

# Greater Chennai Corporation



Request for Proposal (RfP)

for

Design, Build, Finance, Operate and Transfer of  
Public Convenience Toilets  
in locations under Zone 5, 6 and 9 (Marina only)  
of Chennai City

RFP Ref: S.P.D.C. No B1/00452/2022

Dated: 29-09-2022

**Part II – Volume 2 –  
Draft Concession Agreement**

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## ARTICLE 42 DEFINITIONS

### 42.1 Definitions

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

- **"Accounting Year"** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;
- **"Additional Performance Security"** shall have the meaning as set forth in Clause 9.7;
- **"Adjusted Equity"** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **"Reference Date"**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:
  - on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- **"Affected Party"** shall have the meaning as set forth in Clause 28.1;
- **"Agreement"** or "Concession Agreement" means this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;
- **"Annuity Payments"** shall have the meaning as set forth in Clause 23.6.2;
- **"Annuity Payment Date"** shall have the meaning as set forth in Clause 23.6.2;
- **"Appendix"** shall have the meaning as set forth in Clause 10.3.1;
- **"Applicable Laws"** means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and

obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

- **"Applicable Permits"** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;
- **"Appointed Date"** means the date on which Financial Close is achieved and every Condition Precedent is satisfied, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;
- **"Associate" or "Affiliate"** means, in relation to either Party (**and/or Consortium Members**), a person who controls, is controlled by, or is under the common control with such Party (**or Consortium Member**) (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of **more than 50% (fifty per cent)** of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and Policies of such person, whether by operation of law or by contract or otherwise);
- **"Authority"** shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;
- **"Authority Default"** shall have the meaning as set forth in Clause 31.2.1;
- **"Authority Indemnified Persons"** shall have the meaning set forth in Clause 36.1.1;
- **"Authority Representative"** means such person or persons as may be authorized in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;
- **"Bank"** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior lender has an interest;
- **"Bid"** means the documents in their entirety comprised in the bid

submitted by the (selected bidder/Consortium) in response to the Request for Proposals in accordance with the provisions thereof and **"Bids"** shall mean the bids submitted by any and all pre-qualified bidders;

- **"Bid Date"** means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;
- **"Bid Project Cost"** shall have the meaning as set forth in Clause 23.1;
- **"Bid Security"** means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;
- **"COD" or "Commercial Operation Date"** shall have the meaning as set forth in Clause 15.1.1;
- **"CPI (IW)"** means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;
- **"Change in Law"** means the occurrence of any of the following after the Bid Date:
  - The enactment of any new Indian law;
  - The repeal, modification or re-enactment of any existing Indian law;
  - The commencement of any Indian law which has not entered into effect until the Bid Date;
  - a change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
  - Any change in the rates of any of the Taxes that have a direct effect on the Project;
- **"Change in Ownership"** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the (selected bidder/Consortium Members), together with (its/their) Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be) in the proportion of the equity holding of (the

selected bidder/ any Consortium Member) to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership;

- **"Change of Scope"** shall have the meaning as set forth in Clause 16.1.1;
- **"Company"** means the company acting as the Concessionaire under this Agreement;
- **"Completion Certificate"** shall have the meaning as set forth in Clause 14.2;
- **"Completion Cost"** shall have the meaning as set forth in Clause 23.6.1;
- **"Concession"** shall have the meaning as set forth in Clause 3.1.1;
- **"Concessionaire"** shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;
- **"Concession Period"** means the period starting on and from Appointed Date and ending on the Transfer Date. For avoidance of doubt, it is clarified that the Concession Period shall include the Construction Period plus a fixed period of 8 years of Operation & Maintenance Period from the COD;
- **"Concessionaire Default"** shall have the meaning as set forth in Clause 31.1.1;
- **"Conditions Precedent"** shall have the meaning as set forth in Clause 4.1.1;
- **"Consortium"** shall have the meaning as set forth in Recital (D);
- **"Consortium Member"** means a company specified in Recital (D) as a member of the Consortium;
- **"Construction Period"** means the period beginning from the Appointed Date and ending on COD;
- **"Construction Works"** means all works and things necessary to complete the Project in accordance with this Agreement;
- **"Contractor"** means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for

providing financial assistance to the Concessionaire;

- **"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:
  - Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
  - Not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
  - Not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

- **"DBFOT Annuity"** or "Design, Build, Finance, Operate and Transfer" shall have the meaning as set forth in Recital (A);
- **"Damages"** shall have the meaning as set forth in Sub-clause (w) of Clause 1.2.1;
- **"Debt Due"** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
  - the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
  - all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
  - any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt



Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

- **"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;
- **"Development Period"** means the period from the date of this Agreement until the Appointed Date;
- **"Dispute"** shall have the meaning as set forth in Clause 38.1.1;
- **"Dispute Resolution Procedure"** means the procedure for resolution of Disputes as set forth in Article 38;
- **"Divestment Requirements"** means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 32.1;
- **"Document" or "Documentation"** means **documentation in printed or written form, or in tapes, discs, drawings, computer programmers, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;**
- **"Drawings"** means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-H, and shall include 'as built' drawings of the Project;
- **"EPC Contract"** means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;
- **"EPC Contractor"** means the person with whom the Concessionaire has entered into an EPC Contract;
- **"Emergency"** means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;
- **"Encumbrances"** means, in relation to the Project, any encumbrances 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 any designation of loss

payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

- **"Equity"** means the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;
- **"Escrow Account"** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;
- **"Escrow Agreement"** shall have the meaning as set forth in Clause 25.1.2;
- **"Escrow Bank"** shall have the meaning as set forth in Clause 25.1.1;
- **"Escrow Default"** shall have the meaning as set forth in Schedule-O;
- **"Estimated Project Cost"** shall be the cost estimated by the Authority for development of the Project and provided in the Request for Proposal Volume -I- Instructions to Bidders.
- **"Financial Close"** means the fulfillment of all condition's precedent to the initial availability of funds under the Financing Agreements which shall be communicated by the Lender's Representative to the Authority in writing. Such communication from Lender's Representative shall be treated as date on which the Financial Close is achieved;
- **"Financial Default"** shall have the meaning as set forth in Schedule-R;
- **"Financial Model"** means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

- **"Financial Package"** means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;
- **"Financing Agreements"** means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;
- **"Force Majeure" or "Force Majeure Event"** shall have the meaning ascribed to it in Clause 28.1;
- **"GOI"** means the Government of India;
- **"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient use of the Project
- **"Government"** means the Government of the India;
- **"Government Instrumentality"** means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- **"Indemnified Party"** means the Party entitled to the benefit of an indemnity pursuant to Article 36;

- **"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 36;
- **"Independent Engineer"** shall have the meaning as set forth in Clause 21.1;
- **"Indirect Political Event"** shall have the meaning as set forth in Clause 28.3;
- **"Insurance Cover"** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 26, and includes all insurances required to be taken out by the Concessionaire under Clause 26.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;
- **"Intellectual Property"** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;
- **"LOA" or "Letter of Award"** means the letter of award referred to in Recital (D);
- **"Lead Member"** shall have the meaning set forth in Recital (D)
- **"Lenders' Representative"** means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;
- **"Licensed Premises"** shall have the meaning as set forth in Clause 10.2.2;
- **"Maintenance Manual"** shall have the meaning as set forth in Clause 17.3.1;
- **"Maintenance Program"** shall have the meaning as set forth in Clause 17.4.1;
- **"Maintenance Requirements"** shall have the meaning as set forth in Clause 17.2;
- **"Material Adverse Effect"** means a material adverse effect of any

act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

- **"Nominated Company"** means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;
- **"Non-Political Event"** shall have the meaning as set forth in Clause 28.2;
- **"O&M"** means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, and provision of services and facilities, in accordance with the provisions of this Agreement;
- **"O&M Contract"** means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;
- **"O&M Contractor"** means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;
- **"O&M Expenses"** means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premium for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;
- **"O&M Inspection Report"** shall have the meaning as set forth in Clause 19.2;
- **"O&M Payments"** shall have the meaning as set forth in Clause 23.7.1;
- **"Operation Period"** means the operation and maintenance period of 8 (eight) years commencing from COD and ending on the Transfer Date;

- **"Parties"** means the parties to this Agreement collectively and "Party" shall mean any of the parties to this Agreement individually;
- **"Payment Milestone"** shall have the meaning as set forth in Clause 23.4; **"Performance Guarantee"** shall have the meaning as set forth in Clause 33.2.3;
- **"Performance Security"** shall have the meaning as set forth in Clause 9.1.1;
- **"Phased Completion"** means the stage in the progress of the Project as determined and certified by the Independent Engineer in writing to the Concessionaire on which work for a particular phase of the Project (expressed as number of Project Units out of the total number of Project Units) is complete in all respects and is satisfactory, without any pending items whatsoever. As an illustration, if the Concessionaire completes the work on 50 toilet units in all respects, without any pending or punch list items whatsoever, ahead in the schedule of a sequential implementation plan for the entire set of Project Facilities, then and in that event, such of those 50 units can be submitted for consideration of Phased Completion, subject however to determination and certification by the Independent Engineer of the submission.
- **"Phased Completion Certificate"** means the certificate issued by the Independent Engineer to the Concessionaire on completion of a particular Phase of the Project in all respects. The Concessionaire may present one or more phase of the Project for securing Phased Completion Certificate(s).
- **"Physical Progress"** shall mean the physical construction of the Project completed by the Concessionaire and shall be measured as per the assessment done by the Independent Engineer, basis, inter-alia, the unit measure of the seats/service counters completed, and further, in accordance with Clause 23.4 of this Agreement.
- **"Price Index"** shall comprise:
  - 33% (thirty three percent) of WPI; and
  - 67% (sixty seven percent) of CPI (IW),Which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;
- **"Price Index Multiple"** between any two reference periods shall be computed using the variation in Price Index occurring between the Reference Index Date preceding the first period and the Reference Index Date preceding the second period. The latter as a multiple of the former shall be the Price Index Multiple for the reference periods under computation.

- **"Project"** means the construction, operation and maintenance of the Project in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project in Site;
- **"Project Agreements"** means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services;
- **"Project Assets"** means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including .....); (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project;
- **"Project Completion Schedule"** means the progressive Project Milestones set forth in Schedule-G for completion of the Project on or before the Scheduled Completion Date;
- **"Project Facilities"** means all the amenities and facilities situated on the Site, as described in Schedule C
- **"Project Unit"** means each of the public convenience toilets, standalone urinals, standalone bath rooms, and modular toilets
- **"Project Units"** mean collectively all of the public convenience toilets, standalone urinals, standalone bath rooms, and modular toilets
- **"RBI"** means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;
- **"Re.", "Rs." or "Rupees" or "Indian Rupees"** means the lawful currency of the Republic of India;
- **"Reference Exchange Rate"** means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the

relevant date quoted in Chennai by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Chennai by the Bank of India and the Bank of Baroda;

- **"Reference Index Date"** means, in respect of the specified date or month, as the case may be, that last day of the preceding month with reference to which the Price Index or any constituent thereof is revised and in the event such revision has not been notified, the last such Price Index or any constituent thereof shall be adopted provisionally and used until the Price Index or such constituent thereof is revised and notified;
- **"Request for Proposals"** or "RFP" shall have the meaning as set forth in Recital (B);
- **"Right of Way"** means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;
- **"Safety Requirements"** shall have the meaning as set forth in Clause 18.1.1;
- **"SBI MCLR"** means the prevailing marginal cost of funds based lending rate for a tenor of 1 year, notified by State Bank of India from time to time
- **"Scheduled Completion Date"** shall have the meaning as set forth in Clause 12.3.1;
- **"Scope of the Project"** shall have the meaning as set forth in Clause 2.1;
- **"Senior Lenders"** means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold paripassu charge on the assets, rights, title and interests of the Concessionaire;
- **"Site"** shall have the meaning as set forth in Clause 10.1;
- **"Specifications and Standards"** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule- D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project



submitted by the Concessionaire to, and expressly approved by, the Authority;

- **"State"** means the State of Tamil Nadu;
- **"State Government"** means the government of that State;
- **"Statutory Auditors"** means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;
- **"Subordinated Debt"** means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:
  - the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
  - all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the prevailing SBI MCLR in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month Overnight Alternative Reference Rate (ARR) for the respective currency<sup>1</sup> plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;
- **"Substitution Agreement"** shall have the meaning as set forth in Clause 34.3.1;
- **"Suspension"** shall have the meaning as set forth in Clause 30.1;
- **"Taxes"** means any Indian taxes including goods and services tax, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part

<sup>1</sup> <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12191&Mode=0>

of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

- **"Termination"** means the expiry or termination of this Agreement and the Concession hereunder;
- **"Termination Notice"** means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;
- **"Termination Payment"** means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;
- **"Tests"** means the tests set forth in Schedule-I to determine the completion of the Project in accordance with the provisions of this Agreement;
- **"Total Project Cost"** means 60 % (sixty percent) of the Bid Project Cost specified in Clause 23.1;
  - provided that the amount hereinabove specified shall be adjusted for Goods and Services Tax (GST) as applicable
  - provided that in the event WPI increases, on an average, by more than 3% (three per cent) per annum for the period between the Bid Date and COD, the amount hereinbefore specified shall be increased such that the effect of increase in WPI, in excess of such 3% (three per cent), is reflected in the Total Project Cost;
  - provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Debt Due, as the case may be, in accordance with the provisions of this Agreement;
  - provided also that the Total Project Cost shall not exceed 60% of the actual capital expenditure on the Project and capitalized in the books of accounts of the Concessionaire as certified by the Statutory Auditor.
  - For the avoidance of doubt, it is hereby clarified that the Total Project Cost shall not include the cost of any advertising activity likely to be undertaken by the Concessionaire at the Project Site(s).
- **"Transfer Date"** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;
- **"User"** means a person who uses or intends to use the Project or any part

thereof in accordance with the provisions of this Agreement and Applicable Laws;

- **"Vesting Certificate"** shall have the meaning as set forth in Clause 32.4; and
- **"WPI"** means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

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

<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:</p> <p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>	<p>THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ... day of 2022 hereunto affixed in the presence of (.....) Director, who has signed these Presents in token thereof and, Company Secretary/Authorized Officer who has countersigned the same in token thereof:</p> <p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>
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In the presence of:

1.

2.

## **Schedules**

**SCHEDULE – A**

*(See Clause 10.1)*

**SITE(s) FOR THE PROJECT**

**1 The Site(s)**

- 1.1 Site(s) for the Project shall include the land, buildings, and structures, as described in Annex-I of this Schedule-A.
- 1.2 An inventory of the Site including the land, buildings, structures, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for construction of works specified in the Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of Clause 10.3.6 of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

**Annex - I****(Schedule-A)****Site(s) for the Project****1. Site(s)**

The Site(s) for the Project is described in detail in Table 1 below:

Table 1: Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
1	V	N049	Solaiappan Street	200	PCT	13.118921	80.287263
2	V	N049	Appasamy Street	150	PCT	13.121661	80.286974
3	V	N049	G.A Road (Urinal)	100	Standalone Urinal	13.119494	80.290370
4	V	N049	West Kalandabam Road Near Cotton City (Urinal)	80	Standalone Urinal	13.117980	80.289833
5	V	N049	West Kalandabam Road Near Cotton City (Urinal)	80	Standalone Urinal	13.115644	80.289474
6	V	N049	Kalandabam Modular Toilet	40	Modular Toilet	13.115682	80.289575
7	V	N049	Singara Garden 4th Lane	200	PCT	13.113767	80.289514
8	V	N049	West Kalandabam New	50	Standalone Urinal	13.114970	80.291951
9	V	N050	NRT Park	80	PCT	13.105231	80.295356
10	V	N050	East Madha Junction (New Urinals)	50	Standalone Urinal	13.107365	80.295362
11	V	N050	North Madha Koil Street Extn. (Jn Of East Madha Koil Street)	250	PCT	13.109617	80.296280
12	V	N050	East Madha Koil 10th Lane (Dead end side)	300	PCT	13.110983	80.297163
13	V	N050	Venkatesan Street	300	PCT	13.112422	80.296045
14	V	N050	Market Lane	250	PCT	13.115768	80.293928
15	V	N050	Thambu Lane	200	PCT	13.116631	80.295132
16	V	N050	G.M. Pettai	600	PCT	13.115239	80.296578
17	V	N050	Sheak Masthiri Street-Modular Toilet	40	Modular Toilet	13.118770	80.295699
18	V	N050	A.J. Colony Main Road	150	PCT	13.119493	80.295145
19	V	N050	Suryanarayana Street (Kamaraj Park)	150	PCT	13.117908	80.293129
20	V	N050	S.N Chetti Modular Toilet - 1	40	Modular Toilet	13.120925	80.293620
21	V	N050	S.N Chetti Modular Toilet-2	40	Modular Toilet	13.119221	80.293448
22	V	N050	S.N Chetti Modular Toilet-3	40	Modular Toilet	13.118358	80.293178
23	V	N050	S.N chetty Street (Kamaraj park)	300	PCT	13.117621	80.293153
24	V	N051	Narayanappan Garden 8th Lane	250	PCT	13.111918	80.286903
25	V	N052	Jagannathan Street	400	PCT	13.111052	80.288486
26	V	N052	M.C. Road	200	PCT	13.109753	80.287806

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
27	V	N052	Robinson Ground	150	PCT	13.109020	80.287341
28	V	N052	West Cemenry Road Urinals	50	Standalone Urinal	13.112461	80.282695
29	V	N061	Gandhi Irwin Road (Urinal)	50	Standalone Urinal	13.076146	80.259787
30	V	N061	Gandhi Irwin Road	200	PCT	13.076664	80.260078
31	V	N061	Gandhi Irwin Road	250	PCT	13.076813	80.260321
32	V	N061	Gandhi Irwin Road (Rotary)	150	PCT	13.077927	80.262803
33	V	N061	Langs garden Road (Moorthy Street)	200	PCT	13.074745	80.265420
34	V	N061	Chinnakulandai lane	200	PCT	13.075706	80.264798
35	V	N061	Chinnakulandai lane Bath room	120	Standalone Bath room	13.075688	80.264313
36	V	N061	Whannels Road (Modular Toilet)	40	Modular Toilet	13.077213	80.263990
37	V	N061	LG Road	200	PCT	13.073619	80.265784
38	V	N061	Ayyasamy Road	400	PCT	13.072855	80.264569
39	V	N061	Adthinar Salai (Modular Toilet)	40	Modular Toilet	13.072386	80.263304
40	V	N061	Transport lane	300	PCT	13.070358	80.263985
41	V	N061	Transport lane-1	50	Standalone Bath room	13.069802	80.264074
42	V	N061	Transport lane-2	50	Standalone Bath room	13.069534	80.263969
43	V	N061	Transport lane-3	50	Standalone Bath room	13.069332	80.264111
44	V	N061	Transport lane-4	50	Standalone Bath room	13.068985	80.263888
45	V	N061	Transport lane-5	50	Standalone Bath room	13.068506	80.263972
46	V	N061	Rukkumani Lakshmipathy Ammaiyar Salai (Urinal)	50	Standalone Urinal	13.066577	80.260715
47	V	N061	Santhosh Nagar (Varatharajapuram)	200	PCT	13.077715	80.255888
48	V	N061	Gengu (R) Subway (Road East)	200	PCT	13.075745	80.252220
49	V	N061	Subway Service Road (Gopalsamy Nagar)	200	PCT	13.075602	80.252125
50	V	N061	Rangachari Street (Sami(R)Puram)	200	PCT	13.073552	80.254552
51	V	N061	Egmore High Road	200	PCT	13.075030	80.255373
52	V	N061	Tamil Salai	250	PCT	13.073970	80.257177
53	V	N061	Pontheon Road (Urinals)	50	Standalone Urinal	13.068700	80.256237
54	V	N061	Ethiraj Line Park	80	PCT	13.066445	80.257453
55	V	N061	Mayor Sundarao Park	120	PCT	13.066005	80.260763
56	V	N062	West Koovam River Road (New Urinals)	50	Standalone Urinal	13.079259	80.268840
57	V	N062	East Coovum River Road	250	PCT	13.078148	80.271660
58	V	N062	Navalar Nedunchiyan Nagar	200	PCT	13.077646	80.272489
59	V	N062	New Balakrishnan Street	120	Standalone Bath room	13.077901	80.268454
60	V	N062	Koovur Vaithiya Nathan Street	200	PCT	13.078090	80.267092

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
61	V	N062	Laffond Street	200	Modular Toilet	13.075011	80.272225
62	V	N062	Pumping Station Road (Opposite to Zoin Chruch)	150	PCT	13.074795	80.271853
63	V	N062	Pumping Station Road	200	PCT	13.074356	80.271744
64	V	N062	May Day Playground	50	PCT	13.074431	80.272660
65	V	N062	May Day Park	100	PCT	13.072748	80.273334
66	V	N062	Ritchie Street	250	PCT	13.072456	80.272372
67	V	N062	Govindan Street	250	PCT	13.071797	80.271815
68	V	N062	West Koovam River Road (Modular Toilet)	40	Modular Toilet	13.071329	80.268998
69	V	N062	West Koovam River Road	200	PCT	13.073280	80.267318
70	V	N063	Adhithanar Lane	200	PCT	13.069339	80.265553
71	V	N063	South Koovam Road	250	PCT	13.067202	80.263836
72	V	N063	South Koovam Road (New Urinals)	50	Standalone Urinal	13.067685	80.267152
73	V	N063	Dams Road	300	PCT	13.069844	80.269703
74	V	N063	G.P. Road (Modular Toilet)	40	Modular Toilet	13.065769	80.267859
75	V	N063	G.P. Road (New Urinals)	50	Standalone Urinal	13.064066	80.267418
76	V	N063	Kalimanpuram	250	PCT	13.064025	80.267846
77	V	N063	Mohan Dass Road	150	PCT	13.059407	80.268285
78	V	N063	Lord Govindaraj Nagar	300	PCT	13.059617	80.267683
79	V	N063	G.P. Road (Modular Toilet)	40	Modular Toilet	13.058983	80.265528
80	V	N063	Gopal Dass Road	200	PCT	13.061349	80.268876
81	V	N063	Veeranpuram	200	PCT	13.059840	80.270738
82	V	N063	Link Road (Modular Toilet)	40	Modular Toilet	13.063737	80.261230
83	V	N063	Link Road (Urinals)	50	Standalone Urinal	13.066799	80.268076
84	V	N063	Langs Garden Road	300	PCT	13.068731	80.268545
85	V	N058	New Moor Market Road (Near Railway Colony)	200	PCT	13.090149	80.270227
86	V	N058	New Moore Market Road, Near Thideer Nagar	200	PCT	13.090983	80.271305
87	V	N058	Railway Colony	250	PCT	13.091981	80.271642
88	V	N058	Sydenhams Road, Near Ripon building	250	PCT	13.087501	80.269817
89	V	N058	My Ladies Park	250	PCT	13.086877	80.271458
90	V	N058	Allikulam Link Road	250	PCT	13.082693	80.272422
91	V	N058	Allikulam (New Urinals)	50	Standalone Urinal	13.082418	80.273148
92	V	N058	Rajamuthaiah Salai (Near Ripon Building)	200	PCT	13.082215	80.270922
93	V	N058	Naval Hospital Road, Near NH 2nd lane	200	PCT	13.083853	80.266921
94	V	N058	Stringer Street	200	PCT	13.082954	80.265930
95	V	N058	E.K. Guru St.	150	PCT	13.085609	80.269345



Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
96	V	N058	Depot Street	150	PCT	13.090001	80.269099
97	V	N058	Narayana Guru Salai	200	PCT	13.090062	80.264996
98	V	N058	AP Road	200	PCT	13.090428	80.259017
99	V	N058	Purasaiykkam High Road (Urinals)	50	Standalone Urinal	13.086940	80.258265
100	V	N058	Narayana Guru Salai-1	200	PCT	13.087906	80.261179
101	V	N058	E.V.K. Sampath Salai (New Urinals)	50	Standalone Urinal	13.085821	80.262973
102	V	N058	Whannels Road	150	PCT	13.078905	80.263302
103	V	N058	Kannappan Thidal Community Hall	100	PCT	13.090414	80.270365
104	V	N059	South Mint Street	150	PCT	13.083240	80.278008
105	V	N059	Nainiappan Street	150	PCT	13.084030	80.278923
106	V	N059	Nainiappan Street (Near MA Jacob)	150	PCT	13.084608	80.279232
107	V	N059	Rattan Bazar Road	200	PCT	13.085869	80.280942
108	V	N059	Fazer Bridge Road - Modular Toilet	40	Modular Toilet	13.085585	80.282729
109	V	N059	Frazer Bridge Road	150	PCT	13.085419	80.283706
110	V	N059	Broadway Bus Stand Inside (South Side)	200	PCT	13.086749	80.284033
111	V	N059	Broadway Bus Stand Middle	200	PCT	13.086984	80.284078
112	V	N059	Broadway Bus Stand North	200	PCT	13.087922	80.283993
113	V	N059	N.S.C. Bose Road	200	PCT	13.088372	80.282212
114	V	N059	V.O.C. Salai (Near Blue Star)	250	PCT	13.088322	80.275244
115	V	N059	V.O.C. Salai Near Central	200	PCT	13.083081	80.276191
116	V	N059	N.S.C. Bose Road Urinals	80	Standalone Urinal	13.088486	80.281933
117	V	N059	N.S.C. Bose Road (New Urinals)	50	Standalone Urinal	13.088472	80.281957
118	V	N059	Isak Street	100	Standalone Urinal	13.083612	80.276944
119	V	N059	Evening Bazar Road	50	Standalone Urinal	13.085560	80.279891
120	V	N059	R.G.G.G.H.	300	PCT	13.080064	80.275532
121	V	N059	SM Nagar (Opposite to Gandhi Nagar 7th Street)	200	PCT	13.078403	80.279000
122	V	N059	SM Nagar (Opposite to B Block)	200	PCT	13.078404	80.278817
123	V	N059	S.M. Nagar Children Toilet-1	100	PCT	13.078374	80.278868
124	V	N059	S.M. Nagar (Opposite to Gandhi Nagar 6th Main Road)	200	PCT	13.078439	80.277650
125	V	N059	S.M. Nagar Near Central Bridge	200	PCT	13.078971	80.274935
126	V	N059	Pallavan Salai	200	PCT	13.076738	80.276364
127	V	N059	S.M. Nagar Children Toilet-2	100	PCT	13.078370	80.279904
128	V	N059	SM Nagar (Opposite to Middles School)	200	PCT	13.078393	80.279825
129	V	N059	S.M. Nagar Children Toilet-3	100	PCT	13.078358	80.280366
130	V	N059	S.M. Nagar Near Anna Salai Main Road	200	PCT	13.078386	80.281022
131	V	N054	Wood Warf 1 street	250	PCT	13.095784	80.274353

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
132	V	N054	V.O.C.Salai	200	PCT	13.096303	80.275100
133	V	N054	PKG 3rd lane	150	PCT	13.096154	80.276586
134	V	N054	V.O.C. Modular Toilet	40	Modular Toilet	13.098539	80.275149
135	V	N054	Wood Warf 1st Lane	150	PCT	13.099175	80.274156
136	V	N054	V.O.C. Salai (Opposite to Padmanaban Theater)	200	PCT	13.100460	80.274897
137	V	N054	Karnish Nagar (Urinals)	50	Standalone Urinal	13.104132	80.276786
138	V	N054	Mint Street (Ladies Toilet)	150	PCT	13.104933	80.279972
139	V	N054	Mint Street (Opp. To Crown Theatre) Gents	150	PCT	13.105004	80.279984
140	V	N057	Anna Pillai Street Near Workshop	150	PCT	13.095184	80.276479
141	V	N057	Jakkapuram	300	PCT	13.090726	80.274703
142	V	N057	Adhi Andhra Colony	100	PCT	13.093378	80.274693
143	V	N057	Kalyanapuram 8th Street	100	PCT	13.094397	80.274263
144	V	N057	Kalyanapuram 1st Street	350	PCT	13.093987	80.274974
145	V	N057	Water Basin Street	100	PCT	13.093908	80.276298
146	V	N057	Davidson Street	100	PCT	13.092621	80.285629
147	V	N057	Anna Pillai Street	150	PCT	13.091378	80.285282
148	V	N057	Stinger street	150	PCT	13.091185	80.285133
149	V	N057	South Market Kothalchavadi (Urinals)	50	Standalone Urinal	13.090584	80.285239
150	V	N057	Parthiban Street	100	PCT	13.090963	80.283446
151	V	N057	VOC Salai	150	PCT	13.093753	80.275104
152	V	N055	Barracks Street	200	PCT	13.103178	80.283909
153	V	N055	Barracks Playground	50	Standalone Urinal	13.104073	80.284195
154	V	N055	Varadhaman Koil Street	250	PCT	13.099310	80.280878
155	V	N060	Narayanappa Street	250	PCT	13.096949	80.291750
156	V	N060	Venkata Lingappa Street	200	PCT	13.098653	80.292729
157	V	N060	Beach Road 4th Street (Modular Toilet)	50	Modular Toilet	13.099267	80.292701
158	V	N060	Kandappa Street	150	PCT	13.100791	80.293411
159	V	N060	Rajaji Salai (Clybettry)	200	PCT	13.100524	80.294207
160	V	N060	Rajaji Salai (Parrys Corner)	100	PCT	13.088882	80.290554
161	V	N060	Rajaji Salai-1	300	PCT	13.080401	80.289183
162	V	N060	Rajaji Salai, Near Sathya Nagar	1000	PCT	13.074688	80.287426
163	V	N060	Rajaji Salai, Near Sathya Nagar-1	300	PCT	13.074424	80.287308
164	V	N060	Rajaji Salai, Near Sathya Nagar-2-Girls	200	PCT	13.074464	80.287079
165	V	N060	Rajaji Salai, Near Sathya Nagar-3 Boys	200	PCT	13.074507	80.286667
166	V	N060	Double Road	150	PCT	13.085359	80.288823
167	V	N060	Double Road-1	50	Standalone Urinal	13.085304	80.288765

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
168	V	N060	N.S.C. Bose Road	150	PCT	13.088473	80.288075
169	V	N060	N.S.C. Bose Road - Modular Toilet	40	Modular Toilet	13.088591	80.286828
170	V	N060	N.S.C. Bose Road	50	Standalone Urinal	13.088604	80.287545
171	V	N052	Cementry Road	200	PCT	13.108972	80.286997
172	V	N052	Anna Park	150	PCT	13.108111	80.288975
173	V	N052	Anna Park 1	100	PCT	13.107142	80.287850
174	V	N052	Anna Park Modular Toilet	40	Modular Toilet	13.107179	80.287900
175	V	N052	Anna Park Ladies Modular Toilet	40	Modular Toilet	13.108249	80.288113
176	V	N052	Anna Park Ladies Toilet	100	PCT	13.108288	80.288114
177	V	N052	Rope Godown Street, Royapuram	150	PCT	13.108217	80.289589
178	V	N052	Dobikanana	150	PCT	13.106871	80.289211
179	V	N052	Durai street	200	PCT	13.106643	80.289983
180	V	N052	Masuthi Street - Modular Toilet	40	Modular Toilet	13.107702	80.291107
181	V	N052	N.R.T Road, Royapuram	150	PCT	13.106217	80.291943
182	V	N052	M.S. Kovil street	150	PCT	13.103289	80.290770
183	V	N052	OHS Modular Toilet	40	Modular Toilet	13.103670	80.290295
184	V	N052	OSH Road, Royapuram, Near 5th street	200	PCT	13.104170	80.289043
185	V	N052	OSH Road, Royapuram, Near Jn Office	200	PCT	13.104893	80.287168
186	V	N052	M.C. Road Modular Toilet	40	Modular Toilet	13.105640	80.286453
187	V	N052	Model Line 8th Street, Royapuram	200	PCT	13.108278	80.284725
188	V	N052	Model Line 1st Street, Royapuram	150	PCT	13.108597	80.283694
189	V	N053	Dr. Vijayaragavalu Salai	100	PCT	13.109932	80.280135
190	V	N053	Kannan Street (S.No.1-12)	150	PCT	13.113784	80.277051
191	V	N052	Old Jail Road Inside Stanley	200	PCT	13.105121	80.283943
192	V	N056	Ibrahim Salai - Modular Toilet	40	Modular Toilet	13.103089	80.289949
193	V	N056	Ibrahim Salai	50	Standalone Urinal	13.103099	80.289923
194	V	N056	Ibrahim Salai	200	PCT	13.104197	80.287076
195	V	N056	BRN Garden	200	PCT	13.101811	80.286452
196	V	N056	Asirvathapuram	150	PCT	13.099304	80.286425
197	V	N056	Amman Kovil Street	40	Modular Toilet	13.097726	80.286033
198	V	N056	Old Jail Road Modular Toilet	40	Modular Toilet	13.104578	80.286108
199	V	N053	VOC Salai	200	PCT	13.102822	80.274056
200	V	N053	Andhra Park (VOC Salai)	200	PCT	13.103058	80.273498
201	V	N053	B.B. Road (Near Zone-V)	200	PCT	13.104038	80.274488
202	V	N053	Canal Street (Stanly Nager 6th Street)	200	PCT	13.108152	80.272036

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
203	V	N053	C.B. Road	150	PCT	13.107955	80.272626
204	V	N053	C.B Road Near N.N. Nagar	150	PCT	13.109992	80.273593
205	V	N053	Stanly Nagar 6th Street (Canal Street)	200	PCT	13.110039	80.272523
206	V	N053	Stanly Nagar 5th Street	200	PCT	13.110032	80.271308
207	V	N053	C.B Road Near Motor Room	150	PCT	13.106294	80.272727
208	V	N053	P.P Amman Koil Street (East) Jn of 7th street	200	PCT	13.107575	80.273984
209	V	N053	P.P Amman Koil Street (6th)	200	PCT	13.107589	80.273978
210	V	N053	P.P. Amman Koil Street (4th)	200	PCT	13.107039	80.274244
211	V	N053	P.P. Amman Koil Street (2nd)	200	PCT	13.106321	80.274527
212	V	N053	Kathbada Main Road (Opp to New Labour Lane West)	200	PCT	13.106091	80.275533
213	V	N053	New Labour Lane (Park Opposite)	150	PCT	13.105976	80.275722
214	V	N053	Labour Lane	200	PCT	13.105479	80.275924
215	V	N053	Kathbada Main Road (Opp to New Labour Lane East)	200	PCT	13.106421	80.276199
216	V	N053	Kathbada main Street	200	PCT	13.106774	80.276892
217	V	N053	Ramdas Nagar	150	PCT	13.108781	80.277024
218	V	N053	Ramdas Nagar	200	PCT	13.108661	80.277153
219	V	N053	Kathivakkam High Road	150	PCT	13.107123	80.279697
220	V	N053	Pensioners 3rd Street	200	PCT	13.108825	80.279108
221	V	N053	T.H Service Road	150	PCT	13.106750	80.279895
222	V	N053	Srinivasapuram 2nd Street	200	PCT	13.113060	80.276107
223	V	N053	Bojaraja Nagar Main Street (School)	150	PCT	13.111338	80.276969
224	V	N053	Mint Bus Depot	350	PCT	13.105840	80.280793
225	V	N053	North Wall Road (New Bus Stand)	200	PCT	13.104037	80.276134
226	V	N053	Corona Toilet	150	PCT	13.105023	80.278040
227	V	N057	Kalyanapuram	150	PCT	13.093898	80.274806
228	VI	N064	Nermai Nagar 1st Street	200	PCT	13.124867	80.222089
229	VI	N065	G.K.M Colony 1st Main Road	200	PCT	13.111407	80.216441
230	VI	N066	S.R.P. Koil North Kamarajar Nagar	200	PCT	13.121751	80.232661
231	VI	N067	Jaganathan Salai	300	PCT	13.112047	80.232707
232	VI	N068	Maduraisamy Madam Street	100	PCT	13.115990	80.239020
233	VI	N068	S.R.P. Koil Street (North)	150	PCT	13.118796	80.232007
234	VI	N068	Pallavan Salai Opposite to Burial	250	PCT	13.122136	80.238019
235	VI	N068	Thillai Nayagam Pillai 2nd Street	200	PCT	13.113781	80.236163
236	VI	N069	Madhavaram High Road	150	PCT	13.119478	80.242616
237	VI	N069	Thikkakulam Dobi Kanna	150	PCT	13.103955	80.242326
238	VI	N069	Anderson Road Near Bus Depot	150	PCT	13.098106	80.242246
239	VI	N069	Ponnuvelpuram	150	PCT	13.101895	80.243068
240	VI	N070	Chinnaiah Lane (Concrete)	200	PCT	13.106992	80.255344
241	VI	N070	Perambur High Road	200	PCT	13.108144	80.248714

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
242	VI	N070	Murasoli Maran Park	200	PCT	13.108551	80.242491
243	VI	N070	Melpatti Ponnappan Street	150	PCT	13.114884	80.252012
244	VI	N070	Tank Street	150	PCT	13.109745	80.243513
245	VI	N070	Chengan Street	150	PCT	13.107498	80.253392
246	VI	N070	M.H Road CPS School Road	200	PCT	13.110562	80.243498
247	VI	N071	Sasthri Nagar Main Road	150	PCT	13.104816	80.245461
248	VI	N071	Semathamman Colony Main Street	150	PCT	13.106547	80.244287
249	VI	N071	Perambur High Road (Rajiv Gandhi Nagar)	150	PCT	13.106231	80.242761
250	VI	N071	Rajiv Gandhi Nagar (Children)	100	PCT	13.106173	80.242683
251	VI	N071	Brisly Nagar 5th Street	200	PCT	13.099723	80.248777
252	VI	N070	Murasoli Maran Park	100	PCT	13.108457	80.242620
253	VI	N072	Narasima Nagar 2nd Street	150	PCT	13.104483	80.266673
254	VI	N072	Sastri Nagar	150	PCT	13.103163	80.265345
255	VI	N072	Ambedkar Nagar 1st Cross Street	300	PCT	13.103565	80.264482
256	VI	N072	Ambedkar Nagar Main Road	200	PCT	13.103134	80.263014
257	VI	N072	Brightons Road	200	PCT	13.107435	80.262484
258	VI	N072	Decastor Road	200	PCT	13.102051	80.266852
259	VI	N072	Kasthuri Bai Colony A Block	300	PCT	13.107134	80.266842
260	VI	N072	Kanniga Puram Playground (Brightons)	200	PCT	13.106811	80.260735
261	VI	N072	Slaughter House Goat PC	150	PCT	13.104263	80.261263
262	VI	N072	Slaughter House Cow PC	150	PCT	13.103271	80.262694
263	VI	N072	VOC Nagar 11th Street	150	PCT	13.106128	80.262417
264	VI	N072	VOC Nagar 1st Cross Street	150	PCT	13.104537	80.262939
265	VI	N072	Powder Mills Road	200	PCT	13.101158	80.267024
266	VI	N073	Strahans Road 1st Street	150	PCT	13.098361	80.252977
267	VI	N073	Ramaswamy Street	200	PCT	13.102179	80.262261
268	VI	N073	New Ferrance Road	150	PCT	13.098937	80.257585
269	VI	N073	Strahans Road Jn. of Otteri Bridge	150	PCT	13.098078	80.251429
270	VI	N073	Alexander Cross Street	200	PCT	13.099341	80.255405
271	VI	N073	Grey Nagar 3rd Street	200	PCT	13.098937	80.265556
272	VI	N073	Gandhi Nagar Pulianthope High	300	PCT	13.098487	80.266955
273	VI	N073	Stephenson Road	150	PCT	13.102527	80.260507
274	VI	N074	Medavakkam Tank Road	150	PCT	13.089640	80.241073
275	VI	N074	Chinnababu Street	100	PCT	13.095627	80.245178
276	VI	N074	Ranganadhapuram Slum Road	200	PCT	13.093464	80.242838
277	VI	N074	Herbal Park (Entrance of Pumping)	100	PCT	13.092973	80.247134
278	VI	N074	Otteri Dumping Ground Link Road	100	PCT	13.093080	80.249416
279	VI	N074	Herbal Park (Otteri Link Road)	100	PCT	13.093862	80.248413
280	VI	N074	Otteri Link Road	200	PCT	13.093718	80.249510
281	VI	N075	Venkatammal Samathi Street	150	PCT	13.091446	80.253249

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
282	VI	N075	S.S.Puram A Block 2nd Street	200	PCT	13.093289	80.250637
283	VI	N075	Edward Park Street	100	PCT	13.096078	80.253064
284	VI	N075	Ponnamman Koil Street	150	PCT	13.092009	80.252627
285	VI	N075	S.S.Puram A Block 10th Street	150	PCT	13.094716	80.250588
286	VI	N075	S.S.Puram B Block 2nd Street	150	PCT	13.091123	80.249194
287	VI	N075	Ponnamman Koil Street Jn.	150	PCT	13.091955	80.252643
288	VI	N075	Venkatammal Samthy Street	150	PCT	13.091403	80.252373
289	VI	N076	Sachidhanandam Street	150	PCT	13.095074	80.257620
290	VI	N076	Ramanujam Garden Street	150	PCT	13.096016	80.257039
291	VI	N076	Angalamman Koil Street	150	PCT	13.095093	80.262573
292	VI	N076	Kalyana Mastri Garden 6th Street	200	PCT	13.093877	80.260165
293	VI	N076	K. M. Garden 1st Street Junction	250	PCT	13.094528	80.261853
294	VI	N076	Conron Smith Nagar Park	80	PCT	13.095186	80.257607
295	VI	N076	Bakthavachalam Park	80	PCT	13.097062	80.262453
296	VI	N076	Angalamman Koil Street (Near Jai Nagar)	120	PCT	13.095780	80.262421
297	VI	N076	Angalamman Koil Street (Near Jai Nagar)	100	PCT	13.095810	80.262400
298	VI	N076	Angalamman Koil Street (Near Anjanaeyar Koil)	150	PCT	13.096422	80.262408
299	VI	N077	Siva Rao Road	150	PCT	13.098638	80.262795
300	VI	N077	Demellows Road (Near Amma Unavagam)	150	PCT	13.094303	80.268288
301	VI	N077	Gurusamy Nagar 10th Street	200	PCT	13.096285	80.265915
302	VI	N077	Munusamy Street	150	PCT	13.096599	80.263208
303	VI	N077	Kumarasamy Rajapuram	150	PCT	13.095453	80.265344
304	VI	N077	Pulianthope 4th Street	150	PCT	13.097291	80.264588
305	VI	N077	Basin Elephant Gate Road	150	PCT	13.096994	80.268606
306	VI	N077	Sundarapuram	200	PCT	13.096217	80.268006
307	VI	N077	Playground 1st Street	250	PCT	13.094213	80.264186
308	VI	N078	Rajamuthaiah Salai (Sydenams Road)	200	PCT	13.090953	80.269488
309	VI	N078	Muthu Gramani Street	200	PCT	13.092682	80.256568
310	VI	N078	Sachidanandam Slum	150	PCT	13.094030	80.257257
311	VI	N069	Kanakkar Street	50	Standalone Urinal	13.111421	80.231533
312	VI	N069	Loco Scheme 1st Road	50	Standalone Urinal	13.108455	80.228143
313	VI	N069	Loco Scheme 1st Road (Amma Unavagam)	80	PCT	13.108599	80.228053
314	VI	N064	G.K.M Burial Ground	150	PCT	13.111519	80.215468
315	VI	N064	Rohini Street, Rajaji Nagar	80	PCT	13.113906	80.211536
316	VI	N064	Srinivasa Nagar 3rd Main Road - School	80	PCT	13.119249	80.206237
317	VI	N064	Srinivasa Nagar 3rd Main Road - Anganwadi	80	PCT	13.119570	80.206228

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
318	VI	N064	P.V. Shanmugam Nagar	80	Standalone Urinal	13.121535	80.205956
319	VI	N064	Srinivasa Nagar 3rd Cross Street	80	Standalone Urinal	13.120392	80.204650
320	VI	N064	Srinivasa Nagar 10th Cross Street	80	Standalone Urinal	13.121308	80.202370
321	VI	N064	Srinivasa Nagar 13th Cross Street	80	Standalone Urinal	13.122013	80.202624
322	VI	N064	Mahaveer Park	80	Standalone Urinal	13.124117	80.204397
323	VI	N065	Anjugam Nagar Park	40	Modular Toilet	13.122270	80.221175
324	VI	N065	Thiruveedhi Amman Koil Street	150	PCT	13.120942	80.218627
325	VI	N065	Poombuhar Nagar Park (Modular Toilet)	40	Modular Toilet	13.120047	80.211175
326	VI	N065	Poombuhar Nagar 1st Main Road (Modular Toilet)	40	Modular Toilet	13.123047	80.212238
327	VI	N065	V.O.C. Park Lakshmi Nagar 3rd Street	80	Standalone Urinal	13.123155	80.209646
328	VI	N065	MK Stalin Pond Park (Modular Toilet)	80	Modular Toilet	13.119664	80.223699
329	VI	N067	Maduraisamy Madam Street (New Urinals)	50	Standalone Urinal	13.117551	80.238731
330	VI	N067	May Sajith Hussain Park	50	Standalone Urinal	13.113387	80.235296
331	VI	N067	Fish Market	50	Standalone Urinal	13.118633	80.232787
332	VI	N067	Thiru Vi Ka Nagar Bus Stand	40	Modular Toilet	13.119744	80.232542
333	VI	N067	Kalaingar Karunanidhi Park	120	PCT	13.122306	80.233139
334	VI	N067	Pallavan Salai (Modular Toilet)	40	Modular Toilet	13.122245	80.238678
335	VI	N067	K.K.R. Avenue Park	80	Standalone Urinal	13.122440	80.239269
336	VI	N070	Madhavaram High Road (New Urinals)	50	Standalone Urinal	13.122383	80.242407
337	VI	N070	Madhavaram High Road (Amma Unavagam)	60	PCT	13.120689	80.242815
338	VI	N070	Ragavan Street (New Urinals)	50	Standalone Urinal	13.112826	80.238929
339	VI	N070	Anderson Road Near Bus Depot (New Urinals)	50	Standalone Urinal	13.098793	80.242097
340	VI	N070	Madurai Street	120	PCT	13.099977	80.237181
341	VI	N068	Division Office - 68	80	PCT	13.113761	80.230451
342	VI	N068	Division Office - 68-1	100	PCT	13.113716	80.230468
343	VI	N068	Jawahar Nagar 2nd Circular Street Park	80	Standalone Urinal	13.113859	80.230195
344	VI	N068	Jawahar Nagar 1st Circular Street Playground	150	PCT	13.113799	80.228856
345	VI	N068	Jawahar Nagar 1st Circular Street Indoor Stadium	150	PCT	13.113657	80.229114
346	VI	N068	Star Playground (Gym)	80	PCT	13.112200	80.228834
347	VI	N068	Star Playground	80	Standalone Urinal	13.111921	80.228571

Site Locations in Zone - V, VI, and IX (Marina only) of Greater Chennai Corporation							
S No.	Zone	Ward	Toilet Location	Area (sq. ft)*	Toilet Type	Latitude	Longitude
348	VI	N068	Jawahar Nagar Park 5th Main Road	80	Standalone Urinal	13.111032	80.229005
349	VI	N068	Periyar Nagar Park 20th Street	80	Standalone Urinal	13.114621	80.220032
350	VI	N068	S.R.P. Colony 6th Street	80	Standalone Urinal	13.118057	80.224308
351	VI	N068	Chennai Middle School K.C. Thottam	200	PCT	13.118373	80.231131
352	VI	N066	Periyar Nagar Bus Depot	50	Standalone Urinal	13.116551	80.224067
353	VI	N076	Venkatammal Samathy Street (Children)	100	PCT	13.091363	80.252724
354	VI	N076	K.M. Garden 6th Street - 1(Bath room)	50	Standalone Bath room	13.093937	80.259993
355	VI	N076	K.M. Garden 6th Street - 2(Bath room)	50	Standalone Bath room	13.093960	80.260365
356	VI	N076	K.M. Garden 6th Street - 3(Bath room)	50	Standalone Bath room	13.094022	80.260875
357	VI	N076	K.M. Garden 1st Street (Bath room)	50	Standalone Bath room	13.094503	80.261020
358	VI	N076	Strahans Road	150	PCT	13.097293	80.259526
359	VI	N076	Patel Park	100	PCT	13.096229	80.253115
360	VI	N071	Ayyanavaram T.B. Hospital (New Urinals)	50	Standalone Urinal	13.096956	80.245491
361	VI	N071	Chengan Street Old	150	PCT	13.107510	80.253460
362	IX	N114	Swimming Pool	400	PCT	13.060176	80.283200
363	IX	N114	Labour Statue	250	PCT	13.063599	80.283811
364	IX	N114	MGR Memorial Hall Back side	400	PCT	13.065120	80.284115
365	IX	N116	Thiruvalluvar Statue	200	PCT	13.054293	80.281848
366	IX	N116	Slumboard	200	PCT	13.051311	80.281366
367	IX	N121	Opposite to QMC	200	PCT	13.044938	80.280375
368	IX	N121	Opposite to QMC	200	PCT	13.041625	80.279925
369	IX	N126	Loop Road	300	PCT	13.033234	80.279684
370	IX	N125	Loop Road	150	PCT	13.022638	80.276532
371	IX	N125	Loop Road	200	PCT	13.025165	80.269491
372	IX	N114	Anna Swimming Pool	150	PCT	13.067252	80.284642

\* The Area in square feet mentioned hereinabove is indicative and is based on a reasonable estimate of the footprint of the building. This figure may not necessarily indicate the plot area which could, in just a couple of sites, be larger than the footprint area. The Authority expects the Concessionaire to conduct its own due diligence to assess and estimate the area and absorb all the risks arising therefrom, as part of its roles and responsibilities under this Concession.



## **SCHEDULE – B**

(See Clause 2.1)

### **DEVELOPMENT OF THE PROJECT**

1 **Development of the Project**

Development of the Project shall include construction of the Project as described in this **Schedule-B** and in **Schedule-C**.

2 **Project Units**

Augment the existing public toilets by constructing and renovating toilets and related facilities in 372 locations (on **design, build, finance, operate and transfer (the "DBFOT Annuity" or "Hybrid Annuity")** basis to:

- include Project as described in Annex-I of this Schedule-B and Annex-I of Schedule-C.
- be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-I of Schedule-D.

**Annex – I**  
**(Schedule-B)**

**Description of the Project**

- 1** Repair, renovation, revamp, refurbishment etc., of existing toilets, standalone urinals and modular toilets and for building new toilets at locations that the Authority may specify, and for providing certain special facilities in few of these toilet locations, and for operating and maintaining these facilities and to get all of these under a centralized control and monitoring system, under a Design, Build, Finance, Operate and Transfer framework of Concession with GCC for site locations in Zone 5, 6 and 9 (Marina only) of GCC.
  
- 2** **Project Facilities**  
Project Facilities shall be constructed in conformity with Annex-I of Schedule- C.
  
- 3** **Specifications and Standards**  
The Project Facilities shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

## SCHEDULE - C

(See Clause 2.1)

### PROJECT FACILITIES

#### 1 **Project Facilities**

##### Scope of Services for the Project Facilities

The Scope of work will include Design, Build, Finance, Operate, Maintain and Transfer of Public Convenience Toilets (PCTs) (with some of them having Bath room facilities), Standalone Urinals, Standalone Modular Toilets, Standalone Bath rooms and other special facilities in identified locations in Zones 5, 6 and 9 (Marina only) of Greater Chennai Corporation under a Public Private Partnership basis for the term of the Concession Period.

#### 2 **Overall Scope of Services**

- 2.1. The Concessionaire has to design, build, install, commission operate, maintain and eventually transfer the Project Facilities as per the design and maintenance guidelines given in this Agreement. The Concessionaire has to build the Project Facilities including the Centralized Control and Monitoring System in best of class manner so that the Facilities meets the design and operations requirements as well as support the Concessionaire to comply with the service level requirements and thereby, the Key Performance Indicators.
- 2.2. The Authority expects the Concessionaire to note that while scrutiny and approvals are given by Authority for the Project Facilities, the Concessionaire shall ensure standard design theme across all the locations envisaged across the Project Facilities. The façade, material design, interior works, fixtures, electrical, should remain of equal standard across all locations. The Concessionaire shall be given the freedom to create a local theme each / group of PCTs to encourage more usage and response.
- 2.3. The Concessionaire shall be responsible, at his own cost, for all the maintenance and repairs of the PCTs, the related assets and its components. The Concessionaire shall also carry out rectification of any defects during the implementation of any component of the PCTs or during the Operations and Maintenance Period.
- 2.4. The electricity and water charges for construction, running and maintenance of the Project Facilities shall be secured by and the usage charges behind these resources shall be paid for, by the Concessionaire.

#### 3 **Specific Scope of Services**

- 3.1. The Concessionaire shall repair, renovate, retro-fit, revamp, refurbish and carry out all such activities so as to upgrade the look and quality of the PCTs, Standalone Urinals and Modular Toilets located in the Site, and aggregated as under:

Table 2: Location of PCTs, Standalone Urinals, Standalone Bath rooms and Modular Toilets

	Public Convenience Toilets (PCTs)	of the PCT's, New (redevelopment) requirements are	Standalone Urinals	Standalone Bath rooms	Modular Toilets	Total
Zone 5	170	(28)	26	7	24	227
Zone 6	102	(24)	22	4	6	134
Zone 9 (Marina only)	11	(3)	0	0	0	11
<b>Total</b>	<b>283</b>	<b>(55)</b>	<b>48</b>	<b>11</b>	<b>30</b>	<b>372</b>

- 3.2. Toilets listed under new requirements are those that are either defunct or partially/wholly demolished at the Site location and are therefore, required to be developed as a 'redevelopment' activity on that Site location.
- 3.3. Table 3 below indicates the number of seats or service counters as the case may be, across the different PCTs, Standalone Urinals and Modular Toilets.

Table 3: No of seats / service counters across PCTs, Standalone Urinals. Standalone Bath rooms and Modular Toilets

	Seats in PCTs	Urinals in PCTs	Bath rooms in PCTs	Standalone Urinal counters	Standalone Bath rooms	Seats in Modular Toilets	sub-total
Zone 5	1704	76	253	68	10	48	2159
Zone 6	815	7	119	34	4	9	988
Zone 9 (Marina only)	86	35	2	0	0	0	123
<b>Total</b>	<b>2605</b>	<b>118</b>	<b>374</b>	<b>102</b>	<b>14</b>	<b>57</b>	<b>3270</b>

- 3.4. The toilets have also been surveyed for quality of building, electrical and plumbing infrastructure provisions, accessibility and upkeep. The toilets have been assessed to be of differing standards on these parameters as on date and have, therefore, been broadly classified on the quality parameter as under:

Table 4: Asset Inventorisation – Quality Parameters

Toilet Quality	Good	<ul style="list-style-type: none"> <li>Cleanliness</li> <li>Availability of water</li> <li>Availability of electricity</li> <li>All fittings in working condition</li> <li>Access to the Toilet Complex</li> </ul>
	Bad	<ul style="list-style-type: none"> <li>Building with damages</li> <li>Unclean</li> <li>Non-availability of water/clean water</li> <li>Non-availability of electricity</li> <li>Fittings not working or in damaged condition</li> <li>Inaccessible toilet complex</li> </ul>
	Defunct = New Constructions	<ul style="list-style-type: none"> <li>Inoperative toilets due to multiple reasons irrespective of the good/bad condition of the toilets. For avoidance of doubt,</li> </ul>

		these do not refer to a toilet on an altogether newly identified location, if any.
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- 3.5. The Authority has estimated that the aggregate of 3270 seats/ service counters as the case may be are likely to be classified for major refurbishment (for those that are of bad quality as per categorisation above), minor refurbishment (for those that are of good quality as per categorisation above) and new constructions as per Table 5 below.

Table 5: Seats/ Service counters – indicative classification for Major and Minor refurbishment

Type of Work	PCT	Stand-alone Urinals	Stand-alone Bath rooms	E- Toilet	Grand Total
Refurbishment (Major) of Toilets	283	56	61	42	442
Refurbishment (Minor) of Toilets	1806	96	258	6	2166
New construction of Toilets	516	68	69	9	662
<b>Grand Total</b>	<b>2605</b>	<b>220</b>	<b>388</b>	<b>57</b>	<b>3270</b>

- 3.6. The Authority however expects the Concessionaire to conduct its own due diligence to assess and estimate the numbers and absorb all the risks arising therefrom, as part of its roles and responsibilities under this Concession.
- 3.7. The Authority has estimated that about 55% of the PCTs in Zone 5 and about 45% of the PCTs in Zone 6 already have bath room facilities in them. The Concessionaire is however expected to reconfirm these figures and thereafter, provide such special facilities like bath room, washing area, women/child care room and waiting area for atleast 60% of the PCTs listed above.
- 3.8. The Centralized Control & Monitoring System and Mobile App has to be developed by the Concessionaire for monitoring the Public Convenience Toilets lounges.
- 3.9. The Concessionaire shall not collect user charges from public in any manner as the toilet facilities shall be provided to the public free of cost.

#### 4. Specific Scope of Services – advertising activity

- 4.1. The Concessionaire shall be encouraged to develop revenue generation plan by using side walls, façade interiors, and all such permissible areas of the Unit, for planning, designing, engineering, financing, construction, operations and maintenance of advertisement opportunities in the Project Unit(s) subject to securing all permits and approvals and prior approval from the Authority under the provisions of the Concession Agreement.
- 4.2. The Concessionaire is encouraged to explore innovative approaches under advertisement activities.. Provided that such opportunities identified by the Concessionaire shall be scrutinized in detail by the Authority for necessary compliance such as legal, statutory laws, guidelines, council orders, etc. The Authority may, upon finding such plans to be compliant, accord the approval for the same. The Concessionaire has to seek specific approval for each Unit identified for advertisement activities before construction of these facilities at that Unit. The fees applicable for advertisements, rentals and charges etc., as may be applicable under extant rules and regulations will be

leviable and the Concessionaire shall agree and undertake to comply with these statutory and non-statutory obligations.

4.3. Deleted

4.4. The Concessionaire may undertake any advertising activity any time during the Concession Period provided that due approvals from the Authority and from Statutory and Non-Statutory agencies, as applicable are secured behind any or all of the advertisement activities.

Provided that the Concessionaire may also decide not to undertake any advertising activity.

5. Project Facilities to be completed on or before Commercial Operation Date have been described in Annex-I of this Schedule C.

**Annex-I****(Schedule-C)****Project Facilities****a. Project Facilities**

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the Project.

**b. Description of Project Facilities**

Each of the Project Facility is briefly described below:

Table 6: Description of Project Facilities

<b>Facilities</b>	<b>Description</b>
a. Toilets	Repair, renovation, revamp, and refurbishment of all the Toilets listed in in Annex – I (Schedule A) to standards as stipulated in Specifications and Standards, Annex – I Schedule D.
b. Special Facilities in Toilets	Provide certain special facilities in atleast 60% of the Toilets listed in Annex – I (Schedule A) like bath room, washing area, women/child care room and waiting area.
c. Urinals and Modular Toilets	Repair, renovation, revamp, and refurbishment of all the Urinals and Modular Toilets in in Annex – I (Schedule A) to standards as stipulated in Specifications and Standards, Annex – I Schedule D
d. Central Control Monitoring Systems (CCMS)	Develop, install and maintain control systems and related infrastructure for effective monitoring of the facilities.

**SCHEDULE – D**

(See Clause 2.1)

**SPECIFICATIONS AND STANDARDS**

**1 Specification and Standards for the Project**

The Concessionaire shall comply with the Specifications and Standards set forth in Annex- I of this Schedule-D for construction of the Project.



**Annex - I****(Schedule-D)****Specifications and Standards for the Project**

- 1 Standards to apply have been listed in Table 7 below. However, the applicable Standards shall not be limited to the following, and shall include the amendments to these Standards if any from time to time.

Table 7: Standards that apply for the Project

SI #	Standards as specified in	Description
1	Manual on Sewerage and Sewage Treatment Systems CPHEEO, MoUD, 2013	Outlines the norms for toilets, both public and community, and for the facilities to be provided in each of these Outlines the methods and processes to be followed for O&M of the latrines and toilets that are part of any public convenience facility
2	Guidelines on Community Toilets 1995	Provides norms for size of toilet cubicle, bath room, urinal and washing areas
3	Model Building Bye-laws, MoUD, 2016	Outlines the general building requirements and services, codes, standards and guidelines for building toilets in public areas
4	SP 7- National Building Code of India BIS 2016	Deals with guidelines for regulating the building construction activities. This code also reflects the state-of-the-art and contemporary applicable international practices.
5	Urban and Regional Development Plans, Formulation & Implementation Guidelines, MoUD, 2014	Deals with aspects related to locations, signage, maintenance and cleaning of public toilets
6	Harmonised Guidelines on Norms and Standards for Barrier Free Environment for Persons with Disability and Elderly Persons, MoUD, 2016	Outlines detailed norms for different elements of a toilet construction for persons who are differently abled.
7	Guidelines for Swachh Bharat Mission (Urban) 2014	Sanitation requirements and Norms for provisions of toilets, separately for Public and for Community Toilets
8	National Building Code	For structural design and stability of the toilets
9	Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013	Deals with occupational health and safety of the staff associated with O&M of the toilet facility
10	TN Government Gazette Extraordinary, January 31, 2019. Notifications by the Government. MAWS Department. Amendments to the Chennai Municipal Corporation Licensing of Hoardings and Levying and Collection of Advertisements Tax Rules 2003; Read together with WP No 6913 of 2018 dated 11-03-2020, Order passed by Honourable High Court	Deals with contours, permissions, approvals, forms and formats behind licensing of hoardings and levy and collection of advertisement related fees, and rentals.

	Madras and Chennai City Municipal Corporation Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules 2003	
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**2. Specifications to apply, not limited to the following:**

**2.1.** The overall design and operations related specifications for Project shall be structured to achieve the following objectives:

- a. To ensure adequate privacy, comfort, convenience and confidence for women, child, older persons, and persons with disabilities friendly in usage of the Project Facilities
- b. To ensure and uphold the dignity, health, and safety of users as well as the maintenance staff
- c. To ensure environmental sustainability – lower the carbon footprint, the better shall be the design and operations.
- d. To handle digital technologies, sensors, and automation and such other enablers effectively for efficient operations and maintenance of the Project Facilities
- e. To be able to build climate resilient infrastructure that shall withstand adverse impact of flood, water stagnation, rising dampness etc., protect the structure and help uninterrupted operations of the Project Facilities.
- f. To construct the Project Facilities as per the aspirational parameters of Swachh Bharat Mission Guidelines.

**2.2. Design and Implementation related Specifications - Project**

2.2.1. The design related specifications shall, inter-alia:

- a. Allow for easy cleaning and maintenance, have high resistance for vandalism, and have low maintenance requirements
- b. Adequately address the different sanitation needs of special user groups including women, children, old and infirm, and the differently abled.
- c. Provide for both the average and the peak loading factors
- d. Provide for clean, safe, accessible, convenient and hygienic facility at a level of privacy adequate to perform necessary personal functions
- e. Be in such a way that the internal spaces naturally stay dry
- f. Provide adequate access, safe pedestrian path and including ramps for the differently abled.
- g. Provide for signage and display boards with directions and distances to reach that location. Facility shall be brightly lit, vibrant, aesthetic and pleasing.
- h. Include landscaping, greenery and such aspects are to be provided for and properly implemented and maintained.
- i. Be in such manner that the structure of the building and access (including access control) to the building should be reassuring to Users (especially to women) about safety, privacy and security
- j. Focus special attention for women users in matters related to door locks and latches, window and roof designs, etc. Menstrual hygiene management is also to be given specific importance
- k. Cover solutions for hygiene management (toilet seat sanitizers, health faucets, toilet papers, etc.)
- l. Provide for right mix of Indian and Western closets, Male, Female, LGBTQIA+ and Differently abled users, and these to be built of suitable dimensions

- m. Reckon good quality of plumbing materials and workmanship, floor grading and water drains etc., and these shall be such as to prevent spills, leakages and accumulations whatsoever
  - n. Provide for amenities like drum roll for toilet papers, clothes hook, platforms/shelf, grab bars, soap dispensers, hand dryers, etc., to be considered and provided
  - o. Build in optimal locations for placement of support infrastructure such as biometric attendance for the staffs, customer feedback system(s), surveillance camera, mirrors, sanitary items, etc.
  - p. Ensure that doors and door locks, partitions and bay areas shall be such as to offer adequate privacy, protection and confidence for the users of the facility
  - q. Allow natural air and light to be used to fullest possible as a means of ventilating and lighting the facility. Where needed, mechanical ventilation devices to be fitted.
- 2.2.2. The Concessionaire shall ensure that no damage is caused to existing roads, drainages etc., through implementation activities or through any of its agents, contractors etc.
- 2.2.3. The construction of Project shall not obstruct traffic, pedestrian movement and should be carried out such that there shall be no bottleneck in that area. There shall not be any encroachment upon any premises, road, corridor, pathway or footpath or any part of the area beyond the Site boundary for common use in any manner whatsoever and any such encroachment shall be deemed to be breach of this Agreement making the Agreement liable for cancellation.
- 2.2.4. All Project Units shall also be designed to keep the specific needs of weak and/or senior users so that they feel comfortable and confident in using them. Ramps, grab bars, anti-skid floors etc., shall be considered for a very effective and efficient usage.
- 2.2.5. Sump for municipal water supply and/or bore well(s), and storage tanks to be provided to ensure adequate storage availability and storage.
- 2.2.6. Rain water harvesting and Storm water drainage should be given adequate importance so that water stagnations etc., don't end up compromising the quality and upkeep of the toilets
- 2.2.7. Waste water to be appropriately treated (in septic tanks) as much as feasible at the site itself. Other alternative include, connection to a sewer line and appropriate disposal of septage.
- 2.2.8. Adequate lighting, both inside and outside the facility, at all times, especially during night is absolutely essential. Flood lights/mass lights near toilets can help improve a sense of safety and security with the users especially during night times.
- 2.2.9. The Concessionaire shall secure and provide for separate electricity meters for each of the location and shall also have separate meters for the Project Facilities

and advertisement activity inside each Site location.

- 2.2.10. Advertisements are permitted on 3 (three) exterior walls of the Unit, limited to 40% of exterior wall area and subject to a maximum of 40 square metre per Unit. Advertisements are also permitted in the interiors of the Unit limited to 10% of interior wall area and subject to a maximum of 5 square metre per Unit.
- 2.2.11. Lighting systems should be adequate and all fixtures shall be vandalism proof.
- 2.2.12. Emergency power alternatives, atleast for lighting the main access and usage areas shall be provided so that power failures don't end up compromising the usage and safety of the toilets
- 2.2.13. Waste and refuse bins, appropriately color coded, should be placed at all necessary locations in and around the toilet location. Wastes should be segregated and disposed as per practices in vogue, for example, sanitary napkins shall be disposed only as a bio-medical waste.
- 2.2.14. Good quality wires and fittings should be used for the purposes. Concealed wiring is to be preferred. Energy efficient bulbs and fittings to be given importance.
- 2.2.15. Concessionaire shall be responsible for all aspects relating to design and implementation of the Project and Authority shall not be responsible for any errors, deficiencies, omissions, or consequences of the provision or otherwise of these aspects.
- 2.2.16. Waterless urinals, modular toilets and such other recent technology alternatives to be generously considered and provided for
- 2.2.17. Solar power and such other green energy sources to be generously considered and provided for.
- 2.2.18. The Design shall include provision of a Centralized Control and Monitoring System both in terms of hardware, software and network. The aspects related to operations, customer feedback for each Unit would need to be available through mobile app and for Authority for constant review and corrective actions, as may be required. The Users may also be given the same mobile app where they can share their feedback, grievances, suggestions etc. All such data for monitoring, customer feedback, grievances shall in addition, be integrated through API to the Authority's Integrated Command Control Centre at the Authority's head office.
- 2.2.19. All the Project Facilities shall be geotagged and also be available on open digital search engines such as Google etc. The Concessionaire shall carryout the same and ensure compliance to the same before the commencement of Operations phase.

2.2.20. The Concessionaire shall design the Project such as to achieve and exceed the service requirements as per the maintenance requirements and KPI parameters mentioned in Schedule K to this Agreement.

2.2.21. The CCMS to be designed and developed by the Concessionaire shall be such as to monitor all the duties and obligations of the Concessionaire and to capture and record all parameters, not limited to the KPIs that has been laid out in Schedule K to this Agreement.

**SCHEDULE – E**

(See Clause 4.1.3)

**APPLICABLE PERMITS**

**1 Applicable Permits**

1.1 The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits on or before the Appointed Date.

- a. No Objection Certificates from the Authority
- b. No Objection Certificates from the Highways/TNRDC, as required
- c. Permits for Vehicles and Licenses for drivers
- d. Electrical connection from the state electricity utility
- e. Equipment licenses
- f. Labour related permits
- g. Licenses to work during other than normal working hours
- h. Water supply connection from the state water utility
- i. Licenses if any to operate waste water facilities
- j. Health and Safety certificates
- k. Fire safety clearances, as required
- l. Any and all other permits or clearances required under Applicable Laws.

1.2 Unless otherwise specified in this Agreement, Applicable Permits, as required, relating to environmental protection shall have been procured by the Authority as a Condition Precedent.

**SCHEDULE –F**

(See Clause 9.1)

**PERFORMANCE SECURITY**

GCC

**WHEREAS:**

(A) ..... (the "**Concessionaire**") and the GCC (the "**Authority**") have entered into a Concession Agreement dated ..... (the "**Agreement**") whereby the Authority has agreed to the Concessionaire undertaking development and operation of ..... on Hybrid Annuity Mode, subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of **Rs.\*\*\*\*\* (Rupees\*\*\*\*\* crore)** (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).

(C) We, ..... through our Branch at.....(the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

- 1 The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
- 2 A letter from the Authority, under the hand of an Officer not below the rank Deputy Commissioner (Works) in GCC, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the

Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

- 3 In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
- 4 It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
- 5 The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
- 6 This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
- 7 Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the (first) anniversary of the Appointed Date and unless a demand or claim in writing is made by the Authority on the Bank under this



Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

- 8 Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
- 9 The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
- 10 Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
- 11 This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
- 12 This guarantee shall also be operatable at our Branch at Chennai, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
- 13 The guarantor/bank hereby confirms that it is on SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of GCC, details of which is as under:

S No	Particulars	Details
1	Name of Beneficiary	
2	Name of Bank	
3	Account No.	
4	IFSC Code	

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

SIGNED, SEALED AND DELIVERED

For and on behalf  
of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

## **SCHEDULE – G**

(See Clause 12.1)

### **PROJECT COMPLETION SCHEDULE**

#### **1 Project Completion Schedule**

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

#### **2 Project Milestone-I**

2.1 Project Milestone-I shall occur on the date falling on the 90 th (ninetieth) day from the Appointed Date (the "Project Milestone-I").

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have expended not less than 30% (thirty per cent) of the total capital cost set forth in the Financial Package.

2.3 Prior to the occurrence of Project Milestone -1, the Concessionaire shall have commenced construction of the Project and achieved 30% Physical Progress.

#### **3 Project Milestone-II**

3.1 Project Milestone-II shall occur on the date falling on the 180 th (one hundred and eightieth) day from the Appointed Date (the "Project Milestone-II").

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have expended not less than 50% (fifty per cent) of the total capital cost set forth in the Financial Package.

3.3 Prior to the occurrence of Project Milestone -II, the Concessionaire shall have commenced construction of the Project and achieved 50% Physical Progress

#### **4 Project Milestone-III**

4.1 Project Milestone-III shall occur on the date falling on the 270th (two hundred and seventy) day from the Appointed Date (the "Project Milestone-III").

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced construction of all Project Facilities and expended not less than 70% (seventy five per cent) of the total capital cost set forth in the Financial Package.

4.3 Prior to the occurrence of Project Milestone -III, the Concessionaire shall have

commenced construction of the Project and achieved 70% Physical Progress

**5 Scheduled Completion Date**

5.1 The Scheduled Completion Date shall be the 365th (three hundred and sixty fifth) day from the Appointed Date.

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

**6 Extension of period**

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

**SCHEDULE - H**

**(See Clause 12.2)**

**DRAWINGS**

**1 Drawings**

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

**2 Additional drawings**

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

**Annex - I**

**(Schedule-H)**

**List of Drawings**

The Concessionaire shall furnish, under provisions of Clause 12.2 of this Agreement, including but limited to the following Drawings for each Unit.

1. Detailed design – indicating all the changes that the Concessionaire may contemplate (through repair, renovation, refurbishment, etc.) behind each of the Unit
2. Layout Plan – for all the Units
3. Key Plan – for all the Units
4. Drawings behind the drainage system
5. Drawings behind the water supply system
6. Drawings behind the plumbing and electrical lines for each Unit

## **SCHEDULE – I**

**(See Clause 14.1.2)**

### **TESTS**

#### **1 Schedule for Tests**

- 1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Project, notify the Independent Engineer and the Authority of its intent to subject the Project to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

#### **2 Tests**

- 2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2 for all facilities including advertising activities.
- 2.2 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Project to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3 Structural Test: All civil structures shall be subjected to structural and load testing for compliance of the Project with applicable specifications and standards.
- 2.4 Other Tests: The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.
- 2.5 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.6 Safety review: Safety audit of the Project shall have been undertaken by the Safety Consultant as set forth in Schedule-L, and on the basis of such audit, the Independent Engineer shall determine conformity of the Project Facilities with the provisions of this Agreement.

**3 Agency for conducting Tests**

All Tests set forth in this Schedule-I shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

**4 Completion / Phased Completion Certificate**

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Phased Completion Certificate, as the case may be, in accordance with the provisions of Article 14.

**5 Tests during construction**

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.



**SCHEDULE - J**

**(See Clause 14.2)**

**COMPLETION AND PHASED COMPLETION CERTIFICATES**

**COMPLETION CERTIFICATE**

- 1 I/We, ..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated ..... (the "Agreement"), for development and operation of the .....Project (the "Project") on design, build, finance, operate and transfer (the "DBFOT Annuity or Hybrid Annuity") basis, through.....(Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
  
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the **day of ..... 20**

**SIGNED, SEALED AND DELIVERED**

For and on behalf of

**INDEPENDENT ENGINEER by:**

(Signature)  
(Name)  
(Designation)  
(Address)

**PHASED COMPLETION CERTIFICATE**

I/We,..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement Dated.... (the "Agreement"), for development and operation of the Project (the "Project") on design, build, finance, operate and transfer (the "DBFOT Annuity or Hybrid Annuity") basis through.....(Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement for a phase of the Project as per list of Site locations provided in Table 8 hereinbelow.

Table 8: Phased Completion – Listing of Units

S No.	Zone	Ward	Toilet Location	Toilet Type	Latitude	Longitude	Brief description of the nature of work done (new/major/minor)

The tests have been successfully undertaken to determine the compliance of this phase of the Project with the provisions of the Agreement, and I/We am/are satisfied that the phase of the Project as listed in table hereinabove can be safely and reliably placed in commercial service of the Users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming a phase of Project as listed in table hereinabove have been completed, and this phase of the Project is hereby declared fit for entry into commercial operation on this the day of ..... 20..

<p><b>ACCEPTED, SIGNED, SEALED AND DELIVERED</b>                  FOR AND ON BEHALF OF  <b>CONCESSIONAIRE by:</b>                  SIGNED, SEALED AND DELIVERED                  (Signature)                  (Name and Designation)                  (Address)</p>	<p><b>ACCEPTED, SIGNED, SEALED AND DELIVERED</b>                  FOR AND ON BEHALF OF                  INDEPENDENT ENGINEER                  SIGNED, SEALED AND DELIVERED                  (Signature)                  (Name and Designation)                  (Address)</p>
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## SCHEDULE K

(See Clause 17.2)

### MAINTENANCE REQUIREMENTS and KEY PERFORMANCE INDICATORS

#### 1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in Annex – I of this Schedule-K (the "Maintenance Requirements").
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in this Schedule, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.
- 1.3 The Concessionaire shall operate and maintain the Project to best of standards and specifications. Key Performance Indicators to measure and monitor the performance of the Concessionaire has been set forth in Paragraph 10 of this Schedule-K. Deficiencies in compliance or non-compliance by the Concessionaire on these Performance parameters shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in this Schedule, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

#### 2. Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - II of this Schedule - K within the time limit set forth therein.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

#### 3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - II of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 3.2 In respect of any defect or deficiency not specified in Annex - II of this Schedule-K, the Independent Engineer may, in conformity with Good Industry Practice,

specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

**4 Extension of time limit**

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

**5 Emergency repairs/restoration**

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

**6 Daily Inspection by the Concessionaire**

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

**7 Divestment Requirements**

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

**8 Display of Schedule - K**

The Concessionaire shall display copy of this Schedule-K at the site along with the complaint register stipulated in Article 40.

**9 Key Performance Indicators**

9.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall also be evaluated for the performance by the Concessionaire on various performance parameters specified in Annex - III of this Schedule – K.

## ANNEX-I

### (Schedule-K)

#### 1. Project - Operations & Maintenance related requirements

- 1.1. The Concessionaire shall have renovated, refurbished, upgraded the PCTs, Urinals and Modular Toilets, and also provided special facilities at certain PCTs alongwith other equipments, fixtures and fittings. The Concessionaire shall now operate and maintain these Project facilities during the Concession Period.
- 1.2. Maintenance covers and includes upkeep, repairs (minor and major), replacement and providing for augmentation needs as required, of all the assets – moveable and fixed, pertaining to and related to the toilet infrastructure that the Concessionaire is expected to operate and maintain.
- 1.3. This includes operation of the PCTs i.e. regular cleaning of the floors, ceilings, (interior and exterior) walls of the toilets, urinals, bath rooms and other special facilities provided in the PCTs, ensuring the proper functioning of user amenities, provisions of dedicated personnel, supervision and ensuring availability of basic infrastructure requirements such as electricity, proper drainage, sewage, waste removal. More specifically it includes the following:
  - a. Concessionaire shall ensure that commissioned infrastructure being used by public shall be kept in best quality and operational conditional throughout the Concession period
  - b. Project Facilities shall operate for atleast two shifts in a day. They shall have a defined opening and closing time. This shall be determined, defined, and displayed – as a function of the demand and usage pattern around that toilet.
  - c. Toilet operations must provide for a complete set of the requisite cleaning equipment, consumables, safety gear etc. at all times.
  - d. Cleaning is a top priority job for the toilet staff. Cleaning cycles have to be developed for each of the sections (men/women) and for each type of infrastructure in the premises (viz., for fittings and wares related to plumbing, doors and walls related to civil, etc.)
  - e. Cleaning schedules should, as far as possible, be such as to avoid / minimise closure of the toilet during such activities. Lean times during the day or early/end of shift scheduling should be tried.
  - f. Concessionaire shall ensure that quick cleaning is carried out by the attendant of the PCT after each use.
  - g. The Concessionaire shall provide twin litterbins inside and outside of the Project Facilities, and disposal of the collected waste up to existing solid waste collection system in the city shall be the responsibility of the Concessionaire.
  - h. Concessionaire shall plan for periodical and scheduled preventive maintenance of entire infrastructure. Concessionaire shall also obtain prior written approval from the Authority before planning any partial / full closure of the facility for any maintenance works.
  - i. Spreading user awareness for maintaining the facility clean and hygienic is part of the Concessionaire's responsibility
  - j. Cleanliness covers and includes wall and floor surfaces, ambient air odour, waste disposal, waste water management, etc., The Project Facilities shall be fitted with

- sensors for odour control, water leakage detection, people counter, etc., which enables effective maintenance and management
- k. It is of paramount importance that the users feel safe and secure, private and confident to use the facility during its working hours. It shall be the responsibility of the Concessionaire to do whatever required, including looking after the access needs, to ensure complete User satisfaction on these aspects.
  - l. Concessionaire shall deploy staff so that minimum one personnel is available during operational hours (which shall be atleast two shifts in a day) for each toilet who shall be responsible for security and safety of toilet, maintenance of basic sanitary condition inside and around the toilet, regular removal of waste, maintenance of suggestion booklet, reporting of problems, if any, clearing of choking (if any) etc.
  - m. Manpower resources: Concessionaire is not under any obligation to utilise the present manpower resources of the Authority, neither the permanent nor the temporary staff of the Authority.
    - o. Concessionaire is at freedom to employ the necessary count and quality of manpower resources that may be deemed appropriate. The persons so employed by the Concessionaire shall remain employee of the Concessionaire and the Authority shall have no care or concern with them in any manner.
  - n. All costs and expenses related to operations and maintenance of the facilities are to be fully borne by the Concessionaire including for utility charges viz., for water and power consumptions.
  - o. Facility shall be appropriately staffed – on headcount and skill aspects depending on the type and usage of that particular toilet
  - p. Equipments such as fire-fighting equipments, Inverters, etc. installed in the PCTs shall be regularly serviced as per the technical schedules and kept in proper operational condition
  - q. Women staff shall be engaged for women section, as much as possible. A separate caretaker for handling complaints from women is to be provided for.
  - r. Suggestion Booklet: Maintain a suggestion and complaints book in each of the facilities and the copy of the same should be submitted to Authority every month.
  - s. Recycling facility: Concessionaire shall ensure proper working and maintenance of water/solid waste recycling facility so that it is operational at all times.
  - t. Display of Information: Each toilet on the outside shall clearly display the information as prescribed. These signages shall be properly maintained to ensure clear visibility and proper aesthetics. In the inside, information as prescribed shall be properly maintained. The Concessionaire shall not display any objectionable materials
  - u. All maintenance staff shall be provided uniforms, aprons, shoes, identity cards, safety gears etc., and the same shall be periodically replaced for wear and tear reasons.
  - v. Major maintenance related structural changes that entail substantive modifications with associated costs, and which may warrant closure of part or whole of the facility may be carried out with prior discussion and after prior approval of the Authority.
- 1.4. The Concessionaire shall ensure availability of adequate water at all times for general cleanliness and upkeep of the Project Facilities. Further laying of water line, connection and payment of connection and usage charges shall be the sole responsibility of the Concessionaire. In case of non – feasibility of bore well water supply, the Concessionaire may arrange water at its own cost. The Authority shall assist in application for water connection on best effort basis. Concessionaire shall bear both the capital cost towards the setup of water supply as well as the recurring charges

towards actual consumption, however, get them included within the payment terms under the hybrid annuity construct.

- 1.5. The Concessionaire shall ensure also adequate electricity supply for proper lightings inside and outside the Project Facilities. Concessionaire shall bear both the capital cost towards the setup of electricity supply, connection and payment of user charges, as well as the recurring charges towards actual consumption, however, get them included within the payment terms under the Hybrid Annuity construct.
- 1.6. For any electrical requirements towards the advertising activities that the Concessionaire may engage, the Concessionaire shall obtain separate connections and have the consumption separately metered. The capital and recurring cost for such advertising activities shall be borne by the Concessionaire throughout the contract period.
- 1.7. Concessionaire shall not allow any posters or stickers of any kind to be placed inside or outside the PCT by any private person other than those allowed to the Concessionaire by the Authority. In case it happens, it shall initiate lodging FIR against the defaulters under the Prevention of Defacement of Public Property Act and take further action for removal of the said posters/ stickers.
- 1.8. The Concessionaire shall not display or exhibit any picture/poster/ statue or other articles in any part of the premises that are repugnant to the general standards of morality. The Concessionaire expressly agrees that the decision of the Authority in this regard shall be conclusive, final and binding on the Concessionaire.
- 1.9. The Concessionaire shall ensure that the Facilities are not used for playing games and any misuse etc.
- 1.10. It shall be the responsibility of the Concessionaire to connect the sewer line to the nearest main trunk sewer line. The connection charges and usage charges shall be responsibility of the Concessionaire.
- 1.11. Though implied, the Authority explicitly disallows the consumption of alcohol by the employees during working hours. Any incidence shall be dealt with severely including the right to terminate the contract.
- 1.12. The Concessionaire shall make sure that all employees in the operation are eligible for health insurance. They shall also comply with the minimum employee benefits, Employee Provident Fund benefits and leave benefits as entitled by Law.
- 1.13. The Concessionaire shall not use the Project Facilities for residential purposes and not keep any animal/motor vehicle or storage of any kind in and around the complex other than the articles required for the cleanliness and maintenance of the Project Facilities
- 1.14. The Concessionaire shall take insurance for all the equipment and facilities.
- 1.15. The Concessionaire shall pay all taxes and duties, fees and charges, rentals and all other levies applicable and payable under provisions of extant laws, for both the Project and for the advertisement activities.

- 1.16. Concessionaire shall deploy, one vehicle containing jetting cum - suction machine, water-tank, cleaning agents / chemicals, disinfectants, stain removing chemicals, spare consumables, spare fittings and fixtures, sanitation-cum maintenance staff, mopping equipments, brushes, brooms, vacuum cleaner, etc. which can undertake a thorough cleaning-cum-maintenance of the PCTs. While the basic cleaning of the PCTs would be undertaken by the person deployed at the PCT, each PCT shall be subject to thorough cleaning-com-maintenance at least once a day. For PCTs having heavy footfall, the frequency of thorough cleaning-cum-maintenance shall be increased for proper maintenance of sanitation.
- 1.17. When the annual repairs and maintenance of works are carried out the splashes and droppings from white washing, colour washing, painting etc., on walls, floor, windows, etc. shall be removed and the surface cleaned simultaneously with the completion of these items of work in the individual rooms, quarters or premises etc. where the work is done without waiting for the actual completion of all the other items of work in the contract.
- 1.18. The Concessionaire shall operate and maintain the Facilities in Environment friendly manner including beautifying the surrounding by provisions of greenery. The Concessionaire shall be bound to allow the checking by Pollution Control Board or any other such statutory/non statutory board or agency at any time during the Concession Period.
- 1.19. A plan for Maintenance and Upkeep that will be carried out on a (i) continuous basis (ii) daily basis (iii) weekly basis (iv) monthly (v) half yearly (vi) annual and (vii) as and when necessary shall be comprehensively drawn out, covering all aspects viz., civil, electrical, and plumbing provisions, and to be complied with.
- 1.20. Concessionaire shall also develop a monitoring and measurement plan surrounding key parameters that need to be covered, approaches and tools that may be used for the same, periodicity of these activities – in sum, an effective cleanliness protocol that the Concessionaire would commit to and practice throughout the term of contract period. In addition, toilet structure shall also be subject to periodic inspections and audits to assess the soundness and safety of the infrastructure.
- 1.21. The Concessionaire shall have the central team at CCMS operate on a 24x7 basis and be responsible for shift-wise monitoring of the various aspects of the Project Facilities. The customer feedback shall also be monitored. The central team shall publish online report on daily basis on the previous day and cumulative performance for the month. These reports shall be generated through automated tool which collects data from sensors located at the Project facilities, user feedback collection mechanisms, and inspection reports on KPI etc.

The Concessionaire shall ensure that there is 24x7 real time monitoring of all KPIs as per Schedule K. Where KPIs cannot be tracked through automated measures, manual supervision, checking and recording is to be conducted by the Concessionaire.

- 1.22. Concessionaire shall be responsible for all aspects relating to operations and maintenance of the Project Facilities and Authority shall not be responsible for any errors, deficiencies, omissions, or consequences of the provision or otherwise of these services.



**ANNEX-II****(Schedule-K)****Repair/Rectification of Defects and Deficiencies**

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-II of Schedule-K within the time limit set forth herein. The Authority shall impose penalties for non-adherence to the timelines as per the amounts indicated herein. Penalty shall be levied for delay in responsiveness beyond the time limits stipulated.

Table 9: Maintenance Defect/deficiency - Time limits and Penalty details

Sl.No.	Nature of Defect/deficiency	Time limits for repair/rectification	Penalty per instance per day
1.	Attending to water stoppages in pipelines – whole or part of the system Water Shortage	6 hours	Rs.1000
2.	Attending to pipe rupture – isolated or whole system	1 day	Rs.1000
3.	Attending to sewage block – isolated or whole system	1 day	Rs.1000
4.	Attending to manpower absence – primary level, for field level activities	4 hours	Rs.2500
5.	Attending to plumbing faults – taps, tubes, and such fitments	6 hours	Rs.500
6.	Attending to any defects / deficiencies in civil and/or electrical aspects of the Project Facilities	To be replaced within 3 days of such event	Rs.2000
7.	Alternative arrangements for absence of supervisory staff for more than a day	1 day	Rs.1000
8.	Attending to User complaints behind cleanliness/hygiene/safety deficiencies	6 hours	Rs.1000
9.	Attending to User complaints behind water/electricity/plumbing deficiencies	6 hours	Rs.1000
10.	Responding to report of Inspection team	1 day	Rs.2000
11.	Removal of unauthorised handbills/posters/ sign boards/stickers etc.	1 day	Rs.1000
12.	Attending to damages to signage's	1 day	Rs.1000
13.	Removal / addressing restrictions of any nature whatsoever behind access to the facility	1 day	Rs.5000
14.	Removing of cobwebs, dusting, water washing, attending to air purifiers and such other fitments for regular upkeep of the Facilities	Once in 15 days	Rs.2500
15.	Attending to faults/ deficiencies in functioning of the Control room – CCMS	1 day	Rs.1000
16.	Deficiencies in conducting ICE programs and activities	7 days	Rs.5000
17.	Replacement of any lost/ stolen/ damaged asset created/ provided for in the PCT	1 day	Rs.1000

Sl.No.	Nature of Defect/deficiency	Time limits for repair/rectification	Penalty per instance per day
18.	Maintenance of Greenery in /surrounding toilet premises	Daily	Rs. 1000
19.	Non-Functionality of Sanitary napkin vending machine and safe disposal systems.	Weekly	Rs. 500

The Authority shall have the right to recover penalties if any leviable on the Concessionaire under provisions of this Annex from the periodic O&M Payments due and payable to the Concessionaire by the Authority as per the terms of this Agreement.

The Authority shall, for the purposes of deducting penalties under this Annex, cumulate the penalty amounts over the same period (quarterly) that the O&M Payments are also due and payable to the Concessionaire by the Authority as per the terms of this Agreement.

## ANNEX-III

### (Schedule-K)

#### Key Performance Indicators

##### 1. Performance Standards during Operation and Maintenance

The maintenance of the Concessionaire during the Operations period will be monitored by the Independent Engineer throughout the Concession Period, and the performance shall be evaluated on the basis of the below mentioned Key Performance Indicators and the performance thus achieved, shall be evaluated through a quantitative assessment as detailed below.

The IE shall calculate and maintain records of the performance of the Concessionaire both online and offline (hard and soft copies) which shall be accessible to both the Authority and the Concessionaire.

The IE shall collate the performance parameters into a Monthly Performance Report and based on that, calculate the monthly penalty and payment.

##### 2. Key Performance Indicators and Performance Score

- 2.1.1. For each Unit, the Concessionaire shall be assessed based on the following Performance Indicators. A set of 26 Key Performance Indicators has been laid out as more detailed in Table 10 below.
- 2.1.2. The Independent Engineer shall assess the level of performance against each indicator, for each Unit – as either Case 1 or 2 or 3 or 4 as the case may be, and assign the appropriate score.
- 2.1.3. A weighted score shall thereafter be determined against each indicator based on the respective individual weightages pre-defined for each indicator.
- 2.1.4. Summation of the weighted scores shall be used to determine the aggregate score for the unit, viz., the Unit Score
- 2.1.5. Individual Unit Scores for all the Units shall then be summated to arrive at the Final Score for the Project as a whole.
- 2.1.6. Final Score for the Project, estimated basis the performance matrix and calculation steps as above, and calculated on a monthly basis shall then be translated into a penalty stage and a KPI penalty quantum as further detailed in Clause 2.2.

Table10: Key Performance Indicators

S No	Non Applicability (Note 1)	Indicators (Range of Services)	Maximum Marks	Case 1	Marks	Case 2	Marks	Case 3	Marks	Case 4	Marks	Score Received ^ (A)	Weight (B)	Weighted Score (A)*(B)
KPI 1	\$	All toilet seats and urinals clean and usable	20	>90% seats are clean	20	60-90% seats are clean	15	30-60% seats are clean	10	<30% seats are clean	0		0.20	
KPI 2		Wash basin(s) clean and usable	10	100% clean	10	Partially clean	7	Not clean	4	Not available	0		0.10	
KPI 3		Water availability at tap outlets	25	Water is available in all service counters	25	Water is available in <50% of all service counters	15	Water is available outside (in/ around the premises), BUT not inside the premises	5	Water is not available	0		0.25	
KPI 4		Adequate ventilation facility	20	Well ventilated and absolutely odour free	20					Ventilation not available and the Units "stinks"	0		0.20	
KPI 5		All service counters are well lit with adequate luminosity	20	>90% of the light points are functional	20	60-90% of the light points are functional	15	30-60% of the light points are functional	10	<30% of the light points are functional	0		0.20	
KPI 6		Functional and secured bolting arrangements on all doors of all service cubicles	15	>90% cubicles have secure and functional bolting arrangements	15	60-90% of the cubicles have secure and functional bolting arrangements	10	30-60% of cubicles have secure and functional bolting arrangements	5	<30% of cubicles and have secure and functional bolting arrangements	0		0.15	

S No	Non Applicability (Note 1)	Indicators (Range of Services)	Maximum Marks	Case 1	Marks	Case 2	Marks	Case 3	Marks	Case 4	Marks	Score Received ^ (A)	Weight (B)	Weighted Score (A)*(B)
KPI 7		Overflow/ spillage/clogging of untreated faecal sludge/septage and sewage from the Unit	15	Yes	15					No	0		0.15	
KPI 8		Floor is clean and dry throughout the Unit	20	Very clean and absolutely dry	20	Clean and dry	15	Partially unclean and wet	10	Not clean and wet	0		0.20	
KPI 9		Mirrors, if available, are clean and polished	5	Very Clean	5	Clean	3	Partially clean	1	Not clean	0		0.05	
KPI 10	@, #, \$	Litter Bins are available, together with covers and are maintained clean and dry	10	>90% of the available litter bins are covered, clean and dry	10	60-90% of the available litter bins are covered, clean and dry	7	30-60% of the available litter bins are covered, clean and dry	5	No Bins are available OR < 30% of the available litter bins are covered, clean and dry	0		0.10	
KPI 11	\$	Soap / soap dispenser are available and Operational	10	Soap Dispenser available and functional with liquid soap / soap bar of good quality available	10	No dispenser, but handwashing Soap of good quality Available	7	Handwash Soap available, but unsuited for hand-washing (like say a detergent cake instead)	5	Soap/Dispenser not available	0		0.10	

S No	Non Applicability (Note 1)	Indicators (Range of Services)	Maximum Marks	Case 1	Marks	Case 2	Marks	Case 3	Marks	Case 4	Marks	Score Received ^ (A)	Weight (B)	Weighted Score (A)*(B)
KPI 12		Usable taps and fittings with no leakage	15	>90% of the available taps and fittings are usable with no leakage whatsoever	15	60-90% of the available taps and fittings are usable with no leakage whatsoever	10	30-60% of the available taps and fittings are usable with no leakage whatsoever	5	<30% of the available taps and fittings are usable with no leakage whatsoever	0		0.15	
KPI 13		Entrance/ accessibility (like ramp, stairs) to Toilet Unit is barrier free for all Users	20	Yes	20					No	0		0.20	
KPI 14		Premises are visible to passers-by, with clear signage	10	Signages available and visible both during day and night	10					No signage available	0		0.10	
KPI 15		Staff is provided with necessary and sufficient supplies of consumables, cleaning equipment, protective gear and inventory	10	Yes, all 3 (consumables, cleaning equipment and protective gear) available	10	Yes, only 2 available	7	Yes, only 1 available	5	None available	0		0.10	
KPI 16		Roster being maintained for regular cleaning and maintenance and a	20	Yes (Roster and caretaker both available)	20	Yes- (caretaker available but roster is not maintained)	15	Yes- (only roster available)	10	No (None available)	0		0.20	

S No	Non Applicability (Note 1)	Indicators (Range of Services)	Maximum Marks	Case 1	Marks	Case 2	Marks	Case 3	Marks	Case 4	Marks	Score Received ^ (A)	Weight (B)	Weighted Score (A)*(B)
		caretaker is on duty												
KPI 17		Project Units are visible on a Locator Platform as a 'Public Toilet'	20	Yes	20					No	0		0.20	
KPI 18		Complaint registration and redressal mechanism is in place and is functional	20	Yes	20					No	0		0.20	
KPI 19		All walls (inside and outside of the premises) are poster/graffiti free	15	Yes	15					No	0		0.15	
KPI 20	@, #, \$	Plants / shrubs in the vicinity of Unit are well maintained	10	Yes	10					No	0		0.10	
KPI 21	@, #, \$	Vending machine for sanitary napkins are available and functional	10	Sanitary napkin vending machine is available and functional	10					Not available	0		0.10	
KPI 22	@, #, \$	An acceptable (to Authority) arrangement for safe disposal of sanitary napkins is available and functional	10	Arrangement is available and functional	10					Not available	0		0.10	

S No	Non Applicability (Note 1)	Indicators (Range of Services)	Maximum Marks	Case 1	Marks	Case 2	Marks	Case 3	Marks	Case 4	Marks	Score Received ^ (A)	Weight (B)	Weighted Score (A)*(B)	
KPI 23		Premises are well lit, both within and outside, without any dark, shadowy areas in the vicinity of the toilet	20	Yes	20					Not available	0		0.20		
KPI 24		Premises free of vermin / insects	10	Absence of any infestation by Vermin/ Insects	10	Minor level of infestations	5			Heavily Infested with Vermin/insects	0		0.10		
KPI 25		Availability of Premises for Users during Operational hours	20	Premises open and available for Users	20					Unscheduled/un-notified closure	0		0.20		
KPI 26		CCTV Facility available and functional	20	Arrangement is available and functional	20					Not available and or non-functional	0		0.20		
													<b>Unit Score</b>	<b>Summation of score across all KPIs (C)</b>	
														<b>No of seats/service counters for the particular Unit</b>	<b>[to be filled] (D)</b>
														<b>Total number of seats/ service counters across all Units</b>	<b>3720 (E)</b>
														<b>Weighted Unit Score – TO BE CALCULATED AND CARRIED FORWARD, MANDATORILY ROUNDED UPTO 5 DECIMALS</b>	<b>(D/E) x C = F</b>

Note 1: It is clarified by the Authority that while most of the KPI parameters listed hereinabove are relevant and to be applied for all types of units, meaning thereby that they shall be applicable for PCTs, Standalone Urinals, Standalone Bath rooms, and Modular Toilets alike, some a few of the KPI parameters listed hereinabove may be applicable only for certain types of Units and not for others. Table below indicates the exclusion list.



Symbol	Remarks
@	Not applicable in case of Standalone urinals
#	Not applicable in case of Modular toilets
\$	Not applicable in case of Standalone Bath rooms

^ - In case any of the said Performance Indicators is not applicable for any of the Project Units, then such range of services will be awarded full maximum marks as though such facility is available and functional (at Case 1 level). This is being done for ease of computation and to bring in standardization across Project Units.

## 2.2. Penalty Score, Penalty Stage and levy of KPI Penalty amount

2.2.1. Subject to provisions of Clause 16 in the Concession Agreement, the aggregate number of seats/service counters across all the Units is 3270 (refer Schedule C – Scope of Services). The Weighted Unit Score of each Unit (372 Units in total in base case) is then summated to arrive at the Final Score as calculated in Table 11 below:

Table 11: Final Score – KPI related calculations

Description	Final Score
Weighted Unit Score (weighted by seats/service counters)	F (from Table 11 above)
Final Score (FS) is the Weighted Unit Score <b>Summated</b> for all the Project Units	Summation of F's for Units 1 to 372 (FS)

2.2.2. The maximum possible score assuming performance at case 1 levels across all the KPI rows listed in Table 10 above works to 68.50000. Final Score that the Concessionaire may secure is then expressed as a fraction of the maximum possible score, to determine the Effective Performance by the Concessionaire for the particular month for which this exercise would have been carried out by the Independent Engineer, as illustrated with an example in Table 12 below.

Table 12: Effective Performance Score – KPI related calculations

Description	Effective Performance score
Concessionaire's Final Score (FS)	<b>Say, 43.78562</b>
Concessionaire's Final Score as fraction of Maximum Final Score (FM)	$43.78562 / 68.50000 = 63.92\%$

2.2.3. The Effective Performance score is matched with the graded slab structure as indicated in Table 13 to get to the relevant and applicable Penalty Stage for the particular month, across all the Units, under their (performance) evaluation exercise.

Table 8: Penalty Stage - KPI related calculations

Concessionaire's Final Score as Fraction of Max Final Score (FM)	Penalty Stage and Description	
96% - 100%	O	No problems
86 % - 95%	A	Negligible
76% - 85%	B	Minor
51% - 75%	C	Moderate
26%-50%	D	Major
upto 25%	E	Severe

2.2.4. The Penalty Stage shall then determine the quantum of penalties that the Authority shall be authorised to recover from the Concessionaire, as damages towards deficiencies in performances during the period under inspection. The KPI deductions applicable under each of the Penalty Stage is indicated in Table 14 below.

Table 9: KPI Deductions – KPI related calculations

Penalty Stage and Description		KPI DEDUCTION: As %age of O&M Payment (Note 1)
O	No problems	0.00%
A	Negligible	1.00%
B	Minor	2.00%
C	Moderate	3.50%
D	Major	5.00%
E	Severe	10.00%
4 times E	in 6 months	25.00%

Note (1) O&M Payment shall be the then applicable payment amount, determined as per provisions of Clause 23.7 of this Agreement.

For illustration purposes, an effective performance score of 63.92% in say the 3<sup>rd</sup> month of the 2<sup>nd</sup> operational year would indicate (i) a penalty stage corresponding to a **moderate** performance, and (ii) attract a deduction of **3.50%** of the O&M Payment applicable for the 3<sup>rd</sup> month of the 2<sup>nd</sup> operational year under the Concession.

2.2.5. Provided that if the cumulative penalty on account of KPI deductions exceed 5% of the O&M Payment applicable for a 12-month period during any year - continuous period of 12 months, then and in that event, the Authority shall have the right to Terminate the Concession, deeming this as a Termination for Concessionaire Default. The decision of the Authority shall be final and binding on the Concessionaire.

The Parties agree that O&M Payment for the 12-month period under reference in Clause 2.2.5 hereinabove shall be calculated based on the number of days for which the relevant O&M Payment was applicable during the period of calculation.

2.2.6. The Authority shall have the right to recover deductions if any leviable on the Concessionaire under provisions of this Annex from the periodic O&M Payments due and payable to the Concessionaire by the Authority as per the terms of this Agreement.

2.2.7. The Authority shall, for the purposes of deducting penalties under this Annex, cumulate the penalty amounts over the same period (quarterly) that the O&M Payments are also due and payable to the Concessionaire by the Authority as per the terms of this Agreement.

2.2.8. For abundant clarity and for avoidance of any doubt, the periodic O&M Payments due and payable by the Authority to the Concessionaire shall be the O&M Payment Less repair/rectification related penalties calculated vide provisions of Annex-II of this Schedule Less KPI related deductions calculated vide provisions of Annex-III of this Schedule Less any other claims/ damages/fees/charges/payments due and payable by the Concessionaire under various other provisions of this Agreement.

## **SCHEDULE L**

**(See Clause 18.1.1)**

### **SAFETY REQUIREMENTS**

#### **1 Guiding principles**

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project Facilities, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3 Safety Requirements include measures associated with (user) footfall management, with safety of usage by women, child, differently enabled, weak and senior users and enforcement and emergency response.

#### **2 Obligations of the Concessionaire**

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Provisions of this Agreement; and
- (c) Good Industry Practice.

#### **3 Safety measures during Development Period**

- 3.1 The Concessionaire shall provide to the Independent Engineer, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the "Safety Drawings"). The independent Engineer shall review the design details and forward one copy of his recommendations, if any, each to the Authority and the Concessionaire.
- 3.2 The Concessionaire shall incorporate the recommendations of the Independent Engineer in the design of the Project Facilities, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Authority, Specifications and Standards, and Good Industry Practice.

#### **4 Safety measures during Construction Period**

- 4.1 The Independent Engineer shall inspect the Project Facilities to assess the adequacy of safety measures. The Independent Engineer shall submit a safety report recommending a package of additional safety measures, if any, that are considered essential for reducing hazards on the Project Facilities. Such

recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraph 4.4 of this Schedule-L.

- 4.2 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers in construction zones, and notify the Authority and the Independent Engineer about such arrangements.

**5 Safety measures during Operation Period**

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

**6 Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-L, shall be met in accordance with Article 18, and in particular, safety audit, and costs incidental thereto, shall be met by the Concessionaire.

## **SCHEDULE - M**

(See Clause 21.1)

### **SELECTION OF INDEPENDENT ENGINEER**

#### **1 Selection of Independent Engineer**

1.1 The Authority shall appoint an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.

1.2 In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-M.

1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-M.

#### **2 Terms of Reference**

The Terms of Reference for the Independent Engineer shall substantially conform to Schedule-N.

#### **3 Fee and expenses**

All payments made to the Independent Engineer on account of fee and expenses during the Development, Construction and Operation Period shall be borne equally by the Authority and the Concessionaire.

#### **4 Selection every three years**

No later than 3 (three) years from the date of appointment of Independent Engineer pursuant to the provisions of Paragraph 1 of this Schedule-M, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-M.

#### **5 Appointment of government entity as Independent Engineer**

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Independent Engineer.

## **SCHEDULE – N**

(See Clause 21.2.1)

### **TERMS OF REFERENCE FOR INDEPENDENT ENGINEER**

#### **1 Scope**

These Terms of Reference for the Independent Engineer (the "TOR") are being specified pursuant to the Concession Agreement dated . . . . . (the "Agreement"), which has been entered into between the Authority and the "Concessionaire") for the Project on Design, Build, Finance, Operate and Transfer (the "DBFOT Annuity or Hybrid Annuity") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

#### **2 Definitions and interpretation**

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

#### **3 Role and functions of the Independent Engineer**

3.1 The role and functions of the Independent Engineer shall include the following:

- (i) Review of the Drawings and Documents as set forth in Paragraph 4;
- (ii) Review, inspection and monitoring of Construction Works as set forth in Paragraph 5; conducting Tests on completion of construction and issuing Completion/ Phased Completion Certificate as set forth in Paragraph 5
- (iv) Review, inspection and monitoring of O&M as set forth in Paragraph 6;
- (v) Review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
- (vi) Determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (vii) Determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (viii) Assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
- (ix) Undertaking all other duties and functions in accordance with the Agreement.

- 3.2 The Independent engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

#### **4 Development Period**

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its comments/ observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Engineer shall review and; comment on the contract for construction, operation and maintenance of the Project Facilities, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

#### **5 Construction Period**

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and the Project Facilities once every month, preferably after receipt of the monthly progress report



from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 5.4 The Independent Engineer may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.7 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.8 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the

Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

- 5.9 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.10 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.11 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Phased Completion Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.12 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.13 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.
- 5.14 Upon reference from the Authority, the Independent Engineer shall undertake the assessment of cost of civil works, as per applicable schedule of rates, for the reduction of Scope of work as provided in Clause 16.6.1 of the Concession Agreement.

**6 Operation Period**

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 6.2 The Independent Engineer shall review the annual Maintenance Program furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance

Program.

- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Project once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.9 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.4.
- 6.10 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

## **7 Termination**

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project Facilities for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 32.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 33.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 7.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 33, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

## **8 Determination of costs and time**

- 8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

## **9 Assistance in Dispute resolution**

- 9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

## **10 Other duties and functions**

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

## **11 Miscellaneous**

- 11.1 The Independent Engineer shall notify its program of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.
- 11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

**SCHEDULE – 0**

**(See Clause 25.1.2)**

**ESCROW AGREEMENT**

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

- 1 ..... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (insert name and particulars of Lenders' Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 (GCC) represented by .... (the Commissioner, GCC).... and having its principal offices at (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning hereof, include its administrators, successors and assigns).

**WHEREAS:**

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the "Concession Agreement") for the Project (the "Project") on design, build, operate and transfer (the "DBFOT Annuity or Hybrid Annuity") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
  - (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
  - (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.
- NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the

Parties agree as follows:

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

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

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

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

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

**"Escrow Default"** shall have the meaning ascribed thereto in Clause 6.1;

**"Lenders' Representative"** means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

**"Payment Date"** means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

**"Sub-Accounts"** means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month, then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

### **1.2 Interpretation**

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

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

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

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

## **2 ESCROW ACCOUNT**

### **2.1 Escrow Bank to act as trustee**

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

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

### **2.2 Acceptance of Escrow Bank**

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

### **2.3 Establishment and operation of Escrow Account**

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

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the



maximum rate of interest payable to similar customers on the balance in the said account from time to time.

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

2.4 Escrow Bank's fee: The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account held in the Escrow Account are set forth in their entirety in the escrow account.

2.6 Substitution of the Concessionaire : The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

### **3 DEPOSITS INTO ESCROW ACCOUNT**

3.1 Deposits by the Concessionaire

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

- (a) All monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) All funds received by the Concessionaire from its shareholders, in any manner or form;
- (c) Any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project including from advertisement activities ; and
- (d) All proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the

Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

### **3.2 Deposits by the Authority**

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

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire; and
- (b) All revenues collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any amounts due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

### **3.3 Deposits by Senior Lenders**

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

### **3.4 Interest on deposits**

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

## **4 WITHDRAWALS FROM ESCROW ACCOUNT**

### **4.1 Withdrawals during Concession Period**

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

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Deleted;

- (c) All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements
- (e) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
- (f) Any amounts due and payable to the Authority;
- (g) Monthly proportionate provision of Debt Service due in an Accounting Year;
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (i) Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) Balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

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

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Deleted;
- (c) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including any claims in connection with or arising out of Termination;
- (e) Retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 33 of the Concession Agreement;
- (f) Outstanding Debt Service including the balance of Debt Due;
- (g) Outstanding Subordinated Debt;
- (h) Incurred or accrued O&M Expenses;
- (i) Any other payments required to be made under the Concession Agreement; and

(j) Balance, if any, in accordance with the instructions of the Concessionaire: Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

**4.3 Application of insufficient funds:**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

**4.4 Application of insurance proceeds**

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

**4.5 Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 30 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

**5 OBLIGATIONS OF THE ESCROW BANK**

**5.1 Segregation of funds**

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

**5.2 Notification of balances**

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

**5.3 Communications and notices**

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

- (a) May, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

#### **5.4 No set off**

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

#### **5.5 Regulatory approvals**

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

### **6 ESCROW DEFAULT**

#### **6.1 Escrow Default**

- 6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:
- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
  - (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub- Account in which such transfer should have been made,

- within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

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

## **7 TERMINATION OF ESCROW AGREEMENT**

### **7.1 Duration of the Escrow Agreement**

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

### **7.2 Substitution of Escrow Bank**

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

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

### **7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **8 SUPPLEMENTARY ESCROW AGREEMENT**

### **8.1 Supplementary escrow agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub- Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such

as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

## **9 INDEMNITIES**

### **9.1 General indemnity**

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

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

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

### **9.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the

event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **10 DISPUTE RESOLUTION**

### **10.1 Dispute resolution**

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

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

## **11. MISCELLANEOUS PROVISIONS**

### **11.1 Governing law and jurisdiction**

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

11.2 Waiver of sovereign immunity The Authority unconditionally and irrevocably:

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



making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

### **11.3 Priority of agreements**

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

### **11.4 Alteration of terms**

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

### **11.5 Waiver**

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

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

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

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

### **11.7 Survival**

#### **11.7.1 Termination of this Agreement:**

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

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

### **11.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

### **11.9 Successors and assigns**

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

### **11.10 Notices**

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

### **11.11 Language**

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

### **11.12 Authorized representatives**

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

**11.13 Original Document**

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

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

<p>THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the by the Board of Directors of the Concessionaire has been affixed or and on behalf of pursuant to the resolution passed by the ..... SENIOR LENDERS by the Board of Directors of the Concessionaire Lenders Representative: at its meeting held on the day of 20...hereunto affixed in the presence of, Director, who has signed these presents in token thereof and Company Secretary / Authorized Officer who has countersigned the same in token there of</p>	<p>AND DELIVERED For and on behalf of SENIOR LENDERS by the Lender's representative</p>
<p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail address) SIGNED, SEALED AND DELIVERED For and on behalf of THE ESCROW BANK by THE AUTHORITY by: (Signature) (Name)</p>	<p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail address) SIGNED, SEALED AND DELIVERED For and on behalf of THE ESCROW BANK by THE AUTHORITY by: (Signature) (Name)</p>

## **SCHEDULE - P**

(See Clause 27.2.1)

### **PANEL OF CHARTERED ACCOUNTANTS**

#### **1 Panel of Chartered Accountants**

Pursuant to the provisions of Clause 27.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 3 (three) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-P.

#### **2 Invitation for empanelment**

2.1 The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) The firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) The firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) The firm should have an office in Chennai with at least 2 (two) practicing Chartered Accountants on its rolls in Chennai.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 2,00,00,000 (Rs. two five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years

#### **3 Evaluation and selection**

3.1 The information furnished by each firm shall be scrutinized and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be

identified and included in the draft Panel of Chartered Accountants.

**4 Consultation with the Concessionaire**

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinize the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

**5 Mutually agreed panel**

5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalize and constitute a panel of 3 (three) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-P.

**SCHEDULE - Q**

(See Clause 32.4)

**VESTING CERTIFICATE**

- 1 GCC (the **"Authority"**) refers to the Concession Agreement dated.....  
..... (the **"Agreement"**) entered into  
between the Authority and ..... (the **"Concessionaire"**) for .... (the  
**"Project"**) on design, build, finance, operate and transfer (**"DBFOT Annuity or  
Hybrid Annuity"**) basis.
  
- 2 The Authority hereby acknowledges compliance and fulfilment by the  
Concessionaire of the Divestment Requirements set forth in Clauses 32.1 and  
32.4 of the Agreement on the basis that upon issue of this Vesting Certificate,  
the Authority shall be deemed to have acquired, and all title and interest of  
the Concessionaire in or about the Concession and Project shall be deemed to  
have vested unto the Authority, free from any encumbrances, charges and liens  
whatsoever.
  
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a  
condition of this Vesting Certificate that nothing contained herein shall be  
construed or interpreted as waiving the obligation of the Concessionaire to  
rectify and remedy any defect or deficiency in any of the Divestment  
Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this..... day of....., 20..... At. ....

AGREED, ACCEPTED AND SIGNED For and on behalf of CONCESSIONAIRE by (Designation) (Address)	AGREED, ACCEPTED AND SIGNED For and on behalf of CONCESSIONAIRE by (Designation) (Address)
In the presence of:	
1.	2.

**SCHEDULE - R**

(See Clause 34.3.1)

**SUBSTITUTION AGREEMENT**

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

**AMONGST**

- 1 GCC represented by..... and having its principal offices at ..... (Hereinafter referred to as the "Authority" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 .....Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at..... (Hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 ..... (insert name and particulars of Lenders' Representative) and having its registered office at..... acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

**WHEREAS:**

- (A) The Authority has entered into a Concession Agreement dated..... With the Concessionaire (the "**Concession Agreement**") for the.....Project (the "**Project**") on design, build, finance, operate and transfer basis (the "**DBFOT Annuity or Hybrid Annuity**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them: **"Agreement"** means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**"Financial Default"** means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

**"Lenders' Representative"** means the person referred to as the Lenders' Representative in the foregoing Recitals;

**"Nominated Company"** means a company, incorporated under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

**"Notice of Financial Default"** shall have the meaning ascribed thereto in Clause 3.2.1; and

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

### **1.2 Interpretation**

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

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

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

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

## **2 ASSIGNMENT**

### **2.1 Assignment of rights and title**

The Concessionaire hereby agrees to assign the rights, title and interests in the



Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

### **3 SUBSTITUTION OF THE CONCESSIONAIRE**

#### **3.1 Rights of substitution**

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement in the Concession Agreement in favor of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

#### **3.2 Substitution upon occurrence of financial default**

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the Notice of Financial Default) alongwith particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of the Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by the Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 30 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by the Nominated Company, and in event that such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement, provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the

Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### **3.3 Substitution upon occurrence of Concessionaire default**

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to substitute the Concessionaire by the Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

### **3.4 Procedure for substitution**

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- (a) Accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
- (b) Endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) Enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favor of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favor of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the

transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

#### **4 PROJECT AGREEMENTS**

##### **4.1 Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

#### **5 TERMINATION OF CONCESSION AGREEMENT**

##### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 31 of the Concession Agreement.

##### **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

##### **5.3 Realization of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realization of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

#### **6 DURATION OF THE AGREEMENT**

##### **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) No sum remains to be advanced and no sum are outstanding to the Senior Lenders, under the Financing Agreements.

## **7 INDEMNITY**

### **7.1 General indemnity**

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

### **7.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **8 DISPUTE RESOLUTION**

### **8.1 Dispute resolution**

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to

arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

## **9 MISCELLANEOUS PROVISIONS**

### **9.1 Governing law and jurisdiction**

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

### **9.2 Waiver of sovereign immunity**

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

### **9.3 Priority of agreements**

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

### **9.4 Alteration of terms**

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

representatives of the Parties

## **9.5 Waiver**

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

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

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

## **9.6 No third party beneficiaries**

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

## **9.7 Survival**

### **9.7.1 Termination of this Agreement:**

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

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

## **9.8 Severability**

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

resolution under Clause 8 of this Agreement or otherwise.

**9.9 Successors and assigns**

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

**9.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**9.11 Language**

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

**9.12 Authorized representatives**

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

**9.13 Original Document**

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

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

THE COMMON SEAL OF CONCESSIONAIRE has	SIGNED, SEALED
been affixed pursuant to the resolution passed	AND DELIVERED
by the Board of Directors of the	For and behalf of THE AUTHORITY



<p>Concessionaire by: at its meeting held on the.....day of the .....20.....here unto affixed in to the presence of.....the Director, who has signed these presents in token thereof, Company Secretary / Authorized Officer who has countersigned the same in token thereof</p>	
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**Schedule S**

**Deleted**