the insurance claim received or admitted in relation to such Event.
- iv) no other termination payments as goodwill or otherwise shall be payable to the Concessionaire by the Authority.

**Section 16.6.4 Termination due to non Political Force Majeure event**

Upon termination of this Agreement on account of a non Political Force Majeure event

- i) no other termination payments as compensation, goodwill or otherwise shall be payable to the Concessionaire by the Authority.
- ii) the Authority shall retain the payments made till the date of termination including Project Development Fee, Upfront Amount, Annual Premium as damages and shall return / refund Security Deposit and Performance Security if any, available with the Authority on this BOT Project, provided there are no outstanding claims of the Authority on the Concessionaire.
- iii) nothing herein shall prejudice the right of the Authority to recover from the Concessionaire any amounts due and payable to it by the Concessionaire.

**Section 16.6.5 Termination due to Political Force Majeure event**

Upon termination of this Agreement on account of a Political Force Majeure event

- i) the compensation payable by the Authority to the Concessionaire shall be the aggregate Depreciated Historic Cost (DHC), as determined by a third party Expert; appointed by mutual consent (a) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Concessionaire and comprised in the Project Facility, which in the reasonable judgment of the said Expert are capable of being put to use / utilized by the Authority and (b) the moveable assets which the Authority agrees to take over Less any amount due to the Authority from the Concessionaire under this Agreement and the insurance claim received or admitted in relation to such Event.

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- ii) Provided that the compensation shall in no event include the value of the portion of any asset affected by the Political Force Majeure event to the extent of the insurance claim received or admitted in relation to such Event.
- iii) the Authority shall only return / refund the Performance Security and Security Deposit if any, available with the Authority on this BOT Project to the Concessionaire, provided there are no outstanding claims of the Authority on the Concessionaire and the Authority shall retain the payments made till the date of termination including Project Development Fee, Upfront Amount & Annual Premium. The Annual Premium paid in advance shall be retained on pro-rata basis till the date of termination.
- iv) no other termination payments as compensation, goodwill or otherwise shall be payable to the Concessionaire by the Authority.

**Section 16.6.6 Termination on refusal of Approvals / Permits**

- i) In the event of refusal of applicable approvals / permits for the project by statutory authorities and the Concessionaire is unable to proceed with commencement of the project and the refusal / denial is not on account of default / negligence / failure of any nature attributable to the Concessionaire and Concessionaire makes a request to the Authority for termination, the Concession agreement will automatically gets terminated within 30 (thirty) working days of such request of Concessionaire and the Performance Security shall be refunded to the Concessionaire duly adjusting payments due / damages / liabilities till the date of termination.
- ii) In the event of any legal dispute arising out of the title deeds with private parties or with the Government and applicable approvals / permits are rejected on such grounds by statutory authorities and the Concessionaire is unable to proceed with the commencement of the project it should not be treated as Authority event of default. In such situation the Concession agreement will automatically gets terminated and the amounts paid by the Concessionaire shall be refunded without interest and the performance security shall be released to the Concessionaire.
- iii) In the event Government intends take over the Project Site and / or Project facilities and notices are issued on such grounds etc., and the Concessionaire is unable to proceed with the Implementation / Development of the project it should not be treated as Authority event of default. In such situation the Concession agreement will automatically gets terminated and the Amounts paid by the Concessionaire shall be adjusted on pro-rata basis till the date of



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termination and the balance amount along with Performance Security and Security Deposit if any shall be refunded without interest to the Concessionaire.

- iv) No other termination payments as goodwill or otherwise shall be payable to the Concessionaire by the Authority in the event of termination of the Agreement.

**Section 16.6.7 Discharge of rights on Termination**

- i) Termination payment shall become due and payable to the Concessionaire within 30 (thirty) working days of a demand notice being made by the Concessionaire to the Authority with necessary particulars, including report of third party Expert. It is expressly agreed that termination payment shall constitute full discharge by the Authority of its payment obligations in respect thereof.
- ii) The Concessionaire expressly agrees that termination payment under this Article shall constitute a full and final settlement of all claims of the Concessionaire on account of termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

**Section 16.7 Other rights and obligations of the Authority**

Upon termination for any reason whatsoever, the Authority shall:

- a) take possession and control of the Project Site, Project and the Project Infrastructure forthwith;
- b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Project and the Project Infrastructure;
- c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering the Project and the Project Infrastructure;
- d) require the Concessionaire to comply with the divestment requirements set forth in Article 16; and
- e) in the event the Authority cures any outstanding defaults of the Concessionaire on the Project Site, the Project and the Project facilities, the

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amount expended by the Authority for this purpose shall be deducted from the terminal payment.

### **Section 16.8 Termination on Exit At Will by either Party**

At any point of time during subsistence of the agreement, either party can exit from the Agreement at will by way of issuing a 90 day written notice to the other party.

- a) In the event of the Concessionaire intending to withdraw / exit from the Agreement for what so ever the reason may be, shall intimate the same to the Authority through a written notice of 90 days period.

The Authority, on consideration of the request of the Concessionaire, shall terminate the Agreement upon re-conveyance of the Project Site, Project & Project facilities (if any created in the project site) by the Concessionaire to the Authority, without encumbrances and encroachments.

On such termination:

- i) the Authority shall refund the Performance Security Deposit and Security Deposit if any, available with the Authority on this BOT Project to the Concessionaire, without interest, duly deducting dues / damages / liabilities, if any, on the Project Site, Project and Project facilities. All other payments made by the Concessionaire on the Project till such date shall be forfeited;
- ii) no other termination payments as compensation, goodwill or otherwise shall be payable to the Concessionaire by the Authority;
- iii) nothing herein shall prejudice the right of the Authority to recover from the Concessionaire any amounts due and payable to it by the Concessionaire;
- iv) such termination shall be in accordance with the provisions of sections 16.6.7 & 16.7 of this Agreement.

Provided that,

The concessionaire shall not be eligible to invoke the 'At Will Exit' clause when there exists a pending Show Cause Notice of Termination against the Concessionaire for any concessionaire's event of default as defined at section 15.1.(a).

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b) In the event of the Authority intending to withdraw / exit from the Agreement for what so ever the reason may be, shall intimate the same to the Concessionaire through a written notice of 90 days period.

Upon expiry of such notice period, the Agreement ceases to exist and

- i) the Concessionaire shall re-convey the Project Site, Project & Project facilities (if any created in the project site) by the Concessionaire to the Authority, without encumbrances and encroachments;
- ii) the Concessionaire is eligible for terminal payments as per the provisions of sections 16.6.3, 16.6.7 & 16.7 of the Agreement.
- iii) no other termination payments as goodwill or otherwise shall be payable to the Concessionaire by the Authority;

## **ARTILCE 17                      DISPUTE RESOLUTION**

### **Section 17.1                      Resolution Process**

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 be attempted to be resolved by both the Parties using their best efforts promptly, equitably and in good faith as per provisions of sections 17.2,17.3,17.4 &17.5.

### **Section 17.2                      Conciliation:**

On specific notice under dispute, the parties shall meet not later than 15 working days from the date of receipt of the notice by the other party, to settle the dispute amicably with or without the mediation of the Nodal Officer.

If such meeting does not take place within 15 working days of receipt of the notice or the Dispute is not amicably settled within 15 working days of the meeting or the Dispute is not resolved within 30 working days of receipt of the notice by the other party, the dispute shall be referred to the higher committee comprising of the Executive Director (I/c Commercial section) of the Authority and the Chairman or the Assignee of the Board of Directors of the Concessionaire.

If meeting of Executive Director (I/C Commercial section) of the Authority and the Chairman or the Assignee of the Board of Directors of the Concessionaire

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doesn't take place within the 15 working days of receipt of the notice or the Dispute is not amicably settled within 15 working days of the meeting or the Dispute is not resolved within 30 working days of such reference to higher committee, the dispute shall be settled through Arbitration as per section 17.3.

**Section 17.3 Arbitration:**

Any dispute or difference of any nature whatsoever arising out of or in relation to this agreement shall be referred to the sole arbitration of the Vice Chairman and Managing Director of the Authority (APSRTC) and the arbitration shall be held in accordance with the provisions of the Arbitration & Conciliation Act 1996 or any statutory modification or re-enactment thereof and such arbitration shall be conducted at Authority's head quarters in AP, in English language. The Concessionaire shall not be entitled to raise any objection to such Arbitrator on the ground that the Arbitrator is appointed by the Authority. This clause shall survive the termination of the Agreement.

**Section 17.4 Court:**

In case of failure to resolve the dispute through Arbitration, the Hon'ble High Court of AP only shall have the jurisdiction to resolve the dispute.

**Section 17.5 Adjudication:**

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 17.3, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court of AP, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

**ARTICLE 18 MISCELLANEOUS PROVISIONS**

**Section 18.1 Governing Law and Jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the courts at Vijayawada & Hon'ble High Court

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of Andhra Pradesh only shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **Section 18.2 Waiver & Remedies**

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

### **Section 18.3 Survival**

The Termination / expiry of this Agreement:

- a) shall not relieve either Party of any obligations hereunder which expressly or by implication survive Termination/expiry hereof,
- 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

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or caused by acts or omissions of such Party prior to the effectiveness of such Termination / Expiry or arising out of such Termination / Expiry, and

- c) all rights and obligations of either Party under this Agreement, including termination payments and divestment requirements, shall survive the termination to the extent such survival is necessary for giving effect to such rights and obligations.

**Section 18.4      Entire Agreements and Amendments**

- a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.
- b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorised representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

**Section 18.5      Mode of Delivery of Notices**

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

If to Authority:

Chief Manager (Comm),  
 RTC House, 1<sup>st</sup> Floor,  
 Pandit Nehru Bus Station (PNBS),  
 APSRTC, Vijayawada – 520013.

**If to Concessionaire:**

-----  
 -----  
 -----

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

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

**Section 18.6 Severability**

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

**Section 18.7 No Partnership**

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

**Section 18.8 Language**

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

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### **Section 18.9 Exclusion of Implied Warranties etc.**

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

### **Section 18.10 Counterparts**

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

### **Section 18.11 Further Assurances**

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

### **Section 18.12 Regulatory Framework for Infrastructure Projects**

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

### **Section 18.13 Rights of Parties during road widening**

The Authority shall be entitled to receive the monetary compensation, if any paid by the authorities during Road Widening programmes. The Concessionaire shall enjoy the benefit accrued if any in the form of additional built up space subject to the Clause No. 5.2.3 of this agreement. The cost of restoration of the structures shall be borne by the Concessionaire. The Concessionaire shall not be entitled for any claim /compensation with regard to area (if any) affected under road widening.



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## **Section 18.14 Remedies Cumulative**

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

## **Section 18.15 Intellectual Property Rights and Confidentiality**

### **a) Intellectual Property Rights**

- i) The Concessionaire accepts and agrees that the Authority shall be the absolute and exclusive owner and proprietor of the all details, plans, specifications, schedules, programs, budget, reports, calculations and other work relating to the Project hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated or made by any of the Concessionaire or the Persons claiming through or under it or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print. The Concessionaire shall not either directly or in-directly uses the trademarks of APSRTC.
- ii) The Authority shall own all the intellectual property rights in or relating to the Proprietary Material and all rights, privileges, entitlements, interests, property and benefits and associated rights whatsoever therein for the full period in accordance with the Applicable Laws and with all the reservations and extensions thereof and together with the exclusive right of the Authority to use such information and intellectual property/authorize the use thereof by Third Parties in India and abroad in any form, including without limitation the right to reproduce, translate, edit, modify, distribute, sell or assign such rights, with or without consideration.
- iii) The Authority shall have the exclusive right to apply for / procure registration of the intellectual property rights at its cost with relevant competent authorities in India and abroad.
- iv) The Concessionaire and the Authority hereby grant to each other an irrevocable, royalty-free, non-exclusive Authorisation / Concession to use all proprietary material owned by any of them or any of their respective

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employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. Such Authorisation / Concession shall carry the right to use such material for all purposes connected with the Project; however, it shall not be transferable to any Person other than to the permitted assignee under this Agreement. Such Authorisation / Concession shall discontinue on the termination or expiry of this Agreement or the discharge by any Party of its duties hereunder.

**b) Confidentiality**

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

- i) already in the public domain, otherwise than by breach of this Agreement;
- ii) already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;
- iii) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- iv) disclosed to the Lenders under terms of confidentiality; or
- v) which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Government Authority.

**Section 18.16 Joint Responsibility**

In the event that any damage is caused in part only due to the negligence or default or omission on the part of the Authority and in part only due to the negligence or default or omission on the part of the Concessionaire, each Party

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shall be liable to the other Party only in proportion to its respective degree of negligence or default or omission as the case may be.

**Section 18.17 No Liability for Review**

Except to the extent expressly provided in this Agreement,

- a) no review, comment or approval by the Authority/Government Authorities/ of the DPR, the Designs and Drawing, the Transaction Documents or the documents submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project Facility 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 or any Government Authority or GoAP shall not be liable to the Concessionaire by reason of any review, comment, approval observation or inspection referred in sub-section (a) above.
- c) In no event the Authority, or its successor would be vicariously liable during Concession period.

**Section 18.18 Change in Law**

In the event of a Change in Law results in a Material Adverse Effect, the Authority or the Concessionaire may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Concessionaire and the Authority shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure described under Article 17 of this Agreement.

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

**Section 18.19 Depreciation**

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

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**Section 18.20 Assignability**

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

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

**Section 18.21 Interest and Right to Set Off**

- a) Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.
- b) The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein the Agreement and if no such period is specified, within 15 (fifteen) days of receipt of demand along with necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay at the rate of 24% (twenty four percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under the Law and this Agreement, including termination thereof.
- c) All Supplemental Agreements executed subsequently to fulfil the objectives of the project, shall essentially become part of this agreement and shall be read in conjunction with the provisions of this agreement.
- d) The Concessionaire shall be at sole responsibility in respect of issues arising out of consumer laws and their conformance.

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**WITNESS WHEREOF** the Parties have executed and delivered this Deed by their duly authorized representative on the date first above written:

Signed, sealed and delivered by:  The Authorised Signatory  For and on behalf of  <b>Andhra Pradesh State Road Transport Corporation</b>  <b>(LESSOR)</b>  <b>CM (COMM)</b>  Company Seal:	Signed, sealed and delivered by:  The Authorised Signatory  For and on behalf of  _____  <b>(LESSEE)</b>  _____  Company Seal:	Signed, sealed and delivered by:  The Authorised Signatory  For and on behalf of  _____  <b>(Preferred Bidder/Confirming Party)</b>  _____  Company Seal:
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Witness

- 1.
- 2.

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**Appendix -1**

**Draft Letter of Intent (LoI)**

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

[Date]

[Ref Number]

To  
[Preferred Bidder]  
[Address]

Kind Attention: [Authorized Representative of Preferred Bidder]

Sub: Letter of Intent (LoI) for -----.

- Ref: 1) Tender Notice No:  
2) PQ bids opened on:  
3) Financial Bid opened on:

Sir,

- 1) This has reference to the Proposal submitted by you/ your firm / consortium M/s. \_\_\_\_\_, \_\_\_\_\_ (place) to Andhra Pradesh State Road Transport Corporation (APSRTC), dated, \_\_\_\_\_ in response to the Request for Proposal (RFP) issued by APSRTC for \_\_\_\_\_.
- 2) APSRTC is pleased to inform that you/ your Firm/ Consortium has been considered as the Preferred Bidder and is pleased to issue this Letter of Intent ("LoI") to your Firm/ Consortium as the Concessionaire for ----- after going through the Tendering Process under reference cited above, subject to the following terms and conditions.
- 3) The Concession period is 33 Years only, including the Construction period.
- 4) The Preferred Bidder shall incorporate a Special Purpose Vehicle (SPV), exclusively for implementing this BOT Project and Concession Agreement shall be executed between the SPV (Concessionaire), your firm / Consortium (confirming party), and APSRTC (Authority) as per the terms of the RFP and proposal. Any failure on your part in fulfillment of the conditions mentioned under this clause within 90 days from the date of issue of this LoI, shall render your proposal liable for rejection and forfeiture of your Bid Security /

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EMD paid to the Corporation on this BOT Project and also this LoI shall stand withdrawn.

- 5) The Preferred Bidder / Concessionaire is required to fulfil the following requirements within 90 days from the date of issue of this Letter of Intent as a pre requisite for entering into the Concession Agreement.
- a) To arrange a **non refundable, irrevocable payment** of **Rs.\_\_\_\_\_/-** (Rupees: \_\_\_\_ ) plus all applicable taxes in the form of Demand Draft drawn in favour of "Financial Advisor, APSRTC, Vijayawada" on any Nationalised /Scheduled Bank ( except Co-operative Banks) payable at Vijayawada towards "**Project Development Fee**".
  - b) To arrange a **non refundable, irrevocable payment** of **Rs.\_\_\_\_\_/-** (Rupees: \_\_\_\_ ) plus all applicable taxes, after adjusting the Bid Security amount of Rs.\_\_\_\_\_/- (Rupees: \_\_\_\_ ) paid by you to the Corporation, in the form of Demand Draft drawn in favour of "Financial Advisor, APSRTC, Vijayawada" on any Nationalised / Scheduled Bank (except Co-operative Banks) payable at Vijayawada towards the **1<sup>st</sup> installment of Upfront Amount**, i.e., 50% of the "Upfront Amount".
  - c) To arrange a payment of **Rs.\_\_\_\_\_/-** (Rupees: \_\_\_\_ ) in the form of Demand Draft drawn in favour of "Financial Advisor, APSRTC, Vijayawada" on any Nationalised / Scheduled Bank (except Co-operative Banks) payable at Vijayawada towards **interest free, refundable Performance Security**.
- 6) As per terms & conditions of the Tender & RFP the Concessionaire is required to make the following payments from time to time.
- a) To arrange a payment of **Rs.\_\_\_\_\_/-** (Rupees: \_\_\_\_ ) plus all applicable taxes, in the form of Demand Draft drawn in favour of "Accounts Officer, APSRTC, \_\_\_\_\_ **District**" on any Nationalised / Scheduled Bank (except Co-operative Banks) payable at Vijayawada towards **2<sup>nd</sup> installment of Upfront Amount**, i.e., balance 50% of the Upfront Amount **on the 1<sup>st</sup> day of 2<sup>nd</sup> year** of the commencement of Concession Period. 8% discount is allowed on 2<sup>nd</sup> installment of Upfront Amount if total Upfront Amount is paid on or before commencement of Concession Period.
  - b) To arrange a payment of **Rs.\_\_\_\_\_/-** (Rupees: \_\_\_\_ ) plus all applicable taxes, in the form of Demand Draft drawn in favour of "Accounts Officer, APSRTC, \_\_\_\_\_ (District)" on any Nationalised/ Scheduled Bank (except Co-operative Banks) payable at \_\_\_\_\_ towards "**First Year Annual Premium**" on the **1<sup>st</sup> day of 3<sup>rd</sup> Year of** Concession Period.

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This Annual Premium will be enhanced by 5%,7% &9% ever year over the previous year's amount, as defined in RFP and shall be payable by the Concessionaire accordingly.

- c) To arrange a payment of **Rs.\_\_\_\_\_/-** (Rupees: \_\_\_\_ ), in the form of Demand Draft drawn in favour of "Accounts Officer, APSRTC, \_\_\_\_\_ (District)" on any Nationalised / Scheduled Bank (except Co-operative Banks) payable at \_\_\_\_ towards interest free, refundable "**Security Deposit**" on the **1<sup>st</sup> day of 3<sup>rd</sup> Year of** Concession Period.
- (i) This Security Deposit is for the amount equivalent to 50% of Annual Premium of that year.
- (ii) The enhanced Security Deposit for further years shall be paid along with the Annual Premium of that year, as defined in RFP.
- 7) The Concessionaire shall hand over at free of cost a built up area of 200 Sft. in the proposed development at a mutually agreed location to APSRTC with toilet facility and a parking place of 2 equivalent Car Spaces confined in one location in cellar / basement.
- 8) The Concessionaire shall provide four numbers of Non Judicial Stamp papers of **Rs.100/-** each in the name of Special Purpose Vehicle (SPV) for executing the Concession Agreement cum Land Lease Deed.
- 9) Registration of the Concession Agreement should be done within 30 days from the date of Agreement at your own cost.
- 10)The Govt. of Andhra Pradesh have issued GO. MS No. 141 of MAUD dated 06.06.2016 regarding change of land use of all vacant lands of APSRTC converting the land use into multiple use Zone. If still any further permissions in this regard are needed from the Govt. or its Agencies or Local Bodies the same shall be obtained by the Concessionaire with their cost.
- 11)All Taxes including GST, Service Tax, VAT, Duties, Cess, Octroi, Registration charges, Land use conversion Charges etc., or any other Taxes as prescribed by the Government of AP and / or Government of India and / or its agencies and / or Local bodies from time to time, shall be payable by the Preferred Bidder / Concessionaire only.
- 12) The Preferred Bidder shall conduct Joint inspection of the Project Site and conduct a Total Station Survey of the Project Site and submit objections if any, within 15 days from the date of issue of this LoI. The Cost of survey shall be borne by the preferred bidder only.

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- 13) The commencement of Concession Period shall be 90 days from the date of issue of this LoI or the date of Concession Agreement whichever is earlier.
- 14) The Preferred Bidder / Concessionaire shall be governed by all the statutory Laws & provisions prescribed by the State / Central / other Government Agencies (Local Bodies) and obtain requisite license / permission / approval as may be necessary or required from time to time to carry out their business.

In addition to the above, you shall comply with all the other provisions / requirements of the RFP in their entirety.

Kindly note, that this communication by itself does not give any right or contractual relationship with APSRTC. Any such right or relationship shall come into effect only on fulfilling the above said conditions and execution of the Concession Agreement.

We look forward for an early fulfillment of the above-mentioned requirements. Kindly acknowledge the receipt of this LoI by signing the duplicate copy as a token of acceptance within 7 working days from the date of issue of this LOI and indicate a suitable date for execution of the Concession Agreement which shall in no case, be later than 90 Days from the date of issue of this Letter of Intent ("LoI").

Yours Sincerely,

[Authorised Signatory – APSRTC]

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

---

Authorised Signatory

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**Appendix -2**

**PROJECT FACILITIES**

<b>S. No.</b>	<b>Particulars</b>	<b>Details</b>
<b>1</b>	<b>Built up Space as minimum development obligation</b>	The Concessionaire shall complete construction of minimum 50% of total possible built up area of the Project facilities as per approved DPR within 2 years from the execution date of the Agreement.
<b>2</b>	<b>Other Obligation</b>	<p>The Concessionaire shall Construct at its cost and hand over free of cost, charges and rent for exclusive use of the Authority:</p> <p>a) 200 Sft. built up space with toilet facility at a mutually agreed location with internal electrical concealed conduit wiring, painting, flooring, power &amp; water supply connection with sub meters etc.</p> <p>b) 2 car parking bays confined in one location in the cellar/basement. The Built-up area should include internal electrical concealed conduit wiring, painting, flooring, power &amp; water supply connection with sub meters etc.</p> <p>c) The interiors and furnishing of the space shall be the responsibility of APSRTC. APSRTC shall also bear the power, water and other maintenance charges for the said area.</p> <p>d) Compound wall of required height has to be constructed along the RTC boundary by the Concessionaire at its cost.</p>

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### **Appendix - 3**

## **DEVELOPMENT CONTROLS AND TECHNICAL SPECIFICATIONS**

### **1.0 Specifications and standards:**

The Concessionaire shall at its own cost design, construct, operate, maintain and manage the project as per latest Rules and Regulations of Govt. of AP and Local Bodies or as necessary, Bureau of Indian Standards (BIS) specifications, National Building Code (NBC) specifications as applicable and as per Good Industry practice. The following specifications and standards are only indicative and not exhaustive and the Concessionaire is required to adhere to all applicable specifications, laws and regulations:

- 1) The Concessionaire shall not construct more than the approved Built up Area.
- 2) If the Concessionaire wishes to avail any extra benefits / concessions (such as Transferable Development Rights i.e. TDR bonds etc. purchased / obtained by the Concessionaire) accorded by the Govt. of Andhra Pradesh or Govt. of India or its Agencies or local bodies from time to time, the Concessionaire shall obtain approval of the Authority before availing such extra benefits / concessions accorded. The approval of the Authority for such extra benefits / concessions is mandatory. The Authority shall review the request of the Concessionaire for grant of permission for availing such extra benefits / concessions on the BOT Project facilities. The Authority may require the Concessionaire for payment of additional Annual Premium or any other additional License Fee as deemed appropriate for granting permission to avail such benefits / concessions.
- 3) The Project facilities shall always be as per applicable Laws and Permits.
- 4) The Concessionaire shall dismantle all the existing structures in the Project site, handed over to the Concessionaire on signing of the Concession Agreement in as is where is condition, adhering to applicable standards duly intimating the Authority.

The existing structures in dilapidated condition or structures not in use in the project site will be removed by the Authority and vacant site will be handed over to the Concessionaire.

The Concessionaire shall construct at its cost, an alternate structure to the existing structure in use in the project site, if any, at a place specified by the Authority, as per standard specifications of the Authority.

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- 5) The buildings shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces.
- 6) The Concessionaire shall confine their activities to the Project Site only and shall not encroach upon, damage or degrade adjacent land.
- 7) The Concessionaire shall carry out its own tests and investigations related to soil condition, strata, bearing capacity and other characteristics. The Concessionaire shall carryout the construction with good quality materials as per Indian Standard specifications and good quality workmanship. The structural safety of the project facilities is of paramount importance and complete responsibility lies with the Concessionaire.
- 8) The Concessionaire shall provide the required firefighting equipment and facilities including fire exits, fire proof doors, etc. conforming to the relevant BIS standards, guidelines/ specifications.
- 9) The Lifts, Escalators, Air Conditioning equipment, electrical equipment etc. shall confirm to the relevant BIS standards & specifications.
- 10) The rainwater harvesting, Solar panels etc. shall be adopted as per the latest rules and regulations of the Government.
- 11) The Concessionaire shall construct the Project facilities on the principles of 'Green Buildings' as per the guidelines laid down.
- 12) The Concessionaire shall provide signages so as to facilitate necessary information to the visitors regarding amenities and their location.
- 13) The Concessionaire shall provide necessary facilities in the BOT Project for physically challenged and disabled persons as per the norms.

## **2.0 MAINTENANCE AND PERFORMANCE STANDARDS**

- 1) The minimum standards for Operation, maintenance and Management of Commercial Project facilities shall conform to Rules and Regulations of Govt. of AP and Local Bodies or as necessary, Bureau of Indian Standards (BIS) specifications, National Building Code (NBC) specifications as applicable and as per Good Industry practice. However, the Concessionaire may opt for higher standards.
- 2) The Concessionaire shall undertake maintenance of common circulation area with best upkeep practices, periodic and annual maintenance.
- 3) The Concessionaire shall ensure 24 hours power supply to the Project.
- 4) The Concessionaire shall ensure that the Project facilities are operated and maintained to the satisfaction of the Authority and the users. The

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defects shall be rectified within the minimum time avoiding public complaints.

- 5) Notwithstanding anything contrary to specified in this Agreement, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Concessionaire shall be entitled an additional time in conformity with good industry practice. However, the Concessionaire shall get prior approval from the Authority, for such additional requirements of time.
- 6) Notwithstanding anything to the contrary contained in this document if any defect, deficiency or deterioration in the Project poses danger to the life and property of the users thereof, the Concessionaire shall promptly take all reasonable measures for eliminating or minimising such danger.

### **3.0 Performance Standards for Routine Maintenance:**

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

**Table 1: Performance Standards for Routine Maintenance**

<b>Sl. No</b>	<b>Serviceability Indicator</b>	<b>Required Maintenance Level</b>	<b>Permissible Time Limit for repairs/rectifications</b>
1	Power Supply, Electrical Installations, Electrical Equipments shall be functional	As specified by the DISCOMS for the transformers and other Electrical equipment	Any disruption in power supply shall be rectified in six (6) hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours. Permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Nodal Officer.
2	Boundary Wall shall be without any Damage / Breach	Nil	Any damage / breach to the boundary wall shall be rectified within three (3) days after their detection.
3	All Toilets, Urinals,	A minimum of	Toilets, Urinals, bathrooms

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<b>Sl. No</b>	<b>Serviceability Indicator</b>	<b>Required Maintenance Level</b>	<b>Permissible Time Limit for repairs/rectifications</b>
	bathrooms shall be clean and functional	95% toilets and urinals shall be functional at any given point of time.  No clogging or choking, leakages etc. Broken WBC, wash basins shall be replaced immediately.	shall be demarked with suitable signboards. These should be kept clean and hygienic and cleaning shall be done minimum twice daily or as and when required. Any repair work shall be attended at the earliest without causing inconvenience to the customers.
4	All drinking water chambers shall be clean and functional	A minimum of 95% drinking water chambers shall be functional at any given point of time	These shall be cleaned daily. Water supply shall be for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards.
5	Dustbins, spittoons etc. shall be clean and functional	A minimum of 95% Dustbins, spittoons shall be functional at any given point of time	The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell in the neighbourhood.
6	All Information Signage and Display Boards shall be visible, legible and functional	Maximum 2% number of damaged signage and boards at any given point of time	These shall be cleaned once in a week. Damaged signage and boards shall be replaced, repaired within seven days of their detection
7	Staircases shall be clean and functional	Nil	The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within three days after detection.
8	Illumination (Lighting) shall be	To meet the required	The ventilators, sky-lights, etc. serving as source of

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

#### 4.0 Performance standards for Periodic maintenance:

In order to maintain the quality and operational standards of high quality, the following periodic maintenance /renewal activities shall be followed:

**Table 2: Periodic Maintenance / Renewal Activities**

S.No	Periodic Renewal Activities	Time Limit for renewal
1.	Repainting of Buildings and all other structures.	Minimum once in three years
2.	Repainting of carpentry work like joinery, doors, windows, ventilators,	Minimum once in three years

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<b>S.No</b>	<b>Periodic Renewal Activities</b>	<b>Time Limit for renewal</b>
	wooden furniture etc. in the offices, cabins, booths etc.	
3.	Mechanical Equipment	As per manufacturers recommendations or minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual
4.	Electrical Equipment	As per manufacturers recommendations or minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual

### 5.0 Performance standards for operation

In order to maintain quality standards in the operation of the Project, the following performance standards shall be followed:

**Table 3: Performance Standards for Operation**

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



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## **Appendix -4**

### **Off-site Infrastructure**

The Off Site requirements (Road, Power and Water) are being provided by different agencies like Municipal Authorities, Electricity Department etc. The Concessionaire is required to apply to the concerning Authorities and obtain the necessary approvals on his own. The Authority will extend all necessary support to the Concessionaire based on written request of the Concessionaire.

## **Appendix-5**

### **Layout Plan & Site Plans of BOT Sites to be uploaded**

## **Appendix- 6**

### **SCOPE OF THE PROJECT**

The scope of the Project to the Concessionaire during the Concession Period shall mean and include the following (the "**Scope of the Project**"):

- 1) Conceptualization, planning, designing and detailing of the Project. To provide fencing/ boundary wall to the Schedule Property as detailed at ***Appendix – 5***.
- 2) Technical and Financial closure of the Project.
- 3) Obtaining required clearances/ approvals for commencing and implementing the Project from Government of Andhra Pradesh or Government of India and its agencies & local bodies.
- 4) Finance the project, procure, install and commission all machinery and equipment, ancillary facilities and complete construction of the works within the stipulated time frame.

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- 5) Implement the Environmental Management Plan (EMP) required during construction and operational phases.
- 6) Operate & Maintain the Project facilities to meet performance standards in accordance with the provisions of this Agreement and as per good industry practice.
- 7) Development of the Project and award of project agreements in respect of development of the site as per approvals, in accordance with the provisions of this Agreement.
- 8) Marketing the Project Facility.
- 9) Shall not sub-lease the whole or any part of the Project Site.
- 10) To exercise and/ or enjoy the rights, powers, benefits, privileges, entitlements as set forth in this Agreement including the right to collect, retain and appropriate all tariffs, rentals, other fees and charges for the facilities and services provided.
- 11) Transfer of Project facilities at the end of Concession Period or early Termination as provided in the Concession Agreement.
- 12) To perform and fulfil all obligations and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire in accordance with the provisions of this Agreement.
- 13) All activities of the Concessionaire are in accordance with Applicable Laws and Applicable Permits.
- 14) Responsibility for all construction activities in pre commissioning and commissioning rests with the Concessionaire.

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**Appendix – 7**

**LAND LEASE DEED**

**Agt. No. CM(Comm)/BOT/AGT( )/2023-24 Dt. \_\_\_\_\_**

**“Development of \_\_\_\_\_ Sq. Yards of Vacant Site of APSRTC  
at \_\_\_\_\_ in \_\_\_\_\_ Dist. under BOT Scheme”**

**THIS LAND LEASE DEED** is made on this the \_\_\_\_ th **day of**\_\_\_\_ **2023** at **Vijayawada, Andhra Pradesh.**

**By and Among**

**Andhra Pradesh State Road Transport Corporation**, established under RTC Act 1950, represented herein by Chief Manager (Comm) (authorized in this behalf) having its Head Office at RTC House, PNBS, Vijayawada-520013 and being hereinafter referred to as **“APSRTC”** or the **“Lessor”** which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and assigns of the **FIRST PART**.

**And**

**M/s.** “ \_\_\_\_\_”, a company incorporated under the Companies Act, 2013, having its registered office at \_\_\_\_\_, represented by \_\_\_\_\_ (the Authorised Signatory), herein after referred to as the **“Lessee”**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns of the **SECOND PART**.

**And**

M/s ....., a company incorporated under the Companies Act, 2013, having its registered office at..... India, represented by \_\_\_\_ (Authorised Signatory) (details of the private promoters/ members of the Preferred Bidder, to be suitably modified as per the requirement), hereinafter referred to as the "Preferred bidder / Confirming Party", which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns of the **THIRD PART**.

Each singly a **“Party”** and collectively the **“Parties”**

**WHEREAS:**

- A) The Lessor being the absolute owner of \_\_\_\_\_ Sq. Yards of site at \_\_\_\_\_ (B/S or B/D) \_\_\_\_\_ (Place) under survey no. \_\_\_\_\_ of \_\_\_\_\_ (Place), \_\_\_\_\_ (Mandal), \_\_\_\_\_ (Dist.) more particularly

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described in Schedule - I hereunder and shown delineated in the Layout plan / site plan annexed thereto, hereinafter referred to as the "Project Site" or the "Land", decided to develop the Project through Public Private Partnership on the commercial format of Build, Operate and Transfer scheme.

- B) The Lessor undertook a transparent competitive bidding for Commercial exploitation of the said Project Site and issued a Request for Proposal (RFP) vide its Tender Notice No. \_\_\_\_\_ dt. \_\_\_\_\_. The offer of the Lessee through tender cum auction, being the highest, has been accepted by the Lessor on the terms and conditions set forth in the RFP and issued Letter of Intent (LoI) No. \_\_\_\_\_ dt. \_\_\_\_\_.
- C) The preferred bidder has incorporated an SPV as per terms of Concession Agreement to implement the aforesaid Project as Lessee / Concessionaire.
- D) The Lessor, vide the Concession Agreement No. \_\_\_\_\_ dt. \_\_\_\_\_ granted Authorization / Concession to M/s. \_\_\_\_\_ (the Concessionaire or the Lessee herein) for implementing the Project at the Project Site involving designing, financing, construction, marketing, operation, maintenance, management and transfer of the Project Facility and to levy, demand, collection, retention and appropriation of the Tariff from the Project Facilities.
- E) Pursuant to and under the Concession Agreement, the Lessor is required to vest with the Lessee the Project Site with all Concession / Lease rights relating thereto under a valid and binding Land Lease Deed for the purpose of implementing the Project.
- F) Based on the above, the Parties are now executing this Land Lease Deed in accordance with the terms and conditions set forth in the Concession Agreement.
- G) Being the absolute owner of the Project Site with marketable title thereto and having lawful possession thereof, the Lessor is desirous of leasing, demising the Project Site unto the Lessee and vesting unencumbered possession thereof with the Lessee, on the terms and conditions hereinafter contained.

**NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:**

**1) Interpretations:**

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- (a) The words and phrases used in this Deed but not defined shall, unless the context otherwise requires, have the meaning assigned to them respectively in the Concession Agreement.
- (b) The interpretation Section 1.2 of the Concession Agreement shall be deemed to be incorporated in this Deed in extent so mutatis mutandis.

## 2) Definitions:

The following terms shall, except where the context otherwise requires, have the meaning as hereunder:

- a) **Deed or Lease Deed** means this Land Lease Deed, schedules to it, as amended or modified by the Parties in accordance with the provisions hereof,
- b) **Concession Agreement** shall mean the Concession Agreement No. \_\_\_\_\_ dated \_\_\_\_\_ entered into between the Authority (the Lessor herein) and the Concessionaire (the Lessee herein);
- c) **Concession Period** means the period specified under Section 2.2 of the Concession Agreement;
- d) **Demised Premises** means all the lands comprising the Project Site, i.e. \_\_\_\_\_ **Sq.yards. ( \_\_\_\_\_ Sqm.),** of land under survey no. \_\_\_\_\_ of \_\_\_\_\_ (Place), \_\_\_\_\_ (Mandal), \_\_\_\_\_ (Dist.), and shown delineated in the Layout plan / Site plan in Schedule-I;
- e) **Lessor** means the Authority or APSRTC or its successors;
- f) **Lessee** means the Lessee or the Concessionaire; and
- g) **Schedules** mean any of the schedules and supplements hereto.

## 3) Grant of Lease:

Subject to and in accordance with the terms and conditions set forth in the Concession Agreement no. \_\_\_\_\_ Dt. \_\_\_\_\_, applicable laws and applicable permits, the Lessor has leased the project site of \_\_\_\_\_ sq. yards at \_\_\_\_\_ (B/S or B/D) in survey no. \_\_\_\_\_ of \_\_\_\_\_ (Place) \_\_\_\_\_ (Mandal), \_\_\_\_\_ (Dist.) to the Lessee with effect from \_\_\_\_\_ (hereinafter referred to as the "commencement date") and expiring by efflux of time on Dt. \_\_\_\_\_ both days inclusive (hereinafter called the "**Lease Period / Concession Period**") i.e. for a

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lease period of 33 (Thirty Three) years, unless terminated earlier as per the terms of this Lease Deed, subject to and upon the terms and conditions contained in the Concession Agreement.

The Lessee has been conferred upon with the development rights in the said Land / Project site as set out in the Concession Agreement. However, it is expressly agreed that the Lessee does not possess any right to title or interest in the said Land / Project site except for the limited rights as the Lessee during the Concession Period and in the manner set out in the Concession Agreement.

- 4) In consideration of the Concession Agreement between the Lessor and the Lessee and in consideration of the premium herein reserved and the covenants on the part of the Lessee, the Lessor hereby leases / demises unto the Lessee the Project Site on "as is where is basis" and effective from the Commencement Date without interruption or interference, free from encumbrances and together with the full and free right and liberty of way and passage, easements, right of way / way leaves and other rights in relation thereto with delivery of possession thereof.
- 5) The Lessor hereby vests the Project Site with the Lessee with effect from the commencement date along with all easements, free from any encumbrances. Provided that the Lessee shall at its cost be required to remove the utilities including any power transmission lines and structures at, over or under the demised premises as per the provisions of the Concession Agreement and the Lessor shall render the necessary facilitation in this behalf.
- 6) In consideration for the lease of the Project Site by the Lessor to the Lessee:
  - a) The lessee has paid the 1<sup>st</sup> installment of Upfront Amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) after adjusting the Bid Security amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only), Project Development Fee of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only), Performance Security Amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) as a pre condition for entering into the Concession Agreement & Land Lease Deed.
  - b) The Lessee, effective from the Commencement Date and during the Concession Period shall pay Annual Premium (Lease Rent), 2<sup>nd</sup> installment of Upfront Amount and interest free, refundable Security Deposit to the Lessor / Authority as per Section 8.3 of the Concession Agreement and as per the schedule of Payments at Schedule- 2 annexed herewith by way of DD in favour of Accounts Officer, APSRTC, \_\_\_\_\_ District payable at

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\_\_\_\_\_ on a Nationalized/ Scheduled (excluding Cooperative) bank, Andhra Pradesh or through online banking.

The Annual Premium (Lease Rent) from third year onwards shall be payable on yearly basis before tenth (10) day of the \_\_\_\_\_ month of every Year (considered as due date), in advance throughout the Concession Period.

In the event of delay of any payments viz. Annual Premium, Project Development Fee, Upfront amount, Security Deposit, Performance Security from the due date the Lessee shall pay the Lessor, a penal interest on the due amount at the rate of 24% per annum, effective from and including the due date to excluding the date of payment.

In the event the payments are delayed beyond a period of 15 days from the scheduled date, it shall be construed as Concessionaire event of default in payments to the Authority / Lessor. When such a default occurs, the Authority / Lessor shall issue a default notice to the Concessionaire / Lessee requesting to remedy the situation within 15 days. If the situation is not remedied, at the end of 15<sup>th</sup> day a second notice shall be issued allowing further period of 15 days. In the event that the Concessionaire fails to remedy the situation, the Authority / Lessor may at the end of 45<sup>th</sup> day (15+15+15 days) appropriate the amount due from the security deposit and issue a termination notice. The Concessionaire / Lessee shall reinstate the security deposit within 7 days, failing which the Authority / Lessor reserves the right to terminate the Concession Agreement as per Article 16 of this Agreement.

- 7) The Lessor hereby vests the Demised Premises with the Lessee under this Deed for the purpose of implementing the Project, including the design, finance, construction, provision, operation and maintenance of the Project Facility in accordance with terms and conditions of the Concession Agreement and the applicable development guidelines.
  - a) The Lessee shall procure at its cost all Applicable Permits including land use conversion from the competent authorities as are required, from time to time, for development, construction, implementation, completion, commissioning and operation and maintenance of the Project Facility unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect.
  - b) The Lessee shall comply with all the specifications, controls, terms and conditions set forth in the RFP, its bid, this Deed, Concession Agreement,

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any supplementary Agreements, corrigendums, addendums, clarifications, modifications issued from time to time and comply with all the applicable laws and Applicable Permits and good industry practices in implementing the Project.

- 8) The Lessor recognises the right of the Lessee deal with the Demised Premises by grant of sub-leases of built up spaces only and Authorisations, appointment of Contractors and entering into franchise, management and other suitable arrangements with any Person selected or procured by the Lessee (the "Contractual Arrangements") for implementing the Project at the Demised Premises and carrying on its business of establishing, implementing, managing and operating and maintaining the Project Facility ; provided that the same shall be subject to and be carried out in accordance with the provisions of the Concession Agreement.

**PROVIDED THAT:**

- a) any sub-leases (of built-up spaces), licenses or franchising or similar arrangement under or pursuant to this Deed shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions contained in this Deed;
- b) the terms and conditions of this Deed shall be complied with in the case of such sub-leases, licenses or franchising or similar arrangement and, as applicable, form a part thereof;
- c) the term of such sub-leases, licenses or franchising or similar arrangements shall be limited to and be co-terminus with the Term of Lease granted herein by the Lessor to the Lessee;
- d) all such sub-leases, licenses or franchising or similar arrangements shall be determined and terminated simultaneously with and automatically on the expiry, determination or termination of this Deed, as the case may be. The Lessee's failure to comply with this sub-clause shall be at its cost, risk and consequence and constitute a Lessee Event of Default that shall entitle the Lessor to terminate this Deed and Concession Agreement, as per the Article- 16.

**PROVIDED, FURTHER THAT** the execution of such sub-leases of built-up spaces, licenses or franchising or similar arrangement shall not relieve the Lessee of its liability or obligations as set out in this Deed. The Lessor shall not be liable in any manner whatsoever to any person in respect of or in connection with execution of agreements or disputes relating to such sub-



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leases, licenses or franchising or similar arrangement. The Lessee shall at all times indemnify and keep indemnified the Lessor and its employees and representatives from and against all costs, losses, damages, liabilities, suits, actions, proceedings, claims, demands, litigations, penalties etc. in this behalf.

- 9) Subject to the provisions of the Concession Agreement in this behalf, the Lessor hereby consents and confers on the Lessee for the duration of 20 years from the commencement of the Concession Period the right to transfer, assign or otherwise encumber the Project Facilities in the Premises and / or any or all of its rights (except the land title) and interests in relation thereto or to create a Security Interest thereon in favour of the Lenders for the purpose of raising Financial Assistance provided or agreed to be provided by them under the Financing Documents and that no such transfer, assignment, encumbrance or creation of security interest by the Lessee of or over the Demised Premises in favour of the Lenders shall be construed as being in any way an event of default hereunder or a violation of the terms hereof:.

***Provided further:***

- i) except as provided in this Deed / the Concession Agreement, the Lessee shall not create any security interest in favour of any Person without the prior written consent of the Lessor;
- ii) the Lender's representative shall prepare a draft Mortgage Deed and furnish a copy to the Lessor for scrutiny and record. The Lessee shall submit a copy of such security interest to the Lessor as to the creation of security interest in favour of the Lenders, within a period of 14 days from the date of creation of such security interest.
- iii) the mortgage deed shall expire and cease to have any force or effect upon the earlier of (a) repayment of debt due by the Concessionaire; and (b) 20 years from the commencement of the Concession Period;
- iv) in the event of premature termination of the Concession Agreement / this Deed, such assignment / Security Interest shall stand extinguished.

Failure of the Lessee to provide the required information to the Lessor in terms of this clause shall amount to an event of default on the part of the Lessee and any consequential failure or inability on the part of the Lessor to provide any notice or intimation to such Lender, in terms of the relevant provisions of the Concession Agreement, if any required, shall be at the sole risk and responsibility of the Lessee only.

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Provided further, nothing contained in this Clause 9 shall:

- i) absolve the Lessee from its responsibilities to perform / discharge any of its obligations under and in accordance with the provisions of this Deed;
- ii) shall authorise or be deemed to authorise the Lenders to implement and execute the Project themselves; and
- iii) under any circumstances amount to any guarantee from or recourse to the Lessor.

- 10) The Lessee shall, at its cost and expense, purchase and maintain during the Concession Period such insurance policies as are necessary.

The Lessee shall at all times indemnify and keep indemnified the Lessor, its employees and representatives from and against all costs, losses, damages, liabilities, suits, actions, proceedings, claims, demands, litigations, penalties etc. as specified in the Concession Agreement.

- 11) Upon the occurrence of a Concessionaire Event of Default under the Concession Agreement, the Parties shall in consultation with the Lenders and in accordance with the provisions of the Concession Agreement have the right to replace the Lessee by the Substitute Entity for performing the Lessee's obligations hereunder, through a separate 'Substitution Agreement'. Upon appointment of the Substitute Entity, the Substitute Entity shall be deemed to be the Lessee for all the purposes and shall be entitled to all the rights and be bound by all the representations, covenants and obligations of the Lessee under this Deed.

- 12) In the event of termination of the Concession Agreement by efflux of time or otherwise, this Deed also stands terminated. The lease of the Demised Premises and all sub-leases of built up areas, Authorisations and rights in relation thereto shall be determined. The Lessee and Persons claiming through or under it (including without limitation the Contractors, and Contractual Counter Parties to the Contractual Arrangements including the sub-lessees of built up areas, Authorisations, franchisees etc. and the persons claiming through or under them) shall hand over the vacant possession of the Demised Premises to the Lessor or its nominated agency and forthwith vacate the Demised Premises without any demur or delay.

- 13) The Lessor hereby covenants with the Lessee as under:

- a) That the lease rents and other amounts payable by the Lessee are as per Section 8.3 of the Concession Agreement and as per the Schedule- 2 annexed herewith;

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- b) That it shall not interfere with or impede in any manner or otherwise limit, restrict or impose conditions in relation to:
- i) the complete, free and full enjoyment of the Demised Premises by the Lessee for the purpose of the implementation of the Project and all rights related thereto;
  - ii) the design, construction, operation and maintenance of the Project Facility;
  - iii) the implementation of the Project Facility by the Lessee; and
  - iv) the possession, control and use by the Lessee of the Demised Premises, the facilities constructed thereon and any other facilities developed in the course of implementation of the Project; provided that the same are in compliance with the terms and conditions of the Concession Agreement and this Deed.
- c) That it shall not terminate this Deed, except upon the due and valid termination of the Concession Agreement in accordance with the provisions thereof or upon any breach of any of the terms and conditions of this lease deed by the lessee; and
- d) That there are no litigations, claims, demands or any proceedings pending before any authority in respect of the Demised Premises or in respect of any other land-dispute, and that the Lessee shall have complete, lawful and uninterrupted possession, control and use of the Demised Premises.
- 14) The Lessee hereby covenants with the Lessor as follows:
- a) That it shall at its cost develop, establish, design, construct and operate and maintain the Project Facility at the Demised Premises as per its obligations under the Concession Agreement;
  - b) That it shall operate and maintain the Project Facility or cause it to be operated and maintained in accordance with the Concession Agreement;
  - c) That it shall observe and perform all terms, covenants, conditions and stipulations of this Deed and the Concession Agreement;
  - d) That it shall keep the Demised Premises free from encroachments during the Concession Period and operate and maintain and carry out repairs in accordance with the provisions of the Concession Agreement;
  - e) That in respect of the Demised Premises / built up areas there at / its business activities there at / relating to the Project it shall pay all municipal rates, levies, taxes including property tax, rents, including penalties etc. for

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late payment, at the applicable rates from time to time, to the concerned Government Authorities and be liable for payments of all rates and charges for the use of utilities and services at the Demised Premises;

- f) That it shall not sub-lease the whole or any part of the land comprising the Project Site, leased to it by Lessor under the land Lease Deed, to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute a Concessionaire Event of Default under the Concession Agreement. Provided that the Concessionaire shall be entitled to sub-lease the built up areas constructed by it at or on the Project Facility and to enter into Contractual Arrangements subject to and in accordance with the terms and conditions of the Concession Agreement and this lease deed and the same shall be co-terminus with this lease deed.
- g) That it shall pay the lease rents and other amounts to the Lessor as per Section 8.3 of the Concession Agreement and as per the Schedule- 2 annexed herewith with all applicable taxes thereon like GST etc.; and
- h) That it shall transfer the Project Assets to the Lessor free from all encumbrances, encroachments, liabilities etc. on the Project site and Project assets upon Termination of the Agreement by efflux of time or otherwise, in accordance with the provisions of the Concession Agreement.
- 15) Each Party hereto represents and warrants that:
- a) It has full power and authority to execute, deliver and perform its obligations under this Deed and to carry out the transactions contemplated hereby;
- b) It has taken all necessary actions to authorise the execution, delivery and performance of this Deed; and
- c) This Deed constitutes its legal, valid and binding obligations that shall be enforceable against it in accordance with the terms hereof.
- 16) The Parties agree that
- a) The failure of the Lessee to perform its obligations under this Deed and / or the Concession Agreement and any breach of covenants or undertakings given and provided for in this Deed and / or the Concession Agreement by the Lessee shall amount to a Concessionaire Event of Default under the Concession Agreement.

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- b) Any dispute, controversy or claim arising out of or in relation to this Deed and / or the Concession Agreement or the interpretation of any of its provisions shall be settled in accordance with the provision of Article 17 of the Concession Agreement.
- c) Upon occurrence of Default by either party as defined in this Deed and / or the Concession Agreement, the other party shall have the right to terminate this Lease Deed and the Concession Agreement, as per provisions of Article 16 of the Concession Agreement.
- d) Stamp duty, registration charges and any other charges required for execution and registration of this Deed shall be borne by the Lessee.
- e) In case of ambiguities, conflicts or discrepancies between the Concession Agreement and this Deed, the Concession Agreement shall prevail.
- f) All notices under the terms of this Deed shall be sent either by hand, e-mail or courier to the following addresses:

**Lessor** : **Chief Manager (Comm)**  
 RTC House, 1<sup>st</sup> Floor, PNBS,  
 APSRTC, Vijayawada- 520013.  
 e-mail ID: ctmmcap@gmail.com

**Lessee** : \_\_\_\_\_,  
 \_\_\_\_\_,  
 \_\_\_\_\_,  
 \_\_\_\_\_.  
 e-mail ID:

- 17) The Lessor here by handed over the Project Site to the Lessee and the lessee has taken over the site without any objections, as per terms and conditions of RFP and LOI and the Concession Agreement. Prior to handing over the site Joint inspection and Survey of the Project Site was conducted by both parties and no objections have been raised.

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**WITNESS WHEREOF** the Parties have executed and delivered this Deed by their duly authorized representative on the date first above written:

Signed, sealed  
and delivered by:

Signed, sealed  
and delivered by:

Signed, sealed  
and delivered by:

The Authorised  
Signatory  
For and on behalf  
of

The Authorised  
Signatory  
For and on behalf  
of

The Authorised  
Signatory  
For and on behalf  
of

**Andhra Pradesh  
State Road  
Transport  
Corporation**

\_\_\_\_\_

**(LESSOR)**

\_\_\_\_\_

**(LESSEE)**

\_\_\_\_\_

**(Preferred Bidder/  
Confirming Party)**

**CM (COMM)**  
Company Seal:

\_\_\_\_\_

Company Seal:

\_\_\_\_\_

Company Seal:

Witness

1.

2.

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**Schedule-I**

**Land Details.**

**Schedule-II**

**Schedule of Payments**

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## **Appendix - 8**

### **List of Applicable Permits**

The Concessionaire shall procure at its cost all Applicable Permits including land use conversion from the relevant competent authorities as are required, from time to time, for the development, construction, implementation, completion, commissioning, operation and maintenance of the Project facility.

#### **The lists of permits applicable include (but not limited to):**

- a) Consent to Establish under Water Act, 1974 and Air Act, 1981.
- b) Environmental Clearances.
- c) Clearances required if any from Airport Authority of India.
- d) Clearances from factories and labour departments.
- e) Registration under sales tax Act, 1976.
- f) Allotment of water by Municipalities/Local Bodies.
- g) Allotment of power by Electricity Authorities.
- h) All trade licenses as applicable.
- i) Approvals from Andhra Pradesh State Disaster Response and Fire Services Department (AP Fire Services).
- j) Land use conversion from statutory Authorities.
- k) Building Layout and other permissions required from concerned Municipal Authorities / any other statutory regulatory bodies.
- l) Occupancy Certificate/ any other certificate issued by Municipal Authorities permitting commercial operations in the facility.
- m) Immigration clearance (in case of foreign personnel being engaged).
- n) All other relevant statutory approvals / permits for construction, operation and management (maintenance) of Project facilities.



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## **Appendix- 9**

### **Scope of Work for Nodal Officer**

The Scope of Work for the Nodal Officer:

- 1) Review the Detailed Project Report (DPR) submitted by the Concessionaire. Ensure that the provisions of the DPR do not adversely obstruct any development plans of the Authority and are in accordance with the terms and conditions of the Agreement. Recommend to the Authority for approval of the DPR.
- 2) Review the approved plans, Designs and Drawings submitted by the Concessionaire and report to the Authority. Ensure that the approved plans, Designs and Drawings are in conformity with the approved DPR and in accordance with the terms and conditions of the Agreement.
- 3) Recommend to the Authority for approval of the Designs and Drawings, if necessary, within the period stipulated in the Agreement.
- 4) Review, monitor and inspect the activities associated with the design, construction, operation and maintenance of the Project facilities to ensure compliance by the Concessionaire with the approved plans, approved DPR and the terms & conditions of the Concession Agreement.
- 5) Report to the Authority any deviations / defects / objections / 'corrections required' in the activities associated with the design, construction, operation and maintenance of the Project facilities in order to ensure that the implementation of the BOT project is as per the approved plans, approved DPR and in accordance with the provisions of the Concession Agreement and Good Industry Practice.
- 6) Upon request of the Concessionaire on completion of construction of various phases as set out in the Concession Agreement, carry out inspections to ensure that the Project Facility has been constructed as per the provisions of the Concession Agreement and the approved DPR and recommend to the Authority for issuance of completion certificate to the Concessionaire.
- 7) In addition to above, the scope of work / services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Concession Agreement.

***Bidder***

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- 8) In case the Concessionaire proposes any i) deviation to the Drawings or ii) submits any Drawings required but not included in the DPR, the Nodal Officer shall review the same to ensure conformity with the Project / Design Requirements and submit report to the Authority.
- 9) Review the following items on behalf of the Authority:
  - a) Project Concept and Components, Capacity & Area Statement
  - b) Environmental Management Plan
  - c) Project Implementation & Investment Plan
- 10) During the construction phase, the Nodal Officer shall monitor, in accordance with Good Industry Practice, the progress in implementation of the Project. For this purpose the Nodal Officer shall undertake, inter-alia, the following activities and where appropriate make suitable suggestions:
  - a) review designs and drawings and obtain consent of the Authority for various works related to the project.
  - b) monitor the Construction works for conformity with the approved plans & DPR.
  - c) review and monitor the quality assurance and quality control procedures followed by the Concessionaire and ensure that they are in accordance with BIS standards.
  - d) review the manpower and equipment deployed by the Concessionaire.
  - e) monitor the progress in implementation of the project based on the Implementation and Investment Plan submitted by the Concessionaire.
- 11) Meetings, Records and Reporting:
  - a) the Nodal Officer may be required to participate in the project review meetings held from time to time by the Parties, as also to participate in emergency or extraordinary meetings of the Parties held to deal with any emergency, Force Majeure event or other exigencies.
  - b) the Nodal Officer shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities and submit periodic reports to the Authority.
  - c) the Nodal Officer shall submit all the information, data and records collected by it and/or available with it in relation to the discharge of its functions and responsibilities, to the Authority.

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- d) the Nodal Officer shall convey to the Authority and the Concessionaire in writing the shortfalls / defects observed during the Construction, operation and maintenance of the Project.
- 12) Review and monitor the transfer of assets and scope of transfer.
  - 13) Assess the depreciated historical cost of the assets of the BOT Project during transfer of Assets.
  - 14) Any other activity assigned by the Authority to inspect / report the defects / shortfalls of the Concessionaire in implementing the BOT Project during the subsistence of the Agreement in accordance with the terms and conditions of the Agreement.
  - 15) Nodal Officer/s nominated by the Authority on the request of the Concessionaire, shall coordinate between the parties and/or the Government to achieve the objectives of this Agreement. The scope of work for such Nodal Officer/s shall be limited to achieve the objectives of this Agreement as expressly specified by the Authority.

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**Appendix-10**

**VESTING CERTIFICATE**

Andhra Pradesh State Road Transport Corporation (APSRTC), established under RTC Act 1950, represented herein by Chief Manager (Commercial), having its office at RTC House, 1st Floor, Pandit Nehru Bus Station, Vijayawada – 520013, hereinafter referred to as "Authority" refers to the Concession Agreement no. \_\_\_\_\_ dated ..... (the "Agreement") entered into between the Authority and ..... (the "Concessionaire") for the Project of \_\_\_\_\_, at ..... under build, operate and transfer ("BOT") scheme.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in the Concession 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.

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.....

<p>AGREED, ACCEPTED AND SIGNED</p> <p>For and on behalf of Concessionaire by:</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p> <p>(Address)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of Authority by:</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p> <p>(Address)</p>
--	--

In the presence of:

I.

2.

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**Appendix 11**

**GUIDELINES FOR COMPUTATION OF  
DEPRECIATED HISTORICAL COST**

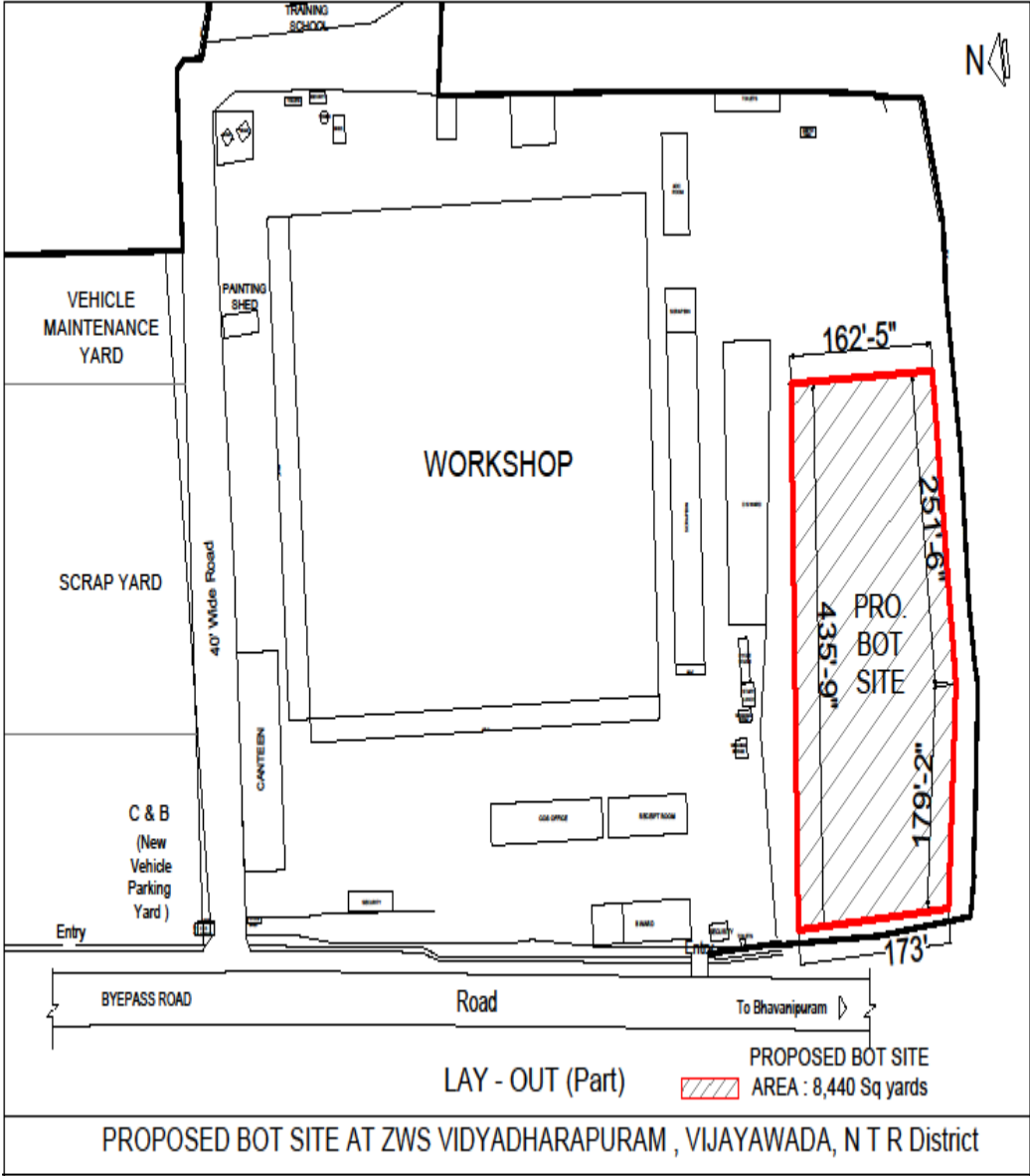
- 1) The **Depreciated Historical Cost** ("DHC"), wherever applicable, shall be computed based on the following norms:

The depreciation shall be calculated on straight-line basis. The depreciation rates shall be in accordance with the provisions of the Companies Act 1956, as may be amended from time to time.

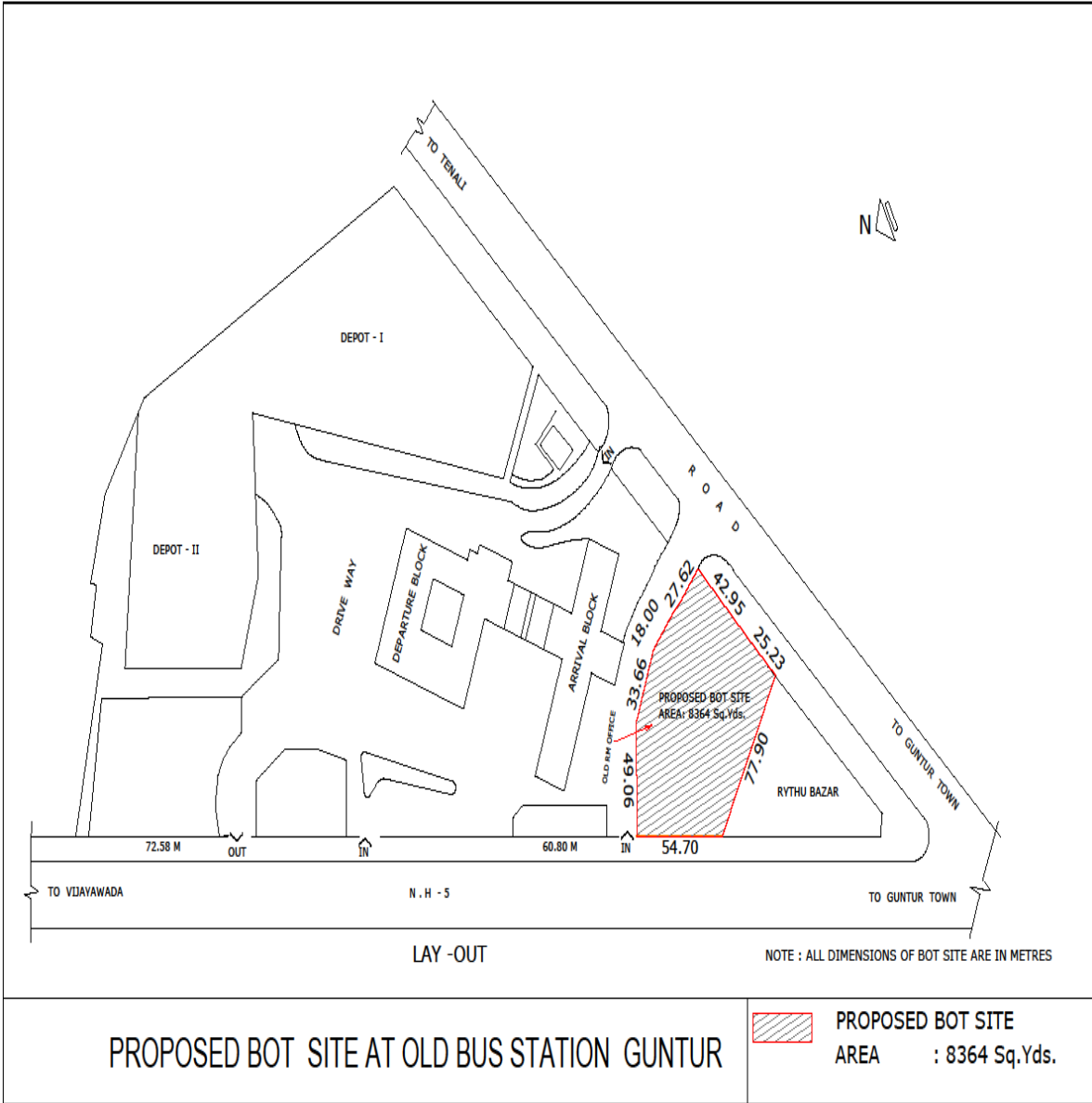
- 2) The date of existence of asset for the computation of the depreciated value shall be the date on which it was scheduled to be completed in all respects or the date on which it becomes capable of being put to or used for commercial operation, whichever is earlier. In respect of replacement assets, the assets shall be deemed to have come into existence when the same is capable of being put to or used for commercial operation as the replacement asset or the date when it was actually put to use, whichever is earlier.
- 3) Wherever Book Value or Depreciated Historical Cost is applicable, the original cost of such assets and those which have come in as replacement assets shall be that cost, established by the Concessionaire, to the satisfaction of the Authority, with Chartered Accountant's, Public Accountant's and valuer's certificates and duly supported by bills and other documents of manufacturers/suppliers/ civil works contractors, at the time of installation of the new assets or replacement of the assets as the case may be.

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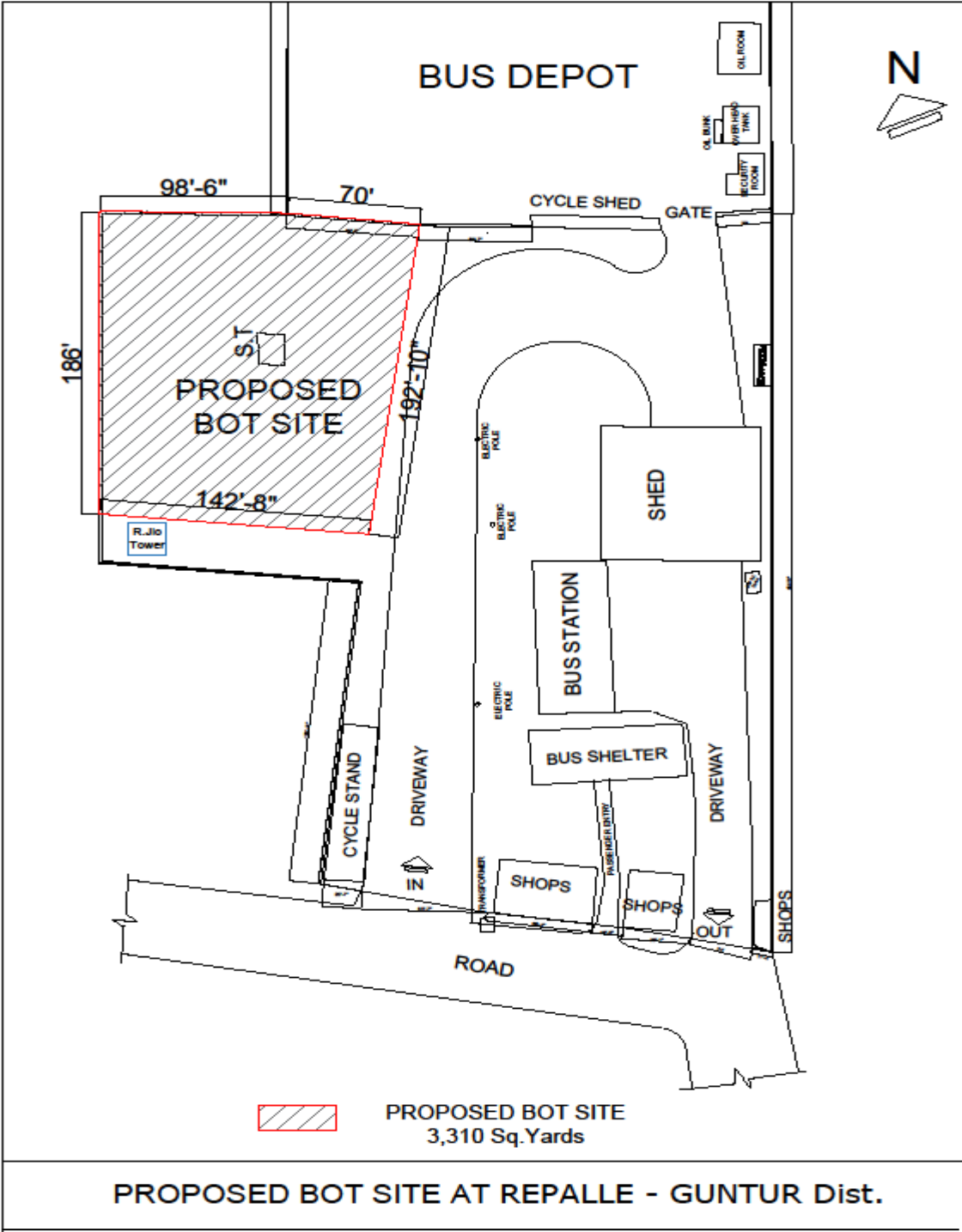
## Layout – 8,440 Sq. Yards of BOT Site at ZWS, Scrap Yard, Vidyadharapuram, Vijayawada



## Layout – 8,364 Sq. Yards of BOT Site at Old Bus Station, Guntur (Adjacent to Rythu Bazar)

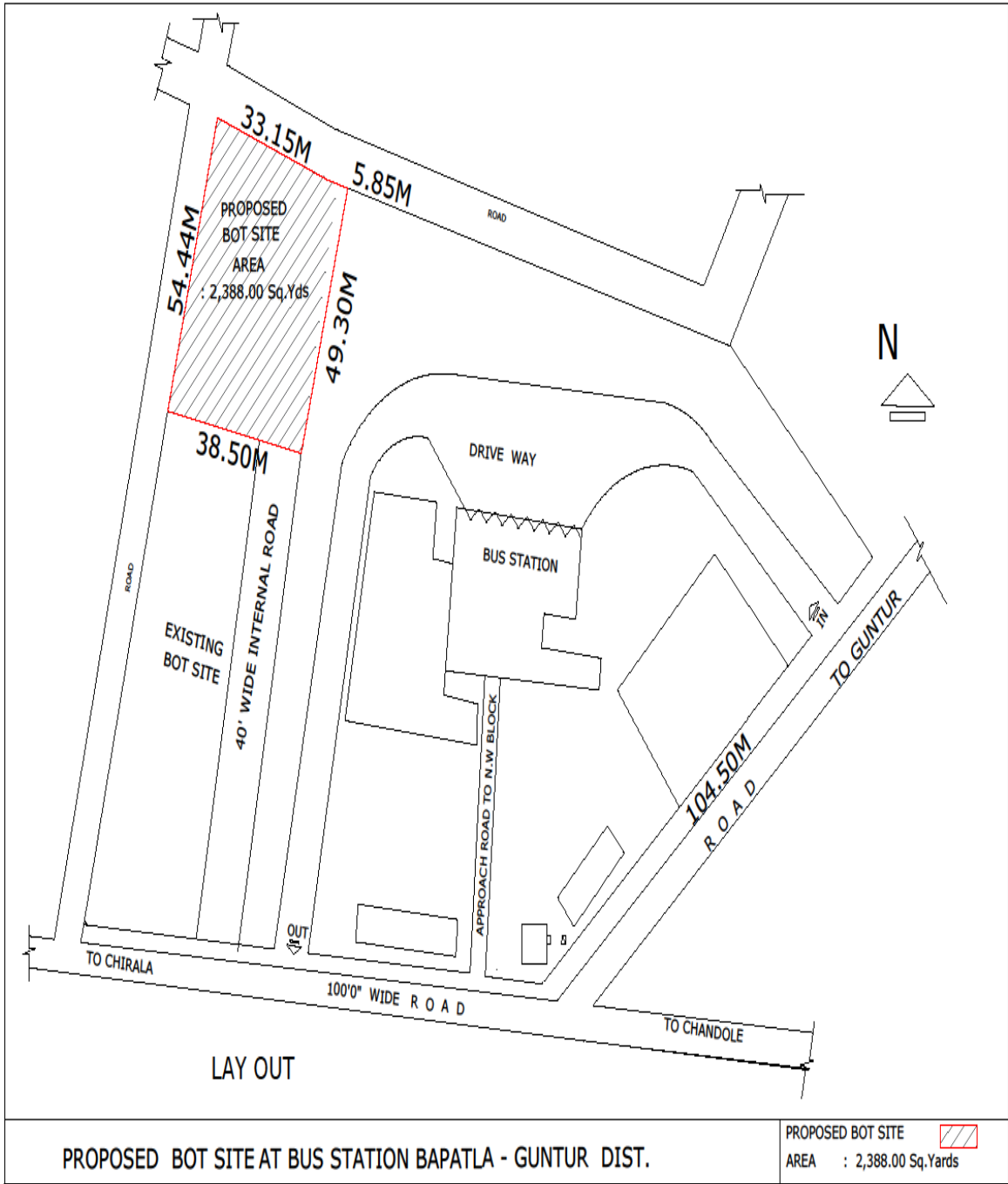


## Layout – 3,310 Sq. Yards of BOT Site at Bus Station Repalle

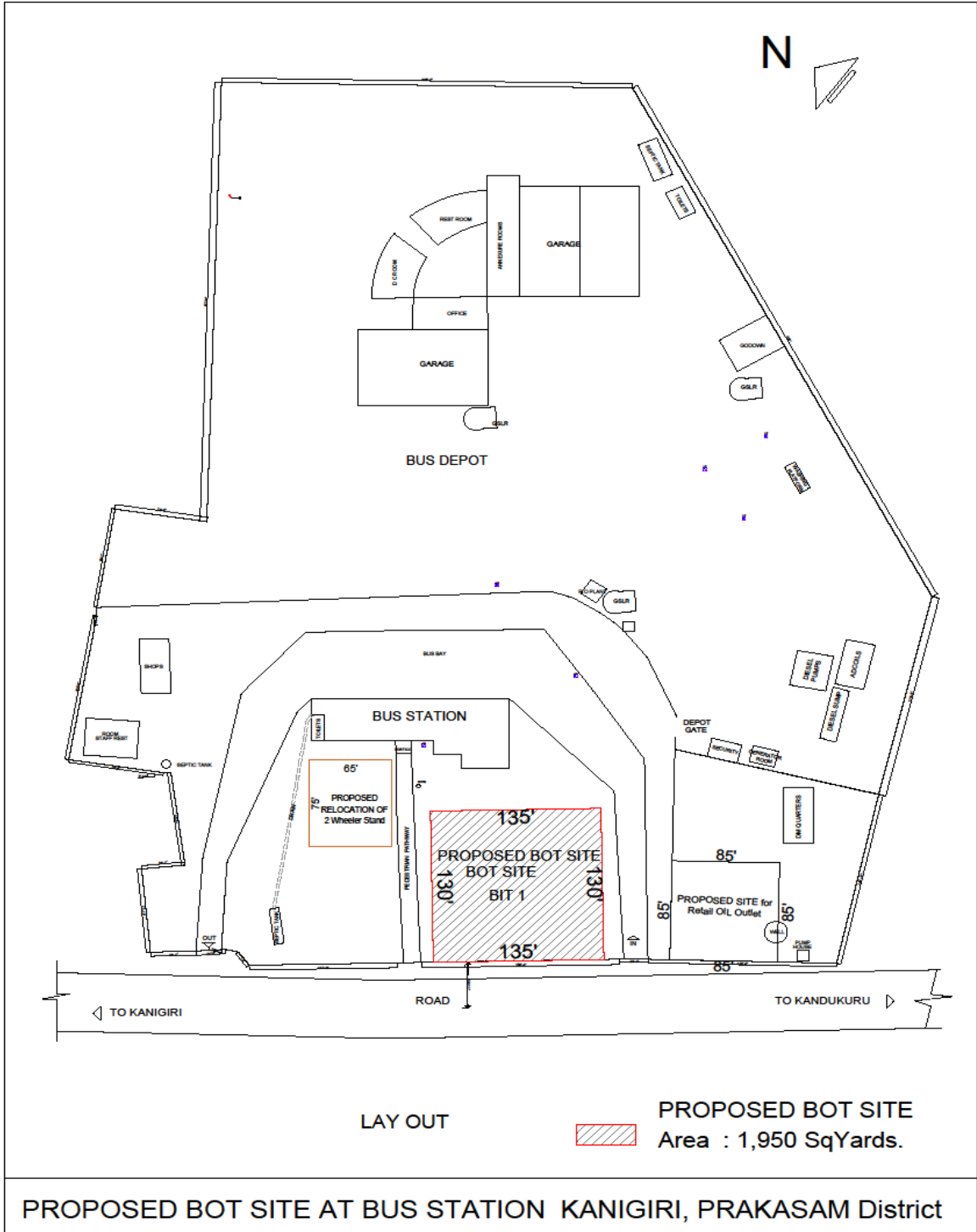




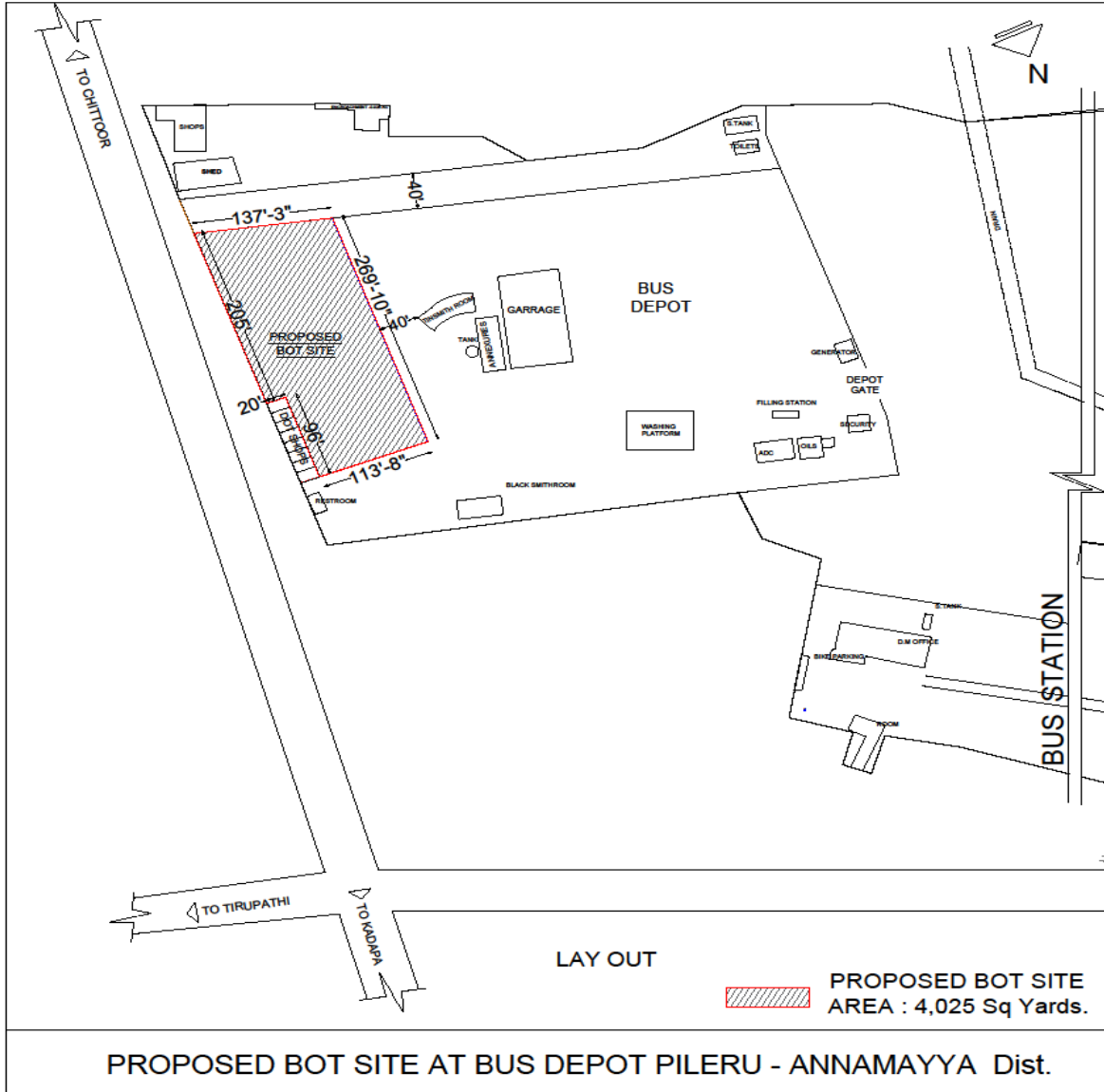
## Layout – 2,388 Sq. Yards of BOT Site Bit-2 at Bus Station Bapatla



## Layout – 1,950 Sq. Yards of BOT Site Bit-1 at Bus Station Kanigiri

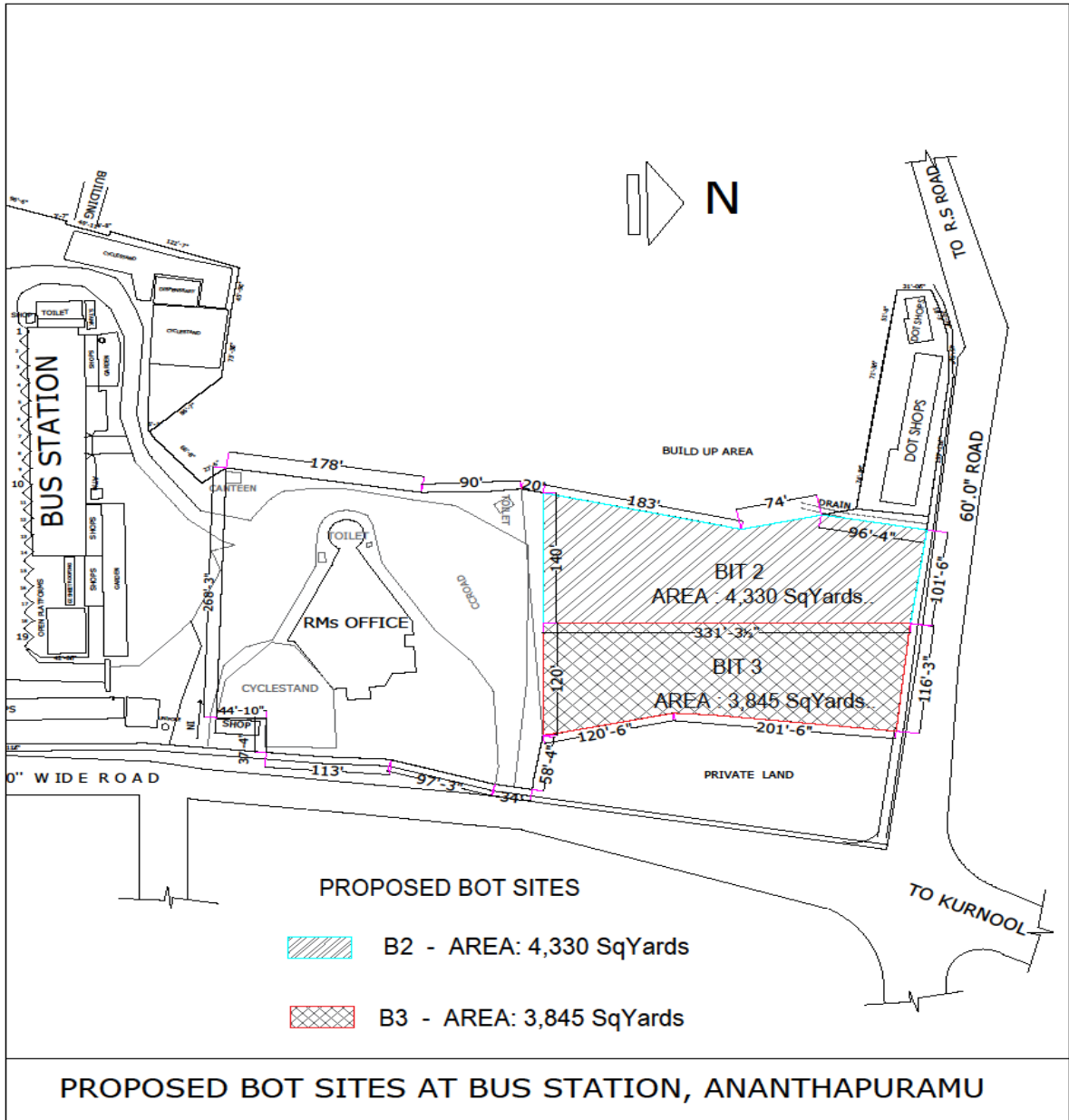


## Layout – 4,025 Sq. Yards of BOT Site at Bus Depot Piler



PROPOSED BOT SITE AT BUS DEPOT PILERU - ANNAMAYYA Dist.

## Layout – 4,330 Sq. Yards of BOT Site Bit-2 & 3,845 Sq. Yards of BOT Site Bit-3 at Bus Station Ananthapuramu



## Layout - 2,870 Sq. Yards of BOT Site at ZSTC, Kakatur

