

## **PART 2 – AUTHORISATION AGREEMENT**

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This Authorisation Agreement is mutually agreed and entered into on this [..date..]<sup>1</sup> day of [..month..], Two Thousand and Nine at Faridabad.

BETWEEN

The Municipal Corporation of Faridabad, having its principal office at Faridabad and represented by the Chief Engineer, (hereinafter referred to as “**MCF**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns); of the ONE PART.

AND

[..Name of the Successful Bidder..] having its principal office at [..office address..], (hereinafter referred to as the “**Successful Bidder**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), of the OTHER PART.

The MCF and Successful Bidder are hereinafter referred to individually as “**Party**” and collectively as the “**Parties**”.

WHEREAS,

- A. MCF has taken up the Public-Private-Partnership (PPP) project (hereinafter referred to as “the Project”) to install energy efficient street lights along power saver with timer on the existing street light poles on 15 stretches of roads in Faridabad. Therefore MCF issued a Request for Proposal (RFP) inviting interested private parties to submit their Proposals for the upgradation, operation & maintenance (O&M) of street lights along these stretches of roads. It was specified in the RFP that MCF would provide advertisement rights along the 15 stretches of road to the selected private player to enable the private party to recover the costs incurred on installation of energy efficient street lights along with power saver with timer on the existing street light poles and O&M of the street lights along with all poles, fixtures, fittings and related civil works covered by the Project.
- B. MCF, after evaluating the aforesaid Proposals, accepted the Proposal submitted by [..name of the Successful Bidder..] for implementing the Project.
- C. Thereafter MCF issued a Letter of Intent (LoI) bearing No. [..LoI Reference Number..] dated [..date of issue of LoI..] conveying its decision to award the Project to the Successful Bidder, which has been acknowledged by the Successful Bidder’s Letter of Acceptance bearing No. [..Reference Number of Successful Bidder’s Letter of Acceptance..] dated [..date of letter of acceptance..].
- D. The Successful Bidder’s scope of work is to replace existing high pressure sodium vapour (HPSV) lamps of 250 watts with HPSV lamps of 150 watts; install power saver with timer on the existing street light poles; install gantries and subsequently carry out operation and maintenance (O&M) of the street lights along with all poles, fixtures, fittings related civil works as per the specifications mentioned herein. The installation of energy efficient street lights along with power saver with timer on the existing street light poles

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<sup>1</sup> All square brackets shown as [..description of details..] represent details to be filled up prior to the execution of this Authorisation Agreement.

should be completed within a period of 90 days from the date of the approval of the design by MCF and the O&M of the street lights along with all poles, fixtures, fittings and related civil works should be undertaken by the Successful Bidder till the expiry of the Authorisation Period. In return for the services provided by the Successful Bidder, MCF shall assign Advertisement Rights to the Successful Bidder from the Commercial Operations Date as specified in this Authorisation Agreement.

- E. Following (i) The payment to MCF by the Successful Bidder of an amount of Rs. [*..Amount in Numbers..*] (Rupees [*..Amount in Words..*] Only) by demand draft no. [*..demand draft number..*] dated [*..date of issue of demand draft..*] drawn on [*..Name of Bank and Branch..*] as the first year's instalment of the Advertisement Premium for the Project and (ii) Provisions by the Successful Bidder of a bank guarantee issued by [*..Name of Bank and Branch..*] dated [*..date of issue of bank guarantee..*] for an amount of Rs. 1,500,000/- (Rupees Fifteen Lakh Only) in favour of MCF as the Performance Security for the satisfactory performance of the obligations of the Successful Bidder under this Authorisation Agreement, both within 21 days of the date of the Letter of Acceptance, a pre-condition to the execution of this Agreement, MCF has agreed to grant the Authorisation for the Project to the Successful Bidder on the terms, conditions and covenants hereinafter set forth in this Agreement.

**NOW THIS AUTHORISATION AGREEMENT WITNESSETH AS FOLLOWS:**

## **1 DEFINITIONS AND INTERPRETATIONS**

### **1.1 Definitions**

In this Authorisation Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meanings ascribed to these words and expressions hereunder:

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

**“Advertisement Rights”** shall mean the rights of the Successful Bidder to display messages including pictures relating to and/or promoting products/goods, services, events, persons, etc. and including any feature or scheme relating to such products/goods, services, events, persons, etc. (such messages being hereinafter referred to as “advertisements”) on surface areas mounted on street light poles and gantries along the 15 stretches of road covered by the Project as specified in Schedule IV to this Agreement subject to all legal requirements in connection with such advertisements being met. Further, the Advertisement Rights include the right of the Successful Bidder to market the availability of these surface areas for the display of advertisements to prospective users (including use of the said surface areas for such marketing) and to recover from the End Users displaying advertisements on these surface areas the charges as may be mutually agreed between the Successful Bidder and the End Users in question and further to retain/appropriate the revenues from such charges.

**“Advertisement Premium”** shall mean the amounts payable by the Successful Bidder to MCF as set out in Schedule V to this Agreement.

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

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

“**Applicable Permits**” shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Successful Bidder under Applicable Law in connection with the installation, O&M of the Installed Facilities and/or exercise of the Advertisement Rights by the Successful Bidder during the subsistence of this Agreement.

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

“**Approved Design**” shall mean the design covering the dimensions, drawings, features, specifications, calculations, technical information, etc. of the energy efficient street lights along with power saver with timer on the existing street light poles and advertisement hoardings covered by the Project, to be submitted by the Successful Bidder and duly approved by MCF with any revisions deemed essential by MCF, in line with the provisions of this Agreement.

“**Authorisation Period**” shall mean the period commencing from the Appointed Date and extending till the expiry of sixty months from the Commercial Operations Date, provided however that the last day of the relevant month shall be considered for this purpose.

“**Commercial Operations Date (COD)**” shall mean the date on which the Project Officer issues the Completion Certificate to the Successful Bidder.

“**Completion Certificate**” shall mean the certificate issued by the Project Officer nominated by MCF to the Successful Bidder after ensuring that the Installed Facilities have been completed by the Successful Bidder as per the Approved Design and can be operated safely.

“**Construction Period**” shall mean a period of 90 (ninety) days from the date of the approval of design till the Scheduled Completion Date or the Commercial Operations Date, whichever is earlier, during which the Successful Bidder undertakes the Construction Works.

“**Construction Works**” shall mean all the works at the Project Site required to be undertaken by the Successful Bidder in conformity with the specifications mentioned herein and the Approved Design for the installation and commissioning of energy efficient street lights along with power saver with timer on the existing street light poles and O&M of street lights along with all poles, fixtures, fittings and related civil works covered by the Project.

“**Dispute Resolution**” shall mean the procedure as mentioned Article 11.

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

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

“**End Users**” shall mean any Third Party whom the Successful Bidder enters into or has entered into an arrangement allowing them to display advertisements on any part or all of the surfaces covered by the Advertisement Rights granted to the Successful Bidder as per the provisions of this Agreement.

“**Successful Bidder**” shall mean M/s \_\_\_\_\_ (name of the Successful Bidder).

“**Financial Closure**” means the execution of legally binding loan documentation entered into between the Successful Bidder and Lenders to mobilise the financial requirements of the Project, if so desired by the Successful Bidder.

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

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

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

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

“**Government Agency**” shall mean Government of India (GoI), Government of Haryana (GoH), MCF or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Parties, the Installed Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Successful Bidder under or pursuant to this Agreement.

“**Installed Facilities**” shall mean the street lights along with the poles, fixtures, fittings and related civil works as well as the hoardings for display of advertisements on street light poles and gantries that are to be installed, operated and maintained by the Successful Bidder as specifically covered by Schedule II, Schedule III and Schedule IV to this Agreement.

“**Lenders**” shall mean financial institutions, banks, funds or trusts, who provide or refinance the debt component of the cost of the Project (including guarantees, letters of credit, risk participation facility, take-out facility and other forms of credit enhancement) and includes subscribers to / trustee for the holders of debentures / bonds or other securities issued by the Successful Bidder to meet the cost of the Project.

“**Letter of Intent**” shall mean the letter issued by the MCF to the Successful Bidder on completion of the evaluation of proposals received in response to the RFP, informing the Successful Bidder of MCF’s intention to award the Project to the Successful Bidder and the necessary steps to be taken by the Successful Bidder in that regard.

“**O&M**” shall mean the O&M of the Installed Facilities by the Successful Bidder from the Commercial Operations Date till the expiry of the Authorisation Period.

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

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

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

“**Performance Security**” shall mean the deposit provided by the Successful Bidder as a guarantee for the performance of its obligations and is in accordance with Article 5.1.1.

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

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

“**Project**” shall mean the installation and the operation & maintenance of the Installed Facilities for the duration of the Authorisation Period by the Successful Bidder and all aspects related to such installation and operation & maintenance of in accordance with the provisions of this Agreement.

“**Project Officer**” shall mean the MCF official appointed for supervision and monitoring the compliance by the Successful Bidder with the specifications for the installation and maintenance of the street lights and more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in this Agreement.

“**Project Site**” shall mean 15 stretches of roads in Faridabad and more particularly as described in Schedule I to this Agreement.

“**Request for Proposal (RFP)**” shall mean the Request for Proposal document dated [*..date of issue of RFP by MCF..*] along with all Annexures, Schedules, Maps, etc. forming part of that document issued by MCF to the interested bidders, as may be amended and modified from time to time.

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

“**Scheduled Completion Date**” shall mean ninety (90) days from the approval of the design by MCF by which time the Successful Bidder is required to complete the installation of energy efficient street lights along with power saver with timer on the existing street light poles and installation of gantries on the Project Site as per the Approved Design and the provisions of this Agreement.

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

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

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

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

“**Third Party**” means any person, real or judicial, or entity other than the Parties to this Agreement.

“**Third Party Insurance**” shall mean liability coverage, purchased by the Successful Bidder from an insurer for the protection against the claims of third party, wherein the Successful Bidder shall be responsible for its own damages or losses whether caused by itself or the third party.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- a. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- b. References to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- c. The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);

- d. The headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. The words "include" and "including" are to be construed without limitation;
- f. Any reference to day, month or year shall mean a reference to a Gregorian calendar day, month or year respectively;
- g. The Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- h. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- i. References to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- j. The damages payable by either Party to the other as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty;
- k. Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- l. In case of any conflict or discrepancy in the articles/ clauses in the body of the Agreement and those in the schedules, the articles/ clauses in the body of the Agreement shall prevail.

## **2 GRANT AND ACCEPTANCE OF ADVERTISEMENT RIGHTS**

### **2.1 Grant of Rights**

Subject to and in accordance with the terms and conditions set forth in this Agreement, MCF hereby agrees to grant the Successful Bidder the Advertisement Rights authorising the Successful Bidder to utilise and market the surface areas on gantries and street light poles along the 15 stretches of road covered by the Project as mentioned under Schedule IV for displaying messages of End Users and to charge, collect, retain and appropriate charges for the display of such messages as mutually agreed with such End Users during the Authorisation Period or till the Termination Date, whichever is earlier. The Successful Bidder will have complete flexibility in pricing of the surface areas on gantries and street light poles for advertisement, provided that this shall not have any bearing on the payments to MCF under this Agreement.

Further, the Successful Bidder is provided right to install energy efficient street lights along with power saver with timer on the existing street light poles as per the Approved Design and to operate and maintain the Installed Facilities during the Authorisation Period or till the Termination Date, whichever is earlier.

### **2.2 Acceptance of Rights**

In consideration of the rights, privileges and benefits conferred upon the Successful Bidder, and other good and valuable consideration expressed herein, the Successful Bidder hereby accepts the Advertisement Rights, and agrees and undertakes to install energy efficient street lights along with power saver with timer on the existing street light poles and operate and maintain the street lights along with all poles, fixtures, fittings and related civil works and to construct, operate and maintain the surface areas on street light poles and gantries covered by the Project for the display of advertisements and to perform / discharge all of its obligations in accordance with the provisions hereof, all at its own cost. The Successful Bidder acknowledges that the rights and obligations under this Agreement shall not be transferred or assigned to any other person in entirety and that the Successful Bidder shall remain solely responsible for meeting all its obligations under the Agreement.

### **3 PROJECT SITE**

#### **3.1 Access to Project Site**

- (a) MCF shall, within 7 days of the Appointed Date, provide free access to the Project Site mentioned under Schedule I to the Successful Bidder on an as-is-where-is basis, for the purpose of designing and installation of energy efficient street lights along with power saver with timer on the existing street light poles as per the Approved Design. During the validity of this Agreement, MCF shall continue to ensure that the Successful Bidder has free access to the Project Site required for the O&M of the Installed Facilities as well as exercise of the Advertisement Rights granted under this Agreement during the validity of this Agreement.
- (b) Upon the Project Site mentioned under Schedule I being handed over pursuant to the preceding sub-article (a), the Successful Bidder shall, subject to the provisions of Article 5 have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, installation and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

#### **3.2 Title and Use of the Project Site**

- (a) The Successful Bidder shall have the right to use the Project Site for the purpose of implementing the Project in accordance with the provisions of this Agreement and for this purpose, it may seek any assistance from MCF to regulate the entry into and use of the same by parties other than the parties to this Agreement and MCF shall be obliged to provide such assistance subject to its authority in this regard and/or seek the assistance of any Government Agency in ensuring the timely implementation of the Project by the Successful Bidder.
- (b) The ownership of the Project Site shall remain exclusively with MCF at all times. No permanent/ temporary security interest or lien of whatever nature is allowed to be created on the Project Site.
- (c) The Successful Bidder shall not part with or create any Encumbrance on the whole or any part of the Installed Facilities save and except as set forth and permitted under this Agreement.
- (d) The Successful Bidder shall not, without the prior written approval of MCF, use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.

#### **3.3 Warranties of MCF**

MCF hereby warrants to the Successful Bidder that:

- (a) The Project Site together with the necessary right of way has been acquired through the due process of law and is vested with MCF.
- (b) MCF has full and complete authority to enter into this Agreement and grant the Advertisement Rights to the Successful Bidder.
- (c) The Successful Bidder shall, subject to complying with the terms and conditions of this Agreement, have the required access to the Project Site for implementation of the Project.
- (d) In the event the Successful Bidder is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, MCF shall, if called upon by the Successful Bidder, defend such claims and proceedings and also keep the Successful Bidder indemnified against any consequential loss or damages which the Successful Bidder may suffer, on account of any such right, title, interest or charge.

### **3.4 Applicable Permits**

The Successful Bidder shall obtain and maintain the Applicable Permits and adhere to Applicable Law in such sequence as is consistent with the requirements of the Project. The Successful Bidder shall be responsible for compliance with the terms and conditions subject to which Applicable Permits have been issued.

## **4 PROJECT OFFICER**

### **4.1 Nomination of Project Officer by MCF**

MCF shall appoint one of its employees to as the Project Officer and communicate the same to the Successful Bidder with fifteen (15) days of the Appointed Date. The Project Officer shall supervise and monitor the installation, O&M of the Installed Facilities for the duration of the Authorisation Period.

### **4.2 Role of the Project Officer**

- a) The Project Officer shall act as the nodal officer for implementation of the Project and administration of this Agreement on behalf of MCF. All communication by the Successful Bidder to MCF shall be addressed to the Project Officer. In this capacity, the Project Officer shall be responsible for communicating any decision taken by MCF, including that related to approval of the design submitted, to the Successful Bidder.
- b) The Project Officer shall be responsible for ensuring on behalf of MCF that the installation of the energy efficient street lights along with power saver with timer on the existing street light poles is completed by the Successful Bidder as per the Approved Design. This responsibility shall extend to specifying any tests on equipment and materials that have to be performed and the results submitted to the Project Officer by the Successful Bidder.
- c) On completion of the installation of the energy efficient street lights along with power saver with timer on the existing street light poles by the Successful Bidder, the Project Officer shall inspect the same and ensure that all specifications and standards have been adhered to and that the street lights can be safely operated. Any deficiencies in this regard shall be communicated to the Successful Bidder in writing by the Project Officer. Once these deficiencies are remedied to the satisfaction of the Project Officer, the Project Officer shall issue a Completion Certificate to the Successful Bidder, permitting the operation of the installed street lights and the exercise of the Advertisement Rights by the Successful Bidder.
- d) During the Authorisation Period, the Project Officer shall be responsible for monitoring the O&M of the Installed Facilities by the Successful Bidder and reporting any deficiency in this regard to MCF and communicating the same to the Successful Bidder with instructions to remedy the deficiency observed. For this purpose, the Project Officer will be entitled to carry out inspections of the Installed Facilities and reporting on the same to MCF, all expenses in this regard being borne by MCF.

## 5 SUCCESSFUL BIDDER’S OBLIGATIONS

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

### 5.1 Financial Obligations

#### 5.1.1 Performance Security

- a) The Successful Bidder shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to MCF prior to the execution of this Agreement, a bank guarantee from a nationalised/ scheduled bank acceptable to MCF, in favour of MCF and in the form as set out in Schedule VI , (“Performance Security”) for a sum of Rs. 1,500,000/- (Rupees Fifteen Lakh Only). All charges, fees, costs and expenses for providing the Performance Security in the form of a bank guarantee shall be borne and paid by the Successful Bidder.
- b) The Successful Bidder agrees that the Performance Security shall be kept valid during the Authorisation Period. Provided further that if the Agreement is terminated due to any event other than a Successful Bidder’s Event of Default, the Performance Security if subsisting as on the Termination Date shall, subject to MCF’s right to receive amounts, if any, due from the Successful Bidder under this Agreement, be duly discharged and released to the Successful Bidder.

#### 5.1.2 Payment of Advertisement Premium

- a) Subject to the provisions of this Agreement and in consideration of the Successful Bidder accepting the Advertisement Rights and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, the Successful Bidder has committed in its Commercial Proposal as accepted by MCF to pay to MCF as Advertisement Premium the following sums in the form of five installments:

**Amount to be paid in each annual installment for five years**

In Figures	Amount in Words
[..As per Successful Bidder’s Commercial Proposal..]	

**Total amount to be paid over the Authorisation Period**

In Figures	Amount in Words
[..As per Successful Bidder’s Commercial Proposal..]	[..Five times the annual installment mentioned above..]

- b) The Successful Bidder has paid to MCF the first installment of the Advertisement Premium prior to signing of this Agreement. The Successful Bidder undertakes to pay to

MCF the remaining four installments in accordance with the payment schedule in Schedule V to this Agreement. All payments by the Successful Bidder to MCF shall be made by way of demand draft from a nationalised/ scheduled bank in favour of “**The Commissioner, Municipal Corporation of Faridabad**” payable at Faridabad.

- c) Any delay in making any payment in accordance with the payment schedule provided in Schedule V to this Agreement shall, in addition and without prejudice to any other consequences under this Agreement, entail the payment of interest on the amount in default at the prevailing medium term prime lending rate of State Bank of India plus two percent (2%) calculated for the duration of the delay in payment. The duration period for delay of payment will be calculated starting on the third day after the due date of the Advertisement Premium payment in question.

### **5.1.3 Financing Arrangement**

The Successful Bidder shall at its cost, expense and risk make such financing arrangements as may be necessary to implement the Project and to meet all of its obligations under this Agreement in a timely manner.

## **5.2 Operational Obligations**

### **5.2.1 Approval of Design**

- a) The Successful Bidder shall within 15 (fifteen) days from the Appointed Date submit design for installation of energy efficient street lights along with power saver with timer on the existing street light poles to the MCF. In addition, the Successful Bidder should include in the submitted design the dimensions and specifications of the hoardings proposed to be installed on street light poles and gantries as well as the proposed location of the gantries.
- b) By forwarding the design to the MCF pursuant to the preceding clause (a), the Successful Bidder shall be deemed to have represented that it has verified and determined that the designs forwarded are in conformity with the specifications as shown in this Agreement.
- c) Within 7 (seven) working days of submission of the design by the Successful Bidder, MCF shall review the same and convey its comments/observations in this regard or its approval of the design to the Successful Bidder. If MCF has any comments on the designs submitted, the Successful Bidder shall make the necessary changes, revisions and modifications within 7 (seven) days from such receipt of the comments and shall re-submit the design to MCF for its approval. However, in case of any delay exceeding twenty one (21) working days on part of the MCF in responding to the design submitted by the Successful Bidder, the design shall be deemed to have been approved by MCF unless otherwise agreed by the Successful Bidder in lieu of any relaxation of its own obligations pursuant to this Agreement to compensate for such delay in approving the design on the part of MCF, including inter alia the extension of the Scheduled Completion Date.

- d) Notwithstanding any review or failure to review or the comments / observations of MCF, the Successful Bidder shall be solely responsible for the adequacy of the specifications in the design and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- e) On approval of the design by the MCF, it shall be known as the Approved Design and shall form part of this Agreement being appended thereto as Schedule VII.

### **5.2.2 Sub-Contractors**

- a) The Successful Bidder may sub-contract at its own cost and risk all or any part of the activities related to the design, installation of energy efficient street lights along with power saver with timer on the existing street light poles and O&M of the Installed Facilities and/or related to the exercise of the Advertisement Rights on the clear understanding that the Successful Bidder shall be at all times during the Authorisation Period responsible for any defect, deficiency or delay with regard to the installation of energy efficient street lights along with power saver with timer on the existing street light poles and O&M of street lights as well as the exercise of the Advertisement Rights as per the provisions of this Agreement.
- b) Provided, however, that the appointment of sub-contractors should not lead to carrying out of the whole or substantially the whole, as determined by MCF, of the Project by such sub-contractors.
- c) The Successful Bidder shall ensure that any of its obligations pursuant to this Agreement that are relevant to the scope of work of any sub-contractor are incorporated in the terms and conditions under which such a sub-contractor is retained.
- d) For the avoidance of doubt, the appointment of sub-contractors shall not relieve in any way the Successful Bidder of its obligations as set out in this Agreement.

### **5.2.3 Project Implementation – Installation**

- a) The Successful Bidder shall install energy efficient street lights along with power saver with timer on the existing street light poles as per the Approved Design and subject to the specifications mentioned under Schedule II at its own cost after obtaining all Applicable Permits. No work shall be commenced or carried out by the Successful Bidder or contractors appointed by the Successful Bidder that infringe any Applicable Law for the time being in force as regards to the Project.
- b) The Successful Bidder shall complete the installation of energy efficient street lights along with power saver with timer on the existing street light poles within 90 (ninety) days from the date of approval of the design by MCF. Once the installation is complete as per the specifications mentioned under Schedule II, the Project Officer shall issue a Completion Certificate. Only after such issue of the Completion Certificate shall the Successful Bidder be entitled to exercise the Advertisement Rights granted as per the provisions of this Agreement.

- c) If the completion of the installation of energy efficient street lights along with power saver with timer on the existing street light poles is delayed beyond the Scheduled Completion Date, MCF shall have the right to demand from the Successful Bidder a maximum of one percent (1%) of the Performance Security amount per day as Liquidated Damages. The Successful Bidder shall pay the Liquidated Damages by way of demand issued by a nationalised/ scheduled bank acceptable to MCF, drawn in favour of “**The Commissioner, Municipal Corporation of Faridabad** ” and payable at Faridabad. For any delay in completion extending beyond 15 days from the Scheduled Completion Date, MCF shall be entitled to terminate this Agreement and appropriate the Performance Security as per the provisions in that regard in this Agreement.
- d) Any damage to the property of MCF on the Project Site during the course of installation shall be rectified and restored to its original form by the Successful Bidder within 3 (three) days from the notification by the Project Officer at its own cost. The rectification conducted by the Successful Bidder should be inspected and declared satisfactory to the Project Officer.
- e) The Successful Bidder should provide at least 3 (three) days prior notice to MCF requesting for traffic management measures (including diversion of traffic) required for any activity related to the installation of the energy efficient street lights along with power saver with timer on the existing street light poles. The notice should explain in detail the intensity, effect and time-frame for such activity requiring traffic management and MCF shall approve such traffic management measures at its own discretion. The scheduled completion date will be extended if there is any delay by the MCF in traffic management measures. However, the Successful Bidder will be required to send a letter to the MCF requesting for expansion of scheduled completion date.
- f) The Project Officer, may, by written notice, require the Successful Bidder to suspend forthwith the whole or any part of the Installation works, if in its reasonable opinion the same is being carried on in a manner as given below.
  - a. The Successful Bidder is in breach of provision of this Agreement especially with regards to the safety requirements.
  - b. The Successful Bidder has failed to make any payment to MCF within the period specified in this Agreement.
  - c. The Successful Bidder abandons or manifests intention to abandon the project as defined in the agreement without the prior written consent of the MCF.
  - d. The Successful Bidder creates any encumbrances in breach of this Agreement,
  - e. The Successful Bidder is declared bankrupt or insolvent or is in the process of being liquidated, dissolved, wound up, amalgamated or reconstituted in a manner that would cause in the reasonable opinion of MCF, a material adverse impact on the project.

#### **5.2.4 Project Implementation – Operation & Maintenance**

- a) The Successful Bidder shall at its own cost operate and maintain the street lights along with all poles, fixtures, fittings and related civil works in accordance with the standards mentioned under Schedule III and apply the standards of a reasonable and prudent industrial practice during such maintenance.

- b) In case the Successful Bidder is found misusing electricity for any activity other than the activities covered under this Agreement, MCF shall be entitled to terminate the Agreement as per the provisions in this regard in the Agreement.

### **5.2.5 Advertising Rights**

- a) The Successful Bidder cannot display any advertisement before receipt of the Completion Certificate issued by the Project Officer.
- b) The Successful Bidder cannot install or construct gantries more than the number specified under Schedule IV.
- c) The Successful Bidder will have to install and operate and maintain all the gantries in a proper, neat and clean condition during the currency of the Agreement. The ownership of the gantries shall vest in MCF and the Successful Bidder shall not tamper with the same or change their configuration during the Authorisation Period. The cost of replacement and maintenance of gantries during the Authorisation Period shall be borne solely by the Successful Bidder. In case any gantry is damaged, the same will be replaced as per original specifications and all cost in this connection shall also be borne solely by the Successful Bidder.
- d) The Successful Bidder shall comply with the Applicable Law regulating the display of advertisements and MCF cannot be held liable for any change/ modification in these laws that adversely affect this Agreement or any breach of Applicable Law by the Successful Bidder. No claim or compensation on this account will be allowed.
- e) The Successful Bidder shall be free to set charges for the display of advertisements to be paid by End Users in line with the market requirements and acceptance of these charges by the End Users. However, the Successful Bidder shall be liable to pay all applicable taxes related to the usage of hoardings on gantries and street light poles for the display of advertisements and the revenues generated from such activity.
- f) One each gantry, the Successful Bidder shall provide 25% of area of each hoarding, free of cost to MCF for the display of road signs or other public service messages of non-commercial nature. The Successful Bidder shall be responsible for displaying the public service messages on that portion of the hoarding that is allocated to the MCF as per the directions issued in writing by MCF.

### **5.2.6 Insurance**

The Successful Bidder shall at its cost and expense, purchase and maintain by due reinstatement or otherwise, all insurance, particularly Third Party Insurance and insurance for covering workers and employees and relevant insurance in respect of the Installed Facilities in accordance with the Good Industry Practice. The Successful Bidder shall maintain a register of entry in order of the premiums paid towards the insurance coverage under this Agreement for the Third Party Insurance, insurance for its workers and

employees and the Installed facilities with proof of payments made and this register shall be made available to MCF whenever requested for during the Authorisation Period.

#### **5.2.7 Application of Insurance Proceeds**

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of insurance policies for the Installed Facilities received shall be promptly applied by the Successful Bidder towards repair, renovation, restoration or re-instatement of the street lights along with all poles, fixtures, fittings and related civil works or any part thereof which may have been damaged or destroyed. Provided, however, that the Successful Bidder 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 Successful Bidder shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the street lights along with all poles, fixtures, fittings and related civil works after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, except in case of normal wear and tear. However, any proceeds under the Third Party Insurance shall be promptly applied to compensate the Third Parties.

#### **5.2.8 Un-insurable Risks**

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

#### **5.2.9 Environmental Compliance**

The Successful Bidder shall, at all times, ensure that all aspects of the Installed Facilities and the processes employed in the installation and O&M thereof shall conform with the Applicable Law pertaining to environment, health and safety aspects including policies and guidelines related thereto. If so required, the Successful Bidder shall obtain and maintain from time to time all necessary clearances from empowered Government Agencies and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Installed Facilities.

#### **5.2.10 Applicable Permits**

The Successful Bidder shall, in respect of the Project, procure the Applicable Permits and be in compliance thereof at all times.

### **5.3 General Obligations**

- a) It shall be the responsibility of the Successful Bidder to consider the safety of the public during the installation of the energy efficient street lights along with power saver with

timer on the existing street light poles, during the O&M of the Installed Facilities and while exercising the Advertisement Rights assigned by this Agreement.

- b) The Successful Bidder shall not appoint any person as its agent, by a Power of Attorney or otherwise, for the purposes of this Agreement except its Officer or Servant. However, the Successful Bidder can appoint an agent for the purpose of marketing its advertisement rights. MCF shall not be liable for the marketing of the advertisements of the Successful Bidder.
- c) The Successful Bidder shall 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;
- d) The Successful Bidder shall 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 with subsequent amendments thereof. The Successful Bidder shall solely be liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies the MCF against any claims, damages, expenses or losses in this regard and accepts that in no case and for no purpose shall the MCF be treated as an employer in this regard.

#### **5.4 No Breach of Obligations**

The Successful Bidder 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:

- a) Force Majeure Event, subject to Article 8;
- b) MCF Event of Default;
- c) Compliance with the instructions of the Project Officer / MCF or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Successful Bidder of any of its obligations hereunder.

## 6 MCF'S OBLIGATIONS

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

MCF within its purview shall:

- a) Facilitate in a timely manner all such authorisations which the Successful Bidder may require or is obliged to seek from MCF under this Agreement, in connection with implementation of the Project and the performance of its obligations.
- b) Where appropriate facilitate necessary liaison to the Successful Bidder in securing Applicable Permits;
- c) Observe and comply with all its obligations set forth in this Agreement;
- d) MCF will not have any objection to the depreciation to be claimed by the Successful Bidder player for the purpose of income tax benefits in line with the provisions of the Income Tax Act.

## 7 INDEMNITY

- a) The Successful Bidder agrees to indemnify and hold harmless MCF and its officers and employees (each a “MCF Indemnified Party”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively, “Losses”) to which a MCF Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
- i. Any misstatement or any breach of any representation or warranty made by Successful Bidder, or
  - ii. The failure by Successful Bidder to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or of the Successful Bidder or
  - iii. Any claim or proceeding by any third party against MCF arising out of any act, deed or omission by the Successful Bidder.

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

## 8 FORCE MAJEURE

### 8.1 Force Majeure Event

Force Majeure shall mean any event or circumstance or combination of events or circumstances set out below that materially and adversely affects any Party in the performance of its obligations in accordance with the terms of this Agreement, but only if and to the extent that such events and circumstances pertains to the Project or has a direct effect on the operations on the Project Site, which are not within the Party's reasonable control, and/or the effects of which the Party could not have prevented through prudent business practices or, through reasonable skill and care, including through the expenditure of reasonable sums of money; Such Force Majeure events may include, inter alia:

- a) Earthquake, flood, inundation and landslide
- b) Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- c) Fire caused by reasons not attributable to the Successful Bidder or any of its employees, appointed by the Successful Bidder for purposes of the Project;
- d) Occurrence of accident/s on the Project Site;
- e) Acts of terrorism;
- f) Strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Successful Bidder, War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions;
- g) Acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Installed Facilities or any part thereof or of the Successful Bidder's or the Contractor's rights in relation to the Project;
- h) Any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Successful Bidder in any proceedings which is non-collusive and duly prosecuted by the Successful Bidder;
- i) Any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Successful Bidder's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgement or order of a Governmental Agency or of any contract by which the Successful Bidder as the case may be is bound; and
- j) Early Termination of this Agreement by MCF for reasons of national emergency or national security.

## 8.2 Exclusions from Force Majeure Event

Force Majeure shall expressly not include the following conditions, except to the extent resulting from another Force Majeure Event:

- a) Unavailability, late delivery or changes in cost of machinery, equipment, materials, spare parts or consumables for the Project;
- b) A delay in the performance of any contractor or supplier;
- c) An indirect effect on the operations of the Project;
- d) Non- performance resulting from normal wear and tear typically experienced in a Project of this kind; and non - performance caused by, or connected with, the non-confirming party's (a) negligent or intentional acts, errors or omission (b) failure to comply with any Applicable Law, or (c) breach of, or default under this Agreement.

## 8.3 Notice of Force Majeure Event

- a) As soon as practicable and in any case within 3 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Successful Bidder/ MCF shall notify the other Party in writing setting out, inter alia, the following in reasonable detail:
  - i. The nature and extent of the Force Majeure Event;
  - ii. The estimated Force Majeure Period;
  - iii. The nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - iv. The measures which the Successful Bidder/ MCF has taken or proposes to take to alleviate/ mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
  - v. Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- b) As soon as practicable and in any case within 5 (five) days of notification in accordance with the preceding clause (a), the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection / survey of the Installed Facilities in order to:
  - i. Assess the impact of the underlying Force Majeure Event;
  - ii. To determine the likely duration of Force Majeure Period, and,
  - iii. To formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.

## 8.4 Performance of Obligations

If the Successful Bidder/ MCF is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused

from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- a) Due notice of the Force Majeure Event has been given as required by the preceding Article 8.3;
- b) The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c) The Successful Bidder/ MCF has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Installed Facilities as a result of the Force Majeure Event and to restore the Installed Facilities to the extent of the obligations mentioned under this Agreement, in accordance with the Good Industry Practice and its relative provisions under this Agreement;
- d) When the Successful Bidder/ MCF is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- e) The Successful Bidder/ MCF shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- f) Any insurance proceeds received shall be, subject to the provisions of Financing Documents, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.
- g) If the Force Majeure Event extends for a period more than 20 days then MCF and Successful Bidder shall have the option to mutually discuss and agree on the Termination of the Agreement.

#### **8.5 Liability for other losses, damages, etc.**

Save and except as expressly provided in this Article 8, 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.

## 9 CHANGE IN LAW

- a. Change in law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
- i. The enactment of any new Indian law;
  - ii. The repeal, modification or re-enactment of any existing Indian law including Rules and Regulations thereunder;
  - iii. A change in the interpretation or application of any Indian law by a court of record; and
  - iv. The commencement of any Indian Law which has not entered into effect until the date of this Agreement.

Provided that change in law shall not include:

- i. Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date;
  - ii. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge; and
  - iii. Any change in a rate of Tax.
- b. Subject to the change in law resulting in Material Adverse Effect and subject to the Successful Bidder taking necessary measures to mitigate the impact or likely impact of change in law on the Project, if as a consequence of a change in law, the Successful Bidder is obliged to incur Additional Costs or if the Successful Bidder enjoys a reduction in the cost and/ or is financially benefited, then, the Parties may by mutual consent modify the terms of the Agreement, including but not limited to by way of extension in the Authorisation Period, so as to mitigate the impact of change in law.

## 10 EVENTS OF DEFAULT AND TERMINATION

### 10.1 Events of Default

Event of Default shall mean either Successful Bidder Event of Default or the MCF Event of Default or both as the context may admit or require.

#### **Successful Bidder Event of Default**

Any of the following events shall constitute an Event of Default by the Successful Bidder ("Successful Bidder Event of Default") unless such event has occurred as a result of one or more reasons set out under "No Breach of Obligations" as mentioned under Article 5.4.

- a) The Successful Bidder fails to pay MCF the Advertisement Premium Payments in accordance with the payment schedule mentioned under Schedule V.
- b) The Successful Bidder subject to Article 5.2.3 has failed to complete the installation of energy efficient street lights along with power saver with timer on the existing street light poles till the 15<sup>th</sup> day from the Schedule Completion Date for any reason whatsoever.
- c) The Successful Bidder fails to adhere with the specifications and requirements for the installation of energy efficient street lights along with power saver with timer on the existing street light poles as per Schedule II and/or the standards for O&M of street lights as per Schedule III.
- d) The Successful Bidder is found interfering or causing damage to the properties of the MCF or others.
- e) The Successful Bidder has deviated from the Approved Design and the specifications provided under this Agreement;
- f) The Successful Bidder fails to replenish the Performance Security up to the amount provided at the time of signing of the Agreement as per the Article 5.1.1.
- g) The Successful Bidder misuses the Installed Facilities for any other purpose other than that for what it has been assigned.
- h) The Successful Bidder installs additional gantries apart from that as specified under Schedule IV and the Approved Design.
- i) The Successful Bidder has encroached upon a part from the Project Site in any manner whatsoever apart from the installation and O&M of the Installed Facilities.
- j) The Successful Bidder has failed to make any payments due to MCF and more than 15 (fifteen) days have elapsed since such payment default.

- k) The Successful Bidder is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 15 (fifteen) days from the date of Preliminary Notice, subject to Article 10.2.
- l) Any representation made or warranty given by the Successful Bidder under this Agreement is found to be false or misleading.
- m) A resolution for voluntary winding up has been passed by the shareholders of the Successful Bidder.
- n) Any petition for winding up of the Successful Bidder has been admitted and liquidator or provisional liquidator has been appointed or the Successful Bidder 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 MCF, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Successful Bidder under this Agreement.
- o) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance from the Successful Bidder and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable.
- p) The Successful Bidder has abandoned the Installed Facilities.
- q) The Successful Bidder has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement.
- r) The Successful Bidder has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 60 days.

#### **MCF Event of Default**

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

- a) Access to the Project Site has not been handed over to the Successful Bidder within 7 (seven) days form the Appointed Date.
- b) MCF is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 7 (seven) days of receipt of notice thereof issued by the Successful Bidder.
- c) MCF has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.

- d) Any representation made or warranties given by the MCF under this Agreement has been proved to be false or misleading.

## **10.2 Termination due to Event of Default**

### **a. Termination for Successful Bidder Event of Default**

- i. Without prejudice to any other right or remedy which MCF may have in respect thereof under this Agreement, upon the occurrence of a Successful Bidder Event of Default, MCF shall be entitled to terminate this Agreement in the manner as set out under Article 10.2 (a)(ii)
- ii. If MCF decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Successful Bidder. Within 15 (fifteen) days of receipt of the Preliminary Notice, the Successful Bidder shall rectify the defects. If, however the Successful Bidder fails to remedy / cure the underlying Event of Default within such period allowed, MCF shall be entitled to terminate this Agreement, by issuing a Termination Notice and to appropriate the Performance Security, if subsisting.

### **b. Termination for MCF Event of Default**

- i. Without prejudice to any other right or remedy which the Successful Bidder may have in respect thereof under this Agreement, upon the occurrence of MCF Event of Default, the Successful Bidder shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Successful Bidder decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to MCF. Within 15 days of receipt of Preliminary Notice, MCF shall remedy/ cure the underlying Event of Default. If, however MCF fails to remedy / cure the underlying Event of Default within such further period allowed, the Successful Bidder shall be entitled to terminate this Agreement by issuing a Termination Notice.

### **c. Termination Notice**

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

- i. In sufficient detail the underlying Event of Default;
- ii. The Termination Date which shall be a date occurring not earlier than 15 days from the date of Termination Notice;
- iii. Any other relevant information.

**d. Obligation of Parties**

Following the 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 MCF in accordance with the following sub - article (f) is paid to the Successful Bidder on the Termination Date; and
- iii. The Installed Facilities are handed back to MCF by the Successful Bidder on the Termination Date free from any Encumbrance along with any payment that may be due from the Successful Bidder to the MCF.

**e. Withdrawal of Termination Notice**

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

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

**f. Termination Payments**

- i. If the Agreement is terminated due to a Successful Bidder Event of Default, the Successful Bidder shall on Termination not be entitled to receive any Termination Payment and the Performance Security shall be invoked by MCF.
- ii. If the Agreement is terminated due to a MCF Event of Default, the Successful Bidder shall receive from MCF a Termination Payment equal to 120% of the Book Value of the Installation Facilities along with the subsisting Performance Security, if any.

**10.3 Rights of MCF on Termination**

- a. Upon Termination of this Agreement for any reason whatsoever, MCF shall upon making the Termination Payment, if any, to the Successful Bidder, have the power and authority to:
  - i. Enter upon and take possession and control of the Installed Facilities forthwith;
  - ii. Prohibit the Successful Bidder and any person claiming through or under the Successful Bidder from dealing with the Installed Facilities;
  - iii. Shall have the right over the payments which are liable to be paid to MCF as per the terms of this Agreement.

- b. Notwithstanding anything contained in this Agreement, MCF shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Successful Bidder or any contractor or agent employed by the Successful Bidder in connection with the Project, and the handing back of the Installed Facilities by the Successful Bidder to MCF shall be free from any such obligation.

#### **10.4 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 the accrued rights of either Party including its right to claim and recover money, damages and other rights and remedies that 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.

## 11 HANDING OVER OF INSTALLED FACILITIES

### 11.1 Ownership

Subject to the terms of the Agreement, the ownership of the Project Site and the Installed Facilities, including all improvements made therein by the Successful Bidder, shall at all times vest in MCF.

### 11.2 Successful Bidder's Obligation

- a. The Successful Bidder shall on the date of expiry or Termination of the Authorisation Period, hand back vacant and peaceful possession of the Project Site with all the Installed Facilities to MCF free of cost and in good operable condition as per terms of this Agreement.
- b. At least 20 (twenty) days before the expected expiry of the Authorisation Period, an inspection of the Installed Facilities and Project Site shall be undertaken by the Project Officer. MCF shall within 2 days of such inspection prepare and furnish to the Successful Bidder a list of works/ jobs, if any, to be carried out so as to conform to the original condition and specifications of the Installed Facilities, barring normal wear and tear. The Successful Bidder shall promptly undertake and complete such works/ jobs at least 7 days prior to the expected expiry of the Authorisation Period and ensure that the Installed Facilities continue to meet such specifications until the same are handed back to MCF. The Performance Security of the Successful Bidder shall be released only when the works/ jobs are rectified as per the list prepared by MCF.
- c. If the Successful Bidder fails to hand over the Installed Facilities after the expiry of the Authorisation Period or after the Termination of the Agreement then the Successful Bidder shall be deemed to be an unauthorized occupant and MCF shall have the right to forcefully remove any person and/or material of the Successful Bidder and/or any End User from the Project Site and/or Installed Facilities without giving a notice to the Successful Bidder.

## **12 DISPUTE RESOLUTION**

### **12.1 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 (“Dispute”) shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in clause (b) below.
- b) The Parties may refer such Dispute to the Project Officer of MCF, for amicable settlement. Upon such reference, the Parties shall meet at the earliest mutual convenience and in any event within 15 (fifteen) 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 12.2 below.

### **12.2 Arbitration**

- a) Should the Dispute not be amicably settled in line with Article 12.1, the Parties shall submit the Dispute for arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted by an arbitral tribunal comprising three arbitrators, of which one shall be appointed by each Party and the two such arbitrators shall appoint the third arbitrator, who shall be the chairman of the arbitral tribunal.
- b) The arbitrators shall make a reasoned award, and any award made pursuant hereto shall be final and binding on the Parties as from the date on which it is made effective, and the Parties shall implement and execute such award without delay.
- c) The arbitration proceedings shall be conducted in the English language and in Haryana or at such other place as may be agreed between the Parties.
- d) The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially paid by the Party seeking arbitration. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.

### **12.3 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.

## 13 REPRESENTATIONS AND WARRANTIES

### 13.1 Representations and Warranties of the Successful Bidder

The Successful Bidder represents and warrants to MCF 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 any of the terms of the Successful Bidder's Memorandum and Articles of Association if applicable or any Applicable Law 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 Successful Bidder'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 Successful Bidder 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 Successful Bidder from MCF 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 Successful Bidder in and to the Installed Facilities shall pass to and vest in MCF on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Successful Bidder;

- k) No representation or warranty by the Successful Bidder contained herein or in any other document furnished by it to MCF 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 Successful Bidder to any person to procure the Advertisement Rights.
- m) Without prejudice to any express provision contained in this Agreement, the Successful Bidder acknowledges that prior to the execution of this Agreement, the Successful Bidder has after a complete and careful examination made an independent evaluation of the Project Site and Project Facility and the information provided by the MCF, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Successful Bidder in the course of performance of its obligations hereunder, such examination/ review having included but not limited to the following:
  - a) the form and nature of the Installed Facilities,
  - b) the hydrological and climatic conditions,
  - c) the extent and nature of the work and materials necessary for the execution and completion of the works, and the remedying of any defects, and
  - d) the means of access to the Project Site
- n) The Successful Bidder 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 MCF shall not be liable for the same in any manner whatsoever to the Successful Bidder.

### **13.2 Representations and Warranties of MCF**

MCF represents and warrants to the Successful Bidder that:

- a) MCF has the full power and authority to grant the Rights mentioned under this Agreement;
- b) MCF has taken all the necessary action to authorise the execution, delivery and performance of this Agreement;
- c) This Agreement constitutes MCF'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 MCF in respect of the Project Site /Installed Facilities.

### **13.3 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.

## 14 MISCELLANEOUS

### 14.1 Assignment and Charges

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

### 14.2 Governing Law and Jurisdiction

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

### 14.3 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.

#### 14.4 Survival

Termination of this Agreement:

- a) shall not relieve the Successful Bidder, the MCF 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.

#### 14.5 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Authorisation 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.

#### 14.6 Notices

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

If to the MCF:

*[..Designation and Address of Authorised Representative of MCF..]*

If to the Successful Bidder:

*[..Designation and Address of Authorised Representative of the Successful Bidder..]*

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

- i. in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- ii. in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

## 14.7 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.

## 14.8 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.

## 14.9 Exclusion of Implied Warranties, etc.

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

## 14.10 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 MCF by:

(Signature)  
(Name)  
(Designation)

For and on behalf of SUCCESSFUL BIDDER by:

(Signature)  
(Name)  
(Designation)

In the presence of:

- 1)
- 2)

**Schedule I. Details of Project Site**

Item	Details
Number of roads and length of roads	15 stretch of road in Fardiabad with total length of approximately 15,850 meters.
Street lighting on Road	Currently, street lights are installed on all the 15 stretches of the road in Faridabad.
Number of poles	A total of around 551 poles are installed on the 15 stretches of road in Faridabad.
Number of street lights	It may be noted that the existing poles on the roads covered by the project have either two lamps per pole or a single lamp per pole. A total of 687 High Pressure Sodium Vapor (HPSV) lamps of 250 watt each are installed on the 15 stretches of road.

**Details of Stretches of Roads**

Road Description	Type of Road	Width	Length (meters)	Number of Poles	Number of Lights per pole
Dividing road of Sector 21A and 21B	Double Lane	50 Feet	1000	33	2
Hardware Chowk to Hitkari Chowk	Double Lane	50 Feet	700	23	2
Panchayat Bhavan Road	Double Lane	50 Feet	600	9	2
Canal Road	Single Lane	18 Feet	1400	47	1
Surajkund Tourist Complex	Single Lane	23 Feet	1800	60	1
Dividing Road of Sector 15 and Sector 15A	Single Lane	33 Feet	1400	56	1
Hospital Road, Ballabgarh	Double Lane	50 Feet	450	15	2
Dividing road of sector 16 and 17	Single Lane	50 Feet	1500	50	1
Dividing road of sector 19 and 28	Single Lane	50 Feet	1700	68	1
Dividing road of sector 28 and 29	Single Lane	33 Feet	1200	48	1
Bata Flyover	Double Lane	50 Feet	900	36	2
Dividing road of sector 16A and 19	Double Lane	50 Feet	600	20	2
Dividing Road of Sector 4 and Sector 7	Single Lane	50 Feet	1300	43	1
Dividing Road of Sector 15A and Sector 16A	Single Lane	33 Feet	600	20	1
Dividing Road of Sector 15 and Sector 16	Single Lane	33 Feet	700	23	1
<b>Total</b>	<b>NA</b>	<b>NA</b>	<b>15,850</b>	<b>551</b>	<b>NA</b>

**Schedule II. Specifications for Street Lights Forming Part of Installed Facilities**

Parameter	Details
Lamp wattage and type of energy saving street light to be installed	<ul style="list-style-type: none"> <li>▪ 250 High Power Sodium Vapour (HPSV) lamps to be replaced by 150 HPSV lamps on the existing 551 street light poles which have 687 lamps.</li> </ul>
Features of the power saver with timer to be installed	<ul style="list-style-type: none"> <li>▪ The power saver with timer should have digital clock based street light timer so that it is possible to set “On time” and “Off time”. The built in timer should be able to automatically fluctuate the voltage level in different time slots.</li> <li>▪ The power saver should have “Sun rise” and “Sun set” based street light control system to store the sun set and sun rise data for complete year. The timer should have RS-485 communication port and uses MODBUS RTU protocol. The software with RS-485 to USB converter can be used for communication with timer.</li> </ul>
Permitted Manufacturers of lamps and power saver with timer	<ul style="list-style-type: none"> <li>▪ HPSV lamps of recognised brands like Philips, Bajaj, Crompton Greaves, etc. For the power saver/timer, the Successful Bidder shall be required to submit the proposed specifications and brand/manufacturer to MCF and adhere to the Approved Design.</li> </ul>

### **Schedule III. Standards for Operation & Maintenance of Street Lights**

- a. The Successful Bidder shall undertake O&M of the street lighting under this project including replacement of fused lamps and non-working fittings, accessories, etc. during the Authorisation Period. For this purpose, the Successful Bidder shall keep maintain adequate stock of spares needed for the working of the Installed Facilities.
- b. The Successful Bidder should attend complaints communicated by the Chief Engineer or Project Officer of MCF, members of the public, the MCF complaint cell, news paper, media, etc. and report back to the Project Officer within 48 hours. The important and emergency repairs have to be attended by the Successful Bidder within 24 hours of receipt of the complaint.
- c. The Successful Bidder shall make suitable arrangement to receive complaints through online messaging system or phone or through a suitable arrangement with MCF.
- d. The representative of Successful Bidder shall conduct daily inspections to identify non-working lamps, fittings, fixtures, etc. and arrange for immediate replacement/rectification of the same.
- e. All the fittings and fixtures like lamps, choke, igniters, etc. must be of recognised brands like Philips, Bajaj, Crompton Greaves, etc. Non-compliance of this clause by the Successful Bidder may lead to the Termination of the Agreement.
- f. The representatives of Successful Bidder shall regularly submit to the Project Officer appointed by MCF a monthly report of all the complaints received and attended during the preceding month.
- g. The normal schedule for illumination of street lights will be from 6 PM to 6 AM. However, if any change in the timing for illumination of street is necessary due to seasonal variations, (change in sunrise and sunset timings) the Successful Bidder will be required to obtain prior written approval from the MCF before changing the normal schedule for illumination, which approval shall not be withheld by MCF without sufficient and valid reasons.

**Schedule IV. Specifications for Hoardings on Gantries & Street Light Poles for Display of Advertisements Forming Part of the Installed Facilities**

The Successful Bidder will be allowed to install a total of 30 gantries for the display of advertisements on the 15 stretches of road (two gantries on each stretch of road) in Faridabad. The exact locations where the gantries are proposed to be installed by the Successful Bidder will be indicated in the design submitted to MCF along with specifications (including proposed illumination, if any) and dimensions. The actual installation of the 30 gantries will be in line with the Approved Design, ensuring adequate clearance for traffic and keeping in mind all aspects and applicable standards related to safety and aesthetics. Each gantry will carry two hoardings facing in opposite directions so that one hoarding is visible to traffic moving in one direction and the other hoarding is visible to traffic in the opposite direction. The maximum size of a hoarding on a gantry will be 5 feet in length by 40 feet in width.

On each gantry, the Successful Bidder shall provide 25% of area of each hoarding, free of cost to MCF for the display of road signs or other public service messages of non-commercial nature. The Successful Bidder shall be responsible for displaying the public service messages on that portion of the hoarding that is allocated to the MCF as per the directions issued in writing by MCF.

The Successful Bidder will be allowed to install two hoardings on each street light pole. The proposed dimensions and specifications of the hoardings on street light poles will be indicated by the Successful Bidder in the design submitted to MCF and actual installation shall adhere to the Approved Design. The maximum size of a hoarding on a street light pole will be 3 feet in length by 2 feet in width.

**Schedule V. Advertisement Premium Payment Schedule**

Year	Advertisement Premium quoted in RFP stage	Due Date of Payment
Year 1		On the Appointed Date
Year 2		365 <sup>th</sup> day from the Appointed Date
Year 3		730 <sup>th</sup> day from the Appointed Date
Year 4		1095 <sup>th</sup> day from the Appointed Date
Year 5		1460 <sup>th</sup> day from the Appointed Date

The annual Advertisement Premium quoted in the commercial proposal at the RFP stage shall be payable by the Successful Bidder on a yearly basis to MCF. Each instalment has to be paid within 3 days of the due date of Advertisement Premium Payment amount.

**Schedule VI. Proforma of Performance Security**

**(Proforma of Bank Guarantee)<sup>2</sup>**

**THIS DEED OF GUARANTEE** executed on this the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_ (*Name of the Bank*) having its 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**

Municipal Corporation of Faridabad (hereinafter called “MCF”), having its principal office at \_\_\_\_\_, India, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

**Whereas**

By the Authorisation Agreement (“the Authorisation Agreement”) being entered into between MCF and \_\_\_\_\_, a company incorporated under the Companies Act, 1956, having its registered office at \_\_\_\_\_, (“the Successful Bidder”), the Successful Bidder has been granted the Advertisement Rights in return to the upgradation, O&M of street lights along with all poles, fixtures, fittings and related civil works and gantries as per the specifications and the terms of the Authorisation Agreement (hereinafter referred to as “the Project”).

- A. In terms of Article 5.1.1 of the Authorisation Agreement, the Successful Bidder is required to furnish to MCF, an unconditional and irrevocable bank guarantee for an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only) as security for due and punctual performance / discharge of its obligations under the Authorisation Agreement.
- B. At the request of the Successful Bidder, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance / discharge by the Successful Bidder of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Authorisation Agreement.

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by \_\_\_\_\_ (hereinafter called “the Successful Bidder”) of all its obligations relating to the Project and in connection with achievement of obligations of the Successful Bidder in accordance with the Authorisation Agreement.
2. The Guarantor shall, without demur, pay to MCF sums not exceeding in aggregate Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only), within five (5) calendar days of receipt of a written demand thereof from MCF stating that the Successful Bidder has failed to meet its obligations

<sup>2</sup> To be issued by a scheduled bank acceptable to MCF.

under the Authorisation Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Successful Bidder or validity of demand so made by MCF and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Successful Bidder 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.

3. In order to give effect to this Guarantee, MCF 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 Authorisation Agreement or other documents or by the extension of time for performance granted to the Successful Bidder or postponement/ non exercise / delayed exercise of any of its rights by MCF or any indulgence shown by MCF to the Successful Bidder 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 MCF or any indulgence shown by MCF, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
4. This Guarantee shall be irrevocable and shall remain in full force and effect until \_\_\_\_\_<sup>3</sup> unless discharged / released earlier by MCF in accordance with the provisions of the Authorisation Agreement. The Guarantor's liability in aggregate is limited to a sum of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only).
5. This Guarantee shall not be affected by any change in the constitution or winding up of the Successful Bidder / the Guarantor or any absorption, merger or amalgamation of the Successful Bidder / the Guarantor with any other Person.
6. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

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

SIGNED AND DELIVERED

by \_\_\_\_\_ Bank

by the hand of Shri \_\_\_\_\_

its \_\_\_\_\_ and authorised official.

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<sup>3</sup> five years and six months from the date of signing the Authorisation Agreement