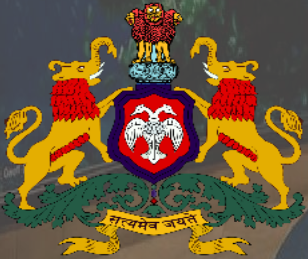


REQUEST FOR PROPOSAL

**SELECTION OF A FIRM FOR UNDERTAKING
RENOVATION, MODERNIZATION, OPERATIONS &
MAINTENANCE OF THE GOVERNMENT AQUARIUM
IN CUBBON PARK, BANGALORE ON PPP MODE**

April 2022

Tendering Authority:



The Department of Fisheries,
Government of Karnataka,
Podium Block, Vishweshwaraiah Center
Dr Br Ambedkar Road, Bangalore -560001

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

1. Table of contents

1.	Table of contents	1
2.	Disclaimer.....	3
3.	Notice Inviting the Tender	4
4.	Project Background	6
4.1	About the Aquarium.....	6
4.2	Advantage of the Location.....	7
4.3	Usage of Space, Operational Detail and Staffing	8
4.4	Aquarium Exhibits	8
4.5	Footfalls, Revenues and Expenditure	9
4.6	Operational Challenges.....	9
4.7	Site Photographs.....	9
5.	Indicative Scope of Work	10
5.1	Civil, Structural and Interior Works Proposed.....	10
5.2	Aquarium Exhibits Anticipated	11
5.3	Indicative List of Works.....	11
6.	Understanding of the Concessionaire Agreement Model for Submission of the Bid	12
7.	Bidding Process and Parameter	14
7.1	Brief Description of the Bidding Process	14
7.2	Bid Parameter	15
8.	Instructions to bidders	16
8.1	Eligibility Criteria for the bidders	16
8.2	Number of proposals	17
8.3	Proposal preparation cost.....	17
8.4	Project inspections and visit to the site.....	17
8.5	Right to accept or reject any of the proposals	17
8.6	Clarification and amendment of 'RFP'	18
8.7	Language	18
8.8	Bid security	19
8.9	Validity of proposal	19
8.10	Extension of validity of proposal	19
8.11	Format and signing of proposal	19
8.12	Sealing and marking of proposals.....	20
8.13	Proposal due date	21
8.14	Late proposals.....	21
8.15	Modifications/ substitution/ withdrawal of proposals	21
8.16	Confidentiality	21
8.17	Clarifications	22
9.	Evaluation process	23
9.1	Evaluation process	23
9.2	Tests of responsiveness	23
9.3	Evaluation of qualification criteria	24
9.4	Evaluation of financial proposal	26
9.5	Letter of Intent (LOI) and execution of agreement	26

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

9.6	Security deposit.....	27
9.7	Contacts during proposal evaluation.....	27
10.	Fraudulent and corrupt practices	28
11.	General Conditions and Compliances of the Bid	29
12.	List of Annexures.....	30
12.1	Annexure-A: Format for covering letter cum project undertaking	30
12.2	Annexure-B: Format for details of bidder / each member of bidding consortium	32
12.3	Annexure-C: Format for technical capacity of the bidder	33
12.4	Annexure-D: Format for financial capacity of the bidder	34
12.5	Annexure-E: Format for power of attorney for signing of proposal	35
12.6	Annexure-F: Format for Financial Proposal	36

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

2. Disclaimer

The information contained in this 'Request for Proposal' document (the "RFP") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this 'RFP' and such other terms and conditions subject to which such information is provided.

This 'RFP' is not an agreement and is neither an offer nor invitation by the Department of Fisheries, Government of Karnataka (the "**Authority**") to the prospective Bidders or any other person. The purpose of this 'RFP' is to provide interested parties with information that may be useful to them in preparing their proposal pursuant to this 'RFP' (the "**Proposal**"). This 'RFP' includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This 'RFP' may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this 'RFP'. The assumptions, assessments, statements and information contained in this 'RFP' may not be complete, accurate, adequate or correct. Each Bidder should conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this 'RFP' and obtain independent advice from appropriate sources.

Information provided in this 'RFP' to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and cannot be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein. The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this 'RFP' or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the 'RFP' and any assessment, assumption, statement or information contained therein or deemed to form part of this 'RFP' or arising in any way in this Bidding Process. The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this 'RFP'.

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

The issue of this 'RFP' does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or 'O&M Agency', as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Proposals without assigning any reason whatsoever.

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

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

3. Notice Inviting the Tender

Notice Inviting Tender (NIT) for Selection of a firm for undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

The Authority	Directorate of Fisheries, Government of Karnataka 3 rd Floor, Podium Block, VV.Center, Dr Ambedkar Road, Bangalore 560001 Email: dfkarnataka@rediffmail.com Website: https://fisheries.karnataka.gov.in Telephone:080-22864681, Fax: 080-22864619	
Call for Tenders	The Director, Office of the Directorate of Fisheries, on behalf of Govt. Karnataka invites e-Tenders from interested eligible firms / companies for undertaking "Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore" on Public Private Partnership Mode	
Advice to the Bidders	Bidders are advised to study this RFP document carefully before submitting their Bids in response to the NIT Notice. Submission of a Bid in response to this notice shall be deemed to have been done after careful study and examination of this document with full understanding of its terms, conditions and implications. This RFQ-cum-RFP document is non-transferable	
Document Fee	INR 2,500/- (Including GST)	
Queries	Bidders shall have to post queries by email to dfkarnataka@rediffmail.com Please keep subject of the query email as - "Query for RFP Document - Selection of a firm for undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode"	
Schedule	Publication of the RFP Document	30/04/2022
	Last Date for receiving queries	06/05/2022 at 12:00 hrs
	Authority Response to the Queries latest by	09/05/2022
	Last date for Bid Submission (Online)	19/05/2022 by 15:00 hrs
	Deadline for submission of Hard copy of Technical Bids at the Directorate of Fisheries office, along with documents	21/05/2022 by 12:00 hrs
	Date and Time for opening of Technical Bid Submission on the Karnataka Public Procurement Portal	21/05/2022 by 12:00 hrs
	Date and Time for Presentation on Technical Proposal (Approach & Methodology)	23/05/2022 by 10:30 hrs
	Date and Time for Opening of Financial Bids	Shall be intimated by the Authority

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

Address of the Authority	The Director Directorate of Fisheries, Podium Block, Vishweshwaraiah Center Dr BR Ambedkar Road, Bangalore -560001
Website to download the RFP Document	https://eproc.karnataka.gov.in/
Earnest Money Deposit	INR 2,00,000 To be deposited through online RTGS/NEFT

The right to accept/reject any or all BID(s) received is reserved without assigning any reason thereof.

The Director, Directorate of Fisheries

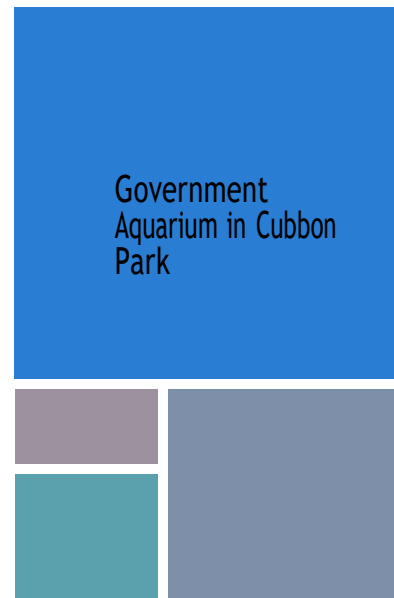
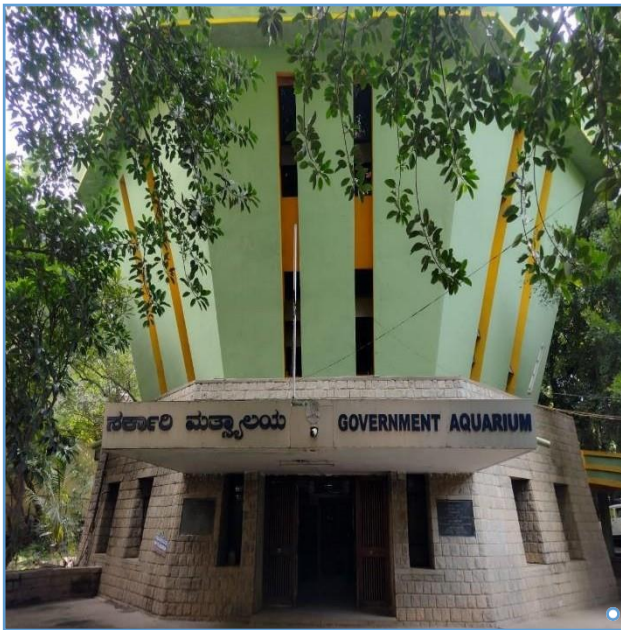


Government of Karnataka

4. Project Background

4.1 About the Aquarium

The Department Fisheries, Government of Karnataka (the “Authority”), oversees the development of Fisheries sector in the state of Karnataka. As part of the various activities undertaken for the development of Ornamental Fisheries sector in the state, the Department has developed a Public Aquarium facility at Cubbon Park, in the city of Bengaluru.



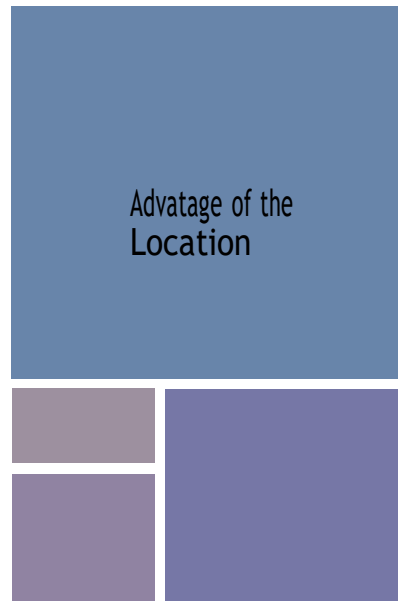
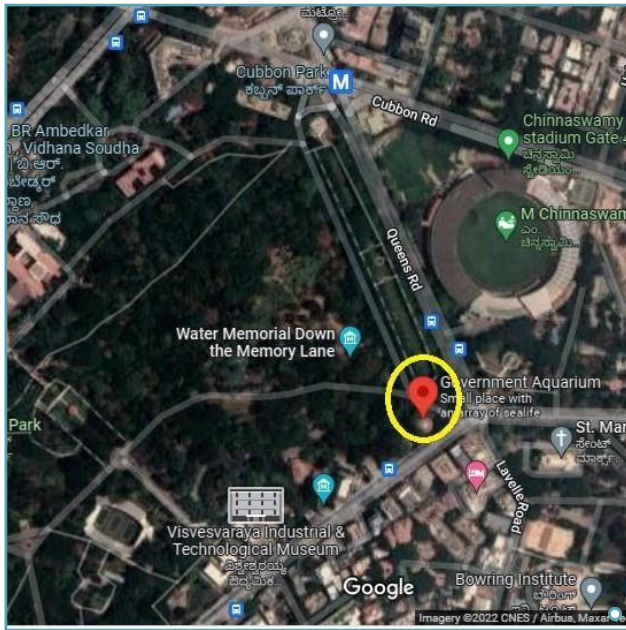
The Government Aquarium at Cubbon Park was inaugurated officially on 27.08.1983 at a project cost of INR 17.35 Lakhs, and has been catering to the visitors for the past 37 years, with prime objectives of recreation, education and therapeutic effect etc. This is a ‘freshwater fish aquarium’ in an octagonal shape and is a three-storied building, built in a site of about 1769.62 Sq.m, of which the actual built up area is only 850 Sqm, while the rest is open and unused space.

4.2 Advantage of the Location

The Government Aquarium is located at a very strategically important location in the city, and is connected with every corner of the city through Metro rail and Road Network. The park is accessible from M.G. Road, Kasturba road, Hudson Circle and Ambedkar Veedhi (Road). The other attractions in and around Government Aquarium are Cubbon Park, Jawahar Lal Bhavan, The State Archaeological Museum, Venkatappa art gallery, High court, Vidhana Soudha, Planetarium, etc. This area is an important tourist destination with respect to the people, including tourists visiting Bangalore. As there is a minimal flow of 6000 people, including tourists visit this area on a daily basis, this place is became an important destination for schools and colleges to expose their students to gain knowledge on Art, Science and Technology along with blended flora and fauna of public aquarium.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

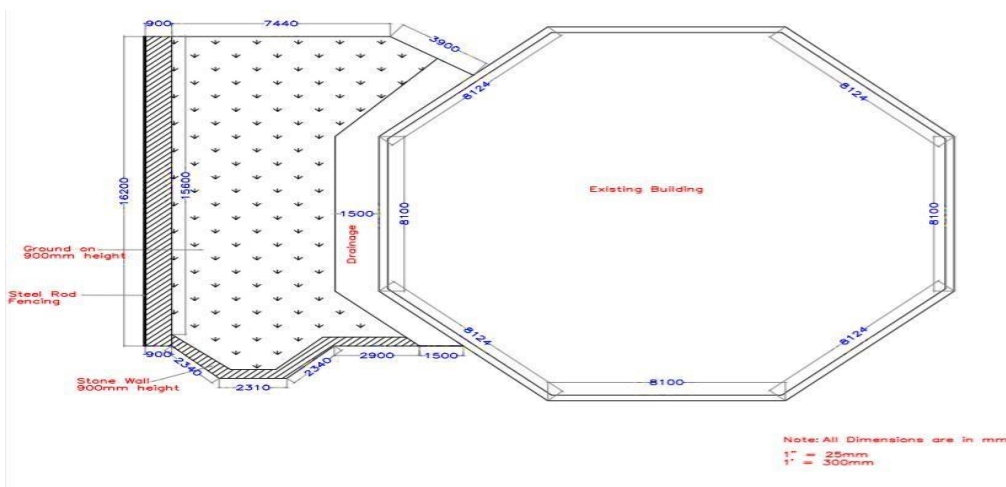


4.3 Usage of Space, Operational Detail and Staffing

While the ground floor is used mainly for the administrative purposes, store room and power backup facilities, the first floor has 14 big tanks of 6'X4'X3' dimension. On the second floor, aquariums are arranged in two rows and there are a total of 62 numbers of medium to small size aquaria. It has about 60-70 varieties both indigenous and exotic species of freshwater ornamental fish. While the first floor comprises of ornamental fish and consumable fish, the second floor has a display of only the ornamental fish.

The Aquarium is open to public on all days except Mondays and 2nd and 4th Tuesdays. The entry fee for the individual visitors is INR 10 per head, while the same is INR 5 per head for the children group visits organized through their respective schools. However, there is no entry fee for children below 5 years. Presently, all the revenues collected through ticketing are remitted to the Government, within 3 days of collection and the Aquarium receives annual budgetary support from the department for salaries, operation and maintenance, and other miscellaneous expenditure etc.

Indicative layout of the Government Aquarium, Cubbon Park:



Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

The organizational set up consists of Curator who is the head of the aquarium. The curator is supported by technical staff comprising Assistant Director of Fisheries Gr-2, Senior Fisheries Supervisor, Fisheries Supervisor, mechanic, and Field men. Administrative staff consist of a first division clerk, a second division clerk, a typist, a driver, and a group D staff. Currently, the aquarium has 10 "On Pay roll Staff", of which only two are officers. 1 worker is on daily wages, and about 4 are outsourced staff.

4.4 Aquarium Exhibits

Following table is the catalogue of fish available in the Aquarium exhibits -

#	Type	S.No	Type	S.No	Type
1	Black Gold Fish	28	Black mollies	55	Red tail arowana
2	Platinum Angel Fish	29	Long tail gold fish	56	Texas Cichlid
3	Venus Cichlid	30	Pencil fish	57	Ballon zebra Cichlid
4	Blue Neon Gourami	31	White mollies	58	Crab
5	Red Neon Gourami	32	Black moor gold fish	59	Blue electric Cichlid
6	Yellow Parrot Fish	33	Arowana	60	Gold Fish
7	Red Parrot Fish	34	White parrot	61	Yellow electric Cichlid
8	Silver Shark	35	Oranda gold fish	62	Gold fish
9	Copper Oscar	36	Sting ray	63	Lid
10	Albino Tiger Sharks	37	Red rukim gold fish	64	Serpea tetra
11	Black Tiger Sharks	38	Hockey stick	65	Fire mouth cich
12	Kissing Gourami	39	Yellow zebra danio	66	Sword tail
13	Neon Tetras	40	Blue gourami	67	Jewel Cichlid
14	Yellow color Cichlids	41	Silver sharks	68	S K Gold fish
15	Silver Pacu	42	White tiger sharks	69	Brass gold fish
16	Tilapia	43	Red cap gold fish	70	Platies
17	Mahseer	44	Vail tail gold fish	71	Yellow mollies
18	Cat Fish Red tail	45	Dolphin fish	72	Albino Oscars
19	Long nose gar	46	Flower horn fish	73	Ticto barb
20	Butter cat fish	47	Black ghost	74	Copper oscars
21	Koi Carps	48	Blue peacock fish	75	Golden severum
22	Butter Koferi	49	Golden peacock	76	Five color Cichlids
23	Snake head	50	Albino tin foil barb	77	Chocolate mollies
24	Gaint gourami	51	Zebra Cichlid	78	White parrot
25	Albino shark	52	Rosey barb	79	Singapore guppies
26	Sword tail	53	Stripped Cichlid	80	Gold fish black tail
27	Electric green tetra	54	Buenos Aires tetra	81	Green sword tail

4.5 Footfalls, Revenues and Expenditure

The ticketing revenues for the Government Aquarium for the FY 2019-20 (Pre-Covid situation) are about INR 11.93 Lakhs, with average daily footfalls of about 400, which may even go up to 1000 during holidays and peak season. However, this is very little compared to the actual daily footfall of the Cubbon Park, which is about 1500 during weekdays and 2500 during weekends.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

Operational (ticketing) revenues for the facility are in the same range for the past three financial years, registering a very meagre/no growth.

#	Financial Year	Total Revenues (INR)
1	2017-18	10,96,820.00
2	2018-19	11,00,225.00
3	2019-20	11,93,230.00

4.6 Operational Challenges

Despite being in the prime location of the city, the aquarium facility, has been unable to tap the existing market potential, due to a plethora of factors:

- Inadequate capital investment to ensure global standard experience of Aquarium Facilities
- Damaged building and structures including drainage, plumbing etc, and lack of proper illumination and sound systems
- Lack of Unique Selling Proposition
- Lack of innovation in marketing and promotion.

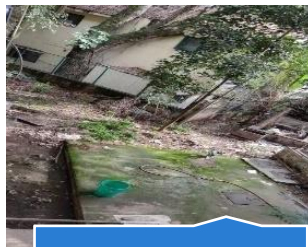
Realizing the immense market potential the facility has, owing to its prime location, and with an intention to address the many challenges, the Department intends to award the effort of Renovating, Modernizing, Operating and Maintaining the Public Aquarium in Cubbon Park to a qualified firm/company on Public Private Partnership (PPP) mode.

In this background and context, the Authority, with a view to upgrade the Aquarium Infrastructure on global standards, enhance the visitor experience and increase the footfalls, intends to select an agency for the said works to a competent entity, on Public Private Partnership (PPP) Mode (the "Project") for a concession period of Thirty (30) years. (the "Agreement period").

4.7 Site Photographs



Ramp



Open Area



Maintenance Area



Unutilised Areas



Library & Office



Roof

5. Indicative Scope of Work

5.1 Civil, Structural and Interior Works Proposed

- i. The Authority anticipates the following works with regards to the Civil, Structural and Interior renovation and modernization. However, the bidder has to carry out a detailed assessment of the civil, structural and interior works that are to be carried out in each floor, to modernize the Aquarium. The Authority mandates that a Civil Engineer, Structural Engineer and a Fisheries Expert (Aquarium) shall be part of the bidder's proposed team.
- ii. Following are the key takeaways for the bidder, while proposing Civil, Structural and Modernization Works:
 - i. Bidder shall ascertain the structural stability and bearing capacity of the building prior to submitting the bid. The selected bidder ("Concessionaire") shall carry out a detailed non-destructive structural stability testing through competent government institutions which certifies that the works proposed by the Concessionaire (in line with his technical proposal) are safe.
 - ii. All costs associated with such testing and certification shall be borne by the concessionaire only.
 - iii. The Concessionaire may propose modifications to enhance visitor experience.
 - iv. Excavation may be permitted for the Koi pond, exclusively, subject to the condition that the structural stability and foundation of the building are maintained without damage.
 - v. Tree cutting shall be permitted, subject to the competent authority approvals wherever required
 - vi. Cafeteria/s may be planned as part of the project. However, restaurants with large scale seating and support kitchens are not permitted.

5.2 Aquarium Exhibits Anticipated

Bidders shall set up completely new exhibits for all intents and purposes to modernize the Aquarium. The current exhibits shall be removed and shall not be put up for display.

Following points shall be considered for the concept development -

A. Mandatory & Optional Facilities

Mandatory Facilities	Optional Facilities
<ol style="list-style-type: none"> 1. Renovation/Repair works with details of Civil, Electrical and Plumbing etc. 2. Exhaustive inventory of Interior Works 3. Paludarium 4. Tunnel Aquarium 5. Cafeteria 6. Koi Pond 7. Quarantine Unit 8. Catalogue of Aquarium Infrastructure - the Exhibits and Supportive Equipment and /Components 9. Life Support System 10. Souvenir Store 11. Washrooms and Amenities 12. Ticket Counters - Computerized Ticketing 13. Retail Aquarium Fish Outlet. 14. Energy Efficient Designs with Optimal Circulation Plans 15. Beautification & landscaping 16. Water conservation including Rain Water harvesting 17. Dedicated Website and user friendly Mobile Application, along with provisions for purchase of tickets. 	<ol style="list-style-type: none"> 1. Touch screen display system 2. An immersive Theatre to offer enhanced digital experience to the visitors 3. A digital message wall /a Holographic wall for value addition to be planned in two locations 4. Amphi-theatre for value addition 5. Smart digital display sign boards, subject to regulatory/legal compliances 6. Smart digital display sign boards, subject to regulatory/legal compliances 7. Any other facility/system that enhances visitor experience. 8. Roof Top Solar System

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

18. Provisions for safety of the facility, users especially women etc. 19. Fire and Safety equipment as required by compliances and regulations. 20. Water Treatment and Recycling 21. A help desk and hobby promotion desk 22. A room for the department official/s with a meeting hall / a board room 23. Storage Space for Aquarium accessories 24. Appropriate Lighting and Acoustics 25. Provisions for Physically Challenged and Elderly visitors 26. Emergency First Aid Facility & statutory requirements.	
--	--

Note:

- a) The details of the cost of all the components being specified shall be submitted by the bidder as part of the technical proposal, and total project cost of all the facilities shall not be less than INR 7 Crores. The proposals with project cost less than 7 crores shall not be considered for evaluation.
- b) The technical feasibility of installation of the tunnel aquarium has to be assessed by the Bidder to ensure visitor safety, and shall comply to the international Standards. The technical proposal submitted by the bidder shall have a detailed description of the technical details of the Tunnel Aquarium. Tunnel shall be planned only outside the building without any impact on the Building Structure.
- c) Every product and equipment for the aquarium including life support systems should be of CLASS 1 quality, meeting the specified standards. Quality certification to be ensured by the Bidder All the said works proposed to be undertaken by the Bidder shall comply with the applicable laws and regulations in the state of Karnataka, and the compliances shall be submitted to the Authority.

5.3 Indicative List of Works

Following list is strictly suggestive and shall not be treated as final. The bidder shall prepare a thorough assessment of the site and submit an exhaustive list of works to be undertaken, for the Technical Proposal and the Detailed Project Report, upon award of contract.

Ground Floor				Aquarium	
Interiors	Exteriors	First Floor	Second Floor	Exterior Works	Works
Minor Demolition Works	Koi Pond	Minor Demolition Works	Minor Demolition Works	Water Proofing	Aquarium tanks
Cleaning & Debris Removal	Pathway	Cleaning & Debris Removal	Cleaning & Debris Removal	Exterior Paints	Fish
Flooring	Prefabrication works	Flooring	Flooring	Roof Modifications	Koi ponds
Paint & Plastering	Plumbing	Cabinets	Cabinets	Equipment	Lighting
Walling & glass panels	Electrical	Plastering & paints	Plastering & paints	Structural reinforcements	Miscellaneous works
False Ceiling	Signage	Partition walls	Electrical		Aeration
Wood work & furniture	Landscaping	False Ceiling	Doors		Filtration
Washrooms & Plumbing Works	Cafeteria	Electrical & Plumbing			
Electrical Works	Tunnel	Doors, Windows			

6. Understanding of the Concessionaire Agreement Model for Submission of the Bid

The selected Bidder shall enter into the Concession Agreement (as the “**Concessionaire**”), with the Fisheries Department (“**Authority**”). The concessionaire shall be responsible for implementation of the Project in accordance with the provisions of the Concession Agreement (the “**Concession Agreement**”). A model concession agreement to be entered into between the Concessionaire and Authority, is provided in the Bidding Documents.

The scope of work and conditions of the concession agreement will broadly include the following:

- i. The Concessionaire shall renovate, modernize, operate, maintain and manage the Government Aquarium at Cubbon Park (**Project Facility**), during the Concession Period.
- ii. The Concession Period shall commence from the date of signing of the Concession Agreement and shall expire after a period of **30 years**, unless it is terminated earlier either owing to a Force Majeure event or an Event of Default by either of the Parties.
- iii. The Concessionaire shall procure funds for the project at their own cost. For this purpose, the costs to be borne by the Concessionaire include entire capital expenditure, operations, maintenance & management expenditure, including but not limited to the utility bills (water, electricity, telephone, sewage, sanitation etc.), cost of consumables, and all kind of taxes, manpower cost, and insurance premium towards protection of project facilities from fire and burglary, natural disasters etc.
- iv. Construction, renovation and installation of the Project Facility, in line with the Concessionaire’s Technical Proposal, shall be completed within 6 Months from the date of signing of the Concession Agreement.
- v. The Concessionaire shall submit to the Authority, a Project Implementation Plan (PIP) in line his Technical Proposal submitted along with the bid. The Concessionaire shall also simultaneously submit the Structural Stability Test Certificate for undertaking the works as per the PIP. The said Test Certificate shall be issued by competent Government institution as may be approved by the Authority. Approvals from the Authority shall be obtained for the start of Construction and installation of Equipment.
- vi. The Concessionaire shall develop, operate, maintain and manage the Aquarium facility in compliance with the industry’s best practices and standards. It shall be obligated to meet the highest standards with respect to the following:
 - a) Establishment of facilities/components
 - b) Customer convenience & Quality of service
 - c) General upkeep and maintenance of the facility
- vii. The Concessionaire shall be solely responsible to obtain all Applicable Approvals and Permits from relevant statutory authorities. The Authority may facilitate the coordination with multiple departments, if required.
- viii. The Concessionaire shall make necessary provision for the following facilities at all times free of cost to the users:
 - a) Drinking Water and
 - b) Washrooms
- ix. The Concessionaire will be allowed to recover all the expenses incurred on the project, through rates/tariffs and other revenues from the value added services and exhibits in the Aquarium.
 - a. The maximum entry fee that may be charged for FY 2022-23 are as follows:

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

Category of visitors	Weekdays	Weekends/Public Holidays
Adult (Indian National)	Rs. 80 per entry	Rs. 100 per entry
Child (Indian National)	Rs. 25 per entry	Rs. 40 per entry
Adult (Foreign National)	Rs. 200 per entry	Rs. 200 per entry
Child (Foreign National)	Rs. 150 per entry	Rs. 150 per entry

- b. The Concessionaire would be free to offer discounted rates (either across days of the week or for special categories of visitors, eg school children, college students, bulk bookings etc.).
- c. The maximum entry fee may be revised upwards by the Authority upto 10% after every block of 3 years.
- x. The Concessionaire shall be allowed to operate the project facilities on continuous basis throughout the Concession period (24 Hours a day, 365 days a year). Minimum operations shall be for 9 hours per day for at least 6 days in every week. The working hours shall be intimated to the Authority and also prominently displayed at the Project Facility. Shutdown of the facility shall be with prior approval by the Authority.
- xi. The Concessionaire shall pay to the Authority an Annual Licensing Fee, as per the financial bid of the bidder as accepted by the Authority.
 - a. There will be 1 Year period of moratorium on payment of the “Annual Licensing Fee” from the date of signing of the Concession Agreement. The 1st Annual Licensing Fee offered by the Selected Bidder shall therefore be payable to the Authority on the first working day after completion of a year from the date of execution of the ‘Concession Agreement’.
 - b. The ‘Annual Licensing Fee’ is exclusive of GST. GST shall be payable to the competent authority by the selected bidder.
 - c. The ‘Annual Licensing Fee thereafter be payable annually in advance to the Authority on every anniversary of the date of execution the ‘Concession Agreement’.
 - d. The selected Bidder should pay the ‘Annual Licensing Fee’ to the Authority notwithstanding the fact that, the renovation and modernization of the Aquarium is not completed within the specified period or if the selected bidder does not start commercial operation of the Project. In other words, the selected ‘Agency’ shall not be entitled to seek any reduction of ‘the Annual Licensing Fee’, claim, damages, compensation or any other consideration from the Authority on account of any reason except the Force Majeure clause as applicable.
 - e. The Annual License Fee shall be escalated by 3% every year.
- xii. The entire ‘Billing System’ including the issue of ‘Entry & Show Tickets and Fee for Other Value Added Services’ of the Government Aquarium in Cubbon Park shall be computerized by the selected bidder/ the Agency for all the tickets, shows, facilities and services provided in the facility and submit the ‘Computer Generated Reports’ on monthly basis to the Director, Directorate of Fisheries, Government of Karnataka
- xiii. The Authority shall have the right to inspect the Project Facilities during the notified working hours and issue instructions pertaining to upkeep of the Project Facilities, which shall be promptly attended to by the Concessionaire.
- xiv. At the end of the Concession Period, the Concessionaire shall handover the Project Site & Project Facilities to the Authority, free of cost and in excellent operable condition.
- xv. The Concession Agreement sets forth the detailed terms and conditions for grant of the right to the Concessionaire, including the scope of the Concessionaire and obligations (the “**Right**”). The Bidders are advised to peruse the detailed terms and conditions including the scope of work, specified in the draft Concession Agreement, prior to formulating and submitting their Bid for the Project.

7. Bidding Process and Parameter

7.1 Brief Description of the Bidding Process

- a. The Authority has adopted a single-stage process (the "**Bidding Process**") comprising the Technical Bid and the Financial Bid (hereinafter collectively referred to as the "**Bid**") for selection of the Bidder for award of the Project and invites Bids from eligible parties which expression shall, unless repugnant to the context include the members of the Consortium ("**Bidders**"), for the Project electronically in the unified e-procurement platform of the Government of Karnataka [https:// https://eproc.karnataka.gov.in/](https://eproc.karnataka.gov.in/) (hereinafter referred to as "**Karnataka eProcurement Portal**") in accordance with the terms of this RFP.
- b. The Authority shall not be held responsible for failure on part of the Bidder to furnish all or any of the documents as part of its Bid through Karnataka Public Procurement Portal or for rejection of Bids for whatsoever reasons. No correspondence shall be entertained by the Authority in this regard.
- c. All Bidders are required to register in Karnataka Public Procurement Portal. The Bidder shall register in the Karnataka Public Procurement Portal using his/her Login ID and attach his/her valid Digital Signature Certificate (DSC) to his/her unique Login ID. He/ She has to submit the relevant information regarding the firm/company. The Bidder who submit their Bid for this Project after digitally signing using their Digital Signature Certificate (DSC), accept that they have clearly understood and agreed the terms and conditions including all the Forms/Annexure of this RFP Document.
- d. A one-time registration in the Karnataka Public Procurement Portal is a pre-requisite for submission of Bids. If an interested Bidder is not already registered, it shall procure a digital signature certificate and get registered in Karnataka eProcurement Portal. The Authority will not be held responsible for technical glitches in the desktop and internet connectivity services used by Bidders or in case of failure on part of the Bidder to submit the Bid Security or any documents as required to be submitted through the Karnataka eProcurement Portal or for rejection of Bids by the Portal for whatsoever reasons. No correspondence shall be entertained by the Authority in this regard.
- e. The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP, the draft Concession Agreement (Volume II), provided by the Authority as part of this RFP (collectively the "**Bidding Documents**"), and as modified, altered, amended and clarified from time to time by the Authority, and all Bids shall be prepared and submitted in accordance with such terms. Any corrigenda / addenda issued subsequent to this RFP Document, but before the last date and time for submission of Bids (hereinafter defined as "**Bid Due Date**"), will be deemed to form part of the Bidding Documents.
- f. Bidders need to submit the following sets of documents as part of their Bid;
 - i. First electronic document- "**Technical Bid**" to be submitted through the Karnataka eProcurement Portal and shall comprise of documents specified in this RFP document
 - ii. Second electronic document - "**Financial Bid**" to be submitted through the Karnataka eProcurement Portal and shall comprise of documents specified in this RFP document
- g. The first stage ("Technical Bid") of the process involves pre-qualification and technical evaluation of interested parties/ Consortia in accordance with the provisions of this RFP document. At the end of the Technical Bid Evaluation Stage, the Authority shall open the second submission ("Financial Bid") of short-listed Bidders who are eligible for participation in this stage of the Bidding Process.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

7.2 Bid Parameter

- a. Financial Proposal is invited for the Project on the basis of the annual 'Licensing Fee' (the "**Annual Licensing Fee**") exclusive of GST to be offered by the Bidder for renovating, modernizing, operating and maintaining the Project facilities.
- b. As part of the Financial Proposal, the Bidder is required to quote the 'Licensing Fee' offered to the Authority from the 1st Year of the 'Concession Agreement' ("Annual Licensing Fee") in the format provided at Annexure F. Bidder shall quote the Licensing Fee, based on the 'Projected Financials' for the Renovations, Modernization, Operations & Management of the Government Aquarium in Cubbon Park on PPP Mode.
- c. The "Annual Licensing Fee" offered by the Bidder shall constitute the sole criteria for evaluation of Financial Proposals..

8. Instructions to bidders

8.1 Eligibility Criteria for the bidders

a. For determining the eligibility of the Bidders, the following conditions are required to be satisfied (the “**Qualification Criteria**”):

i. The Bidder for participating in the Bidding Process shall be a single business entity (the “**Single Business Entity**”) or a consortium of business entities (the “**Bidding Consortium**”). The Bidding Consortium shall have not more than Two (2) Business Entities as Consortium Members.

For the purpose of this ‘RFP’ document, Single Business Entity or Bidding Consortium Member shall mean a company incorporated under the Companies Act, 1956/2013 or a Partnership Firm registered under the Indian Partnership Act, 1932 or a Limited Liability Partnership (LLP) registered under the LLP Act 2008 or a sole Proprietorship firm registered under the Proprietorship Act, 1908.

If the Bidder is:

1. A company, it should furnish copy of the certificate of incorporation and memorandum of association as a proof of identity.
2. A registered partnership firm, it should furnish copy of the registration certificate under the registrar of firms and copy of the partnership deed executed between the partners as a proof of identity.
3. A registered LLP, it should furnish copy of the registration certificate under the registrar of companies and copy of the partnership deed executed between the partners as a proof of identity.
4. A sole proprietorship firm, it should furnish copy of the Shops & Establishment Registration and either the Sales/GST Returns or IT Returns for the last three financial years preceding the Proposal Due Date as a proof of identity.

ii. Eligibility Criteria as listed in the following table:

S.No	Eligibility Criteria	Description
1	Technical Capacity	<ol style="list-style-type: none"> i. The Bidder should have been in existence for at least 10 years before proposal due date. ii. The bidder should have at least 10 years’ of experience in the Design/Development/Installation and Operations of Large Size Aquariums, Aqua Scape and Biotype systems. iii. Proof of the same, duly certified by Statutory Auditor, needs to be submitted along with the documents.
2	Financial Capacity- Turnover	<ol style="list-style-type: none"> i. The Bidders shall have a minimum Average Annual Turnover of INR 2 Crores for the last three Financial Years FY 2018-19, FY 2019-20 and FY 2020-21.
3	Financial Capacity - Net worth	<ol style="list-style-type: none"> i. The Bidder shall have a minimum Average Annual Net worth of INR 1 Crores as on 31st March 2021
4	GST Registration	Should have valid GST registration.

Checklist of Relevant Submissions for Eligibility:

- a) The bidder must submit a Proof of Registration of the legal entity (Certificate of Incorporation)
- b) Audited Balance Sheets of the last three financial years must be submitted in support, without which the bid may not be considered.
- c) Certificate of Statutory Auditor/ Chartered Accountant for Annual Turnover and Net worth for last three financial years must be provided.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

- d) The bidder must submit copy of work orders and its completion certificates of assignments issued by the client.
- e) Certificate by Statutory Auditor certifying area of past projects as required to substantiate eligibility criteria under S. No. 1(ii) above.
- f) Must submit the GST registration certificate & PAN Card Copy.

8.2 Number of proposals

Each Bidder shall submit only one (1) Proposal, in response to this 'RFP'. Any Bidder, who submits more than one Proposal, will be disqualified.

8.3 Proposal preparation cost

The Bidder shall be responsible and shall pay for all of the costs associated with the preparation of its Proposal and its participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

8.4 Project inspections and visit to the site

It is expected that each Bidder submits their Proposal after 'visiting the site' at their own cost and ascertaining themselves about the location, surroundings, and/or any other matter considered necessary.

It would be deemed that by submitting the Proposal for 'RFP', the Bidder has:

- 1 made a complete and careful examination of terms & conditions / requirements, and other information set forth in this 'RFP' document;
- 2 received all such relevant information as it has requested from the Authority; and
- 3 made a complete and careful examination of the various aspects of the Project including but not limited to:
 - the site details (Project Site);
 - existing facilities at the site;
 - the conditions of the access roads and utilities in the vicinity of the Project Site;
 - conditions affecting transportation, access, disposal, handling and storage of materials;
 - clearances obtained by the Authority for the Project;
 - business potential of proposed project;
 - extent of land in actual possession of the Authority and deviations if any, irrespective of the extent of deviation, from the extent of land details mentioned in this 'RFP' document; and
 - All other matters that might affect the Bidder's performance under the terms of this 'RFP' document.

The Authority shall not be liable for any mistake or error on the part of the Bidder in respect of the above.

8.5 Right to accept or reject any of the proposals

Notwithstanding anything contained in this 'RFP', the Authority reserves the right to accept or reject any Proposal and to annul the Bidding Process and reject all Proposals at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event the Authority rejects or annuls all the Proposals, it may, in its discretion, invite all eligible Bidders to submit fresh Proposals hereunder.

The Authority reserves the right to reject any Proposal and appropriate the Bid Security if:

- a. at any time, a material misrepresentation is made or uncovered, or

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

- b. the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Proposal.

Such misrepresentation/improper response shall lead to the disqualification of the Bidder. If such disqualification/rejection occurs after the Proposals have been opened and the Highest Bidder gets disqualified/rejected, then the Authority reserves the right to:

- (i) Invite the remaining Bidders to match the Highest Bidder/submit their Proposals in accordance with the 'RFP'; or
- (ii) Take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

In case it is found during the evaluation or at any time before signing of the 'Concession Agreement' or after its execution and during the period of subsistence thereof, including the right thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Selected Bidder either by issue of the LOI or execution of the Agreement, and if the Bidder has already been issued the LOI or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this 'RFP', be liable to be terminated, by a communication in writing by the Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder or Selected Bidder, as the case may be. In such an event, the Authority shall forfeit and appropriate the Bid Security or Security Deposit, as the case may be, as mutually agreed genuine compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the 'RFP'. Failure of the Authority to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

8.6 Clarification and amendment of 'RFP'

At any time prior to the Proposal Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the 'RFP' Document by the issuance of Addenda. Any Addendum or responses issued hereunder will be uploaded on the Karnataka e-procurement website. <https://eproc.karnataka.gov.in>

8.7 Language

The Proposal and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by Bidder with the Proposal are if in any other language, those should be accompanied by appropriate translations in English language duly certified by a competent person (Statutory Auditor, Chartered Accountant, Company Secretary, or Director of the Company). Supporting materials, which are not translated into English, will not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

8.8 Bid security

- 1 The Bidder must submit as part of its Proposal a Bid Security in the manner set out in this RFP
- 2 The Authority shall not be liable to pay any interest on the Bid Security and the same shall be interest free.
- 3 The Bid Security of the unsuccessful Bidder(s) shall be returned not later than 60 (Sixty) days from the date of announcement of the Selected Bidder. The return of Bid Security shall be in the form of demand draft in favor of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority, give the name and address of the person in whose favor the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Proposal.
- 4 The Bid Security shall be forfeited in the following cases:
 - a. If the Bidder modifies or withdraws its Proposal
 - b. If the Bidder withdraws its Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period.
 - c. If any information or document furnished by the Bidder turns out to be misleading or untrue in any material respect.
 - d. If a Bidder engages in a corrupt or undesirable practice.
 - e. In the case the Selected Bidder, fails within the specified time limit to:
 - i. sign and return the duplicate copy of LOI;
 - ii. sign the Agreement with the Authority; or
 - iii. furnish the Security Deposit within the prescribed period.

8.9 Validity of proposal

The Bid shall be valid for a period of not less than 180 (One Hundred and Eighty) days from the last date for submission of Bids as specified in Clause 1.3 (the “**Bid Due Date**”). The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

8.10 Extension of validity of proposal

In exceptional circumstances, prior to expiry of the original Proposal Validity Period, the Authority may request Bidders to extend the Proposal Validity Period for a specified additional period.

A Bidder may refuse the request without forfeiting its Bid Security. A Bidder agreeing to the request will not be allowed to modify its Proposal, except as provided under the relevant clause in this RFP document, but would be required to extend the validity of its Bid Security for the period of extension.

The Selected Bidder shall, where required, extend the Proposal Validity Period until the date of execution of the Agreement.

8.11 Format and signing of proposal

Bidders must submit the Technical Proposal and the Financial Proposal in the manner set out in this RFP. The Authority would evaluate only those Proposals that are received in the required format and complete in all respects. Incomplete and/or conditional Proposals shall be liable to rejection.

Bidders shall prepare one set of the Technical Proposal (together with originals / copies of documents required to be submitted along therewith pursuant to this ‘RFP’) and clearly mark as “TECHNICAL PROPOSAL”.

The Proposals shall be typed or written in indelible ink and signed by the Authorized Representative (the “Authorized Representative”) of the Bidder who shall also initial each page, in blue ink. In case of printed and

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

published Documents, only the cover shall be initialed. The person signing the Proposal shall initial all the alterations, omissions, additions, or any other amendments made to the Proposal. The Proposals must be properly signed by the Authorized Representative as detailed below:

- (a) By a Director or duly authorized person holding the Power of Attorney, in case of a Company
- (b) By a Partner holding the signing authority or a duly authorized person holding the resolution as signing authority, in case of a Partnership Firm or LLP.
- (c) By the proprietor, in case of a sole proprietary firm.

In case of a Company, a Power of Attorney in the format specified in the Annexure, should be included in the Proposal. However, the Power of Attorney is not required to be submitted, if the Proposal is signed by a Partner in case of a Partnership Firm or LLP, and the proprietor in case of a sole proprietorship firm.

8.12 Sealing and marking of proposals

1. The Bidder shall submit all the documents sought under the 'RFP', together with the documents mentioned in the Annexures in the format provided
2. The Bidder shall submit the Proposal in Two separate envelopes comprising the following documents and marked as "TECHNICAL PROPOSAL" and "FINANCIAL PROPOSAL"
3. "TECHNICAL PROPOSAL" comprising the following documents as part of their Proposal -
 - a. Demand Draft towards the Bid Processing Fee (Rs.2,500/-)
 - b. Bank Guarantee / Demand Draft towards the Bid Security (Rs.2.00 Lakhs);
 - c. Covering Letter-cum-Project Undertaking as per format at Annexure A;
 - d. Details of Bidder as per the format at Annexure-B along with supporting documents as specified therein;
 - e. Technical Capacity of the Bidder as per the format at Annexure-C along with Statutory Auditor certificate and supporting documents as specified therein;
 - f. Financial Capability of the Bidder as per the format at Annexure D along with Chartered Accountant certificate and supporting documents as specified therein
 - g. Power of Attorney for signing of Proposal as per the format at Annexure-E;
 - h. In case of a company, it should furnish copy of the certificate of incorporation and memorandum of association as a proof of identity.
 - i. In case of a registered partnership firm, it should furnish copy of the registration certificate issued by the registrar of firms and a copy of the partnership deed executed between the partners as a proof of identity.
 - j. In case of a Limited Liability Partnership (LLP), it should furnish copy of the registration certificate issued by the registrar of companies and a copy of the partnership deed executed between the partners as a proof of identity.
4. "FINANCIAL PROPOSAL" comprising the following documents shall be part of the Bidder's Proposal -

The Financial Proposal consisting of the Bidder's financial offer, which specifies the "Annual Licensing Fee" offered to the authority, shall be submitted in the prescribed format Annexure - F.
5. The envelopes specified above shall be placed in an outer envelope, which shall be sealed, clearly indicate the name and address of the Bidder and bear the following identification:
"Proposal for Selection of Agency for undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode"

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

The envelopes shall be addressed to the Director, Fisheries Department with the following details:

Address:	The Director Directorate of Fisheries, 3rd Floor, Podium Block, VV.Center, Dr Ambedkar Road, Bangalore 560001
Email:	dfkarnataka@rediffmail.com
Website:	https://fisheries.karnataka.gov.in
Telephone:	080-22864681, Fax: 080-22864619

If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Bidder and liable to be rejected. Proposals submitted by fax, telex, or e-mail shall not be entertained and shall be rejected.

8.13 Proposal due date

- 1 The Bidder should submit the Proposal before Proposal Due Date, at the address provided in this RFP document in the manner and form as detailed in this 'RFP'.
- 2 The Authority may at its sole discretion, extend the Proposal Due Date by issuing an Addendum uniformly for all Bidders.
- 3 The Bidders shall scan and upload all the attested copies of the RFP, General Requirement, Technical and Financial eligibility documents at the tender release website by the date and time mentioned. Please note that the Financial Bid needs to be uploaded separately.
- 4 The Bidders shall quote their "Annual Licensing Fee" on the eProcurement website of the Government of Karnataka only.

8.14 Late proposals

Any Proposal received by the Authority after Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

8.15 Modifications/ substitution/ withdrawal of proposals

Bidder may modify, substitute or withdraw its Proposal prior to the Proposal Due Date by written notice of the modification, substitution or withdrawal to the Authority. No Proposal shall be modified, substituted or withdrawn by the Bidder after the Proposal Due Date.

The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the conditions specified in this RFP document with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

Any alteration/ modification in the Proposal or additional information supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

8.16 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person not officially concerned with the process. The Authority will treat all information submitted as part of Proposal in confidence and would require all those who have access to such material to

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

treat the same in confidence. The Authority will not divulge any such information unless it is ordered to do so by any authority pursuant to applicable law or order of a competent court or tribunal, which requires its disclosure.

8.17 Clarifications

To assist in the process of evaluation of Proposals, the Authority may, at its sole discretion, ask any Bidder for clarification on its Proposal or substantiation of any of the submissions made by the Bidder. The request for such clarification or substantiation and the response shall be in writing or by facsimile. No material change in the substance of the Proposal would be permitted by way of such clarification / substantiation.

9. Evaluation Process

9.1 Evaluation process

Proposals shall be evaluated in the following steps, based on Quality cum Cost Based Criteria. (QCBS) -

- 1 **Step 1** - The first step would involve opening of Technical Proposal and a test of responsiveness would be carried out as set out in Clause 9.2.1 of the 'RFP'. Those Proposals found to be substantially responsive would be considered for the next step of evaluation.
- 2 **Step 2** - In the second step, detailed evaluation would be done of Bidders experience comprising, Technical Capacity and Financial Capacity; the proposed methodology and the project concept ("Technical Evaluation Criteria") would be undertaken as per Clause 9.3 of this RFP document.
- 3 **Step 3** - In the third step, the Financial Proposals of all the Qualified Bidders would be considered for opening. Bidder quoting the Highest Annual License fees calculated in the manner set out in Clause 9.4 shall be declared as the Selected Bidder.
- 4 **Step 4:** Combined technical and financial score shall be calculated based on the formula mentioned below. The bidder scoring the highest combined technical and financial score shall be adjudged as the Selected Bidder.

9.2 Tests of responsiveness

1. Prior to evaluation of Proposals, the Authority will determine whether each Proposal is responsive to the requirements of the 'RFP'. A Proposal shall be considered responsive if the Proposal:
 - a. Is received before the Proposal Due Date including any extension thereof pursuant to Clause 3.
 - b. Contains demand draft towards the cost of the Bidding Document.
 - c. Contains the information, Bid Security and documents as requested in the 'RFP'.
 - d. Contains information in formats specified in the 'RFP'.
 - e. It provides the information in reasonable detail. ("Reasonable Detail" means that, but for minor deviations, the information can be reviewed and evaluated by the Authority without communication with the Bidder). The Authority reserves the right to determine whether the information has been provided in reasonable detail.
 - f. There are no inconsistencies between the Proposal and the supporting documents.
2. A Proposal that is substantially responsive is one that conforms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one which,
 - a. affects in any substantial way, the scope, quality, or performance of the Project, or
 - b. limits in any substantial way, inconsistent with the 'RFP' document, the Authority's rights or the Bidder's obligations under the Agreement, or
 - c. unfairly affects the competitive position of other Bidders presenting substantially responsive Proposals.
3. Bidders may note that the Authority will not entertain any deviations to the 'RFP' at the time of submission of the Proposal or thereafter. The Proposal to be submitted by the Bidders would have to be unconditional and unqualified and the Bidders would be deemed to have accepted the terms and conditions of the 'RFP' with all its contents including the Draft Concession Agreement'.
4. Any conditional Proposal shall be regarded as non-responsive and would be liable for rejection.
5. The Authority reserves the right to reject any Proposal that is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such proposals.
6. The selection of bidders shall be in compliance to Karnataka Transparency in Public Procurement Act.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

9.3 Evaluation of qualification criteria

The Technical Proposal will be evaluated as per the following criteria based on scrutiny of the submitted documentary evidence. Bidders must score a minimum of 70 marks out 100 in Technical Score (ST) to qualify for financial bid opening stage.

#	Technical Evaluation Criteria	Break-up of Marks	Maximum Marks
1.	Average annual turnover (T) of the Bidder in previous three financial years (FY 2018-19, 2019-20 and 2020-21).If,		15 Marks
	a. If T<= INR 2 Crore	5 Marks	
	b. If INR 2 Crores < T <= INR 4 crore	10 Marks	
	c. If T > INR 4 crores	15 Marks	
2.	Minimum Net Worth (NW) of the Bidder as on 31 st March, 2021. If,		15 Marks
	a. NW <= INR 1 Crores	5 Marks	
	2.1 b. INR 1 Crores < NW<0.5 crore <= INR 2 crore	10 Marks	
	2.2 c. NW > INR 2 Crore	15 Marks	
3.	<p>The number of Eligible Projects the Bidderhas executed directly with any Central Government/ State Government / Corporate during the last 10 years. The minimum project value for each eligible project shall be INR 5 lakhs.</p> <p>Letter of Award/ Copy of Agreement signed with Central Government / State Government/Corporate Agency/any Government Agencies to be submitted in support of the claim. The Authority may choose to verify the claims of organization.</p> <p>Project expertise be in the following areas shall be considered as Eligible Projects</p> <ol style="list-style-type: none"> Audit and inspection services of the MEP installations done in the proposed public aquarium. Uninterrupted Operational and maintenance Services to the proposed Public Aquarium. Emergency Repair Service, Renovations and upgrade services with mutual consent between PP/Bidder/Department of Fisheries. On-site services related to the renovation, interior reconstruction and modernization by retaining the external system of walls and roofing of public aquarium. Preparation of detailed floor plans and design for the public aquarium specific to its own internal dimensions. World class Aquarium Design and installation capabilities. World class Design and execution of Life support systems. Quarantine services with best practices for the incoming species. Theme building with best visualized aqua scape based on the inhabitants and systems. Aquatic Species Sourcing Services. <p>The eligible projects shall be evaluated based on</p> <ol style="list-style-type: none"> Number of such eligible projects Total Project Cost of such eligible projects 		

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

#	Technical Evaluation Criteria	Break-up of Marks	Maximum Marks
3.1	Total number of eligible projects - N		20 Marks
	a) N = 01	5 Marks	
	b) 01 < N <=05	10 Marks	
	c) 05 < N <=10	15 Marks	
	d) N>10	20 Marks	
3.2	Total Cumulative Project Cost (TPC) of such Eligible Projects		20 Marks
	a. TPC <=INR 25 Lakhs	5 Marks	
	b. INR 25 Lakhs < TPC <= INR 50 lakhs	10 Marks	
	c. INR 50 Lakhs < TPC <= INR 1 Crores	15 Marks	
	d. TPC > INR 1 Crores	20 Marks	
4.	Approach & Methodology (Detailed Presentation shall be made)		30 Marks
4.1	Detailed concept plan (Detailed drawings shall be submitted) including Project cost (INR Crores)	10 Marks	
4.2	Innovative concepts <ul style="list-style-type: none"> a. Innovations with respect to Aquarium Design & Display. incorporating global best practices b. Conceptual Designs incorporating Global Best Practices c. Technological Innovations in Aquarium Operations d. Best utilization of existing space for maximum display. e. Marketing and Branding Strategy for attracting more footfalls. 	10 Marks	
4.3	Detailed Work Plan including Manpower Deployment Plan	10 Marks	
5.	Maximum Technical Score (ST)		100 Marks

Note:

- a. It is mandated that the Technical Proposal submitted by the bidders shall have the detailed Approach & Methodology, that shall be prepared as per the checklist provided under the Section 6.3.1 of the Draft Concession Agreement enclosed with the RFP.
- b. For this purpose, it is explicitly stated that the evaluation of the Approach & Methodology shall be undertaken based on the completeness of the Technical Proposal in line with the methodology stated above.
- c. It shall be noted bidders shall make a detailed power point presentation on the Technical Proposal to the Authority on the date & time specified by the Authority.

For this RFP, the Marks awarded under Technical Evaluation (i.e Technical Score (ST)) has a total weightage of 70% and Marks awarded under Financial Evaluation (i.e Financial Score (SF)) has a total weightage of 30%.

Formula to determine the Financial Score (SF) for the Financial Bids shall be as follows:

$$\text{Financial Score (SF)} = (\text{Value of Lowest Commercial Bid (FL)} / \text{Value of Financial Bid under Consideration (F)}) \times 100$$

Combined Evaluation of Technical & Financial Bid: The Total Score of the Bidder will be determined as per the formula:

$$\text{Total Score} = (70\% \times \text{ST}) + (30\% \times \text{SF})$$

The Bid which obtains the highest Total Score value, will be rated as the "Best Bid".

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

9.4 Evaluation of financial proposal

- a. The Financial Proposals of only the Qualified Bidders would be opened in the presence of the Bidders(s) / representatives who choose to attend on the date and time as may be intimated to the Qualified Bidders. The Financial Proposal shall be the Annual License Fee (excluding applicable GST) for payable by the Selected Bidder to the Authority in the 2nd year of the Concession Period (since the first year shall be the moratorium period).
- b. The Authority will determine whether the Financial Proposals are complete, unqualified and unconditional. The Bidder scoring the highest combined score would be declared as the Selected Bidder ("the Selected Bidder").
- c. In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the "first round of bidding"), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and to match the Annual License Fee of the aforesaid Highest Bidder (the "second round of bidding"). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose quoted Annual License Fee was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder.
- d. In the event that no Bidder offers to match the Highest Bidder in the second round of bidding, the Authority may, in its discretion, invite fresh Financial Proposals (the "third round of bidding") from all Bidders except Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Financial Proposals, they shall be eligible for submission of fresh Financial Proposals. Provided, however, that in such third round of bidding only such Financial Proposals shall be eligible for consideration, which are higher than the Financial Proposal of the second Highest Bidder in the first round of bidding.

9.5 Letter of Intent (LOI) and execution of agreement

- a. After selection, a Letter of Intent ("LOI") shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (Seven) days of the receipt of the LOI,
 - i. sign and return the duplicate copy of the LOI in acknowledgement thereof
 - ii. pay an amount of Rs. 15 Lakhs + GST through a Demand Draft from a Scheduled Bank made in favour of M/s Infrastructure Development Corporation (Karnataka) Ltd. towards "Project Development Fee" payable at Bangalore.
- b. If the duplicate copy of the LOI duly signed by the Selected Bidder, along with the Demand Draft as set out above, is not received by stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate Bid Security of such Bidder as mutually agreed genuine loss and damage suffered by the Authority on account of failure of the Selected Bidder to acknowledge the LOI.
- c. After acknowledgement of the LOI as previously mentioned, the Selected Bidder shall execute the Concession Agreement' within the period of 30 (thirty) days from the issue of LOI. The preferred bidder may choose to sign the agreement on their name or any Special Purpose Vehicle (SPV) created by them with minimum 51% equity. In case of SPV, the preferred bidder shall ensure that, he will maintain 51% Equity in the SPV during the first 5 years of the Concession Period and at least 26% in the SPV for the remaining duration of the Concession Period.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

9.6 Performance Security

- a. The Selected Bidder shall, as “Performance Security”, within the date specified in the LOI, submit a irrevocable Bank Guarantee drawn in favour of the Authority from any Scheduled Bank for an amount equal to the Annual License Fee quoted by the Bidder. The Successful Bidder shall be responsible to maintain the validity of the Performance Security till one month after expiry of the Concession Period. The value of the Performance Security shall also be enhanced in line the increase in the Annual License Fee.
- b. Failure of the Selected Bidder to furnish the Security Deposit as specified in Clause 9.6 or enter into an Agreement with the Authority as specified in the LOI would constitute sufficient grounds for the annulment of LOI. In such event, the Authority reserves the right to:
 - i. forfeit the Bid Security amount of the Selected Bidder, and
 - ii. either invite the Bidder with the next best offer for negotiations, or
 - iii. Take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

9.7 Contacts during proposal evaluation

Proposals shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/rejection to the Bidders. While the Proposals are under consideration, Bidders and/or their representatives or other interested parties shall not make attempts to establish unsolicited and unauthorized contact by any means, the Authority and/or their employees/representatives on matters related to the Proposals under consideration after opening of the Proposals and prior to notification of the Award. Any attempt by the Bidder causing extraneous pressure on the Authority shall be sufficient reason to disqualify the Bidder.

10. Fraudulent and corrupt practices

The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject a Proposal without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.

Without prejudice to the rights of the Authority under Clause 4.1, if a Bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or 'RFP' issued by the Authority during a period of 2 (Two) Years from the date such Bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

For the purposes of this Article 4, the following terms shall have the meaning hereinafter respectively assigned to them:

- a. "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one Year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under Clause 2.1.2, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
- b. "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c. "Coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
- d. "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. "Restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

11. General Conditions and Compliances of the Bid

The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Bengaluru, Karnataka State shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- b. consult with any Bidder in order to receive clarification or further information;
- c. pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
- d. retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- e. independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

It shall be deemed that by submitting the Proposal, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

12. List of Annexures

12.1 Annexure-A: Format for covering letter cum project undertaking

(To be submitted on the Letterhead of the Bidder)

To

Dear Sir,

Sub: Selection of Agency for Renovation, Modernization, Operations and Maintenance of Public Aquarium at Cubbon Park, Bengaluru on PPP Mode

With reference to your 'RFP' document dated<Publication Date>, I/We having examined the Bidding Documents and understood their contents, hereby submit my/our Proposal for the Project. The Proposal is unconditional and unqualified.

1. I acknowledge that the Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Agency for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of our selection as Agency for the Renovation, Operations & Maintenance, management and transfer of the aforesaid Project.
3. I shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Proposal.
4. I acknowledge the right of the Authority to reject our Proposal without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. I certify that in the last Three Years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have any contract terminated by any public authority for breach on our part.
6. I declare that:
 - a. I have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority;
 - b. I have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the 'RFP' document, in respect of any tender or Request for Proposal (RFP) issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State;
 - c. I hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the 'RFP', no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
 - d. the undertakings given by us along with the Proposal in response to the 'RFP' for the Project were true and correct as on the date of making the Proposal and are also true and correct as on the Proposal Due Date and I/we shall continue to abide by them.
7. I understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Proposal that you may receive nor to invite the Bidders to Proposal for the Project, without incurring any liability to the Bidders, in accordance with the 'RFP'.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

8. I believe that we satisfy the Qualification Criteria (Technical Capacity and Financial Capacity) and meet(s) the requirements as specified the 'RFP'.
9. I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
10. I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
11. I/We further certify that no investigation by a regulatory authority is pending either against us or against our CEO or any of our directors/partners/managers/ employees.
12. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
13. In the event of us being declared as the Selected Bidder, I/We shall agree to enter into a Concession Agreement' in accordance with the draft that has been provided to me/us prior to the Proposal Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
14. I/We have studied all the Bidding Documents carefully and also visited and surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Right.
15. I/We offer a Bid Security in the form of a Demand Draft in accordance with the 'RFP'.
16. The documents comprising the Proposal, as specified in Clause 2.12 of the 'RFP', have been submitted in the manner set out in the 'RFP'.
17. I/We agree and understand that the Proposal is subject to the provisions of the Bidding Documents. In no case, I shall have any claim or right of whatsoever nature if the Project/Right is not awarded to me or our Proposal is not opened or rejected.
18. Financial Proposal is submitted by me after taking into consideration all the terms and conditions stated in the 'RFP'; draft Agreement, our own estimates of costs and revenues and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
19. I/We agree and undertake to abide by all the terms and conditions of the 'RFP'.
20. I/We shall keep this offer valid for 180 (one hundred and eighty) days from the Proposal Due Date specified in the 'RFP'.
21. I/We agree to pay a non-refundable amount (INR 15 Lakhs exclusive of GST) to the M/s Infrastructure Development Corporation (Karnataka) Ltd. towards the Project Development Fee as specified in Clause 9.5 of the 'RFP' Document if I/We are declared as Selected Bidder.

In witness thereof, I/we submit this Proposal under and in accordance with the terms of the 'RFP' document.

.....
Signature of the Authorized Person

.....
Name of the Authorized Person Date-----

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

12.2 Annexure-B: Format for details of bidder / each member of bidding consortium

(To be submitted on the Letterhead of the Bidder or each Member of the Bidding Consortium)

1. Details of the bidder
 - a. Name of the Company / Firm / Concern
 - b. Address
 - c. Date of incorporation and/or commencement of business.

2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in this Project.

3. Name, Designation, Address and Phone Numbers of Authorised Signatory of the Bidder:
 - a. Name :
 - b. Designation :
 - c. Company :
 - d. Address :
 - e. Mobile Number :
 - f. E-Mail Address :

A statement by the Bidder disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past.

	Criteria	Yes	No
1.	Has the Bidder been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3.	Has the Bidder paid liquidated damages of more than 5% (Five per cent) of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last Three Years?		

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

12.3 Annexure-C: Format for technical capacity of the bidder

(To be submitted on the Letterhead of the Bidder/ Lead Member of the Bidding Consortium)

S.No	Name of the	Location	Client	Project Cost	Project Activities
Total Project Cost of the Eligible Projects					

Instructions:

1. The 'Property' cited must comply with the eligibility criteria specified in Clause 2.1.1.
2. The Bidder should furnish following documents:
(i) A copy of Trade License from concerned Local Body, Municipality, Corporation, etc. (ii) Copy of PAN, GST Registration Certificates
3. Certificate from Chartered Accountant in the format provided below.

Format for Certificate for Technical Capacity of the Bidder

(To be submitted on the Letterhead of Chartered Accountant)

TO WHOMSOEVER IT MAY CONCERN

We have verified the relevant statutory and other records of M/s. _____ *[Name of the Bidder]*, and certify that M/s _____ has undertaken **of** _____.

1. _____

2. _____

at _____ Located
in Operation from the date _____ respectively and are
to _____ respectively.

This certificate is being issued to be produced before _____

Seal and Signature of the Chartered Accountant (including Membership No.)

Date:

Place:

Note:

It may be noted that in the absence of any detail from the certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in evaluation of experience criteria. The Chartered Accountant should clearly indicate the membership number assigned by the Institute of Chartered Accountants of India or equivalent organization abroad.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

12.4 Annexure-D: Format for financial capacity of the bidder

(To be submitted on Letterhead of the Bidder/Lead Member of the Bidding Consortium)

Bidder Name	Bidder Type (Company / Partnership Firm / LLP / Proprietorship)	FY	FY	FY	Average (3 Years)
		2018-19	2019-20	2020-21	
		Annual Turnover* (INR Crores)			
		Net worth (INR Crores)			

*Required to provide annual turnovers of any Three (3) financial Years of continuous period as per the Audited Accounts.

Instructions:

1. Annual Turnover = Annual Income as indicated in the annual financial statement
2. Along with the above format and information, the Bidders for demonstrating the Financial Capacity should furnish the following:
 - i. The Bidder shall attach copies of the audited annual reports for 3 (Three) Years preceding the Proposal Due Date. The financial statements shall:
 - a. reflect the financial situation of the Bidder;
 - b. be complete, including all notes to the financial statements; and
 - c. correspond to accounting periods already completed and audited (no statements for partial periods shall be accepted).
3. Chartered Accountant certificate (with stamp & membership no) specifying the annual turnovers & average turnover of the Bidder for the 3 (Three) financial Years in the format provided below.

Format for Certificate for Financial Capacity

(To be submitted on the Letterhead of the Chartered Accountant)

We have verified the relevant statutory and other records of M/s _____ [Name of the Bidder], and certify that the Annual Turnover/Net worth & average turnover/Net worth for the Three financial Years preceding the Proposal Due Date are as follows:

Bidder Name	Bidder Type (Company / Partnership Firm / LLP / Proprietorship)	FY	FY	FY	Average (Three Years)
		2018-19	2019-20	2020-21	
		Annual Turnover* (in Crores)			
		Net worth (in Crores)			

This certificate is being issued to be produced before _____

Date & Signature and Seal of the Chartered Accountant (clearly indicating membership number)

Date: Place:

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

12.5 Annexure-E: Format for power of attorney for signing of proposal

(To be submitted on Stamp Paper of appropriate Value)

POWER OF ATTORNEY

Know all men by these presents, We,----- (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms.----- (Name), --- son/daughter/wife of and presently residing at-----, who is [presently employed with us and holding the position of-----], as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our "Proposal for Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of Government Aquarium in Cubbon Park, Bengaluru on PPP Mode", to **The Director, Department of Fisheries** (the "Authority") including but not limited to signing and submission of all applications, Proposals and other documents and writings, participate in Bidders' and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement' and undertakings consequent to acceptance of our Proposal, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us and/or till the execution of the Concession Agreement' with the Authority.

AND

We hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,-----, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF_, 2020.

For -----(Signature)

(Name, Title and Address)Accepted:

Witnesses:

[Notarized](Signature)

(Name, Title and Address of the Attorney)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

Request for Proposal

Selection of a Firm for Undertaking Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bangalore on PPP Mode

12.6 Annexure-F: Format for Financial Proposal

From

Location & Date:

To

Dear Sir,

Subject: Selection of Agency for Renovation, Operations and Maintenance of Public Aquarium at Cubbon Park, Bengaluru on PPP Mode

We, the undersigned, offer to undertake the Project in accordance with your Request for Proposal (RFP) dated <Date of NIT Publication>, and our Proposal (Technical Proposal and Financial Proposal).

1. I / we hereby offer and agree to pay the following amount as Annual License Fees (exclusive of GST) for the first Year to the Authority for the aforementioned Project in terms of the Agreement as provided below:

Annual Licensing Fee*

(A) Total Amount* (In Figures) -----

(B) Total Amount* (In Words)-----

* Excluding Taxes. GST Extra @ 18% at Present.

2. In case of a discrepancy between the amounts expressed in figures vis-à-vis the amount expressed in words, the higher of the Two shall prevail.
3. The 'Annual License Fee' has been quoted by me/us after taking into consideration all the terms and conditions stated in the 'RFP', draft Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Proposal.
4. I / we understand that the Authority is not bound to accept any Proposal(s) received.
5. I / we agree that my / our Financial Proposal shall remain valid for a period of 180 (One Hundred and Eighty) days from the Proposal Due Date prescribed for submission of Proposal.
6. I / we confirm that our Financial Proposal is unconditional and that we accept all terms and conditions specified in the Bidding Documents.
7. I / we agree to be bound by this offer if we are the Selected Bidder for the Project.

Thanking you,

Sincerely,

Authorized Signatory:

Name and Title of the Signatory:

Name of the Bidder:

----End of the Document---

Volume II

The Concession Agreement

April 2022



Between
Department of Fisheries, Government of
Karnataka
(First Party)

And

Xxx
(Second Party)

For
Renovation, Modernization, Operations
& Maintenance of the Government
Aquarium in Cubbon Park, Bangalore on
PPP Mode

VOLUME II
CONCESSION AGREEMENT

between

Department of Fisheries, Government of Karnataka (First Party)

and

(Second Party)

for

***Renovation, Modernization, Operations & Maintenance of the Government
Aquarium in Cubbon Park, Bangalore on PPP Mode***

TABLE OF CONTENTS

1. ARTICLE 1 - DEFINITIONS AND INTERPRETATION.....	4
1.1 Definitions	4
1.2 Interpretation	9
2. ARTICLE 2- SCOPE OF THE PROJECT	8
3. ARTICLE 3- RIGHTS.....	9
3.1 Grant of Rights	9
3.2 Agreement Period.....	9
3.3 Acceptance of Rights.....	9
3.4 Access rights to Authority and others	9
4. ARTICLE 4 - PROJECT SITE	12
4.1 Handover of Project Site	12
4.2 Peaceful Possession	10
5. ARTICLE 5 - INDEPENDENT ENGINEER	11
5.1 Procedure for Appointment of Independent Engineer	11
5.2 Duties and functions	11
5.3 Remuneration to Independent Engineer.....	11
5.4 Termination of appointment	11
5.5 Replacement of the Independent Engineer	11
5.6 Authorised signatories	11
5.7 Dispute resolution.....	12
6. ARTICLE 6 - OBLIGATIONS OF THE SECOND PARTY	12
6.1 Performance Security	12
6.2 Financing Arrangement	13
6.3 Submission of Project Implementation Plan and Approval	135
6.4 Project Completion Period	14
6.5 Construction of Project Facilities.....	157
6.6 Completion Certificate	16
6.7 Monthly progress reports	19
6.8 Environmental and Safety Compliance	19
6.9 Operation and Maintenance Obligations	19
6.10 Alterations, Modifications or Expansion	17
6.11 General Obligations.....	18
6.12 Specific Obligations	19
6.13 Insurance.....	19
6.14 No Breach of Obligations	21
7. ARTICLE 7- AUTHORITY 'S OBLIGATIONS.....	21
7.2 Specific Obligations	21
7.3 General Obligations.....	21
8. ARTICLE 8 - ANNUAL LICENSE FEE PAYMENT TERMS	21
8.2 Mode of Payment	22

9.	ARTICLE 9 - SHAREHOLDING	223
9.1	Ownership Structure:	223
9.2	Shareholding Commitments.....	23
9.3	Constituent Documents	23
10.	ARTICLE 10 - FORCE MAJEURE	23
10.1	Force Majeure Event	23
10.2	Termination Notice due to Force Majeure Event.....	23
10.3	Obligation of Parties	24
10.4	Termination Payment.....	24
10.5	Liability for other losses, damages etc	24
10.6	Liability for other losses, damages etc	24
11.	ARTICLE 11 - EVENTS OF DEFAULT AND TERMINATION	25
11.1	Events of Default	25
11.2	Termination due to Event of Default	26
11.3	Rights of Authority on Termination	27
11.4	Accrued Rights of Parties	28
12.	ARTICLE 12 - EXIT MANAGEMENT	28
12.1	Ownership	28
12.2	Second Party's Obligations	28
13.	ARTICLE 13 - DISPUTE RESOLUTION	28
13.1	Amicable Resolution.....	28
13.2	Arbitration	29
13.3	Performance during Dispute Resolution.....	29
14.	ARTICLE 14 - REPRESENTATIONS AND WARRANTIES.....	29
14.1	Representations and Warranties of the Second Party	29
14.2	Representations and Warranties of Authority	30
14.3	Obligation to Notify Change	31
15.	ARTICLE 15 - MISCELLANEOUS	31
15.1	Assignment and Charges.....	31
15.2	Interest and Right of Set Off.....	31
15.3	Governing Law and Jurisdiction	31
15.4	Waiver	32
15.5	Survival	32
15.6	Amendments	32
15.7	Notices	32
15.8	Severability.....	33
15.9	No Partnership.....	33
15.10	Language.....	33
15.12	Counterparts	39
	SCHEDULES.....	35
	SCHEDULE 1 A - PERFORMANCE SECURITY	36

SCHEDULE 2 - FORMAT FOR LETTER OF AUTHORISATION	38
SCHEDULE 3 - UNDERTAKING	39
SCHEDULE 4- SCOPE OF WORK OF INDEPENDENT ENGINEER.....	40
SCHEDULE 5- LIST OF PROHIBITED ACTIVITIES	47
SCHEDULE 6- REPORTING REQUIREMENTS	48
SCHEDULE 7 - INDICATIVE LIST OF APPLICABLE PERMITS	45
SCHEDULE 8 - LETTER OF AWARD ISSUED TO THE SELECTED BIDDER	46
SCHEDULE 9 - FINANCIAL PROPOSAL OF THE SELECTED BIDDER	47
SCHEDULE 10 –RFP DATED _____AND ADDENDUM	48
SCHEDULE 11 - JOINT INSPECTION REPORT	49
SCHEDULE 12 - APPROVED PROJECT IMPLEMENTATION PLAN.....	50

CONCESSION AGREEMENT

This Concession Agreement (“**Concession Agreement**” or “**Agreement**”) mutually agreed and entered into on this the _____ day of _____, Two Thousand and _____ at Bengaluru.

BETWEEN

The Department of Fisheries, Government of Karnataka having its registered office at Third Floor, Podium Block, VV Center, Dr. Ambedkar Road, Bengaluru - 560001 represented through its Authorised Representative¹ Shri _____, Director (hereinafter referred to as “**the Authority**” or the “**First Party**”) which expression shall unless repugnant to the context include the administrators, successors and assigns on the First Part.

AND

_____ a company incorporated under the _____ having its office at _____ represented through its Authority Representative, Shri _____ (hereinafter referred to as the “**Second Party**”) which expression shall unless repugnant to the context include the successors and permitted assigns, on the Other Part.

Authority and Second Party are collectively referred to as “**Parties**” and individually as “**Party**”.

WHEREAS,

- A. Authority intends to undertake Renovation, Modernization, Operations & Maintenance of the Government Aquarium in Cubbon Park, Bengaluru on PPP Mode, as specified in Schedule 10 (hereinafter referred to as “**Project Site**”) through private sector participation on Renovate

- Operate - Maintain -Transfer (ROMT) Public Private Partnership (PPP) framework (the “Project”).
- B. Pursuant thereto, Authority through an open, transparent and competitive bid process invited proposals from interested parties for the Project by issuing Request for Proposal (“RFP”) document dated_____containing inter-alia the qualification criteria and the terms and conditions for implementing the Project.
- C. After evaluating the proposals, Authority has accepted the proposal submitted _____[insert the name of the successful Bidder], as the Successful Bidder (the “Successful Bidder”) and issued Letter of Award (“LOA”) No._____dated _____[insert the number and date of issue of LOA]. The Successful Bidder has duly acknowledged the same vide its Letter No. _____ dated _____[insert the letter number and date]. (hereinafter referred to as the “Concessionaire”).
- D. Authority acknowledges that as on the date of execution of this Agreement, the Second Party has submitted the following:
- a. an irrevocable bank guarantee drawn in the favor of the First party for an amount equal to the Annual License Fee quoted by the second party (Rupees _____), exclusive of applicable GST, as Performance Security in terms of Clause 6.1 of this Agreement. The same is attached to this Agreement as Schedule-1.
 - b.
 - c. Amount of Rs. 15 Lakhs exclusive of applicable GST through a Demand Draft from a Scheduled Bank made in favour of M/s Infrastructure Development Corporation (Karnataka) Ltd. towards “Project Development Fee” payable at Bangalore.
- E. The Parties hereto are required to enter into an Agreement, being these presents, to record the terms, conditions and covenants set forth hereunder.

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

1. ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article **Error! Reference source not found.**

“Agreement” means this Agreement, the schedules, annexures hereto and includes any amendments hereto made in accordance with the provisions hereof.

“Agreement Period” shall have the meaning ascribed thereto in Article 3.2 of this Agreement.

“Annual License Fee” means the amounts payable by the Second Party to Authority in accordance with Article 8 of this Agreement.

“Applicable Law” means 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 Parties in relation to the Project.

“Applicable Permits” means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the respective Parties under the Applicable Laws including those specified in Schedule-7, in connection with the construction if any, operation & maintenance of the Project Facilities as the case may be, during the subsistence of this Agreement.

“Appointed Date” means the date of signing of this Agreement.

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

“Book Value” shall mean the expenditure incurred on the Project as per the books of the Second Party, 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 (Indian Generally Accepted Accounting Principles). Revaluation of the land and building shall not be included for calculation of book value during the Agreement Period and at the end of Agreement Period by the Second Party. For the purpose of calculation of the Book Value only the cost incurred on the Project upto the date of Commercial Operation Date shall be considered.

“Commercial Operation Date” shall have the meaning ascribed thereto in Clause 6.6.3 of this Agreement.

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

- i. The Second Party has completed the construction of Project Facilities as per the approved Project Implementation Plan, and the same is safe for operations.
- ii. The Second Party has obtained all approval necessary to commence commercial operations of the Project Facilities.

“Drawings” shall mean all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the Approved Project Implementation Plan.

“Authority” means the Department of Fisheries, Government of Karnataka

“Due Date” means the due date for payment of Annual License Fee as set out in Clause 8.2 of this Agreement.

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

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

“Execution Date” means the date of signing of this Agreement.

“Expiry” means expiry of this Agreement by efflux of time at the end of 30 (thirty) years from the Appointed Date or Termination Date, as the case may be.

“Expiry Date” means the date on which Expiry occurs.

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

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

“Force Majeure” or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in Article 9.

“Good Industry Practice” means 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 & 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, Government of Karnataka or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Second Party, the Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Second Party under or pursuant to this Agreement.

“Independent Engineer” shall mean a firm, company or a body corporate, independent engineer or a department engineers appointed in accordance with Article 5 by Authority for supervision and monitoring of compliance by the Second Party of its obligations related to construction of Project Facilities.

“Lenders” means financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided financial assistance to the Second Party for financing any part of the Project.

“Material Adverse Effect” means a material adverse effect on (a) the ability of the Second Party 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” means 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.

“Operations Period” shall mean the period commencing from the Commercial Operation Date and ending on Expiry Date or Termination Date, as applicable.

“Performance Security” shall mean the Bank Guarantee submitted to Authority by the Second Party for due performance of its obligations under this Agreement, in accordance with Article 6.1.

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

“Project Facilities” shall mean and include the Project Facilities to be developed by the Second Party within the project site as part of Renovation & Modernization, in consistence with Good Industry Practices and as approved under the Approved Project Implementation Plan.

“Preliminary Notice” means 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” means and includes Renovation, Modernization, Operations, Maintenance and transfer of the Project Facilities in accordance with the terms and conditions of this Agreement.

“Project Implementation Plan” shall mean the proposed plan to be submitted by the Second Party for undertaking the Project at the Project Site as per the terms of this Agreement and as set out in Clause 6.3.

“Project Site” means the property belonging to Authority and more fully described in Schedule 11.

“Construction Period” shall mean the period envisaged for construction of Project Facilities under this Agreement.

“Rights” shall have the meaning ascribed thereto in Article 3.1 of this Agreement.

“SBI PLR” means the medium term prime lending rate of the State Bank of India.

“Tax” shall mean and includes all taxes including GST, fees, cesses, duties (including stamp duties, property tax), levies that may be payable by the Second Party for execution of this Agreement and during the Agreement Period under Applicable Law.

“Termination” means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include Expiry.

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

“Termination Notice” means 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 by the Second Party in accordance with this Agreement and “Testing” and “Tested” shall be construed accordingly.

“User Fee” means all charges, costs, fees, tariff and other amounts by whatever name called, collected by the Second Party from the users, pursuant to this Agreement, for usage of the Project Facilities. However, the Second Party shall make available to the users the toilet and drinking water facilities at free of cost.

1.2 Interpretation

In interpreting the conditions in this Agreement, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of this Agreement unless specifically defined. The documents forming part of the Agreement shall be interpreted in the following order of priority:

- a) This Agreement along with Schedules as amended from time to time;
- b) Letter of Award (refer Schedule 8);
- c) Successful Bidder Bids i.e Technical Proposal along with supporting Documents and Financial Proposal (refer Schedule 9);
- d) Bid Document with all Clarification/Corrigendum/Addendum to the Bid Document, if any (refer Schedule 10);

2. ARTICLE 2- SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Agreement Period:

- a) Construction of Project Facilities in accordance with the terms and conditions of this Agreement and the approved Project Implementation Plan;
- b) Operation & maintenance of the Project Facilities in accordance with the terms and conditions of this Agreement and the approved Project Implementation Plan;
- c) Performance and fulfillment of all other obligations in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all obligations under this Agreement and
- d) Transfer of Project Site along with the Project Facilities in good operational conditions on the Expiry Date or the Termination Date as the case may be in accordance with the terms and conditions of this Agreement.

3. ARTICLE 3- RIGHTS

3.1 Grant of Rights

- 3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Authority hereby grants the following rights and authorizes the Second Party:
- i. to carry out surveys, investigation, study, design, engineer, procure, finance, renovate, refurbish, operate & maintain the Project Facilities in accordance with this Agreement and for this purpose it may regulate the entry into and use of the same by 3rd parties,
 - ii. to exercise and/ or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement including the right to collect, retain and appropriate User Fee from the users of the Project Facilities in the Project Site during the operation and maintenance period; and
 - iii. to hand back the Project Site comprising the Project Facilities on the Expiry Date or the Termination Date as the case may be.
- 3.1.2 The Second Party shall not lease, mortgage, assign, transfer or create any lien or Encumbrance on the whole or any part of the Project Site or Project Facilities, save and except as expressly permitted by this Agreement.

3.2 Agreement Period

The tenure of the Agreement shall be for a period of 30 (thirty) years commencing from Appointed Date and ending on the Expiry Date (“the **Agreement Period**”).

Provided that in the event of Termination, the Agreement Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

3.3 Acceptance of Rights

In consideration of the rights, privileges and benefits conferred upon by Authority and other good and valuable consideration expressed herein, the Second Party hereby accepts the Rights and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions of this Agreement.

3.4 Access rights to Authority and others

The Second Party shall, upon reasonable notice, allow free access to the Project Site and Project Facilities for the authorized representatives of Authority, Independent Engineer and for the persons and vehicles duly authorized by any Government Instrumentality to;

- (a) inspect the Project Facilities and to investigate any matter within their authority and provide to such person’s reasonable assistance necessary to carry out their respective duties and functions.
- (b) lay/ install / maintain telephone lines, electric lines or for such other public purposes as Authority may specify. Provided that such access or use do not result in a Material Adverse Effect and that Authority shall, in the event of any physical damage to the Project Site /

Project Facilities on account thereof, ensure that the Project Site / Project Facilities is promptly restored at its cost and expenses.

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

4. ARTICLE 4 - PROJECT SITE

4.1 Handover of Project Site

4.1.1 Prior to the handover of Project Site to the Second Party, Authority and the Second Party shall within 7 (Seven) days from the Appointed Date conduct joint inspection of the Project Site and agree to the exact area and inventory of the existing facilities therein and jointly prepare and sign a joint inspection report. The joint inspection report shall form part of Schedule 11.

4.1.2 Authority shall, within 15 (Fifteen) days from the date of signing of the joint inspection report by both the Parties handover to the Second Party, on as-is-where-is basis, vacant and peaceful physical possession of the Project Site, free from Encumbrance and encroachment, for the purpose of implementing the Project.

4.1.3 Upon handover of the Project Site, the Second Party shall have the right to enter upon, use and make at its own costs, charges and expenses such investigation necessary or appropriate to prepare the Project Implementation Plan for construction of Project Facilities in the Project Site in accordance with the provisions of this Agreement.

4.2 Peaceful Possession

Authority hereby warrants that:

- (a) The Project Site has been acquired through the due process of law and belongs to and is vested with Authority and that Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement.
- (b) In the event the Second Party is obstructed by any Person claiming any right, title or interest in or over the Project Site and Project Facilities 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 or the Project Site and Project Facilities or any part thereof, Authority shall, if called upon by the Second Party, defend such claims and proceedings and also keep the Second Party indemnified against any consequential loss or damages which the Second Party may suffer, on account of any such right, title, interest or charge.

5. ARTICLE 5 - INDEPENDENT ENGINEER

5.1 Procedure for Appointment of Independent Engineer

5.1.1 Authority shall within 30 (Thirty) days from the Appointed Date, appoint an independent engineer under this Agreement (the "**Independent Engineer**") for initial period of 1 (one) year. On expiry of the aforesaid period, Authority may in its discretion renew the appointment, or appoint another Independent Engineer for a term of 1 (one) year, and such procedure shall be repeated after expiry of each appointment.

5.1.2 In the event that the Independent Engineer is not appointed or its term is not extended, then Authority shall perform the functions of the Independent Engineer through its departmental engineers.

5.2 Duties and functions

The Independent Engineer shall submit to Authority at least once in every 2 (two) months a report with respect to the compliances of the Second Party of its construction obligations as per the approved Project Implementation Plan.

5.3 Remuneration to Independent Engineer

Authority shall finalize the fees and other terms of appointment of the Independent Engineer. All fees, costs, charges and expenses payable to the Independent Engineer in accordance with the terms of its appointment (collectively "the **Remuneration**") shall be borne by Authority.

5.4 Termination of appointment

5.4.1 Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 5.1.

5.5 Replacement of the Independent Engineer

5.5.1 Authority may replace the Independent Engineer in any of the following circumstances:

- (i) if Authority has reason to believe that the Independent Engineer has not discharged its duties in a fair, appropriate and diligent manner;
- (ii) if, in accordance with the terms of its appointment the Independent Engineer resigns or notifies its intention not to continue as the Independent Engineer;
- (iii) any other circumstance which in the opinion of Authority warrants replacement of the Independent Engineer.

5.6 Authorised signatories

Authority shall require the Independent Engineer to designate and notify to Authority and the Second Party up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the

Independent Engineer shall be valid and effective only if signed by any of the authorised signatories; provided that the Independent Engineer may, by notice in writing, substitute any of the authorised signatories by any of its employees.

5.7 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or guidelines of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure set out in Article 13.

6. ARTICLE 6 - OBLIGATIONS OF THE SECOND PARTY

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

6.1 Performance Security

- 6.1.1 The Second Party shall, for due and punctual performance of its obligations relating to the Project, prior to or simultaneously with the execution of this Agreement, submit to Authority a performance security ("**Performance Security**") in the form of an irrevocable and unconditional Bank Guarantee from any scheduled bank acceptable to Authority for an amount equal to Annual License Fee quoted by the second party _____(Rs,) , exclusive of applicable GST valid for the entire Agreement Period in the form as set forth in Schedule 1 A.
- 6.1.2 Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as damages from the Second Party for following reasons.
- i. Upon occurrence of a Second Party's Event of Default,
 - ii. For recovery of any amount imposed as a fine by Authority for irregularities committed by the Second Party.
 - iii. For recovery of any amount, which Authority becomes liable to Government /Third party because of any default of the Second Party's or any of his servant/agent.
 - iv. For recovery of any payment/fine made by Authority under the order/judgement of any court/consumer forum or law enforcing agency or any person working on his behalf due to any default of the Second Party's or any of his servant/agent.
 - v. For recovery of any payment from Second Party's due to Authority under this Agreement.
- 6.1.3 Upon such encashment and appropriation from the Performance Security, the Second Party's shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Second Party shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which Authority shall be entitled to terminate this Agreement in accordance with Article 11.

6.1.4 If this Agreement expires or is Terminated due to any event other than a Second Party Event of Default, the Performance Security shall subject to Authority's right to receive amounts from the Second Party, if any, under this Agreement, be duly discharged and released to the Second Party without any interest within 3 (three) months from the date of expiry of this Agreement or Termination, as the case may be.

6.2 Financing Arrangement

6.2.1 The Second Party shall at its own 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. Copy of the executed financing documents duly attested by the authorized signatories must be delivered to Authority within 15 (fifteen) days of entering into such financing agreements by the Second Party.

6.2.2 Authority shall not provide any financial assistance to the Second Party under this Agreement with respect to construction or operation & maintenance of the Project Facilities.

6.3 Submission of Project Implementation Plan and Approval

6.3.1 The Second Party shall within 15 (Fifteen) days from the date of handover of Project Site submit to Authority, a project implementation plan ("**Project Implementation Plan**") setting out in reasonable detail the following necessary information:

- a. Details on types of facilities and the schedule for implementation as per the details specified by the Authority in the Request for Proposal document; and operationalizing the Project Facilities including design and engineering, procurement of materials and equipment, installation etc.;
- b. In case loan is taken by the Second Party, the cost of construction as certified by the financial institutions.
- c. Methodology, standards, quality assurance procedures, periodicity proposed to be adopted with regard to construction of Project Facilities and operation & maintenance milestones.
- d. List of facilities proposed to be developed by the Second Party along with a Detailed Project Report including conceptual plans, details of capacity and dimensions, area statements including Floor Space Index (FSI) or Floor Area Ratio (FAR) permissible and proposed FSI/FAR etc., of such facilities for better commercial utilization of the Project Site. This shall also include office space provided by the second party for the First party within the Project site.
- e. Certification of Structural Stability of the Project Site for the conceptual plan prepared by the second party from a Competent Government Agency like Indian Institute of Science (IISC Bangalore), Indian Institute of Technology, or any equivalent organization etc. including details of the structural strengthening works to be executed at the project site.
- f. Manpower deployment plan 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, safety, plant and equipment maintenance, procurement, materials management and quality control);
- g. Design specifications of Project Facilities;
- h. A detailed architectural drawing along with 3D views;
- i. Maximum handling capacity of each such project facility provided in the Project Site.

- j. A broad method statement for key items (Earth Works, Concrete Works, Structural Steel Works, Aquarium & related Auxiliary equipment) setting out the methodology of construction, materials and construction equipment mobilisation/ utilisation plans and safety management plan;
- k. Details of the quality assurance plan and quality control procedures;
- l. 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), and
- m. Provision for appropriate and adequate lighting and ventilation devices, rain water harvesting, utilization of waste water, water treatment plant, landscaping, appropriate security systems, including provision for fitting CC T.V. systems, waste management systems, cleaning systems etc and details of management of waste generated within the Project Site.

6.3.2 Authority may constitute a committee (the “**Review Committee**”) for review and approval of the Project Implementation Plan. The Review Committee shall review the Project Implementation Plan for compliance with applicable provisions of the Agreement and either approve or convey its comments/observations, if any within 15 (Fifteen) days from the date of receipt of the Project Implementation Plan by the Second Party. On receipt of such comments/observation from Authority, the Second Party shall within 15 (fifteen) days submit a revised Project Implementation Plan to Authority for its approval. After approval by Authority, the Project Implementation Plan (“Approved Project Implementation Plan”) shall be signed by the Parties and appended to this Agreement as Schedule 12.

6.3.3 If the Second Party is unable to submit the Project Implementation Plan within the period of 15 (Fifteen)days from the date of handover of the Project Site, it should in writing convey the reasons for non-submission of the same within the said period of 7 (Seven)days. Upon such request, Authority may for valid reasons and for reasons beyond the control of Parties, waive the delay to submit the approved Project Implementation Plan and extend the date for submission of Project Implementation Plan but not later than for a further period of 7 (Seven) days, subject to payment of penalty amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the submission of the same to Authority. In case the Project Implementation Plan is not submitted within the extended period of 15 (Fifteen) days, Authority shall, subject to the provisions of Article 10.2, be entitled to terminate this Agreement. The said penalty amount should be submitted in the form of Demand Draft (DD) from any nationalized or scheduled bank in favor of the first party payable at Bengaluru.

6.3.4 Notwithstanding any review or failure to review or the comments/observations of Authority, the Second Party shall be solely responsible for the adequacy of the Project Implementation Plan and shall not be relieved or absolved in any manner whatsoever of any of its obligations set forth in this Agreement.

6.4 Project Completion Period

6.4.1 The Second Party shall complete the construction of Project Facilities as per the Approved Project Implementation Plan, within 6 (Six) months from the date of signing of concession Agreement.

6.4.2 The Second Party shall commence operation & maintenance of the Projects Facilities within 15 (fifteen) days from the date of issue of Completion Certificate by Authority of the respective phases and shall operate and maintain the same till the Expiry Date or the Termination Date, as the case may be.

6.5 Construction of Project Facilities

6.5.1 Prior to commencement of construction of Project Facilities for each phase of the project facilities, The Second Party shall have:

- i. Obtained all Applicable Permits for the Project including licenses, consents, exemptions, permissions and approvals from the government agencies concerned necessary or desirable for construction of the Project Facilities and as required under Applicable Law.
- ii. 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 Authority / Independent Engineer
- iii. Appointed a qualified engineer to ensure that the designs, drawings and construction of the Project Facilities and other additional facilities within the Project Site complies with the approved Project Implementation Plan;
- iv. Finalized such Drawings in consultation with Authority / Independent Engineer as are necessary and obtain the approval of Project Implementation Plan by Authority;
- v. Undertaken and performed all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits.

6.5.2 The Second Party shall, except for reasons of a Force Majeure Event, complete construction of Project Facilities from the date of approval of Project Implementation plan within 4 (months) year from the date of approval of Project Implementation Plan. The Project Site should be developed or utilized as per the Applicable Laws including the applicable town and country planning rules.

6.5.3 If the Second Party fails to complete the construction of Project Facilities within the period stipulated for its completion under clause 6.5.1 and 6.5.2 respectively, unless such failure has occurred due to Force Majeure or for reasons solely attributable to Authority, the Second Party should in writing convey the reasons for non-completion of the same within the said period. Upon such request, Authority may waive the delay and extend the date for completion of construction of Project Facilities but not later than for a further period of 30 (Thirty) days, subject to payment of penalty amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay to Authority till completion of the Project Facilities. In case the construction of Project Facilities is not completed within the extended period of 30 (Thirty) days, Authority shall, subject to the provisions of Article 11.2, be entitled to terminate this Agreement. The said penalty amount should be submitted in the form of Demand Draft (DD) from any nationalized or scheduled bank in favor of the first party, payable at Bengaluru.

6.6 Completion Certificate

- 6.6.1 Upon completion of construction but prior to issue of the Completion Certificate, the Second Party shall clear of all construction equipment, surplus materials, debris and temporary installations. The Project Site and Project Facilities shall keep tidy and an aesthetically pleasing appearance to the satisfaction of Authority/Independent Engineer.
- 6.6.2 Upon completion of the Project Facilities, the Second Party shall request Authority to issue the Completion Certificate by submitting the following documents in two sets (both hard copy and CD form):
- i. Geo-technical and borehole reports, if any.
 - ii. Building Plan approved by the competent authority.
 - iii. Blue print of the completed building along with the occupancy and completion certificate by the relevant authority.
 - iv. Approval letter of concerned ESCOM/water supply authority etc.
 - v. Interior & exterior photographs of the Project Site and Project Facilities.
- 6.6.3 The Second Party shall be entitled to operate the Project Facilities only after Completion Certificate is obtained whereupon the Second Party shall be entitled for collecting and appropriating ticket fares, as specified under the RFP _____ The date of issuance of Completion Certificate shall be the commercial operation date ("**Commercial Operation Date/COD**").
- The maximum ticket fares specified in the RFP are applicable for a period of three year from the COD and shall for every subsequent block of three years, the first party may revise the maximum ticket prices upon receipt of such a proposal from the second party.

6.7 Monthly progress reports

The Second Party shall, no later than 7 (seven) days after the close of each month, furnish to Authority a monthly construction report and monthly operation & maintenance report on progress of the construction and operation & maintenance of the Project Facilities. The Second Party shall also promptly give such other relevant information as may be required by Authority.

6.8 Environmental and Safety Compliance

- 6.8.1 The Second Party shall obtain the necessary environmental safety related clearances from the competent authorities wherever applicable.
- 6.8.2 The Second Party shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto, including rainwater harvesting, energy conservation, Fire Safety & First aid, and other such ecological/ sustainable solutions/mechanisms and conforming to Good Industry Practice for securing the safety of the users of the Project Facilities.

6.9 Operation and Maintenance Obligations

- 6.9.1 The Second Party shall renovate, refurbish, modernize, operate, manage & maintain the Project Facilities entirely at its own cost as per the Good Industry Practice.
- 6.9.2 The Second Party shall ensure that the Project Facilities is commissioned and opened for the users within 15 (fifteen) days from the date of obtaining the Completion Certificate from Authority.
- 6.9.3 The Second party shall ensure that the project facilities shall be operated, at all times, within the maximum capacity specified and operated under the Project Implementation plan.
- 6.9.4 The Second Party shall, during the Agreement Period have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to or operate the Project Facilities, to deal with Authority and be responsible for all necessary exchange of information required pursuant to this Agreement;
- 6.9.5 In case the Second Party has failed to operate & maintain the Project Facilities as per the Good Industry Practice, and such failure has not been remedied despite a notice to that effect issued by Authority ("**Notice to Remedy**"), the Second Party shall be deemed to be in material breach of O&M obligations.

Authority, acting reasonably and in accordance with the provisions of this Agreement, determines that due to persistent breach of its obligations by the Second Party, Authority shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement. For avoidance of doubt, persistent breach shall mean:

- (i) any breach of O&M obligations by the Second Party which has not been remedied by the Second Party despite a Notice to Remedy in respect thereof issued by Authority;
 - (ii) recurrence of a breach by the Second Party, during the pendency of Notice to Remedy by Authority requiring the Second Party 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.
- 6.9.6 Authority's right to take remedial measures

In the event the Second Party does not maintain and/or repair the Project Facilities and fails to commence remedial works within 15 (fifteen) days of receipt of a notice in this behalf from Authority, Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Second Party, and to recover its cost from the Second Party. In addition to recovery of the aforesaid cost, a sum equal to 100% (One Hundred per cent) of such cost shall be paid by the Second Party to Authority as penalty.

6.10 Alterations, Modifications or Expansion

- 6.10.1 The Second Party may with the prior approval of Authority and subject to any conditions, as may be specified by Authority carry out necessary alterations/modifications/expansion to the Project Facilities or undertake new expansion in order to meet his obligation of providing

the Project Facilities. Any such alteration, modification or expansion shall be subject to Applicable Law and obtaining Applicable Permits for such alteration/modification/new expansion. Provided however that such alteration/modification/new expansion, shall not at any time cause any damage or have a dangerous effect on either the stability of the Project Facilities or otherwise adversely affect the safety of the users of the Project Facilities.

- 6.10.2 In case of any such damages due to alterations/modifications/expansion to the Project Facilities, the Second Party shall bear all such costs related to such damages. In case the Second Party does not rectify the damages within the time specified by Authority, Authority may rectify the said damages and deduct the cost incurred in rectifying the damages from the Performance Security.
- 6.10.3 In case of a change in Applicable Law resulting for further expansion of the built - up area at any time during the Agreement Period, the Second Party may, at its cost and expense, construct the same by mutual consent of the Parties. Such extended built - up area shall remain and continue to be the property of Authority as per the provisions of this Agreement. The Second Party shall possess all rights under this Agreement on such extended built - up area including and the right to collect User fees/charges/tariffs for the Project Facilities and services provided. Any modification to the Project Facilities should be carried out with prior written approval and permission of Authority.

6.11 General Obligations

Subject to and on the terms and conditions of this Agreement, the Second Party shall at its own cost and expense:

- (a) During the Agreement Period protect the Project Site from any encroachments or Encumbrances, or illegal activities save and except as otherwise expressly set forth in this Agreement.
- (b) Ensure that the Project Site is not used for any of the activities listed out in Schedule 5.
- (c) Obtain Applicable Permits including as set out in Schedule 7 and keep in force in conformity with the Applicable Laws.
- (d) comply with Applicable Law governing the operations of Aquarium, Public Places, Cafeteria etc. and such other laws as may be applicable with regard to Project Facilities at all times during the Agreement Period.
- (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) maintaining a public relations unit to interface with and attend to suggestions from the users of Project Facilities, Government agencies, media and other agencies.
- (g) pay all taxes including GST, property tax, duties (including stamp duties) and outgoings, utility charges relating to the execution of the Agreement, construction of Project Facilities, Operation & Maintenance of Project Facilities.
- (h) Bear the cost towards power supply, supervision charges, electrical inspectorate charges, deposits of transformer if any, deposits for line /poles etc.
- (i) 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. The Second Party shall indemnify Authority against any claims, damages, expenses or losses in this regard and in no case Authority shall be treated as employer;

- (j) be responsible for all the health, security, environment and safety aspects of the Project Facilities throughout the Agreement Period.
- (k) ensure adequate marketing of the Project Facilities in co-ordination with various Government agencies, local authorities and other relevant stakeholders;
- (l) pay all utility charges (including electricity consumption and water supply charges) relating to the Project Facilities.
- (m) provide adequate lighting and ventilations devices, rain water harvesting, utilization of waste water, landscaping, appropriate security systems, including provision for fitting CCTV systems, waste management systems, cleaning systems etc.
- (n) Any statutory payments / deposits for obtaining additional utility infrastructure provisions like Electricity, Water etc.

6.12 Specific Obligations

- (a) The Second Party shall conduct proper due diligence and police verification while recruiting staff for the Project Facilities.
- (b) The Second Party shall ensure security in the Project Facilities by deploying sufficient security personnel as per good industry practice.
- (c) All gold, silver, oil, minerals, precious stones, treasures, fossils, coins, articles of value or antiquity and structures and other relics or remains or things of geological or archeological interest discovered on the Project Site shall be the property of Authority. The Second Party shall take reasonable precautions to prevent any person from removing or damaging any such article or thing. The Second Party shall immediately upon the discovery of such article or thing inform Authority and follow the instructions for dealing therewith that may be issued by Authority.
- (d) The Second Party shall ensure that there will not be any employment of children during the Agreement Period for the purpose of construction or operation and maintenance of the Project Facilities or any work that deprives children of their childhood, interferes with their ability to attend regular school, and that is mentally, physically, socially or morally dangerous and harmful. An undertaking to this extent is required to be submitted by the Second Party at the time of signing this Agreement in the format provided at Schedule -3.
- (e) The Second Party shall ensure that there is no barrier and all necessary facilities are provided to the specially able persons. An undertaking to this extent is required to be submitted by the Second Party at the time of signing this Agreement in the format provided at Schedule - 3.

6.13 Insurance

(a) During Renovation & modernization

The Second Party shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the Renovation and Modernization for the Project Facilities, such insurance as are necessary including but not limited to the following:

- (i) Second Party's 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 Second Party, 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) During O&M

The Second Party shall at its cost and expense, purchase and maintain by re-instatement or otherwise, during the operation & maintenance, insurance against:

- (i) loss, damage or destruction of the Project Facilities at replacement value;
- (ii) the Second Party 's general liability arising out of the Rights;
- (iii) liability to third parties;
- (iv) any other insurance that may be necessary to protect the Second Party, 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 Second Party shall, from time to time, provide to Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Second Party in accordance with this Agreement.

(d) Validity of Insurance

The Second Party shall from time to time promptly pay insurance premium, keep the insurance policies in force and valid throughout the Agreement Period and furnish copies thereof to Authority.

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

(e) Application of Insurance Proceeds

The proceeds of all insurance policies received shall be promptly applied by the Second Party towards repair, construction, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Second Party 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 Project. The Second Party shall carry out such repair, construction, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, construction, 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.

6.14 No Breach of Obligations

The Second Party 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 Article 10.3 and
- ii. Authority Event of Default.

7. ARTICLE 7- AUTHORITY 'S OBLIGATIONS

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

7.2 Specific Obligations

- 7.2.1 Authority shall grant in a timely manner all such approvals, permissions and authorizations which the Second Party may require or is obliged to seek from Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by Authority in the form as set out in Schedule 2, within fifteen days (15) days from receipt of request from the Second Party to make available such authorization.
- 7.2.2 Authority shall subsequent to signing of joint inspection report by both the Parties handed over to the Second Party, on as-is-where-is basis, vacant and peaceful physical possession of the Project Site free from Encumbrance and encroachment, for construction of Project Facilities;
- 7.2.3 Authority shall upon satisfactory completion of construction of Project Facilities on Project Site and submission of necessary documents as specified in Clause 6.6.2, within 30 (thirty) days issue a certificate of completion ("**Completion Certificate**").

7.3 General Obligations

- 7.3.1 Authority shall where appropriate provide necessary assistance to the Second Party in securing Applicable Permits.
- 7.3.2 Observe and comply with all its obligations set forth in this Agreement.

8. ARTICLE 8 - ANNUAL LICENSE FEE PAYMENT TERMS

8.1 Annual License Fee Amount

- 8.1.1 In consideration of the Rights hereby granted, the Second party shall pay to the Authority an Annual License Fee of Rs. _____/- (Rupees _____ Only)² ("**Annual License Fee**"). The First Annual License Fee should be paid on or before 30 (thirty) days prior to the first anniversary of the Execution Date. Subsequently, the Annual License Fee is payable to the Authority on or before 30 (thirty) days prior to the start of every year in advance throughout

² Mention the Annual License Fee amount payable to the Authority and as provided by the Selected Bidder in its Financial Bid.

the Agreement Period. The Annual License Fee is exclusive of GST and all other applicable taxes and shall be payable by the Second Party at actuals. During the Agreement Period the Annual License Fee shall be increased by 3% (three percent) every year over the previous year's Annual License Fee on compound basis.

- 8.1.2 The Second Party should pay the Annual License Fee to the Authority notwithstanding the fact that, the Project facilities is not completed within the specified period or Second party did not start the operation of the Project. In other words, the Second Party shall not be entitled to seek any reduction of Annual License Fee, claim, damages, compensation or any other consideration from the First Party on account of any reason whatsoever.
- 8.1.3 Any delay in payment of the Annual License Fee shall attract an interest for the delayed period at the rate of SBI PLR plus 5% per annum on the outstanding amount, which shall be due from the date of such payment till the amount is realized by the First Party. In addition to the foregoing, any delay in payment of Annual License Fee beyond a period of 60 (sixty) days from the due date of such payment will be construed to be Material Breach under this Concession Agreement.
- 8.1.4 In case of default of payment of the Annual License Fee by the Second Party during the Agreement Period, the First Party shall without prejudice to its other rights, deduct the said dues from the Performance Security.

8.2 Mode of Payment

The Payment shall be made by way of demand draft drawn on any nationalized or scheduled bank in favour of [_____], payable at [] and shall be sent sufficiently in advance to the address specified in Article 15.7 so as to ensure realisation/ encashment thereof on or before Due Date.

The Annual License Fee and any other payments to be made as per the terms of this Concession Agreement shall be paid by way of non- refundable Demand Draft from a Scheduled Bank drawn in favour of “[_____]”, payable at [_____]

9. ARTICLE 9 – SHAREHOLDING

9.1 Ownership Structure & Shareholding Commitments:

- 9.1.1 The Second Party agrees that in case the Selected Bidder is a Consortium, the Lead Member shall subscribe to atleast 26% (twenty-six per cent) or more of the paid up and subscribed equity of the SPV until the completion of 5 (five) years from the Execution Date and members of the Consortium shall hold at least 26% (twenty-six per cent) of the subscribed and paid up equity of the SPV at all times until the completion of 5 years from the Execution Date. Thereafter, until the expiry of the Agreement Period, the other members of the Consortium, shall hold not less than 13% (Thirteen percent) of the subscribed and paid up equity share capital of the SPV and the Lead Member shall hold not less than 26% (twenty-six percent) of the subscribed and paid up equity share capital of the SPV.

- 9.1.2 The Second Party agrees that in case the Selected Bidder is a Single Business Entity, it shall hold at least 51% (Fifty-one percent) of subscribed and paid up equity share capital of the SPV to implement the Project throughout the Agreement Period.

9.2 Constituent Documents

- 9.2.1 The Second Party shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Selected Bidder/Consortium.
- 9.2.2 In particular, the articles of association and the memorandum of association of the Second Party shall be amended within 3 (three) months of the Execution Date to include the terms and conditions regarding the composition of share-holding and management stipulated in this Concession Agreement. The Second Party shall submit the amended articles of association and the memorandum of association to the First Party as soon as may be reasonably possible.
- 9.2.3 Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the First Party and the articles of association and memorandum of association of the Second Party shall include a specific provision to this effect.

10. ARTICLE 10 - FORCE MAJEURE

10.1 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) act of god
- (b) strikes, labour disruptions, riots or any other industrial disturbances not arising on account of the acts or omissions of the Second Party, for which no offsetting compensation is payable to the Second Party;
- (c) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the First Party.
- (d) acts of expropriation, compulsory acquisition or takeover of the Project Facilities by the Government or any part thereof.

10.2 Termination Notice due to Force Majeure Event

In case of a Force Majeure Event, the Affected Party shall certify that this Agreement has been frustrated and shall issue a Termination Notice setting out:

- (a) in sufficient detail the underlying Force Majeure Event;

- (b) an indicative Termination Date which shall be a date occurring not earlier than 60 (sixty) days from the date of occurrence of the Force Majeure Event;
- (c) 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
- (d) any other relevant information.

If the Agreement is terminated due to Force Majeure, no Termination Payment shall be made by Authority to the Second Party. Authority shall however, release the Performance Security after deducting such amounts due and recoverable (if any) by Authority.

10.3 Obligation of Parties

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

- (a) The Performance Security after deducting such amounts due and recoverable (if any) by Authority is released to the Second Party; and
- (b) the Project Site along with the Project Facilities are handed back by the Second Party to the Authority on the Termination Date free from all Encumbrance.

10.4 Termination Payment

10.4.1 If Termination is due to a Force Majeure Event, described under sub-Clauses 10.1(a) to 10.1(c), the Second Party shall be entitled to receive from First Party, Termination Payment equal to 90% (Ninety Percent) of the Book Value less insurance cover. The Performance Security, if subsisting, shall be released.

10.4.2 If Termination is due to a Force Majeure Event, described under sub-Clauses 10.1(d), First Party shall release the Performance Security, and the Second Party shall be entitled to receive from First Party, Termination Payment equal to 100% (One Hundred Percent) of the Book Value.

10.5 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 10, 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.

10.6 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.

11. ARTICLE 11 - EVENTS OF DEFAULT AND TERMINATION

11.1 Events of Default

Event of Default means either Second Party Event of Default or Authority Event of Default or both as the context may admit or require.

(a) Second Party Event of Default

Any of the following events shall constitute an event of default by the Second Party ("**Second Party Event of Default**") unless such event has occurred as a result of a Force Majeure Event or Authority Event of Default or any governmental action for reasons other than any breach, default or lapse on the part of the Second Party:

- (i) Failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- (ii) The Performance Security has been encashed and appropriated by Authority in accordance with this Agreement and the Second Party fails to replenish or provide fresh Performance Security within 60 (sixty) days;
- (iii) The Second Party has failed to make any Payment on due date thereof and more than 60 days have elapsed since such default;
- (iv) The Second Party has failed to complete the construction of Project Facilities within the stipulated time period in this Agreement;
- (v) The Second Party is carrying out any prohibited activities as per Schedule 5;
- (vi) The Second Party has failed to submit the Project Implementation Plan within the stipulated time period as specified in this Agreement;
- (vii) The Second Party failed to adhere to construction and/or O&M obligations towards the Project Facilities during the Agreement Period.
- (viii) The Second Party is in Material Breach of any of its other obligations under this Agreement on account of its own acts of omission or commission and the same has not been remedied for more than 60 (sixty) days;
- (ix) Any representation made or warranty given by the Second Party under this Agreement is found to be false or misleading;
- (x) A resolution for voluntary winding up has been passed by the shareholders of the Second Party;
- (xi) Any petition for winding up of the Second Party has been admitted and liquidator or provisional liquidator has been appointed or the Second Party 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 Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Second Party under this Agreement.
- (xii) The Second Party has abandoned or manifests intention to abandon the construction of and /or operation & maintenance of the Project Facilities without the prior written consent of Authority.
- (xiii) The Second Party has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;

- (xiv) If the Second Party fails to pay the necessary insurance premiums in terms of this Agreement and thereby causes the insurance coverage to diminish, terminate or expire.
- (xv) The Second Party has leased, mortgaged, assigned, transferred or created any lien or Encumbrance on the whole or any part of the Project Site or Project Facilities, save and except as expressly permitted by this Agreement.

(b) Authority Event of Default

Any of the following events shall constitute an event of default by Authority ("**Authority Event of Default**"), when not caused by a Second Party Event of Default:

- (i) Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Second Party;
- (ii) Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;

11.2 Termination due to Event of Default

(a) Termination due to Parties Event of Default

- (i) Without prejudice to any other right or remedy under this Agreement, upon the occurrence of Event of Default, the Affected Party shall be entitled to terminate this Agreement by issuing a Preliminary Notice to other Party.
- (ii) Within 30 days of receipt of Preliminary Notice, the other Party shall forward to the Affected Party its proposal to remedy/ cure the underlying Event of Default (the "**Authority Proposal to Rectify**"). In case of non-submission of the Proposal to Rectify by the other Party within the period stipulated therefor, the Affected Party shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If the Proposal to Rectify is forwarded by the other Party to the Affected Party within the period stipulated therefor, the other Party shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the other Party fails to remedy/ cure the underlying Event of Default within such further period allowed, the Affected Party shall be entitled to terminate this Agreement by issuing Termination Notice.

(b) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Clause 11.2 (a) 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 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) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
- (ii) the termination payment, if any, payable by Authority in accordance with the following Clause 11.2 (e) is paid to the Second Party on the Termination Date and
- (iii) the Project Facilities are handed over to Authority by the Second Party on the Termination Date free from any Encumbrance along with any payment that may be due by the Second Party to Authority.

(d) 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.

(e) Termination Payments

- (i) Upon Termination of this Agreement on account of Second Party's Event of Default, the Second Party shall not be entitled to receive any Termination Payment from the First Party and the Performance Security if subsisting, shall be invoked and appropriated by the First Party.
- (ii) Upon Termination of this Lease Deed on account of the First Party's Event of Default, the First Party shall release the Performance Security subsisting if any after deducting the dues, if any payable by the Second Party to the First Party and the Second Party shall be entitled to receive from the First Party, Termination Payment equal to 100 % (One Hundred Percent) of the Book Value.

11.3 Rights of Authority on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, Authority shall upon making the Termination Payment, if any, to the Second Party have the power and authority to:
 - (i) enter upon and take possession and control of the Project Facilities forthwith;
 - (ii) prohibit the Second Party and any person claiming through or under the Second Party from entering upon/ dealing with the Project Facilities.
- (b) Notwithstanding anything contained in this Agreement, Authority 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 regularization of

employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Second Party in connection with the Project, and the handback of the Project Facilities by the Second Party to Authority shall be free from any such obligation.

11.4 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.

12. ARTICLE 12 - EXIT MANAGEMENT

12.1 Ownership

Without prejudice and subject to this Agreement, the ownership of the Project Facilities, including all improvements made therein by the Second Party, shall at all time remain that of Authority.

12.2 Second Party's Obligations

- (a) Upon the expiry of the Agreement Period by efflux of time and in the normal course, the Second Party shall on the Expiry Date, hand back vacant and peaceful possession of Project Facilities to Authority free of cost and in good operable condition.
- (b) At least 12 months before the Expiry Date a joint inspection of the Project Facilities shall be undertaken by Authority and the Second Party. Authority shall, within 45 (forty-five) days of such inspection prepare and furnish to the Second Party a list of works, if any, to be carried out so as to keep the Project Facilities in good operational condition. The Second Party shall promptly undertake and complete such works at least 4 (four) months prior to the Expiry Date and also ensure that the Project Facilities continue to meet such requirements until the same are handed back to Authority on the Expiry Date.
- (c) Authority shall, within 45 (forty five) days of the joint inspection undertaken under Clause 12.2(b) prepare and furnish to the Second Party a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to Authority along with the Project Facilities.
- (d) The Second Party hereby acknowledges Authority's rights specified in Article 11.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Second Party undertakes to comply with and discharge promptly all such obligations.

13. ARTICLE 13 - DISPUTE RESOLUTION

13.1 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 Clause 13.1 (b) below.

- (b) Either Party may require such Dispute to be referred to the Chief Executive Officer, Authority, and the Chief Executive Officer/Managing Director of the Second Party 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 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 13.2 below.

13.2 Arbitration

(a) Procedure

Subject to the provisions of Article 13.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996.

(b) Place of Arbitration

The place of arbitration shall ordinarily be Lucknow 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 Provision of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

13.3 Performance during Dispute Resolution

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.

14. ARTICLE 14 - REPRESENTATIONS AND WARRANTIES

14.1 Representations and Warranties of the Second Party

The Second Party represents and warrants to Authority that:

- (a) it is duly organised, 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 authorise 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 Second Party '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 Second Party '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 Second Party 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 Second Party from Authority 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 Second Party in and to the Project Facilities shall pass to and vest in Authority on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Second Party or Authority;
- (k) no representation or warranty by the Second Party contained herein or in any other document furnished by it to Authority 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 Second Party to any person to procure the Concession Rights.
- (m) Without prejudice to any express provision contained in this Agreement, the Second Party acknowledges that prior to the execution of this Agreement, the Second Party has after a complete and careful examination made an independent evaluation of the Project Facilities, and the information provided by Authority, has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Second Party in the course of performance of its obligations hereunder.

The Second Party 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 Authority shall not be liable for the same in any manner whatsoever to the Second Party.

14.2 Representations and Warranties of Authority

Authority represents and warrants to the Second Party that:

- (a) Authority has full power and authority to grant the Concession Rights;

- (b) Authority has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes Authority'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 Authority in respect of the Project Site or the Project.

14.3 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.

15. ARTICLE 15 - MISCELLANEOUS

15.1 Assignment and Charges

- (a) The Second Party shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of Authority.
- (b) The Second Party shall not create nor permit to subsist any Encumbrance over the Project Facilities except with prior consent in writing of Authority, which, Authority shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in Clauses 15.1 (a) and 15.1 (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 Second Party
 - (ii) assignment of Second Party 's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

15.2 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 SBI PLR plus 5% 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 Article 15.2 shall neither be deemed nor 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.

15.3 Governing Law and Jurisdiction

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

15.4 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 authorised 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.

15.5 Survival

Termination of this Agreement

- (a) shall not relieve the Second Party or Authority 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.

15.6 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 all the Parties hereto and evidenced in writing.

15.7 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 Authority:

The Directorate of Fisheries,
Government of Karnataka
3rd Floor, Podium Block, VV.Center, Dr Ambedkar Road, Bangalore 560001
Email: dfkarnataka@rediffmail.com
Website: <https://fisheries.karnataka.gov.in>

Telephone:080-22864681, Fax: 080-22864619
If to the Second Party:

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

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

15.8 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.

15.9 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.

15.10 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.

15.11 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.

15.12 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 The Department of Fisheries, Government of Karnataka (Authority) by:

(Signature)
(Name)
(Designation)

For and on behalf of _____ (Second Party) by:

(Signature)
(Name)
(Designation)

In the presence of :

1) _____ 2) _____

SCHEDULES

SCHEDULE 1 A - PERFORMANCE SECURITY

(PROFORMA OF BANK GUARANTEE)³

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

THE Department of Fisheries, Government of Karnataka having its office at 3rd Floor, Podium Block, VV.Center, Dr Ambedkar Road, Bangalore 560001 hereinafter referred to as “Authority”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Concession Agreement being entered into between Authority and _____, a company incorporated under the provisions of the Companies Act, 1956 having its registered office/ permanent address at _____ (“the Concession Agreement”) the Company/Firm/Individual had been granted the Rights to implement the Project for development/ construction and operations, maintenance and transfer of the _____ [*name of the property*], hereinafter referred to as Project.
- B. In terms of Article 6.1 of the Concession Agreement, the Company/Firm/Individual is required to furnish to Authority, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ /-(Rupees _____ Only) (*Equal to fee specified in Clause 6.1 of the Concession Agreement*), as security for due and punctual performance/discharge of its obligations under the Concession Agreement, substantially in the format annexed as Schedule 1 to the Concession Agreement.
- C. At the request of the Company/Firm/Individual, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Concession Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized 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 _____ [*name of the successful Bidder*] (hereinafter called “the Second Party”) of all its obligations under the Concession Agreement.
3. The Guarantor shall, without demur, pay to Authority sums not exceeding in aggregate Rs. _____ /-(Rupees _____ Only) (*Equal to amount specified in Clause 6.1.1 of the Concession Agreement*), within five (5) calendar days of receipt of a written demand therefore from Authority stating that the Company has failed to meet its performance obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Second Party or validity of demand so made by Authority and shall pay the amount specified in the demand notwithstanding any direction to the contrary

³ To be issued by a Scheduled Bank in India and from Lucknow branch only

given or any dispute whatsoever raised by the Second Party 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, Authority 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 Company or postponement/non exercise/ delayed exercise of any of its rights by Authority or any indulgence shown by Authority to the Second Party 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 Authority or any indulgence shown by Authority 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 unless discharged/released earlier by Authority in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only) (Equal to amount specified in *Clause 6.1.1 of the Concession Agreement*).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Second Party / the Guarantor or any absorption, merger or amalgamation of the Second Party / 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.

SCHEDULE 2 - FORMAT FOR LETTER OF AUTHORISATION

(To be given on Authority letterhead)

To whomsoever it may Concern

This is to confirm that the _____ in Survey Nos. ____ having an area of about _____ acres located at _____⁴, has been handed over to _____ (*Name of Second Party*) to renovate, Modernize, operate, maintain and transfer pursuant to the Concession Agreement dated _____, entered into between Authority and _____ (*Name of Second Party*).

In terms of the said Agreement, the Second Party is authorised to occupy the said Project Site and carry out all activities authorised by the said Agreement, and for that purpose, to apply for and obtain all approvals, licenses and permits, required in connection with any construction on the Project Site, and carry out operation & management of the Project Facilities and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required and collect revenue in connection therewith.

Yours faithfully,

⁴ Insert the address of the property for which the agreement is to be executed

SCHEDULE 3 - UNDERTAKING

To,
The Director,
THE Department of Fisheries,
Government of Karnataka
3rd Floor, Podium Block, VV.Center,
Dr Ambedkar Road, Bangalore 560001

Dear Sir/Madam,

We _____, (“the **SPV or the Second Party**”) for _____,
_____ / do hereby declare and undertake as follows:

Pursuant to Clause 6.15 (h) of the Concession Agreement, we hereby undertake that we shall not employ any children during the Agreement Period for the purpose of construction or operation and maintenance of the Project Facilities or any work that deprives children of their childhood, interferes with their ability to attend regular school, and that is mentally, physically, socially or morally dangerous and harmful.

Pursuant to Clause 6.15 (i) of the Concession Agreement, we hereby undertake that the Project Facilities will be constructed in accordance with the relevant building bye-laws or notifications of the State/ Ministry of Urban Developments with regard to barrier free environment for specially abled persons.

We agree that, in the event of we failing to compile with the above conditions, Authority shall be liable to terminate the Concession Agreement.

Yours faithfully,

Date: _____ (Signature, name and designation of the Authorised Signatory)

Place: _____ Name and seal

SCHEDULE 4- SCOPE OF WORK OF INDEPENDENT ENGINEER

1. Role of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the Independent Engineer is to:

- i) independently review, monitor, Project Facilities and where required by the Agreement, to approve activities associated with the design, drawings and construction of the Project Facilities to ensure compliance of Project Facilities with the Project requirements and with the Applicable Laws,
- ii) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections and site visits,
- iii) assist the Parties in arriving at an amicable settlement of disputes, should the need arise, and
- iv) review matters related to safety measures adopted by the Second Party for the Project.

2. Scope of Services

The services to be provided by the Independent Engineer are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

2.1 Construction Period - Design and Planning

- a. In case the Second Party (i) proposes any deviation to the Drawings or (ii) submits alternative Drawings for any of the Project Facilities, the Independent Engineer shall review the same to ensure conformity with the design requirements,
- b. Review of the following submitted by the Second Party:
 - (i) Quality Assurance Plan; and
 - (ii) Project Implementation Plan;

2.2 Construction

The Independent Engineer would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the Project Implementation Plan. For this purpose the Independent Engineer shall undertake, inter alia, the following activities and where appropriate make suitable suggestions:

- (i) monitor the progress in implementation of the Project based on the reports submitted by the Second Party;
- (ii) review and approve the material testing and mix designs results and recommend special Tests, where required, for materials and/or completed works, require removal/substitution of unsuitable materials and /or works and report deficiencies in respect of the same to Authority;
- (iii) review and monitor the quality assurance and quality control procedures followed by the Second Party;
- (iv) review the manpower and equipment deployed by the Second Party;
- (v) monitor the construction works for conformity with the Project Implementation Plan;

- (vi) verify the 'As Built' drawings for each component of the works prepared by the Second Party and require removal of deficiencies found therein;
- (vii) review the safety measures implemented;
- (ix) require suspension of whole or any part of the construction works if in its reasonable opinion the same does not conform to the Project Implementation Plan; and

2.4 Breach of Obligations

If during the course or upon review / inspection undertaken by the Independent Engineer or otherwise, it transpires that either of the Parties is in breach/ default of any of its obligations under the Agreement, the Independent Engineer shall, under intimation to the other Party, require the defaulting Party to remedy such breach/ default within such time and in such manner as the Independent Engineer may deem fit and in each case the same shall be recorded.

2.5 Meetings, Records and Reporting

- a. The Independent Engineer would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected to be held once a month during the construction and to participate in emergency or extraordinary meetings of the Parties held to deal with any Emergency, Force Majeure Event or other exigencies.
- b. The Independent Engineer shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
 - (i) Manpower deployed and other organizational arrangements of the Independent Engineer;
 - (ii) Reviews of documents submitted to it by the Second Party to meet Project requirements, such as Drawings, As Built drawings, schedules, plans and reports;
 - (iii) Inspections undertaken and notices/ instructions issued to the Second Party;
 - (iv) Emergency (including accidents);
 - (vii) Force Majeure Events;
 - (viii) Breaches and defaults by the Parties; and
 - (ix) Handback Requirements.

SCHEDULE 5- LIST OF PROHIBITED ACTIVITIES

The following activities shall be strictly prohibited in the Project Facilities:

1. Construction of or use the Project Site as residential houses, sites, apartments, dwellings flats etc.
2. Any other buildings, which would/perceived to jeopardize the transfer of Project Facilities at the end of the Term of this Agreement from the Second Party to Authority.
3. Setting up and operations of casinos or any other form of gambling activities
4. Any other activity/business not related to wayside amenities and toilet blocks.
5. Rave parties, trafficking of children or women or other illegal activities.
6. Utilisation of the Project Site and Project Facility as residential house, quarters or flats, schools, old aged home etc.
7. Prohibited Activities as per the prevailing Applicable Laws, rules and regulations

SCHEDULE 6- REPORTING REQUIREMENTS

The reporting and information that generally need to be provided by the Second Party 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 finalized in consultation with Authority/Independent Engineer. All reports and records shall be in the English language.

1. Monthly Construction Report

During the Construction Period, within 5 (five) days of the end of each calendar month or part thereof, the Second Party shall provide to Authority a monthly report (Monthly Construction Report) containing the progress made, identify slippages if any, and project the future activities to be undertaken (including rectifications) and would, inter alia, include the following:

- (i) Listing of working drawings/sketches submitted
- (ii) Comments of Authority, if any on the working drawings/sketches submitted
- (iii) Second Party 's response to the comments on the Drawings/sketches
- (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) Second Party 's compliance inspection report, if any required
- (vii) Constraints in construction
- (viii) Project data and sectional completion details
- (ix) Suspension of construction, if any, its reasons, duration and the steps undertaken to resume construction
- (x) All actual or potential deviations from the Implementation Plan
- (xi) Disagreements/ Disputes, if any and proposed measures to be taken
- (xii) Monthly weather report with any other significant event
- (xiii) Injury to any construction personnel during construction, its severity, cause and remedial measure(s) taken to avoid recurrence
- (xiv) Brief report of any accident / incident within the Project Facilities, injury/fatality, property damage, cause of accident and actions taken to avoid recurrence
- (xv) Notes of meetings between the Second Party, Authority and Independent Engineer highlighting critical decisions taken or agreements reached. Minutes of the meeting issued by Authority shall also be included in the monthly progress reports.

2. Monthly O & M Report

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

- (i) Details of major maintenance undertaken and expense incurred towards the same
- (ii) Inspections undertaken by the Second Party during the month and action taken/ proposed thereafter;
- (iii) O & M inspection compliance report

- (iv) Maintenance activities undertaken during the month ended,
- (v) Details of any Emergency and action taken
- (vi) Details of the monthly footfalls for the project facilities, along with number of vehicles for each category.

The format of the O&M Report would be finalized in consultation with Authority/ Independent Engineer.

SCHEDULE 7 - INDICATIVE LIST OF APPLICABLE PERMITS

The list of Applicable Permits includes, but is not limited to:

- a) Building Plan and construction approvals from the competent authority.
 - b) Approved drawings, structural drawings, estimate and other relevant documents from the competent authorities as per their rules, regulations and guidelines.
 - c) All other relevant clearances from other authorities as required for construction of buildings at the Project Site.
1. Approval/ Clearances as per norms and conditions of State Government of Karnataka
 2. All trade licenses as applicable.
 3. Approval/permits from fire safety authorities.
 4. Environmental clearances/approvals, as applicable.
 5. Appropriate certifications for Operations and Safety of the equipment being installed
 6. Other relevant statutory approvals/permits for construction and operation of the Project.

SCHEDULE 8 - LETTER OF AWARD ISSUED TO THE SELECTED BIDDER

SCHEDULE 9 – FINANCIAL PROPOSAL OF THE SELECTED BIDDER

SCHEDULE 10 –RFP DATED _____ AND ADDENDUM

SCHEDULE 11 – JOINT INSPECTION REPORT

SCHEDULE 12 – APPROVED PROJECT IMPLEMENTATION PLAN