

Part II

Draft Concession Agreement

Draft Concession Agreement

between

State Infrastructure and Industrial Development Corporation (“SIIDCUL”)

acting through

(designation of authorised officer)

and

(Concessionaire)

for

**Development of Truck Terminal,
Pantanagar, Uttarakhand**

This CONCESSION AGREEMENT made on this ----- (*insert date*) day of ----
----- (*insert month*), ----- (*insert year*) at ----- (*insert place of*
execution),

BETWEEN

State Infrastructure and Industrial Development Corporation (SIIDCUL),
having its registered office at 29, IIE (IT Park), Sahastradhara Road,
Dehradun-248001, hereinafter referred to as “the Concessioneing Authority”
or “SIIDCUL” which expression shall unless repugnant to the context include
the successors and assigns, on the one part

AND

-----, a company/firm having its registered office at
_____, hereinafter referred to as “Concessionaire” which
expression shall unless repugnant to the context include the successors and
permitted assigns, on the other part.

WHEREAS,

- A. State Infrastructure and Industrial Development Corporation (SIIDCUL) is engaged in the development of Integrated Industrial Estate, Pantnagar, Uttarakhand and as part of this endeavour, the Authority has decided to undertake development and operation of the Truck Parking at Integrated Industrial Estate, Pantnagar, Uttarakhand (the “Project”) through Public Private Partnership (the “PPP”) on Design, Build, Finance, Operate and Transfer (the DBFOT”) basis.
- B. SIIDCUL had, carried out extensive project preparation works in connection with the Project (as hereinafter defined) including assessment of project viability and subsequently invited proposals, through a competitive bid process from eligible parties for implementing the Project. In response thereto, SIIDCUL received proposals from several parties including the Concessionaire for implementing the Project.
- C. Pursuant thereto, after evaluating the aforesaid proposals, SIIDCUL accepted the proposal submitted by the Concessionaire and issued Letter of Acceptance No. _____ (insert Letter No.) dated _____ to the Concessionaire requesting the Concessionaire to execute the Concession Agreement, which the Concessionaire has acknowledged by its Letter No. _____ dated _____.

- D. The Parties hereto are required to enter into the Concession Agreement, being these presents, to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

DEFINITIONS AND INTERPRETATION

ARTICLE 1

1.1 Definitions

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

“Additional Cost” shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law.

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 8.1.

“Agreement” shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

“Applicable Law” shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire.

“Applicable Permits” shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement.

“Appointed Date” shall mean the date of this Agreement.

“Arbitration Act” shall mean the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

“Construction Requirements” shall mean the requirements as to construction of the proposed project as set out in Schedule 4.

“Book Value” means the value of the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged on the basis of straight line method and amortized equally over the

Operations Period, duly verified and certified by an independent auditor in accordance with IGAAP.

“Project Facility Area” shall mean an area of land within Project Site, more fully described in Schedule 1.

“Change in Law” shall have the meaning ascribed thereto in Clause 8.6.

“COD” or “Commercial Operations Date” shall mean the date on which the Authority has issued the Provisional Completion Certificate or the Completion Certificate for the Project Facility, in accordance with the provisions of this Agreement.

“Completion Certificate” shall mean the certificate issued by the Authority certifying, that:

- (i) the Concessionaire has constructed the Project Facility in accordance with the Construction Requirements; and
- (ii) the Concessionaire has obtained all approvals necessary for commercial operations of the Project Facility.

“Concession” shall have the meaning ascribed thereto in Clause 2.1 of this Agreement.

“Concession Period” shall have the meaning ascribed thereto in Clause 2.2.

“Concessionaire’s Equipment” means all machinery, equipment, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, but does not include Plant, Materials, or other things intended to form or forming part of the Permanent Works.

“Construction Documents” means all approved plans, manuals, drawings (including as built drawings), calculations, computer software (programs), samples, patterns and models prepared and used for construction of Project Facility.

“Construction Period” shall mean the duration of construction of Project Facilities commencing from the Appointed Date to the date of issue of Completion Certificate.

“Construction Requirements” shall mean Construction Requirements as set out in Schedule 3.

“Construction Works” shall mean all works and things required to be undertaken by the Concessionaire in accordance with the Construction Requirements.

“Contractor” shall mean any Person with whom the Concessionaire has entered into/may enter into any of the Project Agreements.

“Cure Period” shall have the meaning ascribed thereto in Clause 9.2(a)(iii) of this Agreement.

“Drawings” shall mean all of the drawings including working drawings for the Project Facility, designs, calculations and documents pertaining to the Project submitted by the Concessionaire in connection with the Project.

“Emergency” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project.

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

“Financing Documents” shall mean collectively the documents evidencing Lenders’ commitment to finance the Project.

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

“Force Majeure” or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 8.

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

“Government Agency” shall mean Government of India, any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Site or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“Handback Requirements” shall have the meaning ascribed thereto in Schedule 9.

“Lenders” shall mean financial institutions, banks, funds and trustees for bond holders or debenture holders, who provide funds to the Concessionaire for financing the cost of construction of the Project Facility or any part thereof.

“Materials” means things of all kinds (other than Plant) to be provided and incorporated in the Permanent Works by the Concessionaire, including the supply-only items (if any) which are to be supplied by the Concessionaire as specified in the Agreement.

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

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

“O&M Requirements” shall mean the requirements as to operation and maintenance of the Project Facility as set forth in Schedule 6.

“Operations Period” shall mean the period commencing from COD and ending at the expiry of the Concession /Termination.

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

“Performance Security” shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with Clause 5.1.

“Permanent Works” means the permanent works to be designed and executed in accordance with the Construction Requirements.

“Person” shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

“Plant” means machinery and apparatus intended to form or forming part of the Permanent Works, including the supply-only items (if any) which are to be supplied by the Concessionaire as specified in the Agreement.

“Preliminary Notice” shall mean the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

“Project” shall mean design, financing, construction, operation and maintenance of Project at Project Site in accordance with the provisions of this Agreement.

“Project Agreements” shall mean collectively this Agreement, O&M Contract, and any other material contract (other than Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

“Project Facility” shall mean collectively the facilities Truck Parking, truck parking facility, transit and trans shipment facilities for goods & trucks, communication & networking, amenities and facilities to drivers, transport agency offices, vehicles repairs and maintenance and related activities etc. which are required to be constructed, built, installed, erected or provided by the Concessionaire on the Project Site in accordance with the Construction Requirements

“Project Requirements” shall mean collectively the Construction Requirements, and O&M Requirements or any of them as the context may admit or require.

“Project Site” shall mean and include an area covering land admeasuring approximately 8 acres at Integrated Industrial Estate, Pantnagar more fully shown and described in Schedule 1.

“Provisional Completion Certificate” means the Completion Certificate that may be issued by the Authority pending completion of the Punch List items in accordance with Clause 5.4.

“Punch List” shall have the meaning ascribed thereto in Clause 5.4.

“Rupees” or “Rs.” refers to the lawful currency of the Republic of India.

“SPCD” or “Scheduled Project Completion Date” shall mean the date Twenty Four (24) months from the Appointed Date.

“Tax” shall mean and includes all taxes, fees, cesses, duties, levies that may be payable by the Concessionaire under Applicable Law.

“Temporary Works” means all temporary works of every kind (other than Concessionaire’s Equipment) required for the execution and completion of the Works and the remedying of any defects.

“Termination” shall mean early termination of the Concession, pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

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

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

“Tests” shall mean the tests to be carried out in accordance with the Construction Requirements or the O&M Requirements and if not expressly specified in either of the said requirements, as instructed by the Authority, in accordance with this Agreement.

“User Charges” shall mean charges or fees payable to the Concessionaire by the users of the Project Facility in accordance with Schedule 4.

“Works” means the Permanent Works and the Temporary Works or either of them as appropriate.

1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (d) 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;
- (e) the words "include" and "including" are to be construed without limitation;
- (f) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (g) 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;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST).
- (i) the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- (j) 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;
- (k) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (l) any agreement, consent, approval, authorisation, 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;
- (m) references to “Construction” includes investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto
- (n) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the “Damages”)

Concession

ARTICLE 2

2.1. Grant of Concession

Subject to and in accordance with the terms and covenants set forth in this Agreement, the Concessioneing Authority hereby grants and authorizes the Concessionaire to design, engineer, procure, finance and construct the Project Facility, to operate and maintain the Project Facility and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement, (the “Concession”).

2.2 Concession Period

- a) The Concession hereby granted is for a period of thirty (30) years from the Appointed Date exclusive of the Construction Period of one (1) year (Hereinafter referred to as the “Concession Period”)

Provided that ;

- a) After the expiry of the Concession period the project may be extended for another period of thirty (30) years. The Concessionaire shall have the first-right-of-refusal. If the Concessionaire refuses to accept the extended concession, the project will be offered to alternate concessionaire through competitive bid process.
- b) in the event of the Concession being extended by SIIDCUL beyond the said period of 30 (thirty) years in accordance with the provisions of this Agreement, the Concession Period shall include the period/aggregate period by which the Concession is so extended, and
- c) in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Commencement Date and ending with the Termination

2.3 Acceptance of Concession

In consideration of SIIDCUL agreeing to permit the Concessionaire to receive User Charges, and any other amounts, and the rights, privileges and benefits conferred upon by the Concessioneing Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof.

Project Site

ARTICLE 3

3.1 Handover of Project Site

- (a) SIIDCUL shall, within of 30 (Thirty) days from the Appointed Date, handover to the Concessionaire, vacant and peaceful physical possession of the Project Site for the purpose of implementing the Project.
- (b) Upon the Project Site being handed over pursuant to the preceding Clause (a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 Rights, Title and Use of the Project Site

- (a) The Concessionaire shall have the right to the use of Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.
- (b) The Project Site including the Project Facility developed thereon belongs to SIIDCUL and shall continue to be the property of SIIDCUL.
- (c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site, save and except as set forth and permitted under this Agreement.
- (d) The Concessionaire shall not without the prior written approval of SIIDCUL use the Project Facility for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (e) The Concessionaire shall have the right to collect User Charges as set out in Schedule 4.
- (f) The Concessionaire shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes as SIIDCUL may specify.

Provided that such access or use shall not result in a Material Adverse Effect and that SIIDCUL shall, in the event of any physical damage to the Project Site/ Project Facility/ on account thereof, ensure that the Project Site/ Project Facility is promptly restored at its cost and expenses.

Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.

- (g) The Concessionaire shall be at liberty to:
 - (i) demolish the existing structures within the Project Site subject to adherence to Project Requirements, Applicable Laws and Applicable Permits, and
 - (ii) use, sell or dispose in accordance with Applicable Laws and Applicable Permits, the material obtained as a result of demolition under clause(i) above.

3.3 Peaceful Possession

SIIDCUL, as Concessioneing Authority, hereby warrants that:

- (a) The Project Site together with the necessary right of way/ way-leaves
 - (i) has been acquired through the due process of law
 - (ii) belongs to and is vested in SIIDCUL and that SIIDCUL has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.
- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site or part thereof until expiry of the Concession Period/ completion of Handback Requirements. In the event, the Concessionaire is obstructed by any Person claiming any right, title 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 receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, SIIDCUL shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

3.4 Applicable Permits

The Concessionaire shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project.

Project Engineer
Deleted

ARTICLE 4

Concessionaire's Obligations

ARTICLE 5

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

5.1 Performance Security

- (a) The Concessionaire shall furnish Construction Period Performance Security of Rs.50 Lakhs (Rupees Fifty Lakhs only) by way of an irrevocable Bank Guarantee issued by a scheduled bank located in India in favour of "The Managing Director, SIIDCUL" for the proposed project, as required under the concession agreement. After the completion of construction and at the time of COD, Construction Period Performance Security shall be replaced with Operation Period Performance Security of Rs.20 Lakhs (Rupees Twenty Lakhs Only) which shall remain valid for the entire concession period set forth in Schedule 'Q'.
- (b) The Construction Period Performance Security of shall be valid for entire construction period and Operation Period Performance Security would be valid for three (3) year and renewable for every three (3) year during the entire project term

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to SIIDCUL's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

5.2 Financing Arrangement

The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

5.3 Drawings

(a) Preparation of Drawings

- (i) The Concessionaire shall, subject to the Construction Requirements, prepare its own Drawings with respect to the

Project Facility. The Concessionaire shall in any event be solely responsible for the adequacy of the Drawings.

- (ii) All Drawings shall be subject to review by the SIIDCUL as hereinafter provided in the succeeding sub-clause (b).

(b) Review of Drawings

- (i) The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the Drawings to the SIIDCUL.
- (ii) By forwarding the Drawings to the SIIDCUL pursuant to the preceding sub-clause (i), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Construction Requirements.
- (iii) Within 15 days of receipt of the Drawings, the Authority shall review the same taking into account, inter alia, comments, if any, thereon, and convey its comments/ observations to the Concessionaire on the conformity of Drawings with Construction Requirements. The Authority shall give its observations and comments, if any, within 15 days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalising the Drawings.
- (iv) If, within the period stipulated in the preceding sub-clause (iii), the Authority does not respond to the Drawings submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the construction of the Project Facility on the basis of such Drawings submitted by it to the Authority.
- (v) Notwithstanding any review or failure to review by or the comments/ observations of the SIIDCUL, the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Construction Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (vi) The Concessionaire shall be responsible for delays in meeting the Construction Requirements caused by reason of any Drawings not being in conformity with the Construction Requirements, and shall not be entitled to seek any relief in that regard from SIIDCUL.
- (vii) The Concessionaire shall in consultation with the Authority finalise an implementation schedule for the Project in accordance with the Construction Requirements.
- (viii) Within 30 days of issue of the Completion Certificate or Provisional Completion Certificate, as the case may be, the Concessionaire shall furnish to SIIDCUL three copies of "as built" Drawings of the Construction Works which have been

completed as on COD, in a manner as set out in Construction Requirements.

5.4 Project Implementation

- (a) The Concessionaire shall, at its own costs and expenses, construct the Project Facility, subject to adherence to Applicable Law and obtaining Applicable Permits for such construction, alteration or modification.

Provided that, such construction, shall not at any time cause any damage or have a dangerous effect on either the stability of the Project Facility or otherwise affect the safety of the users of the Project Facility.

- (b) Unless otherwise permitted by SIIDCUL, no Construction Works shall begin until the SIIDCUL is in place and has assumed charge.
- (c) The Concessionaire shall submit such documents and reports as are reasonably required by the Authority for issue of the Completion Certificate.
- (d) The Concessionaire shall make his own arrangements for adequate and timely supply of electricity, water, gas and other utilities required for execution of the Construction Works and SIIDCUL shall be in no way responsible for the same.
- (e) During Construction Period, the Concessionaire shall be responsible for keeping unauthorized persons off Project Site, and authorized persons shall be limited to the employees of the Concessionaire, employees of his subcontractor and persons authorized by SIIDCUL.
- (f) The Concessionaire shall adhere to Construction Requirements; achieve COD on or before the SPCD.

Provided that, on the written request by the Concessionaire for extension of SPCD, SIIDCUL may consider such a request, subject to the Concessionaire agreeing to pay an amount of Rs. 1.0 lakh per week of extension as liquidated damages. However, such extension shall in no case exceed three months from SPCD. In the event Concessionaire is not able to achieve COD within such extended period, it shall be deemed a Concessionaire Event of Default under Clause 9.1.

- (g) The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements.

- (h) The Concessionaire shall, before commencement of Construction Works;
 - (i) have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the SIIDCUL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (i) For the purposes of determining that Construction Works are being undertaken in accordance with the Construction Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the Authority and such Tests shall be carried out under the supervision of the Authority. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- (j) If the Tests are successful and the Project Facility can be safely and reliably opened for operation, the Authority shall issue the Completion Certificate within 7 days of the completion of such Tests.

Provided that, notwithstanding that certain works or things forming part of Construction Works are not complete, if following Tests the Authority determines that the Project Facility can be safely and reliably opened for operations, the Authority may issue Provisional Completion Certificate to the Concessionaire. The Provisional Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Authority and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within such time as may be determined by the Authority, but not exceeding 60 days from the date of issue of the Provisional Completion Certificate. Upon satisfactory completion of all Punch List items, the Authority, shall promptly and in any case within 7 days thereof, issue the Completion Certificate.

- (k) If the Concessionaire fails to complete the Punch List items within the said period of 60 days, SIIDCUL may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. In such an event, the Concessionaire shall reimburse to SIIDCUL, one and half times of the cost incurred by SIIDCUL in completing the Punch List items, within 7 days from the date of receipt of a claim in respect thereof from SIIDCUL. The Authority may issue Project Facility Completion Certificate only upon such reimbursement being made by the Concessionaire to SIIDCUL.
- (l) The Authority, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if

in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements.

- (m) The Construction Works shall be deemed to be complete and ready for commercial operations only when the Provisional Completion Certificate or the Completion Certificate is issued by the Authority in accordance with the provisions hereof.

Provided if COD is delayed beyond 90 days of the SPCD, SIIDCUL shall, subject to the provisions of Article 8, be entitled to terminate this Agreement and to appropriate the Performance Security.

5.5 Operation and Maintenance

- (a) The Concessionaire shall operate and maintain the Project Facility in accordance with the O&M Requirements in terms of Schedule 6.
- (b) The Concessionaire may undertake operations and maintenance of the Project Facility by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.
- (c) The Concessionaire shall, during the Operations Period :
- (i) shall have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project Facility, to deal with the SIIDCUL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (ii) shall, for the purposes of determining that the Project Facility is being maintained in accordance with the O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the Authority and such Tests shall be carried out under the supervision of the Authority. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- (d) In the event the Concessionaire has failed to operate and maintain the Project Facility in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the SIIDCUL (“Notice to Remedy”), SIIDCUL may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facility at the risk and cost of the Concessionaire. The Concessionaire shall reimburse one and half times the costs incurred by SIIDCUL on account of such repair and maintenance within fifteen (15) days of receipt of SIIDCUL’s claim therefor.

- (e) The Concessionaire shall be deemed to be in material breach of O&M Requirements, if SIIDCUL, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire,
- (i) the maintenance of the Project Facility or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
 - (ii) there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facility or any part thereof is not safe for operations;

For avoidance of doubt, persistent breach shall mean :

- (i) any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the SIIDCUL;
- (ii) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the SIIDCUL requiring the Concessionaire to remedy a breach, and
- (iii) repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

Upon occurrence of Material Breach of O&M Requirements, SIIDCUL shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement, be entitled to terminate this Agreement.

- (f) No demolition shall be allowed during the last five (5) years of the Concession Period, unless specifically approved by SIIDCUL.

Insurance

(a) Construction Period

The Concessionaire shall, in accordance to Good Industry Practice, at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the Construction Period, such insurance as are necessary including but not limited to the following:

- (i) builders' all risk insurance;
- (ii) comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Project Site ;
- (iii) workmen's compensation insurance;

- (iv) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

(b) Operations Period

The Concessionaire shall at its cost and expense, purchase and maintain by re-instatement or otherwise, for the Operations Period of 15 years, insurance against :

- (i) loss, damage or destruction of the Project Facility, at replacement value;
- (ii) the Concessionaire's general liability arising out of the Concession;
- (iii) liability to third parties;
- (iv) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

(c) Evidence of Insurance

The Concessionaire shall maintain a register of entry in order of premium paid towards the Project Facility and proof of payments made shall be submitted to SIIDCUL whenever requested for.

(d) Validity of Insurance

The Concessionaire shall, from time to time, promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period. The insurance policy shall not be cancelled or terminated unless 60 days' clear notice of cancellation is provided to SIIDCUL in writing.

If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, SIIDCUL may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by SIIDCUL thereof shall be reimbursed by the Concessionaire to SIIDCUL together with interest thereon at 5% (five) percent over SBI PLR from the date the respective sums were incurred by SIIDCUL, within 7 (seven) days from the receipt of claim in respect thereof made by SIIDCUL.

(e) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Concessionaire. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Facility after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

(f) Un-insurable Risks

If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/ re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

5.6 Environmental Compliance

The Concessionaire shall, ensure that all aspects of the Project Facility during the Concession Period and processes employed in the construction, operation and maintenance thereof shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto.

5.7 Concession Payment

(a) The Concessionaire agrees to make to SIIDCUL payment in accordance with Schedule 2 (“Concession Payment”).

(b) The Concession Payment shall be made by way of cheque/ demand draft in favour of “The Managing Director, SIIDCUL” payable at Dehradun.

5.8 Indemnity by Concessionaire

The Concessionaire shall indemnify and hold harmless SIIDCUL, the Authority and their employees from and against all claims, damages, losses and expenses arising out of or resulting from Concessionaire’s

negligence or breach in execution of the Construction Works and any activity incidental thereto.

5.9 General Obligations

The Concessionaire shall at its own cost and expense :

- (a) investigate, study, design, construct, operate and maintain the Project Facility in accordance with the provisions hereof;
- (b) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- (c) comply with Applicable Law governing the operations of the Project Facility, as the case may be, at all times during the Concession Period;
- (d) ensure and procure that each Project Agreement contains provisions that would entitle SIIDCUL or a nominee of SIIDCUL to step into the same at SIIDCUL's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement ;
- (e) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project ;
- (f) appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;
- (g) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies SIIDCUL against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall SIIDCUL be treated as employer in this regard;
- (h) make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Law and Applicable Permits;
- (i) be responsible for all the health, security, environment and safety aspects of the Project Site/ Project Facility, as the case may be, at all times during the Concession Period;
- (j) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (k) upon receipt of a request thereof, afford access to the Project Facility to the authorised representatives of SIIDCUL for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facility and to investigate any matter within their authority and upon reasonable

notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.

- (l) pay all taxes, duties and outgoings, including utility charges relating to the Project Facility, as applicable throughout the Concession Period.
- (m) make its own arrangements for the engagement of the employees and labour engaged for execution of the Construction Work.
- (n) keep on the Project Site two complete sets of this Agreement, Construction Documents, approvals given by the SIIDCUL and any other communication given or issued under provisions hereof for inspection, verification and use by the SIIDCUL or any authority authorised by law to inspect the same or any of them.
- (o) provide and maintain all necessary accommodation and welfare facilities for its staff and labour. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structure forming a part of the Construction Works.
- (p) take precautions to ensure the health and safety of its staff and labour.
- (q) employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the Construction Works. The Authority may require the Concessionaire to remove any person employed on the Project Site or Construction Works, who in the opinion of the Authority:
 - i. persists in any misconduct,
 - ii. is incompetent or negligent in the performance of his duties,
 - iii. fails to conform with any provisions of the Agreement, or
 - iv. persists in any conduct which is prejudicial to safety, health, or the protection of the environment

The Concessionaire shall in such cases appoint suitable replacement/s.

- (r) take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labour and to preserve peace and protection of persons and property in the neighbourhood of the Construction Works against such conduct.

5.10 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (i) Force Majeure Event, subject to Clause 8.3;
- (ii) SIIDCUL Event of Default;

- (iii) Compliance with the instructions of the SIIDCUL or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- (iv) Closure of the Project Facility or part thereof with the approval of SIIDCUL.

5.11 Access and Assured Availability of the Project Facilities

The Concessionaire shall, at all times during the Concession Period, allow access to and usage of Project Facilities to SIIDCUL / Person nominated by SIIDCUL.

5.12 Expenses Towards Statutory Deposits and Charges

The Concessionaire shall reimburse to SIIDCUL, service charges towards connection of utilities to the Project Facility in the Project Site, other taxes such as property tax, water tax and sewerage charges for the Project Site.

5.13 Erection of Sign Board

- (a) The Concessionaire shall erect a signboard, of a size not less than 2 ft. by 4 ft, adjacent to the main entrance to the Project Site in a manner such that it is ordinarily visible to any person using such entrance. The signboard shall prominently display the following text in black upper case letters on a white/yellow background:

“This property belongs to the SIIDCUL and has been handed over to _____ (*name of the Concessionaire*) for development of Truck Terminal from _____ (*Insert the in Appointed Date*) to _____ (*Insert the Expiry Date*)”.

- (b) The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period.

SIIDCUL's Obligations

ARTICLE 6

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, SIIDCUL shall have the following obligations :

6.1 Specific Obligations

- (a) SIIDCUL shall handover the possession of the Project Site to the Concessionaire in accordance with the Agreement;
- (b) Prior to handover of the Project Site to the Concessionaire, SIIDCUL shall remove all encroachments from the Project Site;
- (c) SIIDCUL shall grant in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from SIIDCUL under this Agreement, in connection with implementation of the Project and the performance of its obligations.

Provided where authorisation for avilment of utilities such as power, water, sewerage, telecommunications or any other incidental services/ utilities is required, the same shall be provided by SIIDCUL in the form as set out in Schedule 8, within 15 days from receipt of request from the Concessionaire to make available such authorisation.

6.2 General Obligations

SIIDCUL shall :

- (a) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, 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;
- (b) assist the Concessionaire in obtaining police assistance, upon payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/ Project Facility and implementing this Agreement in accordance with the provisions hereof;
- (c) observe and comply with all its obligations set forth in this Agreement.

6.3 Monitoring and Assessment

- (a) SIIDCUL, shall set up a program monitoring mechanism from SIIDCUL, Industry and the Concessionaire to periodically monitor the project deliverables, including research outputs.
- (b) The expert committee would be chaired by a representative, not below the rank of Regional Manager, from the SIIDCUL
- (c) Since the outputs in terms of availability of Truck Terminal facility, regular repair and maintenance activities, smooth flow of traffic and decongestion are the prime deliverables of the entire project, the expert committee would evaluate the efforts and outputs of these activities by the concessionaire.
- (d) The expert committee shall submit its report to SIIDCUL regarding the achievement of projects deliverables - low, moderate, satisfactory, excellent etc with specific recommendation(s) on continuance/discontinuance/restructuring of the project. The findings of the expert committee would be considered to be final and binding.
- (e) If the project deliverables are found to be moderate or low, the expert committee would direct SIIDCUL to plan corrective action(s) with the concessionaire and implement the same to achieve desired outputs within sixty (60) days.
- (f) The expert committee shall evaluate project deliverables on a three monthly basis based on visit to the facility, review of auditors' reports, reports provided by concessionaire, information received from general public including project stakeholders etc.

SIIDCUL shall facilitate the expert committee in information gathering, conducting facility visit, meetings, interviews etc.

Levy and Collection of User Charges and Other Charges

ARTICLE 7

7.1 User Charges

- (a) Subject to the provisions of this Agreement and Applicable Law, in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms and conditions set forth in this Agreement, the Concessionaire shall be entitled to levy, collect, retain and appropriate the User Charges in accordance with Schedule 4.

- (b) Concessionaire shall, at its own cost, arrange the necessary infrastructure as may be required for levy and collection of User Charges mentioned above.

7.2 Advertisement / Hoarding Charges

The Concessionaire shall have the right to permit/ allow and charge for advertisement/ hoarding or other commercial activity in the Project Facility as per Applicable Laws, provided no such activity shall affect the safe and smooth flow of Project operations or cause any physical damage to the Project Facility.

7.3 Change of Scope

SIIDCUL may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition/ deletion to the works and services in the Project Facility which are beyond the scope of the **Project as contemplated by this Agreement (“Change of Scope”)**, provided such changes do not require expenditure exceeding **Rs. 2,00,00,000/- (Rupees two crore only) and does not adversely affect the COD. All such changes shall be made** by SIIDCUL by an order (the “Change of Scope Order”) issued in accordance with the procedure set forth in this Clause.

7.3.1 Procedure for Change of Scope

- (a) SIIDCUL shall whenever it desires provision of addition/ deletion of items of work and services referred to in Clause 7.3 above, issue to the Concessionaire a notice of change of scope (the “Change of Scope Notice”).
- (b) Upon receipt of such Change of Scope Notice, the Concessionaire shall within 15 days provide to SIIDCUL such information as is necessary and reasonable together with preliminary documentation in support of the following :
- i. the impact, if any, which the Change of Scope is likely to have on the SPCD if the work is required to be carried out before COD, and
 - ii. the cost to the Concessionaire of complying with such Change of Scope Notice (including, without limitation, material and labour cost information furnished in accordance with the current schedule of rates applicable to the works assigned by SIIDCUL to its contractors, including the premium on such rates), the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof including a detailed breakdown by work classifications.

Provided, however, that the cost of providing such information shall be reimbursed to the Concessionaire by SIIDCUL to the extent such costs are certified to be reasonable by the SIIDCUL.

- (c) If SIIDCUL desires, after receipt of information set forth in sub-clause (b) to proceed with the Change of Scope, it shall convey the desired option (with or without modification) to the Concessionaire by issuing a Change of Scope Order within 30 days from the date of recommendation made and thereupon the Parties shall make good faith efforts to mutually agree upon the costs and time for implementing of the same. Upon reaching an agreement relating to such costs and time, SIIDCUL shall issue a written confirmation of the Change of Scope and thereupon the Concessionaire shall proceed with performance of such order. In the event, the Parties are unable to agree, SIIDCUL may, by issuing a confirmation in writing of such Change of Scope Order, require the Concessionaire to proceed with the performance of the Change in Scope Order pending resolution of such dispute.

7.3.2 A Change of Scope Order will be effective and binding upon issuance of a confirmation of such Change of Scope Order by SIIDCUL. Notwithstanding a dispute regarding cost and time for implementation of such Change of Scope Order, the Concessionaire shall proceed with the performance of such Change of Scope Order promptly following SIIDCUL's confirmation pursuant to Clause 7.3.1(c). Pending resolution of such dispute, SIIDCUL shall pay to the Concessionaire, if the Change of Scope Order involves increase in bill of quantities an amount equal to the costs that are certified by the Authority.

7.3.3 All claims by the Concessionaire pursuant to this Clause 7.3 shall be supported by such documentation as is reasonably sufficient for SIIDCUL to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

Force Majeure and Change In Law

ARTICLE 8

8.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby (“Affected Party”) and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event

- (a) earthquake, flood, inundation and landslide
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- (c) fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- (d) acts of terrorism;
- (e) strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- (f) action of a Government Agency having Material Adverse Effect including but not limited to
 - (i) acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facility or any part thereof or of the Concessionaire’s or the Contractor’s rights in Contractor’s rights under any of the Project Agreements.
 - (ii) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
 - (iii) any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire’s or the Contractor’s breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
- (g) early determination of this Agreement by SIIDCUL for reasons of national emergency, national security or the national interest.
- (h) any failure or delay of a Contractor caused by any of the events mentioned in (f) and (g) above, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.
- (i) war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned

in this sub-clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.

8.2 Obligations of the Parties

- (a) As soon as practicable and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the Authority and the other Party of the same setting out, inter alia, the following in reasonable detail:
- (i) the nature and extent of the Force Majeure Event;
 - (ii) the estimated duration of the Force Majeure Event;
 - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - (v) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- (b) As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Clause 8.2 (a), the Parties, shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility in order to:
- (i) assess the impact of the underlying Force Majeure Event,
 - (ii) to determine the likely duration of Force Majeure Event and,
 - (iii) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the Parties may reasonably require.

8.3 Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Clause 8.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event and to restore the Project Facility, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Engineer written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- (f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

8.4 Termination due to Force Majeure Event

(a) Termination

- (i) If a Force Majeure Event, is an event described under Clauses 8.1(a) to 8.1(e) and 8.1(i), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- (ii) If the Force Majeure Event is an event described in 8.1 (f), 8.1 (g) or 8.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 8.1 (f), 8.1 (g) or 8.1 (h) subsists or is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement.

Provided further, SIIDCUL may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clauses 8.1(f), 8.1(g) or 8.1(h).

(b) Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding clause 8.4(a) (i) or (a) (ii), it shall issue Termination Notice setting out ;

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof and;
- (iv) any other relevant information.

(c) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (i) the Termination Payment, if any, payable by SIIDCUL in accordance with the following clause is paid to the Concessionaire on the Termination Date and
- (ii) the Project Facility are handed back to SIIDCUL by the Concessionaire on the Termination Date free from all Encumbrance.

(d) Termination Payment

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

- (i) If Termination is due to a Force Majeure Event, described under Clauses 8.1(a) to 8.1(e), no Termination Payment shall be made by SIIDCUL to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies.
- (ii) If Termination is due to the occurrence of any event described under Clauses 8.1(f) or 8.1(g) or 8.1(h), SIIDCUL shall pay to the Concessionaire Termination Payment equal to 100% of the Book Value

Provided SIIDCUL shall be entitled to deduct from the Termination Payment any amount due and recoverable by SIIDCUL from the Concessionaire as on the Termination Date.

- (iii) If Termination is due to the occurrence of any event described under Clause 8.1(i), SIIDCUL shall, pay to the Concessionaire, Termination payment equal to 70% of the Book Value.

Provided SIIDCUL shall be entitled to deduct from the Termination Payment any amount due and recoverable by SIIDCUL from the Concessionaire as on the Termination Date.

8.5 Liability for other losses, damages etc.

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

8.6 Change in Law

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
 - (i) the enactment of any new Indian law;
 - (ii) the repeal, modification or re-enactment of any existing Indian law;
 - (iii) a change in the interpretation or application of any Indian law by a court of record.

Provided that Change in Law shall not include:

- (i) coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
 - (ii) any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
 - (iii) any change in the rates of the Central Taxes.
- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Concessionaire is obliged to incur additional costs, SIIDCUL shall not reimburse any such cost.
- (c) Upon occurrence of a Change in Law, the Concessionaire may, notify SIIDCUL of the following:

- (i) the nature and the impact of Change in Law on the Project
- (ii) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
- (iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost

Events of Default and Termination

ARTICLE 9

9.1 Events of Default

Event of Default shall mean either Concessionaire Event of Default or SIIDCUL Event of Default or both as the context may admit or require.

(a) Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in Clause 5.12

- (i) The Concessionaire has failed to adhere to the Construction Requirements and such failure, in the reasonable estimation of the Authority, is likely to delay achievement of COD beyond 90 days of the SPCD;
- (ii) The Concessionaire has failed to achieve COD within 90 days of the SPCD for any reason whatsoever;
- (iii) At any time during the Concession Period, the Concessionaire fails to adhere to the Construction Requirements or O&M Requirements and has failed to remedy the same within 60 days;
- (iv) The Concessionaire has failed to make the Concession Payment due to SIIDCUL and more than 30 days have elapsed since such payment became due;
- (v) The Concessionaire has failed to make any payments due to SIIDCUL and more than 120 days have elapsed since such payment became due;
- (vi) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days ;
- (vii) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (viii) A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up/ dissolution of the Concessionaire;
- (ix) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound

up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of SIIDCUL, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;

- (x) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- (xi) The Concessionaire has abandoned the Project Facility ;
- (xii) The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (xiii) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days
- (xiv) The Concessionaire has failed to perform/ discharge its obligations under Clause 5.13 of this Agreement for a continuous period of 24 hours.
- (xv) The Consortium formed for the purpose of the Project is changed by the Concessionaire without the consent of SIIDCUL.

(b) SIIDCUL Event of Default

Any of the following events shall constitute an event of default by SIIDCUL ("SIIDCUL Event of Default"), when not caused by a Concessionaire Event of Default or a Force Majeure Event:

- (i) SIIDCUL is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 days of receipt of notice thereof issued by the Concessionaire;
- (ii) SIIDCUL having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within 30 days from the date of written notice thereof given by the Concessionaire
- (iii) SIIDCUL has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (iv) SIIDCUL has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- (v) Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/ this Agreement becomes inoperable or takeover by any government agency of the Project/ Project Facilities or any part thereof, thereby causing Material Adverse Effect.

- (vi) Any representation made or warranties given by the SIIDCUL under this Agreement has been found to be false or misleading.

9.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which SIIDCUL may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, SIIDCUL shall subject to the provisions of the Lenders' Step-in Rights as per Clause 9.5, be entitled to terminate this Agreement in the manner as set out under Clause 9.2(a)(ii) and Clause 9.2(a)(iii).

Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Clause 9.2(a)(xiv), SIIDCUL may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Clause 9.2(c).

- (ii) If SIIDCUL decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 days of receipt of the Preliminary Notice, the Concessionaire shall submit to SIIDCUL in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, SIIDCUL shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 days ("Cure Period") to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/ cure the underlying Event of Default within such further period allowed, SIIDCUL shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate Performance Security, if subsisting.

(b) Termination for SIIDCUL Event of Default

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of SIIDCUL Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

- (ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to SIIDCUL. Within 30 days of receipt of Preliminary Notice, SIIDCUL shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "SIIDCUL Proposal to Rectify"). In case of non submission of SIIDCUL Proposal to Rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If SIIDCUL Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor, SIIDCUL shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however SIIDCUL fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

(c) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub clause (a) or (b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and,
- (iv) any other relevant information.

(d) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility,
- (ii) the termination payment, if any, payable by SIIDCUL in accordance with the following Clause (f) is paid to the Concessionaire on the Termination Date and
- (iii) the Project Facility is handed back to SIIDCUL by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to SIIDCUL.

(e) Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

(f) Termination Payments

Upon Termination of this Agreement on account of SIIDCUL Event of Default, the Concessionaire shall be entitled to revoke the Performance Security, if subsisting, and receive from SIIDCUL, termination payment equal to 120% of the Book Value.

9.3 Rights of SIIDCUL on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, SIIDCUL shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:
- (i) enter upon and take possession and control of the Project Site / Project Facility forthwith;
 - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Site /Project Facility;
- (b) Notwithstanding anything contained in this Agreement, SIIDCUL shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facility by the Concessionaire to SIIDCUL shall be free from any such obligation.

9.4 Accrued Rights of Parties

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

9.5 Lenders' Step-in Rights

- (a) Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that :
- i. upon the Lenders recalling and demanding the debt outstanding under the Financing Documents (following an event of default under the Financing Documents), or
 - ii. upon a Termination Notice being issued by SIIDCUL,

the Lenders shall, without prejudice to any other remedy available to them, have the option to propose to SIIDCUL the substitution of the Concessionaire by another suitable company ("Proposed Concessionaire"). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Concessionaire and the terms and conditions of the substitution.

- (b) Upon receipt of the Lenders' proposal pursuant to the preceding sub-clause (a), SIIDCUL shall, at its discretion, have the right to accept substitution of the Concessionaire on such terms and conditions as it may deem fit.

Provided that any such substitution shall :

- (i) be on terms and conditions of the Concession which are not less favourable to SIIDCUL than those prevailing at the time of substitution, and
 - (ii) be for the remaining period of Concession only.
- (c) In the event of substitution as aforesaid, all the rights, privileges and the benefits of the Concessionaire shall be deemed to have been transferred to and vested in the Proposed Concessionaire and SIIDCUL and the Proposed Concessionaire shall take such steps and enter into such documents as may be necessary to give effect to the substitution.
- (d) Upon the substitution of the Concessionaire becoming effective as aforesaid, the Concessionaire shall hand back to SIIDCUL or upon instruction of SIIDCUL to the Proposed Concessionaire and for the purpose of giving effect to this provision, SIIDCUL shall have all such rights as are provided in Clause 9.3.

Handback Requirements

ARTICLE 10

10.1 Ownership

Without prejudice and subject to the Concession, the ownership of the Project Site, and the Project Facility, including all improvements made therein by the Concessionaire, shall at all times remain that of SIIDCUL.

10.2 Obligations of Parties

(a) Concessionaire's Obligations

- i. The Concessionaire shall on the date of expiry of the Concession Period, hand back vacant and peaceful possession of the Project Facility to SIIDCUL free of cost and in good operable condition.
- ii. At least 12 months before the expected expiry of the Concession Period a joint inspection of the Project Facility shall be undertaken by SIIDCUL, Concessionaire. SIIDCUL shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs ("Project Facility Handback Requirements"), if any, to be carried out so as to conform to the Construction Requirements and O&M Requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least 3 months prior to the expected expiry of the Concession Period and ensure that the Project Facility continues to meet such requirements until the same are handed back to SIIDCUL.
- iii. SIIDCUL shall, within 15 days of the joint inspection undertaken under preceding clause (ii) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to SIIDCUL along with the Project Facility.
- iv. The Concessionaire hereby acknowledges SIIDCUL's rights specified in Clause 9.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.
- v. At least 24 months prior to the expiry of the Concession Period, the Concessionaire shall, for due performance of its obligations relating to handback of the Project Facility, submit to SIIDCUL a bank guarantee, in the form as set forth in Schedule 9 ("Handback Guarantee"), from a bank acceptable to SIIDCUL. The Handback Guarantee shall be kept valid for a period of 30 months.

10.3 SIIDCUL's Obligations

SIIDCUL shall, subject to SIIDCUL's right to deduct amounts towards:

- (i) carrying out works/jobs listed under Clause 10.2(a)(ii), which have not been carried out by the Concessionaire,
- (ii) purchase of items, which have not been handed back to SIIDCUL along with the Project Facility in terms of Clause 10.2(a)(iii), and
- (iii) any outstanding dues, which may have accrued in respect of the Project Facility during the Concession Period

duly discharge and release to the Concessionaire the Handback Guarantee within 3 months from the expiry of the Concession Period.

Dispute Resolution

ARTICLE 11

11.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-clause (b) below.
- (b) Either Party may require such Dispute to be referred to the Director, SIIDCUL and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 11.2 below.

11.2 Arbitration

(a) Procedure

Subject to the provisions of Clause 11.1, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about

such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

(b) Place of Arbitration

The place of arbitration shall ordinarily be Nainital but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

(c) English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

(d) Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

(e) Performance during Arbitration

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

Representations and Warranties, Disclaimer

ARTICLE 12

12.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to SIIDCUL that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (g) 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 constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) 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 Agency which may result in Material Adverse Effect;
- (i) 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 in the aggregate have or may have Material Adverse Effect;
- (j) subject to receipt by the Concessionaire from SIIDCUL of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Site/Project Facility shall pass to and vest in SIIDCUL on the Termination

- Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or SIIDCUL;
- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to SIIDCUL or to any Government Agency in relation to Applicable Permits 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;
 - (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.
 - (m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by SIIDCUL, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that SIIDCUL shall not be liable for the same in any manner whatsoever to the Concessionaire.

12.2 Representations and Warranties of SIIDCUL

SIIDCUL represents and warrants to the Concessionaire that:

- (a) SIIDCUL has full power and authority to grant the Concession;
- (b) SIIDCUL has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes SIIDCUL's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) There are no suits or other legal proceedings pending or threatened against in respect of the Project, Project Site or Project Facility.

12.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

13.1 Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of SIIDCUL.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site/ Project Facility, except with prior consent in writing of SIIDCUL, which consent SIIDCUL shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - (ii) Pledges/hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
 - (iii) assignment of Concessionaire's rights and benefits under this Agreement and other Project Agreements to or in favour of the Lenders as security for financial assistance provided by them.

13.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be 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. Such sum shall until payment thereof carry interest at 15% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to 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.

Provided the stipulation regarding interest for delayed payments contained in this Clause shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

13.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Nanital shall have jurisdiction over all matters arising out of or relating to this Agreement.

13.4 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - (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) 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 hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

13.5 Survival

Termination of this Agreement:

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

13.6 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by both the Parties hereto and evidenced in writing.

13.7 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 international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to SIIDCUL:

The Managing Director
State Infrastructure and Industrial Development Corporation,
29, IIE (IT Park), Sahastradhara Road,
Dehradun-248001

If to the Concessionaire:

The Managing Director,

-----(*insert complete address with phone and fax details*)

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- (i) in the case of any communication made by letter, when delivered by hand, by recognised international 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.

13.8 Severability

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

13.9 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

13.10 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

13.11 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 and any representation by any Party not contained in a binding legal agreement executed by the Parties.

13.12 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of SIIDCUL by: For and on behalf of CONCESSIONAIRE by:

(Signature)

(Signature)

(Name)

(Designation)

In the presence of :

1)

2)

Project Site

SCHEDULE 1

Site Map Enclosed

Concession Payment

SCHEDULE 2

PAYMENTS TO THE CONCESSIONING AUTHORITY

1. Concession Payment

The Concessionaire shall pay to the Concessing Authority annual payment (“the Concession Payment”).

Sr. No	Due Date	Year	Amount Calculation	Amount in figures	Amount in words
1.	On COD	1	CP		
2.	COD + 1 Year	2	CP		
3.	COD + 2 Year	3	CP		
4.	COD + 3 Year	4	(1.10) X CP		
5.	COD + 4 Year	5	(1.10) X CP		
6.	COD + 5 Year	6	(1.10) X CP		
7.	COD + 6 Year	7	(1.10) ² X CP		
8.	COD + 7 Year	8	(1.10) ² X CP		
9.	COD + 8 Year	9	(1.10) ² X CP		
10.	COD + 9 Year	10	(1.10) ³ X CP		
11.	COD + 10 Year	11	(1.10) ³ X CP		
12.	COD + 11 Year	12	(1.10) ³ X CP		
13.	COD + 12 Year	13	(1.10) ⁴ X CP		
14.	COD + 13 Year	14	(1.10) ⁴ X CP		
15.	COD + 14 Year	15	(1.10) ⁴ X CP		
16.	COD + 15 Year	16	(1.10) ⁵ X CP		
17.	COD + 16 Year	17	(1.10) ⁵ X CP		
18.	COD + 17 Year	18	(1.10) ⁵ X CP		
19.	COD + 18 Year	19	(1.10) ⁶ X CP		
20.	COD + 19 Year	20	(1.10) ⁶ X CP		
21.	COD + 20 Year	21	(1.10) ⁶ X CP		
22.	COD + 21 Year	22	(1.10) ⁷ X CP		
23.	COD + 22 Year	23	(1.10) ⁷ X CP		
24.	COD + 23 Year	24	(1.10) ⁷ X CP		
25.	COD + 24 Year	25	(1.10) ⁸ X CP		
26.	COD + 25 Year	26	(1.10) ⁸ X CP		
27.	COD + 26 Years	27	(1.10) ⁸ X CP		
28.	COD + 27 Years	28	(1.10) ⁹ X CP		
29.	COD + 28 Years	29	(1.10) ⁹ X CP		
30.	COD + 29 Years	30	(1.10) ⁹ X CP		

- a. Concession Payment for each Financial Year shall be paid to the Concessioneing Authority on or before the fifteenth Day of the due date.
- b. Concession Payment amounts remaining unpaid on respective due dates would carry interest @ SBI PLR plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

Construction Requirements

SCHEDULE 3

A. Construction Requirements for Project Facility

1.0 General

1.1 Project Facilities

1.2 It is proposed that the selected developer (the “Concessionaire”) would develop, build Truck Parking, as per permissible laws and subsequently operate and maintain the same for a specified period from the date of signing of the Concession Agreement and at the end of this period, hand back the facility to SIIDCUL.

1.3 The following land area is available for the proposed Project:

Plot Area	= 8 Acres
Permissible FAR	= As per Bye Laws
Coverage	= As per Bye Laws

The Concessionaire is free to redesign the Project facilities fulfilling the SIDA building bye laws.

1.4 The concession period would be Fifteen (15) years of Operations & maintenance excluding one year Construction period.

1.5 After the expiry of the Concession period the project may be extended for another period of Fifteen (15) years on satisfactory completion.

1.6 Project should comply with all regulatory/legal requirements for parking, environment protection etc.

2.0 Parking Fees

A. The approved parking fees to be collected from the person offering to keep their vehicle are as under:

1. Two axle Vehicles Rs. 100/- for first four hours & Rs. 150/- for eight hours and Rs. 20/- for every 4 hours thereafter.
2. More than Two axle Vehicles Rs. 150/- for every four hours & Rs. 200/- for eight hours and Rs. 25/-for every 4 hours thereafter.
3. Unclaimed vehicles shall be handed over to the local police immediately.

- B. In respect of collection of the parking fees as per the rates mentioned above, the contractor/agency/bidder shall ascertain from the vehicles owner parking hours time in order to issue tickets so that there may not be any disputes with the vehicles owner regarding the number of hours of parking charges thereof.
- C. All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/lots shall have proper cross slope and drainage. They shall be marked with paint as per Indian Standards to demarcate parking and circulation space.
- D. Ticket number, date, time and amount shall be printed on the ticket in order to issue to the vehicle owner. One copy shall be given to the vehicle owner and the other copy shall be kept for record and verification.
- E. In case the bidder collect fees higher that those prescribed in the present contract a penalty of Rs. 1,000/- (Rupees one thousand only) on each fees collected at higher rate will be imposed in the first instance and the same will be extended to Rs 1,500/- (rupees one thousand five hundred only) on each subsequent occasion. In case such cases the contractor/agency/bidder shall have to return the excess amount collected to the first party shall be entitled to terminate/rescind the present contract and the amount deposited will be forfeited to the Corporation.
- F. The toilet block and cloak room facility provided by the bidder shall be regularly cleared and well maintained by the successful bidder.
- G. All the charges such as connection and consumption of Power & water supply shall be borne by the successful bidder.
- H. Parking Fees would be revised and notified by SIIDUCCL after due consultation with the IIE Pantnagar stakeholders. Rates shall remain unchanged for first 2 years after COD.

3.0 Site Development related specifications:

- i. The Selected Private Partner should provide site infrastructure including landscaping, internal road network, parking areas, air conditioning, water supply, rain water harvesting, sewage treatment, solid waste management, security and other facilities within the site.

- ii. The internal paving to be a combination of black top/concrete road, concrete paving blocks, interlocking paving blocks, landscaped garden and green areas

3.1 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.
- ii. RCC structures shall be designed as per IS 456: 2000
- iii. Steel structures shall be designed in accordance with the provisions of IS 800 - 1984. Structural steel shall conform to IS 2062. Tubular sections would conform to IS- 4923. Structural joints shall conform to IS 4000:1992.
- iv. Concessionaire is advised to carry out its own tests and investigations related to soil condition, strata, bearing capacity and other characteristics.

3.2 Footpaths

The footpaths of at least 2.0m width at the edge of the Project Site. The foot path shall be formed by 0.2m thick earth filling, and above this 50 mm thick paver blocks shall be laid.

3.3 Public Conveniences

- i. The Concessionaire shall provide separate public conveniences (“Public Convenience Facilities”/ “PCF”) at suitable locations in the Project Facility.
- ii. The location of the PCF blocks should be such that it should be easily accessible for users of the Project Facility.
- iii. Additional toilets shall be provided in the commercial built up area as per NBC Norms and Applicable Laws.
- iv. The Concessionaire shall ensure that at least one toilet is functional within the Project Site at all times during the Construction Period.

3.4 Signage

- i. The Concessionaire shall provide illuminated signages so as to facilitate necessary information to the visitors regarding Project Facility, amenities and their location.
- ii. The scheme for signages shall be finalised in consultation with the SIIDCUL.

3.5 Generator Back-up

The Concessionaire shall provide power back-up adequate for at least 80% of the designed power load of the Project Facility. The generator shall be equipped to have a switch-over mechanism so as to be activated automatically in the event of power failure. The generator shall be installed in a separate sound-proof enclosure.

3.6 Drainage

- i. The roof & rainwater shall be collected through main rainwater collection points and gratings and collected in soak pits to allow rain water harvesting. Surplus rainwater overflowing from the recharge soap pits would need to be disposed off the road drain.
- ii. The Concessionaire shall design and implement a storm water drainage system in such a manner that there is no stagnation of water in the Project Site. The internal drainage system shall be connected to main common drain at an appropriate location in accordance with Applicable Permits.

3.7 Worker Amenities

The Concessionaire shall provide worker/employee amenities in accordance with Good Industry Practice.

3.8 Fire Fighting System

The Concessionaire shall design and implement a comprehensive fire fighting system in accordance with CPWD and NBC norm.

3.9 Safety Barriers

- i. The Concessionaire shall provide, at appropriate locations, safety barriers to effectively manage pedestrian and vehicular traffic.
- ii. The design and scheme for such safety barriers shall be finalised in consultation with the Authority.

3.10 Boundary Wall/Fencing

The Concessionaire shall provide a boundary wall/fencing having a height of at least 5 feet so as to isolate, to the extent possible, the Project Site from the road/s.

3.11 Air Conditioning and Mechanical Ventilation

- i. Project Facility shall be provided with adequate mechanical/ natural ventilation as per applicable norms.

3.12 Utilities

The Concessionaire shall apply and obtain Power, Water and any other utilities from the concerned authorities for suitable load.

3.13 The Concessionaire would be at liberty to design the Project Facility, subject to review by the SIIDCUL and compliance with Applicable Law. The SIIDCUL shall review the designs/ drawings pertaining to the Project Facility to check for structural stability and conformance to the conditions specified in this Schedule.

3.14 At least two weeks prior to commencement of design work, the Concessionaire shall finalize a quality assurance plan for the design work (“Quality Assurance Plan”).

4.0 Procedure

4.1 Before Commencement of Construction

4.1.1 Prior to commencement of any construction activity, the Concessionaire shall finalize an implementation plan for the Project (“Construction Plan”) in consultation with the Authority. The Construction Plan shall, inter alia, include:

- (i) A detailed schedule of implementation for putting up and operationalising the Project Facilities, and which shall specify at least 4 major milestones;
- (ii) The Critical Path Method (CPM)/ Programme Evaluation and Review Technique (PERT) charts or similar activity planning technique/ method for monitoring. This would cover all stages/ aspects of the Project implementation including design and engineering, procurement of materials and equipment, installation, construction and testing;
- (iii) Manpower deployment plan, including the designation of key personnel for the management and supervision of all Project activities. (This would include the designation of suitably qualified personnel for areas such as contract administration and supervision, construction management, traffic and safety, environmental management, plant and equipment maintenance, procurement, materials management and quality control); and
- (iv) A broad method statement for key items setting out the methodology of construction, materials and construction equipment mobilization/ utilization plans, broad output calculations and details of the quality assurance and quality control procedures.

- (v) Format of the monthly report giving details of the physical progress in implementation of the Project and operations and maintenance activities undertaken (Monthly Progress Report).
- 4.1.2 Prior to commencement of any construction activity, the Concessionaire shall also finalize in consultation with the SIIDCUL an operations and maintenance plan for the Project during the Construction Period (“O&M Plan - Construction Period”) and which shall, inter alia, include the following :
- (i) Traffic Management Plan;
 - (ii) Safety management programme including an Emergency Response Protocol; and
 - (iii) Environmental Management Plan
- 4.2 The Concessionaire shall, in consultation with the Authority workout an appropriate schedule for submission of documents set out in 5.1 above to the Authority for review.
- 4.3 Prior to commencement of construction of any of the Project Facilities, the Concessionaire shall have:
- (i) Obtained all such Applicable Permits as are necessary to commence construction of such Project Facilities;
 - (ii) Finalized Construction Drawings as are necessary and the Construction Schedule in consultation with the Authority;
 - (iii) Mobilized the requisite resources, personnel and organization necessary for the same and designated and appointed suitable officers/ representatives as it may deem appropriate with responsibility to supervise implementation of the Project and for exchange of information with the Government Agency;
 - (iv) Finalized in consultation with the Authority a method statement setting out details of the actual methods that would be adopted by the Concessionaire for the construction of such Project Facilities including details of equipment and machinery that would be used, their locations, and arrangements for conveying and handling materials;
 - (v) Finalized in consultation with the Authority quality assurance and quality control procedures to cover all aspects of the work so as to ensure the desired quality.
- 4.4 During Construction**
- 4.4.1 The Concessionaire shall:
- (i) Strictly follow the guidelines on quality as set out in BIS/NBC/IRC/MORTH specifications.
 - (ii) Ensure that the construction/rehabilitation of the Project Facilities is undertaken with minimal inconvenience to the traffic using the roads surrounding the Project Site.

- (iii) Take the necessary precautions to minimise accidents and respond to Emergency as quickly as possible;
- (iv) Take precautions to avoid inconvenience to, damage to, destruction of or disturbance to any third party rights and properties;
- (v) Provide a safe, clear and informative system of road signs in connection with the Project, wherever required;
- (vi) Ensure adequate safety of the personnel deployed at the Project Site which would include measures for the safety such as the provision and maintenance of barricades, traffic signs and illumination during night in consultation with the Authority;
- (vii) Be in compliance with the Applicable Laws and Applicable Permits obtained for the Project including the clearances obtained by the Government Agency;
- (viii) Adhere to the Construction Plan and O&M Plan-Construction Period;
- (ix) Deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the Government Agency.

4.4.2 Positions and Levels

- (i) The Concessionaire shall be responsible for :
 - (a) the accurate setting-out in relation to original survey control points, lines and levels of reference provided by SIIDCUL;
 - (b) the correctness of the positions, levels, dimensions and alignment of all parts of the works;
 - (c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.
- (ii) If, at any time during execution of the works, any error is noticed in the position, levels, dimensions or alignment of any part of the Construction Works, with respect to those provided by SIIDCUL, the Concessionaire, on being asked to do so by the SIIDCUL, shall at his own cost, rectify such errors to the satisfaction of the Authority.
- (iii) The checking of any setting-out or of any line or level by the Authority shall not in any way relieve the Concessionaire of his responsibility for the accuracy thereof and the Concessionaire shall carefully protect and preserve all benchmarks, sight rails, pegs and other materials used in setting-out the works.

4.4.3 Tests

- (i) Various quality control tests would be undertaken for the Project as per the standards prescribed by Bureau of Indian Standards and MORT&H. Where no testing methods are specified by the said standards, details of the tests to be carried out and specifications to be achieved for the respective

Project Facilities/Construction Works or part thereof shall be agreed upon with the Authority prior to construction;

- (ii) Where material properties vary from or comply only marginally with the specifications contained in the Construction Requirements, the Authority shall increase the frequency of testing as appropriate at the cost of the Concessionaire.
- (iii) The tests would be carried out at a location (place of manufacture, fabrication or preparation, at site or any specialised testing laboratory) that the Authority may reasonably require, at the cost and expense of the Concessionaire.
- (iv) The Concessionaire shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or plant and shall supply samples of materials, as required to undertake Tests.

4.4.4 The Concessionaire shall arrange for all the material requirements for the Project and disposal of all material wastes. The Applicable Permits in this regard would have to be obtained by the Concessionaire. All excess and unsuitable excavated materials shall be piled at appropriate dumping places or otherwise disposed of by the Concessionaire in consultation with the Authority.

4.4.5 Prior to making the request for the issue of Completion Certificate, the Concessionaire shall submit to SIIDCUL the following, duly finalised in consultation with the Authority:

- (i) the Operation and Maintenance Manual for the Project (O&M Manual) setting out in detail the standards, schedules, procedures, type, periodicity and other details of the operation and maintenance activities to be carried out for the Project during the Operations Period so as to meet the O&M Requirements as well as details of the management information system to be incorporated, reports to be submitted and procedure for reviews.
- (ii) the Operations & Maintenance Plan (O&M Plan) for the first year of operations.

4.5 After Completion of Construction

Upon completion of construction (including road marking work) but prior to issue of the Completion Certificate, the Project Site shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the Authority.

4.6 Reporting Requirements and Documents to be provided

4.6.1 During the Construction Period, the Concessionaire shall submit to the SIIDCUL, Monthly Progress Report (for each calendar month or part thereof) within 5 working days of the last day of the month. The report shall review the progress made, identify slippages, if any, and project the future activities to be undertaken (including rectifications), operations and maintenance activities undertaken and would, inter alia, include the following:

- (i) Listing of working drawings/sketches submitted
- (ii) Comments of the Authority, if any on the Concessionaire's Drawings submitted
- (iii) Concessionaire's response to the comments on the Concessionaire's Drawings
- (iv) Listing of the "As Built" drawings submitted
- (v) Progress of pre-construction activities - mobilization of plant and equipment, personnel, site office, utility relocation etc.
- (vi) Concessionaire's compliance inspection report, if any required
- (vii) Constraints in construction
- (viii) Progress data with "S" curves, if applicable
- (ix) Project data with contract detail and sectional completion details
- (x) Tests carried out, if any, and results thereof
- (xi) Remedial measures taken by the Concessionaire following such tests, where required
- (xii) Traffic management steps taken by the Concessionaire
- (xiii) Review of milestones and reasons for delay, if any
- (xiv) Suspension of construction, if any, its reasons, duration and the steps undertaken to resume construction
- (xv) Change of Scope Notice issued by the Government Agency, if any, and status thereof
- (xvi) All actual or potential deviations from the Construction Plan
- (xvii) Disagreements/ Disputes , if any and proposed measures to be taken
- (xviii) Maintenance activities carried out by the Concessionaire on the existing carriageway
- (xix) Injury to any construction personnel during construction, its severity, cause and remedial measure(s) taken to avoid recurrence
- (xx) Brief report of any accident/incident within the Project Site, injury/fatality, property damage, cause of accident and actions taken to avoid recurrence
- (xxi) Traffic detour/diversion for construction - time and duration
- (xxii) Notes of meetings between the Concessionaire and the Government Agency highlighting critical decisions taken or agreements reached. Minutes of the meeting issued by the client shall also be included in the monthly progress reports.

4.6.2 Prior to making the request for the issue of Completion Certificate, the Concessionaire shall submit to SIIDCUL the following documents, free of costs:

- (i) Three hardcopies and two copies in electronic form (two Compact Discs) of the "As Built" drawings of the Project - detailed, accurately scaled and sequentially numbered, covering all relevant engineering features, which in relation to structures shall also include cross sections in each drawing;
- (ii) copies of all geo-technical and borehole reports obtained by the Concessionaire, if any;
- (iii) Three hardcopies and two copies in electronic form (two Compact Discs) of the Operations and Maintenance Manual.

User Charges For Project Facility

SCHEDULE 4

- A. The approved parking fees to be collected from the person offering to keep their vehicle are as under:
 - 1. Two axle Vehicles Rs. 100/- for first four hours & Rs. 150/- for eight hours and Rs. 20/- for every 4 hours thereafter.
 - 2. More than Two axle Vehicles Rs. 150/- for every four hours & Rs. 200/- for eight hours and Rs. 25/-for every 4 hours thereafter.
 - 3. Unclaimed vehicles shall be handed over to the local police immediately.
- B. In respect of collection of the parking fees as per the rates mentioned above, the contractor/agency/bidder shall ascertain from the vehicles owner parking hours time in order to issue tickets so that there may not be any disputes with the vehicles owner regarding the number of hours of parking charges thereof.
- C. All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/lots shall have proper cross slope and drainage. They shall be marked with paint as per Indian Standards to demarcate parking and circulation space.
- D. Ticket number, date, time and amount shall be printed on the ticket in order to issue to the vehicle owner. One copy shall be given to the vehicle owner and the other copy shall be kept for record and verification.
- E. In case the bidder collect fees higher that those prescribed in the present contract a penalty of Rs. 1,000/- (Rupees one thousand only) on each fees collected at higher rate will be imposed in the first instance and the same will be extended to Rs 1,500/- (rupees one thousand five hundred only) on each subsequent occasion. In case such cases the contractor/agency/bidder shall have to return the excess amount collected to the first party shall be entitled to terminate/rescind the present contract and the amount deposited will be forfeited to the Corporation.
- F. The toilet block and cloak room facility provided by the bidder shall be regularly cleared and well maintained by the successful bidder.

- G. All the charges such as connection and consumption of Power & water supply shall be borne by the successful bidder.
- H. Parking Fees would be revised and notified by SIIDUCL after due consultation with the IIE Pantnagar stakeholders. Rates shall remain unchanged for first 2 years after COD.

Operation and Maintenance Requirements

SCHEDULE 6

1. General

- 1.1 The specifications broadly cover the design, manufacture, inspection, testing, delivery to Project Site, storing and handling at Project Site, erecting, commissioning and carrying out acceptance test of the Project Facility.
- 1.2 It is not the intent to specify completely herein, all the details of design and construction of the equipment/ Project Facility. However the Project Facility shall confirm, in all respects, to high standards of engineering, design and workmanship and capable of performing in continuous operations.
- 1.3 The Concessionaire shall comply with the O&M Requirements set out in this Schedule. In doing so, the Concessionaire shall ensure that the Project Facilities are maintained to the standards and specifications as set out in the Construction Requirements also meet the other requirements, if any, set out in the Agreement.
- 1.4 The Concessionaire shall take appropriate measures to minimise traffic disruption on the roads adjoining the Project Site.
- 1.5 In the design, planning and implementation of all works and functions associated with the operation and maintenance of the Project Facilities, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging contractors, if any, agents and employees) in such manner, as will :
 - (i) keep the Project Facilities from undue deterioration and wear;
 - (ii) ensure the safety of personnel deployed for operation & maintenance of facilities like lifts, street lighting, common area lighting etc.
 - (iii) permit unimpaired performance of statutory duties and functions of any party in relation to the Project.
- 1.6 During the Concession Period, the Concessionaire shall ensure that :

- (i) Project Facility is kept free from undue deterioration and undue wear;
- (ii) applicable and adequate safety measures are taken;
- (iii) adverse effects on the environment and to the owners and occupiers of property and/or land in the vicinity of the Project Facility, due to any of its actions, is minimised;
- (iv) any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimised;
- (v) disturbance or damage or destruction to property of third party by operations of the Project Facility is controlled/minimised;
- (vi) members of the public are treated with due courtesy and consideration by its employees/ agents;
- (vii) users are provided with adequate information and forewarned of any event or any other matter affecting the Project Facility to enable them to control/minimise any adverse consequences by such event or matter;
- (viii) a complaint register to record grievances of any member of the public in relation to the operations and maintenance of the Project Facility is duly maintained;
- (ix) all materials used in the maintenance, repair and replacement of any of the Project Facility shall meet the Construction Requirements.
- (x) the personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O & M Requirements.

2. Operation and Maintenance Manual and O& M Plans

- 2.1 Prior to the commencement of any construction activity, the Concessionaire, in consultation with the Authority, shall finalise the O&M Plan - Construction Period.
- 2.2 As provided in Schedule 3, prior to making application for the Completion Certificate for the Project the Concessionaire shall finalise in consultation with the SIIDCUL:
 - (i) the O&M Manual for Project Site
 - (ii) the O&M Plan for the first year of operations
- 2.3 Six weeks prior to the anniversary of COD each year, the Concessionaire shall submit an annual O&M Plan for the next year of operations.

3. Maintenance Requirements

3.1 Maintenance Standards

3.1.1 During Operations Period, the Project Facility shall be maintained in accordance with the standards (“Maintenance Standards”) set out below :

3.2 Routine Maintenance Activities

3.2.1 In order to ensure smooth and uninterrupted use of the Project Facility during normal operating conditions for all 24 hours of a day, routine maintenance of the Project Facility shall include but not be limited to:

- (i) repairs to equipment, pavement, building and other civil works which are part of the Project Facilities;
- (ii) replacement of equipment/ consumables,
- (iii) maintenance of the Project Facilities in accordance with Good Industry Practice;
- (iv) keeping the Project Facilities in a clean, tidy and orderly condition free of litter and debris;
- (v) removing and disposing of in accordance with all Applicable Laws and Applicable Permits, all rubbish, debris, etc. including any and all equipment, supplies, materials and wastes brought or produced by the Concessionaire/ Contractor;
- (vi) taking all practical measures to prevent damage to the Project Facilities;
- (vii) undertaking maintenance works in accordance with the O & M Plan and O&M Manual;
- (viii) preventing, with the assistance of concerned law enforcement agencies/ SIIDCUL where necessary, any unauthorised entry to and exit from and any encroachments on the Project Facilities;
- (ix) taking all reasonable measures for the safety of all the workmen, material, supplies and equipment brought to the Project Site. Explosives, if any, shall be stored, transported and disposed of by the Concessionaire in accordance with Applicable Laws/ Applicable Permits.

3.2.2 The Concessionaire shall regularly carry out the necessary preventive maintenance activities for the Project Facilities to ensure adherence to the Project Requirements throughout the Concession Period.

3.2.3 All maintenance activities shall be planned and coordinated in such a way that the maintenance works shall generally be done during nights and holidays (if unavoidable) so as to cause least disturbance.

3.3 Emergency Maintenance Activities

3.3.1 The Emergency Response Protocol (“ERP”) shall be developed by the Concessionaire in consultation with the local police, hospital/ ambulance services, fire departments and other authorities/support

personnel. This shall be a part of the O&M Manual developed by the Concessionaire.

3.3.2 The ERP shall set out steps to be taken and measures to be adopted by the Concessionaire in responding to dealing with Emergency including those situations related to vehicle accidents involving personal injuries or fatalities, property damage and Force Majeure:

3.3.3 In case of Emergency, the Concessionaire shall

- (i) carry out such emergency maintenance and repairs as may be required to repair the damages, if any, in consultation with the Authority and where required under the supervision of the police in order to ensure that the Project Facilities are returned to normal operating standards as quickly as possible.
- (ii) follow the relevant operating procedure specified in the O&M Manual including the setting up of temporary traffic cones and lights as well as the removal of obstruction and debris expeditiously.

4. Safety

4.1 The Concessionaire shall make provision for round-the-clock security of the Project Facilities.

4.2 The Concessionaire shall implement a Safety Management Programme in line with relevant guidelines and shall form a part of the O&M Manual.

5. Inspections & Frequency

The Concessionaire shall prepare an inspection programme plan for the Project Facilities for its smooth operations as follows:

5.1 Visual Inspection

Visual Inspections are broad general inspections carried out frequently by maintenance engineers having adequate knowledge of building and pavement structures. The purpose of visual inspection is to report fairly obvious deficiencies at the Project Site, which could lead to accidents or maintenance problems. Such inspections should be frequent. The visual inspection may be carried out by visual assessment with careful observation of the specific object/ item of the Project Facilities for identification and for quantification of the deficiencies or damages of the Project Facilities.

5.2 Close Inspection

Close inspections may be visual and/or by standard instrumental aids for assessment of defects/ deficiencies of the Project Facility with careful observation of specific element/s. The close inspection would require detailed examination of the specific element of the Project Facility and should cover all the aspects against a checklist. This inspection is to be carried out by the engineer having good knowledge of the specific element to analysis the nature, and extent of defects/ deficiencies, suggest suitable remedial measures to rectify/ remedy them and quantify repair work.

5.3 Thorough Inspection

Such an inspection is to be carried out on the basis of comprehensive checklist of items related to the materials, condition and situation of the structure etc. on the Project Site. This inspection is to be carried out by the engineer having good knowledge of the specific element to analysis the nature, and extent of defects/ deficiencies, suggest suitable remedial measures to rectify /remedy them and quantify repair work.

5.4 Frequency of Inspections

The type of inspection and related frequency of various items of Project Facility have been indicated in the table set out below. The frequency of inspection can be suitably revised in consultation with the Authority if the situation so warrants.

Asset	Dail y	Monthl y	Quarterl y	Before and after Rainy Season
Project Facility	V	C	T	T
Parking Area	V	C	T	T
Floors & walls	V	C	T	T
Drinking Water Facilities	V	C	T	-
Toilets	V	C	T	-
Information Boards/ Signages	V	C	T	-
Staircases	V	C	T	T
Doors and Windows	V	C	T	-
Safety Barriers	V	-	T	-
Fire Fighting System	V	C	T	T
Lights and Fans	V	C	T	-
Other Electrical Installations	V	C	T	T
Back-up power facility	-	C	T	-
Drainage and Sewerage	-	C	T	T
Landscaping	-	V	C	-
Boundary Wall	-	V	C	-
Footpath	V	C	T	T

Asset	Dail y	Monthl y	Quarterl y	Before and after Rainy Season
Painting	V	-	T	T
General Cleanliness	V	C	-	-

Legend :

V : Visual inspection
C : Close inspection
T : Thorough inspection

6. Reporting Requirements

The reporting and information that generally need to be provided by the Concessionaire are given below. The Requirements given below are indicative of the type of information to be provided. The format of such reports, recording requirements, software standards and number of copies required would be finalised in consultation with the Authority. All reports and records shall be in the English language.

6.1 Inspection Reports and Remedial Measures

The periodicity of inspections for maintenance activities by the Concessionaire shall be set out in the O&M Manual and regular reports on the same shall be sent to the Authority. Where required, the Concessionaire shall carry out any maintenance, repair or rehabilitation works found necessary as a result of such inspections.

6.2 Monthly O & M Report

During the Operation Period, within 5 days of the end of each calendar month or part thereof, the Concessionaire shall provide to the SIIDCUL a monthly report (Monthly O&M Report) which shall contain the following minimum information:

- (i) Details of major maintenance undertaken
- (ii) Inspections undertaken by the Concessionaire during the month and action taken/ proposed thereafter;
- (iii) Details of all reports submitted to the Authority during the month
- (iv) O & M inspection compliance report
- (v) Maintenance activities undertaken during the month ended,
- (vi) Details of any Emergency and action taken

6.3 O & M Manual

- 6.3.1 The O&M Manual prepared by the Concessionaire in consultation with the Authority shall set out the operations and maintenance standards and details of the operations and maintenance activities to be

undertaken during the Operations Period, so that the Project Facilities shall at all times conform to the Project Requirements.

6.3.2 The O&M Manual shall have separate sections for operations and maintenance.

6.3.3 The O&M Manual shall include without limitation the following aspects:

- (i) Organisation structure with responsibilities of key personnel;
- (ii) Project Facility Management;
- (iii) Safety Management Programme including the Emergency Response Protocol;
- (iv) Inspection Procedures;
- (v) Maintenance Standards (including Maintenance Intervention Levels);
- (vi) Maintenance Programme;
- (vii) Management information system;
- (viii) Report Formats.

7. Miscellaneous

7.1 The Concessionaire shall maintain an inventory of all items comprised in the Project Facilities (the "Inventory"), in a format to be developed in consultation with the Authority.

7.2 Throughout the Concession Period the Concessionaire shall keep the Inventory updated to take account of works carried out on and other changes made to the Project Facilities.

7.3 A copy of the Inventory shall be submitted by the Concessionaire to the Authority within thirty (30) days of receipt of a request for the same.

Performance Security

SCHEDULE 7

(Performa of Bank Guarantee)¹

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

In favour of

SIIDCUL, represented by _____ and having its office at _____, hereinafter referred to as “SIIDCUL”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Concession Agreement entered into between SIIDCUL and _____, a company incorporated under the provisions of the Companies Act, 1956, having its registered office/ permanent address at _____ (“the Concessionaire”), the Concessionaire has been granted the Concession to Development of Truck Terminal for a period of 30 years (hereinafter referred to as “the Project”) in Dehradun.
- B. In terms of Clause 5.1 of the Concession Agreement, the Concessionaire is required to furnish to SIIDCUL, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ (Rupees _____ only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to Project by the Concessionaire.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

- 1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
- 2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called “the Concessionaire”) of all its obligations relating to the Project and in connection with achieving COD by the Concessionaire in accordance with the Concession Agreement.

¹ To be issued by a Scheduled Bank in India

3. The Guarantor shall, without demur, pay to SIIDCUL sums not exceeding in aggregate Rs. _____ (Rupees _____ only), within _____ calender days of receipt of a written demand therefor from SIIDCUL stating that the Concessionaire has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by SIIDCUL and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, SIIDCUL shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by SIIDCUL or any indulgence shown by SIIDCUL to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by SIIDCUL or any indulgence shown by SIIDCUL , provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____² unless discharged/ released earlier by SIIDCUL in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by _____ Bank
by the hand of Shri _____
its _____ and authorised official.

² 18 months from the date of signing the Concession Agreement

Format for Letter of Authorization

SCHEDULE 8

(To be given on SIIDCUL letterhead)

To Whomsoever It May Concern

This is to confirm that to pursuant to the Concession Agreement dated _____, entered into between the SIIDCUL and _____ (“the Concessionaire”), the Concessionaire has been authorized to Development of Truck Terminal, Pantnagar and for that purpose, to apply for and obtain all approvals, licenses and permits required therein and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,

Director

Handback Guarantee

SCHEDULE 9

(Proforma of Bank Guarantee)

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

In favour of

SIIDCUL, represented by its _____, having its office at _____, hereinafter referred to as “SIIDCUL”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Concession Agreement entered into between SIIDCUL and _____³, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at _____ (“the Concessionaire”) the Company had been granted the Concession to implement the Project, as defined under the Concession Agreement mentioned hereinabove.
- B. In terms of Clause 10.2 as the case may be, of the Concession Agreement, the Concessionaire is required to furnish to SIIDCUL, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ (Rupees _____ only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to handback of the Project Facility.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement relating to handback of the Project Facility.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

- 1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
- 2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called “the Concessionaire”) of all its obligations relating to handback of the Project Facility.
- 3. The Guarantor shall, without demur, pay to SIIDCUL sums not exceeding in aggregate Rs. _____ within _____ calender days of receipt of a written demand therefor from SIIDCUL stating that the Concessionaire has _____

³ In case of Consortium both members would be included as Parties to the Agreement and collectively referred to as ‘the Concessionaire/Consortium’ as the context may require.

failed to meet its performance obligations relating to handback of the Project Facility. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by SIIDCUL and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

4. In order to give effect to this Guarantee, SIIDCUL shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by SIIDCUL or any indulgence shown by SIIDCUL to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by SIIDCUL or any indulgence shown by SIIDCUL, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____⁴ unless discharged/released earlier by SIIDCUL in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____ (Rupees _____ only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by _____ Bank
by the hand of Shri _____
its _____ and authorised official.

⁴ 30 months from the date of issue of the Handback Guarantee in accordance with Clause 10.2 of the Concession Agreement