



**GREATER CHENNAI CORPORATION**

**CONCESSION AGREEMENT – Volume 1**

**DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER  
OF 285 PUBLIC TOILETS  
IN ZONES I, II, III AND IV (*Package 2*)  
OF GREATER CHENNAI CORPORATION AREA  
UNDER HYBRID ANNUITY MODEL**

**RFP Ref: S.P.D.C.No.B1/1227/2024**

**Dated: .....**

**Greater Chennai Corporation,**

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**Part I**

**Preliminary**



## CONCESSION AGREEMENT

**THIS AGREEMENT** is entered into on this the **xxxxxx** day of, 20xx

### BETWEEN

1. Greater Chennai Corporation, a Municipal Institution established on the 29th September 1688, represented by its **...(the Commissioner)...** and having its principal offices at Ripon Building, **.....**, Periyamet, Chennai, Tamil Nadu 600003 (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **One Part**

### AND

2. **.....LIMITED**, a company incorporated under the provisions of the Companies Act, 2013 with CIN 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) of the **Other Part**.

### WHEREAS:

- a) The Authority had resolved to augment the existing public toilets in Chennai City by constructing and/or renovating toilets and related facilities in 285 locations (the "Project") for **design, build, finance, operate and transfer the facilities under HAM - Hybrid Annuity format (the "Hybrid Annuity")** basis, which shall be partly financed by the Concessionaire who shall recover its investment and costs through payments to be made by the Authority, in accordance with the terms and conditions set forth in this concession agreement to be entered into.
- b) The Authority had adopted a single -stage bidding process and accordingly invited proposals by its Request for Proposal **dated \*\*\*** (the "Request for Proposal " or "RFP") for qualification, short listing and selection of bidders for construction, operation and maintenance of the above referred Project on Hybrid Annuity basis.
- c) The Authority had prescribed the technical and commercial terms and conditions in the RFP, and invited bids comprising technical and financial proposals from the bidders for undertaking the Project.
- d) After evaluation of the bids received, the Authority had technically qualified certain bidders including, inter alia, the **selected bidder/consortium** comprising **.....** and **.....** (collectively the "Consortium") with **.....** as its lead member (the "Lead Member") and accepted the financial bid of the **selected bidder/ Consortium** and issued its **Letter of Award No .....** dated **.....** (hereinafter called the "LOA") to the **selected bidder/ Consortium requiring**, inter alia, the execution of this Concession Agreement within 60 (sixty) days of the date of issue thereof.
- e) The **selected bidder/ Consortium** has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the **selected bidder/ Consortium** under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.

- f) By its letter dated .....the Concessionaire has also joined in the said request of the **selected bidder/ Consortium** to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the **selected bidder/ Consortium** including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the **selected bidder/ Consortium** for the purposes hereof and has delivered to the Authority a legal opinion with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof.
- g) The Authority has agreed to the said request of the **selected bidder/ Consortium** and the Concessionaire and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on a Hybrid Annuity basis, subject to and on the terms and conditions set forth hereinafter.

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

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 42) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

#### 1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- f) references to "construction" or "building" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;
- g) references to "development" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a calendar day;
- j) Reference to a "business day" shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

- l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- m) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- n) the words importing singular shall include plural and vice versa;
- o) References to any gender shall include the other and the neutral gender;
- p) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- q) "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- r) references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- u) the Schedules and Recitals to this Agreement and the Request for Proposals ("RFP") forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages"); and

x) Time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/ or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### **1.3. Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to 5 (five) decimal places, with the sixth digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### **1.4. Priority of agreements, clauses, and schedules**

1.4.1. This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- a) this Agreement; and
- b) all other agreements and documents forming part hereof or referred to herein, i.e., the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2. Subject to provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- f) between any value written in numerals and that in words, the latter shall prevail.

**Part II**

**The Concession**

## ARTICLE 2

### SCOPE OF THE PROJECT

#### 2.1 Scope of the Project

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

- a) construction of the Project on the Site(s) set forth in **Schedule-A** and as specified in **Schedule-B** together with provision of Project Facilities as specified in **Schedule- C**, and in conformity with the Specifications and Standards set forth in **Schedule- D**;
- b) deployment by the Concessionaire minimum manpower as specified in para 3.12 of Annex-I, Schedule-C,
- c) operation and maintenance of-the Project in accordance with the provisions of this Agreement as **specified in Schedule K**; and
- d) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

## ARTICLE 3

### GRANT OF CONCESSION

#### 3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable laws and Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to construct, operate and maintain the Project (the "**Concession**") during the Construction Period of 365 (Three Hundred Sixty Five) days and Operation Period of 8 (eight) years commencing from COD, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) finance and construct the Project;
- (c) manage, operate and maintain the Project;
- (d) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- (e) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (f) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.



## ARTICLE 4

### CONDITIONS PRECEDENT

#### 4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 22, 28, 38 and 41, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**").

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, by notice require the Authority to satisfy all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 120 (one hundred and twenty) days from the date of this Agreement. The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.2;
- (b) Not Used;
- (c) considered and approved the Micro Implementation & Operations Plan (MIOP) in accordance with the provisions of Clause 4.1.3 (h)..

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 120 (one hundred and twenty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to the Authority along with the Additional Performance Security, if required in terms of Clause 9.1 and Clause 9.7 of this Agreement. For the avoidance of doubt, it is clarified and agreed that the Concessionaire is required to provide the Performance Security and the Additional Performance Security if required, on or before the date of signing of this Agreement;
- (b) executed and procured execution of the Escrow Agreement;
- (c) executed and procured execution of the Substitution Agreement;
- (d) procured all the Applicable Permits specified in Part-I of **Schedule-E** unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and
- (g) delivered to the Authority (**from the Consortium Members, their** respective constituents) confirmation of the correctness of the representations and

warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement.

- (h) submitted to the Authority, the draft MIOP prepared in accordance with the requirements stated in Annex-I to Schedule-D. The draft MIOP shall be submitted by the Concessionaire to the Independent Engineer and the Authority within 60 (sixty) days from the date of this Agreement. The Independent Engineer/Authority may provide its comments for improvement of the MIOP. However, it shall be the endeavour of the Authority to ensure that the improvements suggested to the MIOP will be such that the Concessionaire can incorporate the same in the MIOP without any undue impact on the agreed Bid Project Cost and O&M Payments under this Agreement.
- (i) After receiving the comments of the Independent Engineer and the Authority, the Concessionaire shall revise the MIOP as required and re-submit the same for approval by the Authority. Once the MIOP is approved by the Authority, it is deemed to be the final MIOP. The timeline for submission of the draft and final MIOP is provided in the Table below:

Table 1: Timelines for MIOP Submissions and Approval

S.no	Milestone	Time from Contract execution date) (Days)
1	Submission of draft MIOP	60
2	Review & Comments given by IE & Authority	75
3	Submission of Revised MIOP by the	90
4	Review & Comments given by IE & Authority	105
5	Submission of Final MIOP by the Concessionaire and Approval by Authority	120

- (i) The MIOP shall be revised every 6 (six) months during the Concession Period and approval sought by the Authority. The Revisions to the MIOP shall be submitted by the Concessionaire to the Independent Engineer and the Authority within 30 (thirty) days prior to expiry of the 6 (six) month period. While the procedure set out in Clause (h) and Clause (i) shall be followed for approval by the Authority of the subsequent MIOPs, the process shall be expedited and shall be completed within 30 days from the expiry of the 6 (six) month period.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Subject only to payment of Damages, it is agreed between the Parties that the obligation to fulfill each parties' Conditions Precedent is an independent obligation of the respective Party.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

**4.2 Damages for delay by the Authority**

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to the maximum limit equal to 20% of the amount of Performance Security and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided further that in the event of delay by the Concessionaire in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.3.

**4.3 Damages for delay by the Concessionaire**

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to the maximum limit equal to the 20% of the amount of Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement.

Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

**4.4 Commencement of Concession Period**

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Project.

**4.5 Deemed Termination upon delay**

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before 120 (one hundred twenty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

Provided, however, that in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security and the Additional Performance Security, if any, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

## ARTICLE 5

### OBLIGATIONS OF THE CONCESSIONAIRE

#### 5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
- (c) comply with the conditions set out in the final MIOP approved by the Authority and continue being in compliance with the revisions if any to the MIOP from time to time.
- (d) perform and fulfil its obligations under the Financing Agreements;
- (e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (f) Not Used
- (g) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (h) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement
- (i) support, cooperate with and facilitate the Authority in the implementation

and operation of the Project in accordance with the provisions of this Agreement; and

- (i) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions of this Agreement.

## **5.2 Obligations relating to Project Agreements**

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for intimation and record. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire and shall respond to the request for consent no later than 30 days from the receipt of such request from the Concessionaire.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority and/ or Lenders Representative to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). Further, it is clarified that in case both the Authority and Lenders' Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any

relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the EPC Contractor and an O&M Contractor and execution of the EPC Contract and O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall convey its decision thereon expeditiously and no later than 30 days from the date of receipt of the proposal along with the draft agreement by the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

### **5.3 Obligations relating to Change in Ownership**

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority. Any Change in Ownership during the Concession Period is permissible in the following manner::

#### **Concessionaire set up by a Single Entity Bidder**

The selected bidder should hold a minimum issued and paid-up equity share capital of 100% in the Concessionaire till 3 (three) years after the COD. From the 4th year after COD till end of the Concession Period, the selected bidder should hold minimum 26% shareholding in the Concessionaire. Provided that at any time from the 4th (fourth) year after COD, during the Concession Period, if any company other than the selected bidder intends to hold 51% shareholding in the Concessionaire, such a company should have equal or better technical and financial qualifications as given in the Request For Proposal. Such inclusion of the shareholder in the Concessionaire shall be with the prior written approval of the Authority.

#### ***OR (Strike off the para that's not applicable)***

#### **Concessionaire set up by a Consortium**

The selected bidder should hold 100% of paid-up equity capital in the Concessionaire till 3 (three) years after COD. Out of which the Lead Member of the Consortium should hold at least 51% (fifty-one percent) of the issued and paid-up equity share capital in the Concessionaire till 3 (three) years after COD. After the 4th (fourth) year of COD till the end of the Concession Period the Lead Member should hold not less than 26% of issued and paid-up equity share capital in the Concessionaire. Provided that, any time from the 4th (fourth) year after COD, during

the Concession Period, if any company other than the Lead Member intends to hold 51% paid up share capital, in the Concessionaire, such a company shall have equal or better qualifications as provided in the Request for Proposal. Such inclusion of the shareholder in the Concessionaire shall be with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (i) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether



situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

**5.4 Obligations relating to employment of foreign nationals**

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

**5.5 Obligations relating to employment of trained personnel**

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective function

**5.6 Facilities for differently abled and elderly persons**

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the Project.

**5.7 Branding of Project**

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of Authority.

**5.8 Sole purpose of the Concessionaire**

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

**5.9 Advertising on the Site**

The Concessionaire shall have the right to undertake advertising on the Site(s) and the Project Facilities at its costs and expenses and collect charges from the advertisers. . The Concessionaire shall comply with all Applicable Laws in this respect.

**5.10 Commercial activities on Site**

Save as permitted under Clause 5.9, the Concessionaire shall have no rights whatsoever for any kind of commercial development and/or exploitation in or on the Project Unit(s) and/or the Project Site(s). The Concessionaire shall strictly comply with this directive and violation, of any measure whatsoever, shall be deemed as a Concessionaire's breach of the terms of this Agreement.

## ARTICLE 6

### OBLIGATIONS OF THE AUTHORITY

#### 6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits and approvals required from any Government Instrumentality for implementation and operation of the Project;
  - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
  - (c) procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
  - (d) upon written request from the Concessionaire, extend reasonable assistance so as to follow the approved MIOP requirements.
  - (e) Subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project;
  - (f) Assist the Concessionaire in procuring police assistance for regulation of Users, removal of trespassers and security on or at the Project;
  - (g) Not do or omit to do any act, deed or thing which may in any manner is violating of any of the provisions of this Agreement;
  - (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements.

#### 6.2 Not Used

#### 6.3 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government

or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. The Authority shall endeavour to convey its decision on such request of the Concessionaire within 30 days of receipt of the proposal by the Authority.

## ARTICLE 7

### REPRESENTATIONS AND WARRANTIES

#### 7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) **The selected bidder/ Consortium Members** have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement -will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;
- (f) The information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association (or **those of any member of the Consortium**) or any Applicable laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 Provided further that any such request made under Clause 7.1 (k) and/ or Article 42, at the option of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders;
- (l) **The selected bidder/ each Consortium Member** is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with **itself/the Concessionaire** pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it Subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (n) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (p) all information provided by the **selected bidder/ Consortium Members** in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (q) All undertakings and obligations of the Concessionaire arising from the Request for Proposal or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

## 7.2 **Representations and warranties of the Authority**

The Authority represents and warrants to the Concessionaire that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and

- that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
  - c) It has the financial standing and capacity to perform its obligations under this Agreement;
  - d) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
  - e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
  - f) It has complied with Applicable Laws in all material respects;
  - g) It has the right, power and authority to manage and operate the Project; and
  - h) It shall procure good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire.

**7.3 Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

## ARTICLE 8

### DISCLAIMER

#### 8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, (the Consortium Members) or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.



**Part III**

**Development and Operations**

## ARTICLE 9

### PERFORMANCE SECURITY

#### 9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority on or before the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 2.61 Crores (Rupees Two Crore Sixty One Lakhs ) in the form set forth in **Schedule-F** (the "**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Not Used

#### 9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 31.

Provided that upon appropriation on account of Concessionaire's Default the Concessionaire shall replenish the Performance Security and upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default, save and except as provided in Clause 4.5 of this Agreement, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

#### 9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the COD, but shall be released earlier upon the Concessionaire expending on Project Construction, an aggregate sum that is not less than 90% (ninety per cent) of the Bid Project Cost (adjusted for Goods and Service Tax); Provide however that only 95% of the Performance Security shall be released at the material time as mentioned herein, and provided further that the Performance Security shall not be released and shall be kept alive by the Concessionaire if the Concessionaire is in breach of this

Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith. The remaining 5% of the Performance Security shall be renewed by the Concessionaire every 2 (two) years during the Concession Period which shall be finally released upon expiry of this Agreement.

**9.4** Not Used

**9.5** Not Used

**9.6 References to Performance Security**

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire.

**9.7 Additional Performance Security**

The Concessionaire shall along with the Performance Security provide to the Authority an irrevocable and unconditional guarantee from a Bank for a **sum equivalent to Rs. \*\*\*\*\* crore (Rupees \*\*\*\*\* crore)**<sup>1</sup> in the form set forth in **Schedule-F** (the "Additional Performance Security"), to be modified, mutatis mutandis, for this purpose as security to the Authority if the Bid Project Cost of the **selected Bidder/ Consortium** is lower by more than 10% with respect to the Estimated Project Cost. The requirement of submitting the Additional Performance Security shall be a Condition Precedent. Failure to maintain the Additional Performance Security shall be treated as Concessionaire Default as per Clause 31.1.1.

**9.8 Appropriation and Release of Additional Performance Security**

Notwithstanding anything contrary contained in this Agreement, if this Agreement is terminated, except for Authority Default or due to the Force Majeure, prior to achievement of the III (third) Project Milestone, the Authority shall have the right to encash the Additional Performance Security in addition to the Performance Security. However, the Additional Performance Security shall be released upon achievement of Project Milestone - III as defined in Schedule G and shall be released immediately and no later than 30 (thirty) days from the certification of achievement of Project Milestone- III.

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<sup>1</sup> Calculated as the difference in the Estimated Project Cost and the Bid Project Cost

## ARTICLE 10

### RIGHT OF WAY

#### 10.1 The Site

The site of the Project shall comprise the real estate described in **Schedule-A** and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (**the "Site"**). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Project as set forth in **Schedule-A**.

#### 10.2 License, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Construction Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Project, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in **Schedule-A** hereto (**the "Licensed Premises"**), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the Licensed Premises is available to Users at all times during the Concession Period.

10.2.4 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

### **10.3 Procurement of the Site**

10.3.1 Not Used.

**10.3.2** The Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way to the extent of 100% (hundred per cent) of the area thereof, including the space for development of CCMS (of a minimum of 1000 square feet) together with the server with ICCC and in the event Financial Close is delayed on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages solely under the provisions of Clause 4.2.

10.3.3 On and after handing over the Site and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 Not Used.

10.3.5 Not Used.

10.3.6 Not Used

10.3.7 Not Used

### **10.4 Site to be free from Encumbrances**

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except

insofar as otherwise expressly provided in this Agreement. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

**10.5 Protection of Site from Encumbrances**

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

**10.6 Special/temporary right of way**

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

**10.7 Access to the Authority and Independent Engineer**

The license, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

**10.8 Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government - Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

**10.9 Not Used**

**ARTICLE 11**

**Not Used**

## ARTICLE 12

### CONSTRUCTION OF THE PROJECT

#### 12.1 Obligations prior to commencement of construction

In addition to its obligations of maintaining the Project during the Construction Period, prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in **Schedule-G**;
- (b) Appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits.
- (d) Not Used.

#### 12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project as set forth in **Schedule-H**, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Engineer for review.
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.



- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.
- (f) Not Used.
- (g) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed forming part of Project Facilities.

### **12.3 Construction of the Project**

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in **Schedule-B** and **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D**. The 365th (three hundred and sixty fifth) day from the Appointed Date shall be the scheduled date for completion of the Project (the "**Scheduled Completion Date**") and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.

12.3.2 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in **Schedule-G**. In the event that the Concessionaire fails to achieve any Project Milestone within the date set forth for such Project Milestone in **Schedule-G**, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in **Schedule-G** shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if **Schedule-G** has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.3 In the event that the Project is not completed, and COD does not occur within 90 (ninety) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

## **12.4 Maintenance during Construction Period**

12.4.1 From the date of takeover of the Project Site(s) by the Concessionaire (from the Authority) and into the Construction Period, the Concessionaire shall maintain, at its cost, the existing Project Sites, the Units and all the Project Facilities to ensure that it is available and usable for the Users. The Concessionaire shall not be entitled to receive reimbursement of cost of maintenance for this infirm period, however, the monitoring of compliance to Maintenance Requirements and to Key Performance Indicators shall commence from the date of issuance of Phased Completion Certificate/Completion Certificate/Commercial Operation date. Further, in case the Scheduled Completion Date gets extended due to delay attributable solely to the Authority, the Concessionaire shall be liable to maintain the Project Sites, the Units and the Project Facilities for such extended period till the Commercial Operation Date. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring availability, usability, safety and functionality of the Project.

## **12.5 Not Used**

## ARTICLE 13

### MONITORING OF CONSTRUCTION

#### 13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on physical and financial progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

#### 13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project at least once in fifteen days and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

#### 13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests required by Good Industry Practice for the construction works undertaken by the Authority through their contractors. The Concessionaire shall, with due diligence, and at its cost and expense, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

**13.4 Delays during construction**

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

**13.5 Suspension of unsafe Construction Works**

13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, Such work threatens the safety of the Users and pedestrians. Provided, however, that in case of an emergency, the Authority may suo-moto issue the notice referred to hereinabove.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 28.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer.

**13.6 Not Used**

**13.7 Monitoring of advertising activities**

It is hereby clarified that the provisions of this Article 13 shall, to the extent applicable, apply to advertising activities undertaken by the Concessionaire on the Site.

## ARTICLE 14

### COMPLETION CERTIFICATE

#### 14.1 Tests

14.1.1 No later than 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

14.1.2 All Tests shall be conducted in accordance with **Schedule-I** at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

#### 14.2 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in **Schedule-J** (the "**Completion Certificate**").

Upon the Concessionaire achieving Phased Completion for a particular phase/portion of the Project and the Independent Engineer determining the Tests behind these completed portions to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in **Schedule-J** (the "**Phased Completion Certificate**").

#### 14.3 Not Used

#### **14.4 Not Used**

#### **14.5 Withholding of Phased Completion Certificate or Completion Certificate**

14.5.1 If the Independent Engineer determines that a particular phase/portion of the Project or the Project does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that a particular phase/portion of the Project or the Project, as the case may be, is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Phased Completion Certificate (s) or the Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Not Used.

#### **14.6 Rescheduling of Tests**

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Phased Completion Certificate(s), as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

## ARTICLE 15

### ENTRY INTO COMMERCIAL SERVICE

#### 15.1 Commercial Operation Date (COD)

15.1.1 The Project shall be deemed to be complete only when the Completion Certificate is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate is issued (**the "COD"**). For avoidance of doubt, the Project shall not be deemed to be complete when the Phased Completion Certificate(s) are issued to the Concessionaire. The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Annuity Payments in accordance with the provisions of this Agreement.

15.1.2 The Concessionaire shall be eligible for release of O&M payments for Phased Completion only after achieving COD.

15.1.3 Such O&M payment shall be calculated on a pro-rata basis for each of the Units within the Project Site(s) that would have achieved Phased Completion, calculated from the relevant date of Phased Completion and till the COD, and worked out as a function of the First Year O&M Cost, the estimated O&M Payment as applicable for the construction period and the aggregate number of Units for which such O&M payment is payable.

15.1.4 For avoidance of doubt:

- A. Let us assume that 50 Sites achieve Phased Completion on the 120th day from the Appointed Date and these 50 Sites have, between them have 400 Units (i.e., seats/service counters), and
- B. Let us also assume that the First Year O&M Cost is Rs. 25 Crore for say 2300 seats/service counter under consideration.
- C. Further, the Price Index Multiple is to be calculated between the two reference periods viz., the 120th day from the Appointed Date and the Scheduled Completion Date and let us assume that this works out to 1.20 (one point two zero).
- D. With above data, the O&M Payment, as applicable for these Phased Completion Sites, and applicable during the Construction period, is calculated as Rs. (25/1.20) Crore = Rs. 20.83 Crore.

Concessionaire would, therefore, subject to deductions if any under adherence/compliance to the Maintenance Requirements and KPIs as per Schedule K, be eligible to receive  $20.83 \times (400/2300) \times ((365-120)/365) = \text{Rs. } 2.43 \text{ Crore}$  for these 50 Sites comprising 400 Units (i.e., seats/ service counters), for the period from Phased Completion date and till Scheduled Completion Date and payable upon achieving COD of the Project (number of days in the year assumed as 365).

15.1.5 For avoidance of doubt if the Agreement is terminated as per terms of the



Agreement before COD, the Authority is not obligated to pay such accrued amounts to the Concessionaire.

**15.2 Damages for delay**

- 15.2.1 Subject to the provisions of Clause 12.3, if COD does not occur prior to the 31st (thirty first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until COD is achieved. Upon failure of the Concessionaire to pay the said Damages, the same shall be paid along with interest at the prevailing 1(one)year SBI MCLR plus 2.25% (two point two five percent) and shall be deducted from the 1st (first) Annuity Payment. In case the Damages and the interest thereof are more than the 1st Annuity payment, then the balance Damages along with interest thereof shall be recovered from any further amount due and payable to the Concessionaire excluding O&M Payments but including interest to be paid on reducing balance of the Bid Project Cost remaining to be paid along with the 1st Annuity or from further Annuity payments.

## ARTICLE 16

### CHANGE OF SCOPE

#### 16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional seats/service counters (i) by way of providing additional toilets/ standalone urinals/ standalone bathrooms/ modular toilets and/or (ii) by way of expanding coverage to pre-constructed toilets/ standalone urinals/ standalone bathrooms/ modular toilets, if any but not already included in the Scope of the Project as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope, which decision of the Authority shall be final and binding.

16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

#### 16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

- a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the

Authority to the extent such cost is certified by the Independent Engineer as reasonable.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (**the "Change of Scope Order"**) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire under this Article 16.

### **16.3 Payment for Change of Scope**

Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and approved by the Assistant Engineer, Assistant Executive Engineer and Executive Engineer of the respective ward/zone of the Authority and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

### **16.4 Restrictions on certain works**

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Change of Scope Order shall not be reckoned for purposes of determining completion of the Project and issuing the Completion Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 25% (twenty five per cent) of the aggregate of the Total Project Cost and the summation of the O&M Payments for the term of the Concession.

### **16.5 Power of the Authority to undertake works**

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder<sup>2</sup>.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 16.5. It is hereby clarified that the Concessionaire shall be bound and obliged to undertake operation and maintenance of facilities covered under the provisions of this Article, whether constructed by the Concessionaire or undertaken by the Authority, and such facilities shall be deemed to be a part of Project Facilities.

### **16.6 Reduction in Scope of the Project**

16.6.1 If the Authority has failed to handover one or more Project Sites referred to under Clause 10.1 and the Concessionaire is not able to complete the Construction Works for reasons attributable to the Authority not handing over all the Project Sites or due to Force Majeure conditions, the Authority shall undertake the following procedure to calculate the cost of reduced Scope:

- I. On the direction by the Authority, the Independent Engineer shall assess the civil cost of the reduced Scope, as per the schedule of rates applicable on the Bid Due Date.
- II. The civil cost of the reduced Scope shall be multiplied by the [.....]<sup>3</sup> to arrive at the estimated cost of reduced Scope.

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<sup>2</sup> The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire

<sup>3</sup> This percentage shall be calculated as (Estimated Project Cost divided by Civil Construction Cost (alone, for the entire Project) as estimated by Authority) – essentially, the mark up that the aggregate project cost has over the constituent civil construction cost.

- III. The estimated cost of reduced Scope shall then be multiplied by the ratio of Bid Project Cost to Estimated Project Cost to arrive at the Total Cost of the Reduced Scope.

If the Authority is unable to handover a few Project Sites referred under Clause 10.1 for reasons beyond its control, but the Concessionaire, nevertheless, undertakes to provide the seats/service counters in excess of the direct one to one mapping of the reductions caused by the absence of the seats/service counters associated with those Sites that were not handed over by the Authority, then such of those additional seats/ service counters undertaken to be provided by the Concessionaire, within the otherwise truncated list of Sites, shall be built by the Concessionaire in ratio indicated in the last row of the table below.

Table 2: Seats/Service Counters proportions for Additionality, however, within a reduced Project Site handover

	<b>PCT Closet</b>	<b>PCT Urinals</b>	<b>PCT Bathroom</b>	<b>Standalone Urinals</b>	<b>Standalone Bathrooms</b>	<b>Modular</b>	<b>Total</b>
Under this Project Scope	1849	168	188	82	12	2	<b>2301</b>
Under this Project Scope - Distribution	80%	7%	8%	4%	1%	0%	<b>100%</b>
<b>Distribution to be applied for additional seats/ service counters</b>	<b>82%</b>	<b>9%</b>	<b>9%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>100%</b>

The Authority shall follow the process outlined in this Clause 16.6.1 for calculation of total cost of reduced Scope, if any, after reckoning the additional seats/ service counters that the Concessionaire may provide and which the Independent Engineer shall verify and duly certify, and thereafter, make the payments in accordance with this Clause.

On or before a Payment Milestone immediately succeeding the date of finalization of such Reduction in Scope, the Bid Project Cost shall be adjusted for the Total Cost of Reduced Scope and all payments made or to be made to the Concessionaire shall be suitably adjusted and recoveries, if any, shall be made from the payment to be released on that Payment Milestone immediately succeeding the date of finalization of Reduction in Scope.

For the avoidance of doubt, it is agreed that upon the Reduction of Scope and revision of Bid Project Cost, all references to Bid Project Cost shall mean the revised Bid Project Cost and all the payments shall be calculated in accordance with the revised Bid Project Cost.

- 16.6.2 For determining the obligations of the Concessionaire under Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply mutatis mutandis, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall

pay forthwith the sum specified therein.

### **16.7 Effect of Change in Scope on the O&M Costs**

Pursuant to the provisions of Article 16, if the Change in Scope leads to a reduction or increase in the scope of the Project, the O&M Payments as provided in Clause 23.7 shall be reduced or increased in proportion to the reduction or increase in the scope of the Project.

**Increase in Seats/ Service Counters** - Pursuant to the provisions of Article 16, if the Change in Scope leads to an increase in the scope of the Project, the Concessionaire shall be paid the O&M payment for such works on a pro-rata basis derived as a function of the number of seats/service counters constructed, the O&M Payment applicable for the relevant period when these seats/service counters come into operations and the aggregate number of seats/ service counters for which the O&M payment is applicable for that relevant period.

For avoidance of doubt:

- A. If 500 additional seats/service counters get constructed in accordance with this Article during year 2 (two), and
- B. If these seats/service counters are operational for a full the period of year 2 (two), and
- C. If the relevant per annum O&M Cost for the 2<sup>nd</sup> (second) operational year works out to Rs.40 Crore (after applying the applicable Price Index Multiple on the 1<sup>st</sup> (first) Year O&M) for say 2300 seats/service counters reckoned under the Project Scope, then
- D. The pro-rata per annum O&M Cost applicable for these 500 additional seats/service counters shall be  $(500) \times (40/2300) = \text{Rs. } 8.70$  Crore for the full (of the 2<sup>nd</sup>) year.
- E. Subsequent year payments of O&M Costs for these additional seats/service counters shall be with the applicable Price Index Multiples for those years.

**Decrease in Seats/ Service Counters** – Pursuant to the provisions of Article 16, if the Change in Scope leads to a reduction in the scope of the Project, the Concessionaire shall be paid the O&M payment for the balance of seats/service counters that form part of the decrease in scope of the Project after deducting from it the O&M payments applicable to the reduced seats/service counters.

The O&M payments applicable to the reduced seats/service counters shall be calculated on a pro-rata basis derived as a function of the number of seats/service counters that get reduced, the seats/ service counters that originally constituted the Project Scope, and the First Year O&M Cost quoted by the Concessionaire in the Bid.

For avoidance of doubt:

- A. If 240 seats/service counters get reduced under a Change in Scope exercise, and
- B. If the First Year O&M Cost as quoted by the Concessionaire in the Bid was Rs.25

Crore for say 2300 seats/service counters reckoned under the Project Scope

- C. Then the pro-rata per annum O&M Cost applicable for these 240 seats/service counters shall be  $(240) \times (25/2300) = \text{Rs. } 2.61 \text{ Crore}$ .
- D. This amount (of Rs 2.61 Crore) shall be reduced from the First Year O&M Cost.

Save and except the provisions in Clause 16.6 as they relate to Reduction in Scope of the Project and to Clause 16.7 as they relate to the effect of Change in Scope on the O&M Costs, the provisions of the Agreement shall apply mutatis mutandis to the works carried out under this Clause.

## ARTICLE 17

### OPERATION AND MAINTENANCE

#### 17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) Procuring and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions;
- (b) Minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services associated with the Authority;
- (c) Carrying out periodic preventive maintenance of the Project;
- (d) undertaking routine maintenance including prompt repairs of ~~petholes~~, cracks, joints, drains, structures, lighting, signage and other devices;
- (e) Undertaking major maintenance such as, repairs to structures, and repairs and refurbishment of system and equipment;
- (f) Preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- (g) Preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized entry to the Project;
- (h) Protection of the environment and provision of equipment and materials thereof;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing safe, smooth and uninterrupted use of the Project Facilities, the Project Site and the Units to the Users;
- (j) **Not Used**
- (k) Maintaining a public relations unit to interface with and attend to suggestions from the Users,; and
- (l) Complying with Safety Requirements in accordance with Article 18.

17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice. For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at Kodingaiyur dumping ground and/or at Perungudi Dumping ground, Chennai.



17.1.3 Not Used.

## **17.2 Maintenance Requirements**

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements set forth in **Schedule-K** (the "**Maintenance Requirements**").

## **17.3 Maintenance Manual**

17.3.1 No later than 180 (one hundred eighty) days from the Appointed Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve an operations, repair and maintenance manual (the "**Maintenance Manual**") for the operations, regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause shall apply, mutatis mutandis, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for operations and maintenance of Project Assets and shall provide detailed operations plan, manpower staffing and deployment plan, plan for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for operations, maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

## **17.4 Maintenance Program**

17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual program of preventive, urgent and other scheduled maintenance (the "**Maintenance Program**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Program shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) Criteria to be adopted for deciding maintenance needs;
- (d) Intervals and procedures for carrying out inspection of all elements of the Project;
- (e) Intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) Arrangements and procedures for carrying out safety related measures; and
- (g) Intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Program, the Independent Engineer shall review the same and convey its comments to the Concessionaire with

particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Program as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply mutatis mutandis to such modifications.

#### **17.5 Not Used**

#### **17.6 De-commissioning due to Emergency**

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.6.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Authority of the same without any delay.

17.6.3 Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

#### **17.7 Project closure**

17.7.1 Save and except as provided in Clause 17.6, the Concessionaire shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Program, except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Program and a copy of such permission shall be sent to the Authority.

17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to any closure for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when usage of the Project is comparatively lower.

17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in re-opening such part, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.5% (zero point Five per cent) of the Performance Security, for each day of delay until that part of the Project has been re-opened for use.

#### **17.8 Damages for breach of maintenance obligations**

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages as specified in Schedule – K. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

#### **17.9 Authority's right to take remedial measures**

17.9.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Program, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.

17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses.

### **17.10 Overriding powers of the Authority**

17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 28.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 28. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

### **17.11 Restoration of loss or damage to the Project**

17.11.1 Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

### **17.12 Modifications to the Project**

17.12.1 The Concessionaire shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, Maintenance

Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws and the provisions of this Agreement.

### **17.13 Excuse from performance of obligations**

17.13.1 The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to Users on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project:

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer without any delay;

Provided further that the Concessionaire shall keep all unaffected parts of the Project open to Users, provided they can be operated safely.

### **17.14 Not Used**

### **17.15 Installation and operation of CCTV**

The Concessionaire shall install and operate a closed circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof.

### **17.16 Advertising on the Site**

The Concessionaire shall be entitled to undertake any form of advertising, display or hoarding at any place on the Project Site /Project Facilities subject to compliance with Applicable Laws, extant standards, rules and regulations and after obtaining prior written approval of the Authority.

### **17.17 Operations and Maintenance of advertising activities**

It is hereby clarified that the provisions of this Article 17 shall, to the extent applicable, apply to advertising activities undertaken by the Concessionaire on the Project Site in accordance with the provisions of this Agreement.

## ARTICLE 18

### SAFETY REQUIREMENTS

#### 18.1 Safety Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety program for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in **Schedule-L** (the "**Safety Requirements**").

18.1.2 Not Used

#### 18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

#### 18.3 Safety requirements for advertising activities

It is hereby clarified that the provisions of this Article 18 shall, to the extent applicable, apply to advertising activities undertaken by the Concessionaire on the Project Site in accordance with the provisions of this Agreement.

## ARTICLE 19

### MONITORING OF OPERATION AND MAINTENANCE

#### 19.1 Monthly status reports

19.1.1 During the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Program and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.1.2 During the Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish a monthly management report which shall include a summary of:

- (a) Key Performance Indicators achieved on a daily basis (aggregating the daily KPI reports), along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
- (c) Not Used.

#### 19.2 Inspection

The Independent Engineer shall inspect the Project on a daily basis. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Program and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

#### 19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, and at its cost and expense, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer.

#### 19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case

may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

**19.5 Reports of unusual occurrence**

The Concessionaire shall send to the Authority and the Independent Engineer, by facsimile or e-mail on a weekly basis stating therein accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project. Unusual occurrences may be:

- (a) death or injury to any person,
- (b) damage or obstruction on the Project resulting in the hampering of services to the Users,
- (c) smoke or fire,
- (d) flooding of the Project Site and
- (e) such other relevant information as may be required by the Authority or the Independent Engineer.

**19.6 Monitoring of advertising activities**

It is hereby clarified that the provisions of this Article 19 shall, to the extent applicable, apply to advertising activities undertaken by the Concessionaire on the Project Site in accordance with the provisions of this Agreement.



**ARTICLE 20**

**Not Used**

## ARTICLE 21

### INDEPENDENT ENGINEER

#### 21.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in **Schedule-M**, to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 60 (sixty) days from the date of this Agreement and shall be for an initial period of 3 (three) years. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of **Schedule-M**, and such procedure shall be repeated after expiry of each appointment.

#### 21.2 Duties and functions

21.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in **Schedule-N**.

21.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in **Schedule-N**.

21.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

21.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

#### 21.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in **Schedule-M**, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

#### 21.4 Termination of appointment

21.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 21.1.

21.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the

appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 21.1.

**21.5 Authorized signatories**

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

**21.6 Dispute resolution**

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

**21.7 Interim arrangement**

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 21.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

**21.8 Role of Independent Engineer behind advertising activities**

The Independent Engineer shall, to the extent applicable or required, undertake and discharge its duties and functions in respect to the advertising activities undertaken by the Concessionaire in accordance with the provisions of this Agreement, in the same manner as being undertaken by him in respect to the Project.

**Part IV**

**Financial Covenants**

## ARTICLE 22

### FINANCIAL CLOSE

#### 22.1 Financial Close

22.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close for an amount not lower than either:

- i. Total Project Cost; or
- ii. 10% less than (Estimated Project Cost minus 40% of Bid Project Cost).

within 120 (one hundred and twenty) days from the date of this Agreement. In the event of delay in achieving the Financial Close, the Concessionaire shall be liable to pay damages to the Authority in a sum calculated and payable as per the provisions of Clause 4.3.

22.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

#### 22.2 Termination due to failure to achieve Financial Close

22.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 28.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 22.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

22.2.2 Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the Bid Security or Performance Security, as the case may be and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash there from an amount equal to the Bid Security.

## ARTICLE 23

### PAYMENT OF BID PROJECT COST

#### 23.1 Bid Project Cost

The Parties expressly agree that the cost of construction of the Project, as on the Bid Date, which is due and payable by the Authority to the Concessionaire, shall be deemed to be Rs.....(Rupees.....) (The " Bid Project Cost")<sup>4</sup>. The Parties further agree that the Bid Project Cost specified hereinabove for payment to the Concessionaire shall be inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, expenses and charges for and in respect of construction of the Project, save and except Goods and Services Tax (GST), any additional costs arising on account of variation in Price Index, Change of Scope, Change in Law, Force Majeure or breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement.

For the avoidance of doubt, the Bid Project Cost specified herein represents the amount due and payable by the Authority to the Concessionaire and may be less than, equal to, or more than the Estimated Project Cost. For the avoidance of doubt, it is also hereby clarified that the Bid Project Cost shall not include the cost of any advertising activity likely to be undertaken by the Concessionaire at the Project Site(s) in accordance with the provisions of this Agreement.

#### 23.2 Not Used

#### 23.3 Payment of Bid Project Cost

23.3.1 40% (forty per cent) of the Bid Project Cost or the Estimated Project Cost, whichever is lower, shall be due and payable to the Concessionaire in 4 (four) equal installments of 10% (ten per cent) each during the Construction Period in accordance with the provisions of Clause 23.4. GST as applicable shall be reckoned by the Authority at the material time of each such payment.

23.3.2 The remaining Bid Project Cost, shall be due and payable in 32 (thirty two) equal quarterly instalments commencing from the 91<sup>st</sup> (ninety first) day of COD in accordance with the provisions of Clause 23.6. GST as applicable shall be reckoned by the Authority at the material time of each such payment.

#### 23.4 Payment during Construction Period

Upon receiving a report from the Independent Engineer certifying the achievement of the below mentioned Payment Milestones, and upon the Assistant Engineer, Assistant Executive Engineer and Executive Engineer of the respective ward/zone of the Authority approving the same, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an installment equal to 10% (ten per cent) of the Bid Project Cost (adjusted for Goods and Service Tax);.

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<sup>4</sup> Bid Project Cost shall be the amount, Project Capital Cost, specified in the Bid of the selected Bidder.

For the purpose of this Clause 23.4, the Payment Milestone for release of payment during Construction Period shall be as under:

- a) I (first) Payment Milestone - On achievement of 20% Physical Progress (the first milestone shall include completion of atleast 0% [i.e., no minimum specification] of those Project Facilities that are, in aggregate, to be constructed new)
- b) II (second) Payment Milestone - On achievement of aggregate 50% Physical Progress (the second milestone shall include completion of atleast 30% of those Project Facilities that are, in aggregate, to be constructed new)
- c) III (third) Payment Milestone - On achievement of aggregate 80% Physical Progress (the third milestone shall include completion of atleast 60% of those Project Facilities that are, in aggregate, to be constructed new)
- d) IV(fourth) Payment Milestone - On achievement of aggregate 100% Physical Progress (the fourth milestone shall include completion of atleast 100% of those Project Facilities that are, in aggregate, to be constructed new)

Provided that in case of Change of Scope, the Physical Progress shall be recalculated to account for the changed scope.

### 23.5 Not Used.

### 23.6 Annuity Payments during Operation Period

23.6.1 The Parties acknowledge and agree that the Authority has paid a portion of the Bid Project Cost as payments during Construction Period pursuant to Clause 23.4 of this Agreement. The balance Bid Project Cost shall be due and payable during the Operations Period in accordance with the provisions of Clause 23.6.2.

23.6.2 The Bid Project Cost remaining to be paid in pursuance of the provisions of Clause 23.6.1 shall be due and payable in quarterly instalments over a period of 8 (eight) years commencing from COD, (the "**Annuity Payments**"). The 1<sup>st</sup> (first) instalment of Annuity Payments shall be due and payable within 15 (fifteen) days of the 91<sup>st</sup> (ninety first) day of COD and the remaining instalments shall be due and payable within 15 (fifteen) days of completion of each of the successive three months ("**the Annuity Payment Date**"). For the avoidance of doubt, the last Annuity Payment Date would be adjusted to in such a way that it falls at the end of the Operations Period.

23.6.3 Each of the Annuity Payments due and payable during the years following the COD shall be in equal instalments, commensurate with the payments due during the Operations Period.

Each of the quarterly instalments payable hereunder shall be paid along with interest as specified in Clause 23.6.4.

23.6.4 Interest shall be due and payable on the reducing balance of Bid Project Cost (adjusted for Goods and Service Tax); at an interest rate equal to 1 (one) year SBI MCLR plus 2.25% (two point two five percent) per annum. Such interest shall be due and payable along with each instalment as specified in Clause 23.6.3.

For the avoidance of doubt and by way of illustration, the Parties agree that interest on the Bid Project Cost remaining to be paid, calculated from COD and until the 90th (ninetieth) day of COD, shall be due and payable to the Concessionaire along with the first Annuity Payment and interest on the Bid Project Cost remaining to be paid on COD less the instalment paid on the 91<sup>st</sup> day of COD, calculated from first Annuity payment date and until the second Annuity Payment date, shall be due and payable along with the second Annuity Payment due and payable under this Agreement. The Parties further agree that interest shall be calculated based on the number of days for which the relevant rate of the 1 (one) year SBI MCLR was applicable during the period of calculation. For the purpose of illustration, assuming that the balance capital cost remaining to be paid is Rs.100 Crore on the 1st Annuity Payment Date, the applicable (SBI interest rate under Clause 23.6.4 for the first 75 days is 8% and thereafter it is revised to 7.5% and remains unchanged till the 2nd Annuity Payment Date, the interest would be calculated as  $((100 \times (8\% + 2.25\%) \times 75) / 365) + ((100 \times (7.5\% + 2.25\%) \times 15) / 365)$  for a quarter that comprise 90 days. For the avoidance of doubt, the Interest would be calculated on simple interest basis and no compounding of the same would be undertaken.

### 23.7 O&M Payments

23.7.1 The Parties acknowledge and agree that all O&M Expenses shall be borne by the Concessionaire and in lieu thereof, a lump sum financial support in the form of quarterly payments shall be due and payable by the Authority, which shall be computed on **Rs..... (Rupees.....)** (the "**First Year O&M Cost**")<sup>5</sup>, in accordance with the provisions of this Clause 23.7 (the "**O&M Payments**"). GST as applicable shall be reckoned by the Authority at the material time of each quarterly payment of O&M Expenses. The Parties further acknowledge and agree that any O&M Expenses in excess of the O&M Payments shall be borne solely by the Concessionaire, save and except as expressly provided in this Agreement. For avoidance of doubt, it is clarified that the O&M Payments will be subject to any Change in Scope of the Project of the Concessionaire under Article 16 of this Agreement.

23.7.2 Subject to the provisions of Clause 23.7.3, the O&M Payments due and payable to the Concessionaire shall be paid in 4 (four) equal quarterly instalments and disbursed by the Authority together with the corresponding instalments of Annuity Payments.

23.7.3 Each instalment of O&M Payment shall be the product of the amount determined in accordance with Clause 23.7.1 and the Price Index Multiple on the Reference Index Date preceding the due date of payment thereof.

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<sup>5</sup> First Year O&M Cost shall be the amount specified in the Bid of the selected Bidder



For the avoidance of doubt and by way of illustration:

- A. if the First Year O&M Cost is Rs.1 Crore (Rupees one crore), and
- B. if the O&M Payment is to be determined for the 2<sup>nd</sup> (second) year of the Operation Period, and
- C. if the Price Index on the Reference Index Date preceding the Bid Date is 200 (two hundred) and the Price Index on the Reference Index Date preceding the due date of payment (the 2<sup>nd</sup> year in this assumed case) is 240 (two hundred forty), then
- D. The Price Index Multiple is calculated as  $240/200 = 1.2$  (one point two), and
- E. Therefore, The O&M Payment for the instalment falling due in the 2<sup>nd</sup> operational year shall be the product of First Year O&M Cost and the applicable Price Index Multiple, viz., Rs. 1 Crore x 1.2 = Rs 1.2 Crore (Rupees one point two crore).

As aforementioned, GST as applicable shall be reckoned by the Authority at the material time of each quarterly payment of O&M Expenses.

Further, it may be noted that, for abundant clarity,

- A. The First Year O&M Cost shall be paid as specified in the Bid, adjusted for Goods and Services Tax as applicable, with no adjustments for Price Index Multiple
- B. The Price Index Multiple adjustment shall be applicable only from the Second Year O&M Cost
- C. Each instalment of O&M Payment shall be subject to adjustments under clause 17.8 of this Agreement and subject to provisions under Schedule K and

All O&M Payments shall be reviewed and certified for payment by the Independent Engineer and thereafter, the Assistant Engineer, Assistant Executive Engineer and Executive Engineer of the respective ward/zone of the Authority shall all approve the same, prior to payment of the due amounts to the Concessionaire.

**23.8 Not Used**

**23.9 Not Used**

23.10 For avoidance of doubt the Concessionaire shall not be eligible or entitled to collect User charges from the Users of the Public Units. The Authority may at any time during the Concession Period, decide to collect User charges from the Users depending on prevailing situations and appropriate the same in the manner that it deems fit and the Concessionaire shall have no right or claim on such User charges charged by the Authority. The Concessionaire acknowledges that it shall facilitate the Authority in collecting the User charges as and when decided by the Authority and provide all the necessary support to the Authority for this purpose

## **ARTICLE 24**

### **PAYMENTS TO AUTHORITY**

#### **24.1 Payment against advertising rights**

The Concessionaire will have the right to undertake advertising on the Project Site/ Units and shall be required to pay all fees, rentals and other charges and any and all other payments due and payable behind any advertisement activity undertaken by it to the Authority as applicable, from time to time, and through the term of the Concession.

## ARTICLE 25

### ESCROW ACCOUNT

#### 25.1 Escrow Account

25.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

25.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in **Schedule-0**.

#### 25.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) All funds constituting the Financial Package;
- (b) All revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) All payments by the Authority, after deduction of any outstanding payments.

#### 25.3 Withdrawals during Concession Period

25.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Not Used;
- (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 this 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;
- (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.

25.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 25.3.1, except with the prior written approval of the Authority.

#### **25.4 Withdrawals upon Termination**

25.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Not Used;
- (c) Ninety Percentage of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement;
- (d) Outstanding payments due to the Authority;
- (e) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (f) Retention and payments relating to the liability for defects and deficiencies set forth in Article 33;
- (g) Outstanding Debt Service including the balance of Debt Due;
- (h) Outstanding Subordinated Debt;
- (i) Incurred or accrued O&M Expenses;
- (j) Any other payments required to be made under this Agreement; and
- (k) Balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (k) of this Clause 25.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 32.

25.4.2 The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

## **ARTICLE 26**

### **INSURANCE**

#### **26.1 Insurance during Concession Period**

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues. For the avoidance of doubt, the Concessionaire shall procure and maintain adequate insurance cover also for the advertising activities undertaken by him and all the provisions of this Article 26 shall also apply to such insurance cover.

#### **26.2 Insurance Cover**

Without prejudice to the provisions contained in Clause 26.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) Comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- (c) The Concessionaire's general liability arising out of the Concession;
- (d) Liability to third parties for goods or property damage;
- (e) Workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items(a) to (e) above.

#### **26.3 Notices to the Authority**

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Authority may

require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

**26.4 Evidence of Insurance Cover**

All insurances obtained by the Concessionaire in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Concessionaire to the Authority.

**26.5 Remedy for failure to insure**

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

**26.6 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

**26.7 Concessionaire's waiver**

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**26.8 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 25.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery 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.

**26.9 Compliance with conditions of insurance policies**

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies affected in accordance with this Agreement.

## ARTICLE 27

### ACCOUNTS AND AUDIT

#### 27.1 Audited accounts

27.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

27.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

27.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project,] and such other information as the Authority may reasonably require.

#### 27.2 Appointment of auditors

27.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the criteria set forth in **Schedule-P**. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

27.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered



Accountants.

27.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the **Statutory** Auditors are required to do, undertake or certify pursuant to this Agreement.

**27.3 Certification of claims by Statutory Auditors**

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided.

**27.4 Set-off**

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 27.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

**27.5 Dispute resolution**

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

**Part V**

**Force Majeure and Termination**

## ARTICLE 28

### FORCE MAJEURE

#### 28.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political event, as defined in Clauses 28.2, 28.3 and 28.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

#### 28.2 Non-Political Event

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

- (a) act of God, pandemic, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 28.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non- Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

### **28.3 Indirect Political Event**

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) Not Used;
- (e) failure of the Authority to permit the Concessionaire to continue its Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) Any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) Any Indirect Political Event that causes a Non-Political Event; or
- (h) Any event or circumstances of a nature analogous to any of the foregoing.

### **28.4 Political Event**

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 35 resulting in Material Adverse Effect;
- (b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

- (e) Any event or circumstance of a nature analogous to any of the foregoing.

## **28.5 Duty to report Force Majeure Event**

28.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof;
- (b) The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) Any other information relevant to the Affected Party's claim.

28.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

28.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 28.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **28.6 Effect of Force Majeure Event on the Concession**

28.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent and in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

28.6.2 at any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Construction Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) After COD, the Concessionaire shall be entitled to receive Annuity Payments plus interest due and payable under this Agreement.  
Provided any payment to be made under this clause shall be subject to deduction of outstanding dues of the Authority, if any.

## **28.7 Allocation of costs arising out of Force Majeure**

28.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

28.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on Debt Due, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include any costs which are expressly covered under any provision of this Agreement or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

28.7.3 Save and except as expressly provided in this Article 28, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

## **28.8 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 28, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) day's time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in

receipt of such representation, in its sole discretion issue the Termination Notice

### 28.9 Termination Payment for Force Majeure Event

28.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount to be calculated as under:

- (i) Prior to COD:

Table 3: Termination Payment: Non Political Event

Payment Milestone	Basis of calculation for termination payment <sup>^</sup>
1st Payment Milestone	90% Debt Due or 5% of Bid Project Cost, whichever is lower
2nd Payment Milestone	90% Debt Due or 15% of Bid Project Cost, whichever is lower
3rd Payment Milestone	90% Debt Due or 25% of Bid Project Cost, whichever is lower
4th Payment Milestone	90% Debt Due or 35% of Bid Project Cost, whichever is lower

<sup>^</sup> Bid Project Cost shall be adjusted for Goods and Services Tax, as applicable

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered; provided further the above payment so calculated above shall be reduced by Insurance Cover.

- (ii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 75% (seventy five percent) of Annuity Payments remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date. Provided further the above payment so calculated above shall be reduced by Insurance Cover.

28.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (i) In case termination occurs prior to COD:
  - (a) Debt Due payment calculated as per the Table 4 below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. Further the Debt Due would be calculated as per the Table provided below:

Table 4: Termination Payment: Indirect Political Event

Payment Milestone	Basis of calculation for termination payment <sup>^</sup>
1st Payment Milestone	Debt Due or 5% of Bid Project Cost, whichever is lower
2nd Payment Milestone	Debt Due or 15% of Bid Project Cost, whichever is lower
3rd Payment Milestone	Debt Due or 30% of Bid Project Cost, whichever is lower
4th Payment Milestone	Debt Due or 40% of Bid Project Cost, whichever is lower

<sup>^</sup> Bid Project Cost shall be adjusted for Goods and Services Tax, as applicable

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of

calculation of Debt Due, the milestone achieved would only be considered;  
and

- (b) 110% (one hundred and ten per cent) of the Adjusted Equity;
- (ii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety percent) of Annuity Payments remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date.

28.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 31.3.3 as if it were an Authority Default.

For the avoidance of doubt, no Termination Payment shall be payable by the Authority under this Agreement for any advertisement activity undertaken by the Concessionaire.

#### **28.10 Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event

#### **28.11 Excuse from performance of obligations**

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

- (a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (II) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (III) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

#### **28.12 Not Used**



## ARTICLE 29

### COMPENSATION FOR BREACH OF AGREEMENT

**29.1 Compensation for default by the Concessionaire**

Subject to the provisions of Clause 29.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

**29.2 Compensation for default by the Authority**

Subject to the provisions of Clause 29.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Annuity Payments, debt repayment obligations or other consequential losses, loss of profit, EPC Contractors claims, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

**29.3 Not Used**

**29.4 Mitigation of costs and damage**

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or because of breach of Agreement by the other Party.

## ARTICLE 30

### SUSPENSION OF CONCESSIONAIRE'S RIGHTS

#### **30.1 Suspension upon Concessionaire Default**

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement, and pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

#### **30.2 Authority to act on behalf of Concessionaire**

30.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 25.3.

30.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 30.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

#### **30.3 Revocation of Suspension**

30.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of

Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

30.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

#### **30.4 Substitution of Concessionaire**

At any time during the period of Suspension, the lenders' Representative, on behalf of Senior lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 30.1, for enabling the lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

#### **30.5 Termination**

30.5.1 At any time during the period of Suspension under this Article 30, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 30.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 31 as if it is a Concessionaire Default under Clause 31.1.

30.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 30.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

## ARTICLE 31

### TERMINATION

#### 31.1 Termination for Concessionaire Default

31.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 30 (thirty) days, the Concessionaire shall be deemed to be in default of this Agreement (the "**Concessionaire Default**"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of **Schedule-G** and continues to be in default for 120 (one hundred and twenty) days;
- (d) The Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) COD does not occur within the period specified in Clause 12.3.3;
- (f) Not Used;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any

- action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
  - (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
  - (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
  - (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
  - (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
  - (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
    - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
    - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
    - iii. Each of the Project Agreements remains in full force and effect;
  - (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
  - (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
  - (v) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;

- (w) the Concessionaire issues a Termination Notice in violation of this Agreement;
- (x) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

31.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 31.1.3.

31.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

Provided further 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 such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

### **31.2 Termination for Authority Default**

31.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred

to herein shall include the following:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) The Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) The Authority fails to provide, within a period of 120 (one hundred and twenty days) from the Appointed Date, statutory clearances required for construction of the Project; or
- (d) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

31.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

### 31.3 Termination Payment

31.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 65% (sixty five per cent) of the sum of Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon up to the Transfer Date.

31.3.2 Notwithstanding to the provisions of Clause 31.3.1 upon Termination on account of Concessionaire Default during the Construction Period, the Termination Payment shall be based on the Payment Milestone achieved which is in terms of the Physical Progress made by the Concessionaire in the Project and the Termination Payment corresponding to the achieved Payment Milestone shall be as follows:

Table 5: Termination Payment: Concessionaire Event of Default

Payment Milestone	Basis of calculation for termination payment <sup>^</sup>
1st Payment Milestone	Nil
2nd Payment Milestone	60% Debt Due or 10% of Bid Project Cost, whichever is lower
3rd Payment Milestone	75% Debt Due or 20% of Bid Project Cost, whichever is lower
4th Payment Milestone	85% Debt Due or 30% of Bid Project Cost, whichever is lower

<sup>^</sup> Bid Project Cost shall be adjusted for Goods and Services Tax, as applicable

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Termination Payment, the milestone achieved would only be considered.

31.3.3 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (i) In case the termination occurs prior to COD
  - (a) Debt Due payment calculated as per the Table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. Further the Debt Due would be provided below:

Table 6: Termination Payment: Authority Event of Default

Payment Milestone	Basis of calculation for termination payment <sup>^</sup>
1st Payment Milestone	Debt Due or 5% of Bid Project Cost, whichever is lower
2nd Payment Milestone	Debt Due or 15% of Bid Project Cost, whichever is lower
3rd Payment Milestone	Debt Due or 30% of Bid Project Cost, whichever is lower
4th Payment Milestone	Debt Due or 40% of Bid Project Cost, whichever is lower

<sup>^</sup> Bid Project Cost shall be adjusted for Goods and Services Tax, as applicable

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered; and

- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity;
- (ii) In case the termination occurs on or after COD, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to sum of Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon up to the Transfer Date.

31.3.4 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 2.25% (two point two five percent) above the prevailing 1 (one) year SBI MCLR on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

31.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

For the avoidance of doubt, it is hereby clarified that no Termination Payment, on



account of advertising activity undertaken by the Concessionaire, shall be due and payable by the Authority.

### **31.4 Certain limitations on Termination Payment**

31.4.1 During the Construction Period, Termination Payment due and payable under this Agreement shall be computed with reference to the Debt Due in accordance with the provisions of this Agreement. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 85% (eighty five per cent) of the Total Project Cost.

31.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment. It is clarified that the rate of conversion of such foreign currency shall be calculated on the date on which the Agreement is terminated.

### **31.5 Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- (a) Be deemed to have taken possession and control of the Project forthwith;
- (b) Take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) Be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) Require the Concessionaire to comply with the Divestment Requirements set forth in Clause 32.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being -due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

**31.6 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 31.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## ARTICLE 32

### DIVESTMENT OF RIGHTS AND INTEREST

#### 32.1 Divestment Requirements

32.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) Notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmers and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

32.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

### **32.2 Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 33 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 32.

### **32.3 Cooperation and assistance on transfer of Project**

32.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

32.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

32.3.3 Not Used.

### **32.4 Vesting Certificate**

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in **Schedule-Q** (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire. It is hereby clarified that the provisions of this clause shall, to the extent applicable, apply to advertising activities undertaken by the Concessionaire on the Site.

**32.5 Divestment costs etc.**

32.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets and advertisement facility in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Document executed by the Concessionaire in connection with such Divestment shall be borne by the Authority.

32.5.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

## ARTICLE 33

### DEFECTS LIABILITY AFTER TERMINATION

#### 33.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. If the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 33.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 33 shall not apply if Termination occurs prior to COD.

#### 33.2 Retention in Escrow Account

33.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 33.2.3, a sum equal to 15% (fifteen per cent) of the Annuity Payment due and payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 33.1.

33.2.2 Without prejudice to the provisions of Clause 33.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 33.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

33.2.3 The Concessionaire may, for the performance of its obligations under this Article 33, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 33.2.1 or 33.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in **Schedule-F** (the "**Performance Guarantee**"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at

the Concessionaire's risk and cost in accordance with the provisions of this Article 33. Upon furnishing of a Performance Guarantee under this Clause 33.2.3, the retention of funds in the Escrow Account in terms of Clause 33.2.1 or 33.2.2, as the case may be, shall be dispensed with.

**Part VI**

**Other Provisions**



## ARTICLE 34

### ASSIGNMENT AND CHARGES

#### 34.1 Restrictions on assignment and charges

34.1.1 Subject to Clauses 34.2 and 34.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.1.2 Subject to the provisions of Clause 34.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

#### 34.2 Permitted assignment and charges

The restraints set forth in Clause 34.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favor of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) Liens or encumbrances required by any Applicable Law.

#### 34.3 Substitution Agreement

34.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in **Schedule-R**.

34.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire

shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

**34.4 Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all the Authority's then outstanding obligations under this Agreement.

## **ARTICLE 35**

### **CHANGE IN LAW**

#### **35.1 Costs**

Any increase in costs or reduction in net after tax return or other financial burden, due to Change in Law shall be borne by the respective Parties. Provided however, if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

#### **35.2 No Claim**

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse the Concessionaire any sums of money on account of a Change in Law.

#### **35.3 Not Used**

#### **35.4 Not Used**

## ARTICLE 36

### LIABILITY AND INDEMNITY

#### 36.1 General indemnity

36.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or to any User, or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

36.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement, and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

#### 36.2 Indemnity by the Concessionaire

36.2.1 Without limiting the generality of Clause 36.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) Payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (c) Non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are

payable by the Concessionaire or any of its contractors.

**36.2.2** Without limiting the generality of the provisions of this Article 36, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons against any and all suits, proceedings, actions, claims, demands, liabilities which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and *its* use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

**36.3 Notice and contest of claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 36 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand 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. If the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

**36.4 Defense of claims**

**36.4.1** The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent

provided by this Article 36, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

36.4.2 If the Indemnifying Party has exercised its rights under Clause 36.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

36.4.3 If the Indemnifying Party exercises its rights under Clause 36.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) The employment of counsel by such party has been authorized in writing by the Indemnifying Party;
- (b) The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 36.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

**36.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 36, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

**36.6 Survival on Termination**

The provisions of this Article 36 shall survive Termination.

## **ARTICLE 37**

### **RIGHTS AND TITLE OVER THE SITE**

#### **37.1 Licensee rights**

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as a licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

#### **37.2 Access rights of the Authority and others**

37.2.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of the Authority and/or its contractors, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

37.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility specified in Article 11, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility.

#### **37.3 Property taxes**

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of license comprising this Agreement shall be paid by the Concessionaire. Provided, however, that the Authority may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand thereof.

#### **37.4 Restriction on sub-letting**

The Concessionaire shall not sub-license or sub-let the whole or any part of the Site.



## ARTICLE 38

### DISPUTE RESOLUTION

#### 38.1 Dispute resolution

38.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 38.2

38.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

38.1.3 Not Used

#### 38.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Principal Secretary of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 38.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3.

#### 38.3 Arbitration

38.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 38.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 38.3.2. Such arbitration shall be held in accordance with the Rules of Madras High Court Arbitration Centre, Chennai (the “Rules”), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Chennai, and the language of arbitration proceedings shall be English.

38.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

38.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 38 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

38.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

38.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any Dispute between them, each party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

#### **38.4 Adjudication**

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 38.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

## ARTICLE 39

### DISCLOSURE

#### **39.1 Disclosure of Specified Documents**

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Program, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Site and the Concessionaire's Registered Office. The Concessionaire shall prominently display at the Site, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

#### **39.2 Disclosure of Documents relating to safety**

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire's Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

**39.3** Notwithstanding the provisions of Clauses 39.1 and 39.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

#### Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 39.1 and 39.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

## ARTICLE 40

### REDRESSAL OF PUBLIC GRIEVANCES

#### 40.1 Complaints Register

40.1.1 The Concessionaire shall maintain a public relations office and keep it open to public access at all times during 9 am to 6 pm daily, wherein the Concessionaire shall open and maintain a register (the “**Complaints Register**”), in a physical form and soft form, and an online complaint mechanism through its website or mobile applications or kiosks or citizen service centres or through e-mail or through SMS system or through calls, for recording of complaints by any person (the “**Complainant**”) at any time of the day. The availability of and access to such office and the mode of registering complaints shall be prominently displayed by the Concessionaire at each Project Facility so as to bring it to the attention of Users. The Concessionaire shall provide a dedicated phone number (with minimum 10 lines) for lodging of complaints by the public. Every call to the phone number shall be recorded. The Concessionaire shall also provide an email id for making complaints in electronic form and for responses thereto. Every complaint registered shall be necessarily recorded in the Complaint Register on a daily basis without fail.

40.1.2 Each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered, the Complainant shall be given a receipt, either in physical form or soft form, by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns including but not limited to the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.

40.1.3 Not Used.

#### 40.2 Redressal of complaints

40.2.1 The Concessionaire shall inspect the Complaints Register at intervals of every 30 minutes on a daily basis and take prompt steps for redressal of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the ‘Action taken’ column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post and/or courier and/or SMS and/or e-mail.

40.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, the Authority may advise the Complainant to seek appropriate remedy under the

Consumer Protection Act, 1986, at his own risk and cost.

## ARTICLE 41

### MISCELLANEOUS

#### 41.1 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 exclusive jurisdiction over matters arising out of or relating to this Agreement.

#### 41.2 Waiver of immunity

Each Party 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 Party 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).

#### 41.3 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

#### 41.4 Delayed payments

41.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 2.25% (two point two five percent) above the prevailing 1 (one) year SBI MCLR, and recovery thereof shall be without prejudice to the rights of the Parties under this

Agreement including Termination thereof.

41.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

#### **41.5 Waiver**

41.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (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.

41.5.2 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 the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### **41.6 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

#### **41.7 Exclusion of implied warranties etc.**

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

#### **41.8 Survival**

41.8.1 Termination shall:

- (a) Not relieve the Concessionaire or the Authority, as the case may be, 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, 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.

41.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

#### **41.9 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals shall be deemed to form part of this Agreement and treated as such.

#### **41.10 Severability**

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties 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 the Dispute Resolution Procedure set forth under this Agreement or otherwise.

#### **41.11 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### **41.12 Third parties**

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed



to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement including any Concessionaire's Contractor.

**41.13 Successors and assigns**

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

**41.14 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Chennai may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority.

(Attention:  
Designation:  
Address:  
Fax No:  
Email : );

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Chennai it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

(Name:  
Designation:  
Address:  
Fax No:  
Email : ); and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day

following the date of its delivery.

**41.15 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

**41.16 Counterparts**

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



**GREATER CHENNAI CORPORATION**

**CONCESSION AGREEMENT – Volume 2**

**DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER  
OF 285 PUBLIC TOILETS  
IN ZONES I, II, III AND IV (*Package 2*)  
OF GREATER CHENNAI CORPORATION AREA  
UNDER HYBRID ANNUITY MODEL**

**RFP Ref: S.P.D.C.No.B1/1227/2024**

**Dated: .....**

**Greater Chennai Corporation,**

**Special Projects Department,  
Greater Chennai Corporation,  
4th Floor, Kalaignar Maaligai,  
Ripon Building,  
Periyamet,  
Chennai,  
Tamil Nadu 600003**

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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;
- **"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;
- **"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 as applicable to the Project;
  - The repeal, modification or re-enactment of any existing Applicable 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 total Equity in the Concessionaire, {single entity bidder} (i) to decline below 100% (one hundred percent) till 3 (three) years after the COD and (ii) from the 4th year after COD till end of the Concession Period, the selected bidder to hold minimum 26% shareholding in the Concessionaire, 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 bid) in the proportion of the equity holding of {the selected bidder} to the total Equity, if it occurs any time during the Concession Period shall constitute Change in Ownership.

**OR(Strike off the para that's not applicable)**

- **"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 total Equity in the Concessionaire {Consortium Bidder} (i) to decline below 100% (one hundred percent) till 3 (three) years after the COD. Out of which the Lead Member of the Consortium to hold atleast 51% (fifty-one percent) of the issued and paid equity share capital of the Concessionaire till 3(three) years after COD and (ii) after the 4th year of COD till end of the Concession Period, the Lead Member to hold minimum 26% shareholding in the Concessionaire, 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 bid) in the proportion of the equity holding of {the selected bidder} to the total Equity, if it occurs any time during the Concession Period 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;
- **"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;
- **"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 programmes, 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;

- **"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;
- **"Micro Implementation and Operation Plan (MIOP)"** shall mean the detailed Project construction and operation plan prepared and

submitted by the Concessionaire to the Independent Engineer and the Authority, which is reviewed and updated on a 6 (six) monthly basis, covering the micro level details of the Project construction, operation and maintenance. The MIOB shall be drawn out such as to enable achieving the maintenance and performance requirements in accordance with the Agreement.

- **"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 Project Sites 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 Sites 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 phases of the Project for securing Phased Completion Certificate(s).
- **"Physical Progress"** means 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; To illustrate, if the WPI as on the date of index measurement is 120 and the CPI (IW) on the same date is 110, then the Price Index is calculated as  $33\%*120+67\%*110 = 39.6+73.7 = 113.3$ .
- **"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 relating to the Project Units and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;
- **"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 to be repaired or renovated and/ or to be newly constructed at the Project Sites
- **"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 Proposal"** 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;

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

- **"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 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 the outstanding Bid Project Cost after payments under Clause 23.3.1;
  - 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 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 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 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 Additional land required for construction of works specified in the Change of Scope Order issued under Article 16 of this Agreement shall be acquired by the Authority. 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 – I, II, III and IV of Greater Chennai Corporation

<b>Toilet Locations in Zone - I (THIRUVOTRIYUR) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
1	1	S.V.M Nagar burial ground road	PCT	Repair (Major/Minor)	13.224745	80.327734
2	1	Cyclone Shelter (S.V.M. Nagar Burial Ground Road Near CI Office Urinal)	St. Urinal	Repair (Major/Minor)	13.224665	80.327686
3	1	SVM Nagar burial ground	PCT	Repair (Major/Minor)	13.22303	80.32705
4	1	S.V.M Nagar 9th St	PCT	Repair (Major/Minor)	13.222606	80.32608
5	1	Ennore exp road (opp.to Thalankuppam OHT)	PCT	Repair (Major/Minor)	13.226502	80.326895
6	1	Thalankuppam	St. Urinal	Repair (Major/Minor)	13.22699	80.326893
7	1	Nettakuppam Main Road Near Community Hall	PCT	Repair (Major/Minor)	13.229918	80.327657
8	1	Ennore kuppam 3rd St	PCT	Repair (Major/Minor)	13.229837	80.326735
9	1	Mugathuvarakuppam 2nd St	PCT	New (Redevelopment)	13.229732	80.325931
10	1	Nettukuppam main road (near 2nd St)	PCT	Repair (Major/Minor)	13.230267	80.328273
11	1	Nettukuppam 1st St	PCT	Repair (Major/Minor)	13.229286	80.329949
12	1	Thalankuppam colony road	PCT	Repair (Major/Minor)	13.227664	80.328694
13	1	Thalankuppam colony road end	PCT	New (Redevelopment)	13.227451	80.329148
14	1	TNUHDB Tenement Park	St. Urinal	Repair (Major/Minor)	13.226852	80.324997
15	1	J.J. Nagar near KH road	PCT	Repair (Major/Minor)	13.22481	80.32086
16	1	J.J. Nagar near Thamarai kulam	PCT	New (Redevelopment)	13.224244	80.322928
17	2	Valluvar Nagar	PCT	Repair (Major/Minor)	13.221357	80.320104
18	2	MGR Nagar	PCT	Repair (Major/Minor)	13.219802	80.320969
19	2	Sweepers colony	PCT	Repair (Major/Minor)	13.217387	80.320811
20	2	MTC Bus station	St. Urinal	Repair (Major/Minor)	13.2163	80.320516
21	2	K.H Road - Bus Depo	PCT	Repair (Major/Minor)	13.215833	80.320769
22	2	MTC Depot (Ennore)	St. Urinal	Repair (Major/Minor)	13.215179	80.320566



Development of Public Toilets in Zones I, II, III, and IV Of Greater Chennai Corporation Area  
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<b>Toilet Locations in Zone - I (THIRUVOTRIYUR) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
23	2	South lock road - Thadavakara kuppam	PCT	Repair (Major/Minor)	13.216596	80.317815
24	2	South lock road	PCT	New (Redevelopment)	13.21562	80.31613
25	2	Kattukuppam 5th street	PCT	Repair (Major/Minor)	13.219151	80.318284
26	2	Kattukuppam 1st street	PCT	Repair (Major/Minor)	13.220251	80.318745
27	2	UPHC Kathivakkam	St. Urinal	Repair (Major/Minor)	13.218015	80.32015
28	2	Kattivakkam Gandhi Market	PCT	Repair (Major/Minor)	13.217865	80.319749
29	2	Nehru Nagar mendra St	PCT	New (Redevelopment)	13.214685	80.31842
30	2	Sasthri Nagar 2nd St	PCT	Repair (Major/Minor)	13.2083	80.314556
31	2	Anna Nagar 1st	PCT	Repair (Major/Minor)	13.207143	80.313578
32	2	Chinnakuppam New	PCT	Repair (Major/Minor)	13.205473	80.321918
33	2	Chinnakuppam	PCT	Repair (Major/Minor)	13.207897	80.322413
34	2	Periya kuppam Old (Ennore Express Road)	St. Urinal	Repair (Major/Minor)	13.211702	80.322238
35	2	Periya kuppam near school	PCT	Repair (Major/Minor)	13.211123	80.323408
36	2	Periya kuppam new	PCT	New (Redevelopment)	13.213349	80.324786
37	2	Periya kuppam old	PCT	New (Redevelopment)	13.211323	80.324051
38	3	Railway station road	PCT	Repair (Major/Minor)	13.203329	80.315967
39	3	Annai sivagami Nagar	PCT	Repair (Major/Minor)	13.200282	80.316229
40	3	Ernavoor kuppam main road	PCT	New (Redevelopment)	13.202445	80.320752
41	3	Annai sivagami Nagar 10th street	PCT	New (Redevelopment)	13.196649	80.314871
42	3	Kasi Koil kuppam 1st street near seashore	PCT	Repair (Major/Minor)	13.190876	80.316837
43	3	Kasi Koil kuppam (ladies)	PCT	New (Redevelopment)	13.190359	80.313676
44	3	Kasi kovi kuppam bio toilet	PCT	Repair (Major/Minor)	13.190297	80.313325
45	3	Nethaji Nagar 8th street	PCT	New (Redevelopment)	13.188228	80.315017
46	3	Nethaji Nagar 1st street	PCT	Repair (Major/Minor)	13.189052	80.316804
47	3	J.J. Nagar 1st street	PCT	Repair (Major/Minor)	13.188955	80.311839
48	3	AIR NAGAR	PCT	Repair (Major/Minor)	13.187669	80.309744
49	5	KVK kuppam	PCT	Repair (Major/Minor)	13.177192	80.313276
50	5	Bharath Nagar	PCT	Repair (Major/Minor)	13.185469	80.308843
51	6	Sathiyamoorthy Nagar Bio Toilet	PCT	Repair (Major/Minor)	13.176282	80.291824

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<b>Toilet Locations in Zone - I (THIRUVOTRIYUR) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
52	7	Balakrishna Nagar (Hansa Park)	St. Urinal	Repair (Major/Minor)	13.166031	80.297029
53	7	Kirubai Nagar	PCT	Repair (Major/Minor)	13.169191	80.299945
54	7	Rajaji Nagar	PCT	Repair (Major/Minor)	13.165027	80.291195
55	7	MGR Nagar	PCT	Repair (Major/Minor)	13.154005	80.274792
56	7	Periyar Nagar	PCT	Repair (Major/Minor)	13.149818	80.270567
57	5	MTC Depot (Thiruvottiyur) (Ramakrishna Nagar 3rd Main Road)	St. Urinal	Repair (Major/Minor)	13.184113	80.316288
58	8	Masthan Koil	PCT	Repair (Major/Minor)	13.166274	80.308258
59	9	Pattinathar Market	PCT	Repair (Major/Minor)	13.163705	80.304401
60	9	Thiruvottriyur kuppam (ladies)	PCT	Repair (Major/Minor)	13.163008	80.308558
61	9	Tiruvattroyur Burial Ground Near	PCT	Repair (Major/Minor)	13.161327	80.307062
62	9	Appar nagar (ladies)	PCT	Repair (Major/Minor)	13.159564	80.306526
63	9	Thiruvottriyur kuppam near ennore exp	PCT	Repair (Major/Minor)	13.15701	80.305763
64	10	Poonthottam School	PCT	Repair (Major/Minor)	13.160015	80.301992
65	10	East tank street	PCT	Repair (Major/Minor)	13.161049	80.300642
66	11	T.H. Road (Taluka Office)	PCT	Repair (Major/Minor)	13.157353	80.301853
67	11	T.H. Road Near Taluka Office	St. Urinal	Repair (Major/Minor)	13.157562	80.301852
68	11	Poonga Nagar (ladies)	PCT	Repair (Major/Minor)	13.15582	80.303382
69	11	Kaladipet Sannadhi Street	St. Urinal	Repair (Major/Minor)	13.153308	80.297136
70	11	T.H. Road near UPHC	PCT	Repair (Major/Minor)	13.157436	80.301039
71	11	Zonal office	PCT	Repair (Major/Minor)	13.156192	80.301675
72	14	Ennore Express Road Near Amma Unavagam SBM	St. Urinal	Repair (Major/Minor)	13.152419	80.303636
73	14	Ennore Express Road Dhobikona	PCT	New (Redevelopment)	13.152668	80.302872
74	14	Thiruchinakuppam road	PCT	Repair (Major/Minor)	13.14954	80.301093
75	4	Ramanathapuram	PCT	New Proposal	13.180535	80.302318
76	4	Thiruvethi Amman 5th Street	PCT	New Proposal	13.191925	80.304594
77	4	Manali Express Salai Near Chennai National Hospital	St. Urinal	New Proposal	13.183795	80.301168
78	4	Jothi Nagar Bus Stop Near Daha Street	St. Urinal	New Proposal	13.181387	80.298753
79	4	Murugappa Kulam Jothis Nagar	PCT	New Proposal	13.179192	80.302237
80	4	Jothi Nagar 10th Street Near Amma Unavagam	St. Urinal	New Proposal	13.180652	80.298744

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<b>Toilet Locations in Zone - I (THIRUVOTRIYUR) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
81	5	In Front of MRF Open Park Ennore Express Road	St. Urinal	New Proposal	13.174814	80.312349
82	5	WIMCO Nagar	PCT	New Proposal	13.179254	80.30705

Development of Public Toilets in Zones I, II, III, and IV Of Greater Chennai Corporation Area  
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<b>Toilet Locations in Zone - II (MANALI) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
1	22	Devaraj Street Inside Community Hall	PCT	Repair (Major/Minor)	13.15807	80.260588
2	22	Vazhuthalaimedu Main Road (Open Windrow Method)	PCT	Repair (Major/Minor)	13.150444	80.261401
3	22	Open Window Method Inside	PCT	Repair (Major/Minor)	13.149599	80.261462
4	20	Chinna mathur salai near lake park	St. Urinal	Repair (Major/Minor)	13.172392	80.254094
5	20	Otravadai Street	PCT	Repair (Major/Minor)	13.175097	80.252976
6	20	Srinivasaperumal Street Burial Ground	PCT	Repair (Major/Minor)	13.170605	80.255538
7	20	Kamarajar Salai Near Fire Station	PCT	Repair (Major/Minor)	13.161541	80.268273
8	21	Nedunchezian street (Manali Bus Stand)	PCT	Repair (Major/Minor)	13.170313	80.257177
9	21	Manali Padasalai	Modular Toilet*	Repair (Major/Minor)	13.166803	80.258369
10	21	Manali Jalaganda Park	Modular Toilet*	Repair (Major/Minor)	13.164297	80.263283
11	15	80 Feet Road (CMDA Market, Near Bus Stand)	PCT	Repair (Major/Minor)	13.207454	80.273314
12	15	Maha Lakshmi Nagar	PCT	Repair (Major/Minor)	13.205086	80.280124
13	15	Manali new town 150 feet Road	PCT	Repair (Major/Minor)	13.21155	80.27647
14	15	TPP Salai, Near 150 feet Road	St. Urinal	Repair (Major/Minor)	13.212512	80.271843
15	15	New Colony (Nappalayam)	PCT	New (Redevelopment)	13.225299	80.274439
16	15	Old nappalayam (old colony)	PCT	Repair (Major/Minor)	13.224229	80.279243
17	15	Old nappalayam (Vadukarपालयाम)	PCT	Repair (Major/Minor)	13.223151	80.280053
18	15	Edayanchavadi Main Road (Near Anganwadi maiyam)	PCT	New (Redevelopment)	13.212088	80.278869
19	15	Edayanchavadi Main Road	PCT	Repair (Major/Minor)	13.211236	80.280507
20	15	Maha Lakshmi Nagar, Eachangkuzhi	PCT	Repair (Major/Minor)	13.204323	80.272187
21	16	Kadapakkam	PCT	Repair (Major/Minor)	13.20158	80.259976
22	16	Kanniamman pet 2	PCT	Repair (Major/Minor)	13.1974	80.252864
23	16	Kanniyamman Pet Old Ladies	PCT	Repair (Major/Minor)	13.197518	80.252983
24	16	Kamarajapuram Radhakrishnan Perumal Koil Street (New)	PCT	Repair (Major/Minor)	13.193791	80.257691
25	16	Kamarajapuram Radhakrishnan Perumal Koil Street	PCT	Repair (Major/Minor)	13.193887	80.257687
26	16	Andarkuppam main road near Ayya Koil	St. Urinal	Repair (Major/Minor)	13.198123	80.275642
27	16	Elandhanur	PCT	Repair (Major/Minor)	13.19084	80.275077
28	16	Sadayankuppam near CMS (New)	PCT	Repair (Major/Minor)	13.184748	80.291919
29	16	Sadayankuppam near CMS	PCT	Repair (Major/Minor)	13.184605	80.291989

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<b>Toilet Locations in Zone - II (MANALI) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
30	16	Irullar colony (Sadayankuppam)	PCT	Repair (Major/Minor)	13.182545	80.291836
31	16	Burma Nagar Burial Ground Road	PCT	Repair (Major/Minor)	13.182323	80.286531
32	18	Manali Express Road Opposite to EB Office	PCT	Repair (Major/Minor)	13.175661	80.286866
33	16	Burma Nagar Playground (New)	PCT	Repair (Major/Minor)	13.184828	80.283908
34	17	Ariyallur Burial Ground	PCT	Repair (Major/Minor)	13.193034	80.249556
35	17	Kanniamman Pettai Theeyambakkam	PCT	Repair (Major/Minor)	13.19628	80.238272
36	17	Theeyambakkam	PCT	Repair (Major/Minor)	13.195823	80.235156
37	17	Kosapur road Junction	St. Urinal	Repair (Major/Minor)	13.184983	80.238531
38	17	Thiyagi Viswanatha Dass Nagar Park	PCT	Repair (Major/Minor)	13.185331	80.235392
39	17	Kosappur Bridge Downside	PCT	Repair (Major/Minor)	13.179786	80.233814
40	17	Kathakuzhi	PCT	Repair (Major/Minor)	13.181438	80.229267
41	17	Kathakuzhi Gents and Ladies Toilet	PCT	Repair (Major/Minor)	13.181375	80.229308
42	17	Perumal Koil street (Vadaperumbakkam)	PCT	Repair (Major/Minor)	13.176701	80.219109
43	17	Samuvel Nagar	PCT	Repair (Major/Minor)	13.174652	80.220145
44	17	Chinna Thopu	PCT	Repair (Major/Minor)	13.176334	80.214806
45	17	Chinna thoppu	PCT	Repair (Major/Minor)	13.176428	80.214774
46	18	200 Feet Road	PCT	Repair (Major/Minor)	13.179344	80.25536
47	18	Nedunchezhiyan Street Opp to SRF	PCT	Repair (Major/Minor)	13.175877	80.256045
48	18	Bharathiyar Street near Burial Ground	PCT	New (Redevelopment)	13.170632	80.263425
49	18	Bharathiyar Street near Sivan Koil Temple	PCT	Repair (Major/Minor)	13.170551	80.261874
50	18	TPP Salai opposite to CPCL Company	PCT	New (Redevelopment)	13.161577	80.269069
51	19	MMDA 2nd Main Road - Park	PCT	Repair (Major/Minor)	13.171586	80.24732
52	19	Kulakarai Street Burial Ground	PCT	Repair (Major/Minor)	13.177535	80.251101
53	19	Ponnamman koil street (Periya Mathur)	PCT	Repair (Major/Minor)	13.169716	80.243619
54	19	Ponniyamman Kovil Street Burial Ground	PCT	Repair (Major/Minor)	13.170615	80.243699
55	19	Ponniyamman Koil Street and Chinna Mathur Salai Junction Near CPCL Nagar	PCT	Repair (Major/Minor)	13.174759	80.240667
56	19	Manjampakkam Kosappur Junction	PCT	Repair (Major/Minor)	13.173057	80.238582
57	19	Kamarajar Salai Kalvai Eri Karai Near RRC Point	PCT	Repair (Major/Minor)	13.171759	80.23655

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<b>Toilet Locations in Zone - II (MANALI) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
58	19	Kosapur Burial Ground	PCT	Repair (Major/Minor)	13.170346	80.236543
59	19	Junction of Kamarajar Salai Near 16th Day Ceremony Hall	PCT	Repair (Major/Minor)	13.163524	80.228189
60	20	Kamarajar Salai Manali Lake Near Amma Unnavagam	PCT	New Proposal	13.150444	80.261401
61	20	Sokkamaal Kolam Street	PCT	New Proposal	13.167456	80.257321
62	20	Kaal Thottam MGR Street	PCT	New Proposal	13.172247	80.255475
63	20	Chinnamathur Salai Lake View Near Park	PCT	New Proposal	13.172351	80.254301
64	21	Neduchelivan Salai Opp SRF Gate 1st	PCT	New Proposal	13.174556	80.257062
65	21	Jalagandam Marriaamman Kovil Street Near Old Police Quarters	PCT	New Proposal	13.15807	80.260588
66	17	Periyar Nagar Opp Metro Water Tank	PCT	New Proposal	13.193634	80.238583
67	17	Kosappur Chelliamman Pond	PCT	New Proposal	13.207454	80.273314

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<b>Toilet Locations in Zone - III (MADHAVARAM) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
1	23	KS Nagar Burial Ground	PCT	Repair (Major/Minor)	13.170976	80.195016
2	23	S.L.R.Camp	St. Bath	New (Redevelopment)	13.170467	80.194853
3	23	S.L.R.Camp Toilet	PCT	New (Redevelopment)	13.170506	80.194847
4	23	S.L.R.Camp Toilet	PCT	New (Redevelopment)	13.1703	80.194786
5	23	S.L.R.Camp Gents Bath	St. Bath	New (Redevelopment)	13.170248	80.194779
6	23	S.L.R.Camp Ladies Toilet 1	PCT	New (Redevelopment)	13.17021	80.194793
7	23	S.L.R.Camp	PCT	New (Redevelopment)	13.173227	80.197793
8	23	S.L.R.Camp Gents Toilet 1	PCT	New (Redevelopment)	13.169552	80.194854
9	23	S.L.R.Camp Gents and Ladies Toilet	PCT	New (Redevelopment)	13.169051	80.195167
10	23	Erattaimalai Srinivasan St (Female)	PCT	New (Redevelopment)	13.157	80.206214
11	23	Erattaimalai Srinivasan St (Male)	PCT	New (Redevelopment)	13.156043	80.206734
12	23	Gangadharan St (Ladies)	PCT	Repair (Major/Minor)	13.160028	80.21142
13	24	GNT Road Burial Ground	PCT	Repair (Major/Minor)	13.155191	80.206151
14	24	Ambattur Redhills Road (Location Changed)	PCT	Repair (Major/Minor)	13.157973	80.203199
15	24	Surapet Burial Ground	PCT	New Proposal	13.147451	80.190192
16	24	Bharathidasan Burial Ground	PCT	New Proposal	13.144912	80.182387
17	24	Parapakulam near Kadapa Road	PCT	New Proposal	13.132163	80.198073
18	25	MRH Road Inside of Bus Stand	PCT	Repair (Major/Minor)	13.152112	80.228593
19	25	Andra Bus Stand	PCT	Repair (Major/Minor)	13.144754	80.221785
20	25	CMDA Truck Terminal (Opp to Admin. Building)	PCT	Repair (Major/Minor)	13.14416	80.223441
21	25	CMDA Truck Terminal (Northeast Corner)	PCT	Repair (Major/Minor)	13.145049	80.225362
22	25	200 Feet Road near Valli Bhavan (Location Changed)	PCT	Repair (Major/Minor)	13.146707	80.220737
23	26	Thattangulam Road	PCT	New (Redevelopment)	13.146114	80.229661
24	27	Perumal Koil street Edama Nagar MMC road	PCT	Repair (Major/Minor)	13.164345	80.244909
25	27	Easwaran Koil Street	PCT	Repair (Major/Minor)	13.153025	80.233928
26	27	Telugu colony Street	PCT	New (Redevelopment)	13.155554	80.233173
27	27	M.G.R. Street (Telugu colony)	PCT	New (Redevelopment)	13.155485	80.232047
28	28	Periyar Nagar Main Road	PCT	Repair (Major/Minor)	13.128573	80.23927
29	28	Ambedhkar Nagar 2nd Main Road	PCT	Repair (Major/Minor)	13.136091	80.233673

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<b>Toilet Locations in Zone - III (MADHAVARAM) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
30	28	Ma Po Vedha St (Gents)	PCT	Repair (Major/Minor)	13.142347	80.232207
31	28	Pandian St Old Gents	PCT	New (Redevelopment)	13.141908	80.234696
32	28	Muthumariamman Koil St (Location Changed) - Amma Unavagam (Ladies)	PCT	Repair (Major/Minor)	13.138896	80.236127
33	28	Muthumariamman Koil St	PCT	Repair (Major/Minor)	13.138848	80.236002
34	28	M.M.C. pottu room	PCT	Repair (Major/Minor)	13.156234	80.239268
35	30	PRH Road Near Jothy Nagar (Location Changed)	PCT	Repair (Major/Minor)	13.132882	80.211974
36	30	Vinayagapuram Bus Stand	PCT	Repair (Major/Minor)	13.139795	80.205475
37	30	Bharathiyar 1st street	PCT	New (Redevelopment)	13.149744	80.234597
38	31	Kolkatta shop (Opp to Burial ground)	PCT	New (Redevelopment)	13.139018	80.233424
39	31	Kannabiran Koil St (Opp to Indital Company)	PCT	New (Redevelopment)	13.140048	80.232107
40	31	Jangiri shop	PCT	Repair (Major/Minor)	13.137775	80.231539
41	31	Maa Po Vedha Street (Back side of Dental Hospital) (Ladies)	PCT	New (Redevelopment)	13.142345	80.232213
42	31	Pandian St New	PCT	Repair (Major/Minor)	13.141831	80.234724
43	32	Near Ashoka Street Opp to Adhilakshmi Nagar	PCT	Repair (Major/Minor)	13.132255	80.206919
44	32	Thiruvalluvar St	PCT	Repair (Major/Minor)	13.136987	80.190723
45	32	Murugambedu Burial Ground	PCT	Repair (Major/Minor)	13.139114	80.173356
46	33	Teachers Colony Bus stand	PCT	Repair (Major/Minor)	13.130329	80.201717
47	33	Vasudeva Mudhali thottam	PCT	New (Redevelopment)	13.1318	80.23162
48	22	Subash Chandraboss Street	PCT	Repair (Major/Minor)	13.169267	80.196772
49	24	Bharath Nagar Burial Ground	PCT	New Proposal	13.133721	80.193156
50	29	Kalaignar Karunanidhi Street	PCT	Repair (Major/Minor)	13.159913	80.258707
51	29	E.V.R. Street	PCT	Repair (Major/Minor)	13.158239	80.259561
52	26	Milk Colony Opp. to GH	PCT	New Proposal	Not Available	
53	27	Kamaraj Salai (Sastri Nagar Burial Ground)	PCT	New Proposal		
54	29	GNT Road Near Adhinath Apartments	PCT	New Proposal		
55	30	Madhavaram Roundana-1	PCT	New Proposal		
56	30	200 Feet Road	PCT	New Proposal		
57	30	Andhra Bus Terminus	PCT	New Proposal		
58	31	Padmavathy Nagar Main Road (RRC)	PCT	New Proposal		
59	31	Sembium redhills Road	PCT	New Proposal		
60	31	Tambaram - Maduravoyal bypass Service Road	PCT	New Proposal		



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<b>Toilet Locations in Zone - IV (TONDIARPET) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
1	38	Parameshwaran Nagar	PCT	Repair (Major/Minor)	13.143162	80.283329
2	48	Venkatakrishnan Street	PCT	New (Redevelopment)	13.114755	80.283024
3	48	Kanni Koil street (Venkatakrishnan Street)	St. Urinal	Repair (Major/Minor)	13.114687	80.283018
4	48	Nainiappan Street	PCT	New (Redevelopment)	13.115359	80.281274
5	48	Parthasarathy Street	PCT	Repair (Major/Minor)	13.112813	80.281027
6	48	Telugu Chetty street (Park)	St. Urinal	Repair (Major/Minor)	13.112211	80.285116
7	37	MKB Nagar 4th cross street park	St. Urinal	Repair (Major/Minor)	13.119878	80.260036
8	37	Central Avenue Playground	St. Urinal	Repair (Major/Minor)	13.122801	80.260416
9	37	Srinivasan Street (Mahakavi Bharathi Nagar 3rd Main Road)	PCT	Repair (Major/Minor)	13.122985	80.261539
10	37	MKB Nagar 18th cross street	PCT	Repair (Major/Minor)	13.125581	80.261076
11	37	North avenue road (near bridge)	PCT	Repair (Major/Minor)	13.126072	80.259426
12	37	Jawahar Park	PCT	Repair (Major/Minor)	13.129502	80.260628
13	37	North avenue road (RRC Center)	PCT	Repair (Major/Minor)	13.12664	80.262399
14	37	Mullai Nagar burial ground	St. Urinal	Repair (Major/Minor)	13.126803	80.266357
15	36	EH Road	PCT	Repair (Major/Minor)	13.120557	80.254599
16	36	Sastri Nagar 16th Street	PCT	Repair (Major/Minor)	13.119189	80.253747
17	36	Sharma Nagar 9th street Playground	St. Urinal	Repair (Major/Minor)	13.123243	80.254894
18	36	Papathiamman Koil Street	PCT	Repair (Major/Minor)	13.124494	80.249021
19	36	Ambedkar Street	PCT	Repair (Major/Minor)	13.124787	80.249982
20	36	Vasuki Nagar Park	St. Urinal	Repair (Major/Minor)	13.131139	80.253234
21	46	Street End, Moorthinagar Street (Junction)	PCT	Repair (Major/Minor)	13.114298	80.261513
22	46	Moorthingar Street	PCT	Repair (Major/Minor)	13.116586	80.261903
23	46	Street End, John Kennady Nagar	PCT	Repair (Major/Minor)	13.117716	80.2653
24	37	JJ Nagar 1st Street	PCT	Repair (Major/Minor)	13.119868	80.267521
25	46	Good Shed Road, Samanthi Poo Colony	PCT	Repair (Major/Minor)	13.118151	80.267629
26	46	Malligai Poo Colony	PCT	Repair (Major/Minor)	13.116585	80.267677
27	46	C. Kalyanapuram	PCT	Repair (Major/Minor)	13.113739	80.267025
28	46	Corporation Higher Secondary School Near, SM Nagar Main Road	PCT	Repair (Major/Minor)	13.112075	80.265768

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<b>Toilet Locations in Zone - IV (TONDIARPET) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
29	46	Gandhipuram	PCT	Repair (Major/Minor)	13.110075	80.268174
30	46	Gandhipuram	PCT	Repair (Major/Minor)	13.110154	80.269805
31	46	Samandhi Poo Playground	St. Urinal	Repair (Major/Minor)	13.118962	80.266189
32	46	Sathyamurthy Nagar Park	St. Urinal	Repair (Major/Minor)	13.118756	80.265927
33	41	Anna Nagar	PCT	Repair (Major/Minor)	13.12145	80.274688
34	41	J.J Nagar Ladies	PCT	Repair (Major/Minor)	13.120333	80.27262
35	41	J.J. Nagar (Div41) Demolition & reconstruction old Ladies	PCT	Repair (Major/Minor)	13.120346	80.27263
36	47	Kamaraj Nagar 7th Street	PCT	New (Redevelopment)	13.119017	80.273148
37	47	Kamaraj Nagar 2nd Street	PCT	Repair (Major/Minor)	13.119023	80.274302
38	47	Meenabal Nagar Cross St	PCT	Repair (Major/Minor)	13.115989	80.275577
39	47	Harinarayanapuram (Pumping Station) Ladies	PCT	New (Redevelopment)	13.112492	80.274629
40	47	Harinarayanapuram Pumping Station Opposite Gents Toilet	PCT	New (Redevelopment)	13.112494	80.274527
41	45	Desikananda park	St. Urinal	Repair (Major/Minor)	13.110006	80.259924
42	45	Melpatti Ponnappan Street	PCT	Repair (Major/Minor)	13.113167	80.257339
43	45	BV Colony 8th Street (5th St)	PCT	Repair (Major/Minor)	13.115344	80.255811
44	44	MPM street Jn of Kamarajar 1st street	St. Urinal	Repair (Major/Minor)	13.115455	80.250213
45	44	Sathyavani Muthu Nagar Park	St. Urinal	Repair (Major/Minor)	13.120226	80.250462
46	35	GNT Road	PCT	Repair (Major/Minor)	13.12659	80.244295
47	35	Krishnan street park	St. Urinal	Repair (Major/Minor)	13.130458	80.242707
48	35	Muthamizh Nagar 9th street Park	St. Urinal	Repair (Major/Minor)	13.131373	80.2482
49	34	Milk Colony Road (Riswan Road)	PCT	Repair (Major/Minor)	13.142157	80.240741
50	34	Manali Salai	PCT	Repair (Major/Minor)	13.139597	80.248187
51	34	Union Carbide colony 14th street	St. Urinal	Repair (Major/Minor)	13.137693	80.252845
52	34	Kaveri Nagar Park	St. Urinal	Repair (Major/Minor)	13.139424	80.254122
53	39	S.N Chetty street	PCT	Repair (Major/Minor)	13.133943	80.296937
54	39	Buchammal street Dobikana	PCT	Repair (Major/Minor)	13.134425	80.296374
55	39	Butchammal Street Dobikanna 1	PCT	Repair (Major/Minor)	13.133891	80.296732
56	39	Tollgate Bus Stop	St. Urinal	Repair (Major/Minor)	13.143334	80.296751
57	39	A.E Koil street	PCT	Repair (Major/Minor)	13.138856	80.293681

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<b>Toilet Locations in Zone - IV (TONDIARPET) of Greater Chennai Corporation</b>						
<b>S No.</b>	<b>Ward</b>	<b>Toilet Location</b>	<b>Toilet Type</b>	<b>Toilet Status</b>	<b>Latitude</b>	<b>Longitude</b>
58	40	A.A. Scheme Road	PCT	Repair (Major/Minor)	13.136357	80.290394
59	40	A.E. Koil Street	PCT	Repair (Major/Minor)	13.134251	80.292761
60	47	Harinarayanapuram (C.B Road)	PCT	Repair (Major/Minor)	13.111057	80.274059
61	47	Amma ECO park (Oswal garden park), CB road	St. Urinal	New (Redevelopment)	13.112821	80.271134
62	42	Thiyagaraya Park, T.H. road	St. Urinal	Repair (Major/Minor)	13.118326	80.285532
63	42	Kailasam Street	PCT	Repair (Major/Minor)	13.126583	80.285951
64	42	T.H. Road Service Road	PCT	Repair (Major/Minor)	13.123097	80.287152
65	47	Pitty munusamy Street	PCT	Repair (Major/Minor)	13.117146	80.277486
66	43	16AA.D Road Tondiarpet Ch-81	PCT	Repair (Major/Minor)	13.127589	80.292448
67	43	97, New Amarajipuram, Royapuram Ch-13	PCT	Repair (Major/Minor)	13.122544	80.292485
68	43	SN Chetty street (Near Park)	St. Urinal	Repair (Major/Minor)	13.121545	80.293702
69	43	43/A S.N Chetty Street, Ch-13	PCT	Repair (Major/Minor)	13.123918	80.294475
70	43	S.N. Chetty street	St. Urinal	Repair (Major/Minor)	13.12999	80.295952
71	43	(Thedeer Nagar) S.N Chetty Street, Ch-13	PCT	Repair (Major/Minor)	13.130657	80.295934
72	42	Illaya Street	St. Urinal	Repair (Major/Minor)	13.119137	80.280644
73	42	In front of Rettai Kuli Street	St. Urinal	Repair (Major/Minor)	13.123687	80.285981
74	42	Jeeva park	St. Urinal	Repair (Major/Minor)	13.12174	80.286565
75	43	CD Hospital Phase-I	PCT	New Proposal	13.128137	80.29073
76	43	CD Hospital Phase-II	PCT	New Proposal	13.127968	80.291781

**Note :**

In Addition to above locations mentioned under the different Zones covered in this Package, the Authority shall also provide an area of atleast 1000 square feet, together with the server with ICCC, to the Concessionaire, for the comprehensive development of the CCMS.

## **SCHEDULE – B**

**(See Clause 2.1)**

### **DEVELOPMENT OF THE PROJECT**

**1 Development of the Project**

1.1 Development of the Project shall include construction of the Project to include repair and renovation, including new construction, as deemed necessary, of each of the Project Unit, in line with and as further described in this **Schedule-B** and in **Schedule-C**.

**2 Development to include repair and renovation, including new construction, as necessary, of Project Units**

2.1 Development shall include designing, building and financing the renovation, including new constructions, as necessary, of the Project Units spread over 285 locations in Zones I, II, III and IV of GCC, containing within them 2301 seats/service counters and as more elaborately described in Annex-I of this Schedule-B and Annex-I of Schedule-C.

2.2 Repair and Renovation shall 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 where necessary and as deemed necessary of public convenience toilets, standalone urinals, standalone bathrooms, and modular toilets (each a Project Unit) and redevelopment of toilets or building new toilets at existing or new locations as the case may be (comprising the Project Units) spread over 285 locations in Zones I, II, III and IV of GCC, containing within them 2301 seats/service counters and (i) in conformity with the Schedules and Annex and other terms of this Agreement and (ii) operation and maintenance of the Project Assets and (iii) adherence and compliance with stipulated maintenance and performance standards. .
  
- 2** **Project Facilities**  
Project Facilities refers to all the amenities and facilities on the Site, including those that are renovated and/or constructed on the Site, in conformity with and as more fully described in Schedule C and in Annex-I to 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**

**a. Project Facilities**

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement. Such Project Facilities shall include:

- (i) Public Convenience Toilets – to include all of the Units at all the Sites, duly repaired, renovated, refurbished, newly constructed, as the case may be.
- (ii) Standalone Urinals - to include all of the Units at all the Sites, duly repaired, renovated, refurbished, newly constructed, as the case may be
- (iii) Standalone Bathrooms - to include all of the Units at all the Sites, duly repaired, renovated, refurbished, newly constructed, as the case may be
- (iv) Modular Toilets - to include all of the Units at all the Sites, duly repaired, renovated, refurbished, newly constructed, as the case may be
- (v) Central Control Monitoring Systems
- (vi) And all other amenities and facilities incidental to and related to items (i) to (v) above

The Project Facilities as listed hereinabove, are to be designed, built, operated and maintained as per provisions of this Agreement and to the standards and specifications provided herein.

**Annex-I  
(Schedule-C)**

**Project Facilities**

**1 Project Facilities**

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the Project. The scope of services that constitute the development of the Project Facilities shall include:

**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) (which, within them may have closets, urinals and bathrooms), Standalone Urinals, Standalone Bathrooms, and Standalone Modular Toilets – all of these in identified locations in Zones I, II, III and IV of Greater Chennai Corporation under Hybrid Annuity Model 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 conditions 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 Project Facilities meet the design and operations requirements as well as comply with the service level requirements and thereby, the Key Performance Indicators.
- 2.2. The Concessionaire shall note that while scrutiny and approvals may be given by Authority for the Project Facilities, the Concessionaire shall ensure standard design, standard specifications and a standard 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 eco-friendly 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 build, 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, Standalone Bathrooms, and Modular Toilets located in the Site, and aggregated as under:

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

	<b>PCTs</b>	<b>Standalone Urinals</b>	<b>Standalone Bathrooms</b>	<b>Modular</b>	<b>Total</b>
Zone 1	66	16			<b>82</b>
Zone 2	61	4		2	<b>67</b>
Zone 3	58		2		<b>60</b>
Zone 4	52	24			<b>76</b>
<b>Total</b>	<b>237</b>	<b>44</b>	<b>2</b>	<b>2</b>	

- 3.2. The 285 locations comprise majority of Project Sites (estimated about 213) where the Concessionaire shall carry out the minimum repair/renovation works as stipulated and, where found deficient or absent, the additional works as well, as stipulated by the Authority. Few of the sites shall necessitate the Concessionaire to either redevelop the Site (as existing asset may be defunct or demolished, estimated about 41) or to construct an asset at the Site where no asset existed prior (estimated number of Sites, about 31). The Authority shall identify and make available the vacant and unencumbered land at those Sites where no Toilet assets exist as on date on this Agreement.
- 3.3. The Authority shall not guarantee the workmanship or suitability and sustainability of the assets at the Toilet Sites referred to in Clause 3.2 of this Schedule. The Concessionaire shall incur incremental costs at these locations as necessary to meet the Authority's specifications and standards and for meeting the Tests/ Certification requirements as well as the Operational and Maintenance specifications stipulated under this Agreement.
- 3.4. Deleted
- 3.5. Table 3 below indicates the number of seats/ service counters (aggregating 2301) , across all the the Project Sites, and categorised under various types viz., PCTs, Standalone Urinals, Standalone Bathrooms and Modular Toilets. In this context it is mentioned that each and every service station – be it a closet, and urinal, a bathroom facility at the PCT or be it a standalone urinal or a standalone bathroom or be it a modular toilet (in namma toilets or e-toilets) is referred to as a Seat/Service Counter in this Agreement.

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

	<b>PCT Closet</b>	<b>PCT Urinals</b>	<b>PCT Bathroom</b>	<b>Standalone Urinals</b>	<b>Standalone Bathrooms</b>	<b>Modular Toilets</b>	<b>Total</b>
1	537	10	60	32			<b>639</b>
2	433	77	21	8		2	<b>541</b>
3	445	62	39		12		<b>558</b>



	<b>PCT Closet</b>	<b>PCT Urinals</b>	<b>PCT Bathroom</b>	<b>Standalone Urinals</b>	<b>Standalone Bathrooms</b>	<b>Modular Toilets</b>	<b>Total</b>
4	434	19	68	42			<b>563</b>
<b>Total</b>	<b>1849</b>	<b>168</b>	<b>188</b>	<b>82</b>	<b>12</b>	<b>2</b>	

*PCT – Public Convenience Toilets – These are toilet complexes that house within them closets for men and women and may have also urinals and bathrooms as part of the complex.*

*Modular Toilets include e-Toilets and Namma Toilets*

In aggregate, and subject to other provisions of this Agreement, an aggregate of 285 Sites with 2301 seats/ service counters get covered under the Project Scope - for Design, Build, Finance Operate, Maintain and Transfer of these assets. Authority estimates that the Concessionaire may be required to construct fresh/new toilet facility in atleast 72 sites with about 671 seats/service counters within that (72 Sites and 671 seats/service counters are subsumed into respectively, 285 and 2301 mentioned hereinabove).

The Concessionaire shall however, not relying on the Authority's estimate but basis their own due diligence and their investment assessment and basis the repair specifications laid out by the Authority, spend the initial quantum of capital resources for renovation, as also for new constructions - as the condition of each of the asset at each Site and as the contract terms of this Agreement may warrant.

- 3.6. The Authority has estimated that about 1630 seats/service counters may warrant repair works while the balance 671 seats may have to be newly constructed. The estimates are based on a survey of these assets for the quality of building, electrical and plumbing infrastructure provisions, accessibility and upkeep. General caveats apply that the Concessionaire is expected to carry out its own due diligence and make their own assessments of these data points and the Authority shall not bear any risk or responsibility in this regard whatsoever.

*Table 4: Asset Inventorisation – Quality assessment of Seats/Service Counters across the Sites*

	<b>Needs Repair</b>	<b>New (Full) Construction</b>	<b>Total</b>
1	467	172	<b>639</b>
2	424	117	<b>541</b>
3	236	322	<b>558</b>
4	503	60	<b>563</b>
<b>Total</b>	<b>1630</b>	<b>671</b>	

- 3.7. The Concessionaire shall undertake the following repair works at each of the Project Site. This list shall be viewed as not an exhaustive listing, but merely providing the minimum expectations of the Authority.

*Table 5: Sites and Seats/ Service counters –Repair / New Constructions to be carried out*

Base Repairs - At all the Sites, without exception	All Sites/Locations to have the following renovation tasks compulsorily undertaken, irrespective of whatever be the existing status of each of the asset that's referred to under the
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	<p>following. Materials shall be of good quality and best industry standards.</p> <ul style="list-style-type: none"> <li>✓ Replacement of all tiles – vertical walls, upto 7 feet and floor, complete, and anti-skid</li> <li>✓ Replacement of all toilet fittings and accessories</li> <li>✓ Replacement of all electrical wires and fittings</li> <li>✓ Replacement of all plumbing lines and connections with CPVC pipes.</li> <li>✓ Replacement of all Doors with WPC doors and stainless-steel handles and hooks.</li> <li>✓ Exterior and Interior Painting.</li> <li>✓ Provision of washbasin.</li> <li>✓ Provision of a Mirror</li> <li>✓ Provision of view cutter</li> <li>✓ Provision of adequate Ventilation and Lighting</li> <li>✓ Provision of ramps for elderly and disable friendly, wherever feasible to be provided for, given that these are existing assets and, therefore, a given land, location and layout</li> </ul>
<p>Base + Additional Repairs - At Sites where these infrastructure provisions are not available</p>	<p>Further, wherever the following provisions are not already available or are inadequate, they have to be provided for, to best of quality and industry standards:</p> <ul style="list-style-type: none"> <li>✓ Septic tank and drainage connections</li> <li>✓ Water Motor arrangements/ mote replacements, as required</li> <li>✓ Ensuring sufficient storage of water and proper flow and supply of water</li> <li>✓ Providing Electricity connections through a separate line and meter arrangements</li> <li>✓ Attending to any and all civil defects/ deficiencies as needed (without altering the overall structural design of the asset)</li> </ul>
<p>Needing Redevelopment on existing sites and Development on Vacant (New) Plots</p>	<p>New (fresh constructions) construction of a toilet asset shall, inter alia follow the following guidelines::</p> <ul style="list-style-type: none"> <li>✓ As per SBM guidelines and building code, without a compromise, and including all the items listed above under minor or major repair and including provision of ramps for elderly and differently abled people.</li> </ul>

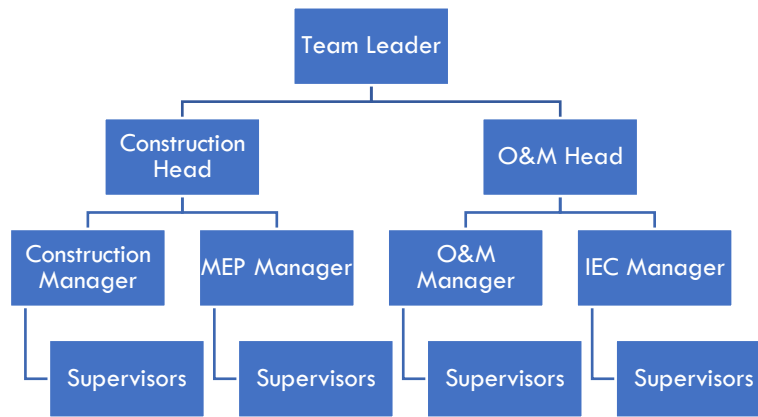
3.8. Deleted.

3.9. The assessment of inventory, as brought out in the various tables hereinabove, is expected to serve a guidance for the Concessionaire to take up these infrastructure assets for capital investment on locations as it feels necessary, and thereafter, for operations and maintenance of all these locations uniformly. The Authority 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.

- 3.10. The Centralized Control & Monitoring System and Mobile App has to be developed by the Concessionaire for monitoring the Public Convenience Toilets. The place for CCMS (of atleast 1000 square feet) would be given by the Authority as a bare shell facility, together with the server with ICCC, both on a no-cost basis and the Concessionaire is expected to arrange for the needful furniture, fixtures, infrastructure and all equipments necessary for operating the CCMS in a most effective and efficient manner from that place. The Concessionaire shall ensure integration of Data with the ICCC project undertaken by the Authority.
- 3.11. 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.
- 3.12. The Concessionaire shall also provide for the minimum manpower requirements as under and also have a suggested organogram as below to effectively handle the construction and thereafter, the operations and maintenance of the Project Facilities.

*Table 6: Manpower Resources and Organogram*

S.No.	Designation	Minimum Qualification
1	Team Leader	Masters in Civil/Construction Management/MBA or related. Minimum 15 years of industry experience with related experience in leading and managing FMS projects.
2	Construction Head	Masters in Civil / Construction Management / Architecture or related. Minimum 10 years of experience in executing building construction activities.
3	Operations and Maintenance Head	Masters in Operations or related. Minimum 10 years of experience in handling Operations for FMS projects.
4	Construction Manager	Bachelors in Civil engineering. Minimum 5 years of experience in executing building projects.
5	MEP Manager	Bachelors in Civil engineering. Minimum 5 years of experience in executing MEP for building projects.
6	IEC / Sanitation Manager	Graduate in Social Sciences / Public Health or related. Minimum 5 years of experience handling sanitation related activities.
7	O&M Manager (atleast one per zone; function of number of locations in each zone)	Any graduate. Minimum 5 years of experience in FMS of projects.
8	Construction Supervisor/s (function of overall number of locations)	Graduate in Civil engineering. Minimum 2 years of experience in building projects
9	O&M Supervisor/s (function of overall number of locations)	Any graduate. Minimum 2 years of experience in FMS of projects



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

- 4.1. The Authority shall ***not allow the Concessionaire to exploit the premises for any commercial/real estate gains.*** As such, no permission will be granted for any activity like renting spaces to run kiosks or any such activity. The Concessionaire will be allowed to generate revenue, whatever may be feasible, by seeking advertisements on specified and permitted areas of the site, as explicitly laid out in this Agreement.
- 4.2. Authority's prior approval for advertisement usage as well as for the contents of advertisements shall be taken by the Concessionaire. As such, the Concessionaire shall be responsible for, planning, designing, engineering, financing, construction, operations and maintenance of advertisement opportunities subject to securing all permits and approvals and prior approval from Authority
- 4.3. The Concessionaire has to seek specific approval for each Site identified for advertisement activities before construction of these facilities at that Site. 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.
- 4.4. Deleted
- 4.5. 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.

**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 and Specifications 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 Madras and Chennai City Municipal	Deals with contours, permissions, approvals, forms and formats behind licensing of hoardings and levy and collection of advertisement related fees, and rentals.

	Corporation Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules 2003  TN Govt Gazette Extraordinary-124 Dt 12/04/2023 Part III, Sec 1(a) – 341 – 361, and as amended from time to time	
11	GST 2nd Edition 31/3/2017 and as amended/ updated from time to time.	Deals with provisions related to levy and collection of tax on goods or services and matters connected therewith or incidental thereto.

**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 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.

The Concessionaire shall have undertaken a thorough due diligence on the structural soundness, available assets and the base design at the toilet assets and made an assessment of the extent of repair/revamp/rebuild required at these assets;

The Concessionaire shall have obtained the approval Authority and the Independent Engineer as the case maybe, for the proposed development design, renovation methodology, quality assurances, drawings and specifications.

2.2.2. The Concessionaire shall commit and undertake to carry out the requisite repairs and renovations as well as to build new toilet assets at the Sites as per provisions of this Agreement and as further spelt out in detail under Clause 3.7 under Annex-

I to Schedule-C.

The Concessionaire shall commit to provide for an optimal inventory of a basic, functional and usable Mobile Toilets, for likely usage of one or more such Mobile Toilets at Project Sites, whenever a particular Site or set of Units at a Site are taken up for repair and renovation.

2.2.3. The eco-friendly 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. Include 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 bio-metric attendance for the staffs, customer feedback system(s), surveillance camera, mirrors, sanitary vending machines and 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.
- 2.2.4. 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.
- 2.2.5. 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. **The Concessionaire shall preserve all materials that could possibly be salvaged during the replacement/ demolition work and duly hand them over to the Authority.** 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.
- 2.2.6. All Project Locations and all 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.
- 2.2.7. Sump for municipal water supply and/or bore well(s), and storage tanks to be provided to ensure adequate storage availability and storage.
- 2.2.8. 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
- 2.2.9. 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.
- 2.2.10. 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.
- 2.2.11. 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.
- 2.2.12. Advertisements are permitted on 3 (three) exterior walls of the toilet facility, limited to 40% of exterior wall area and subject to a maximum of 40 square metre per facility. Advertisements are also permitted in the interiors of the toilet facility limited to 10% of interior wall area and subject to a maximum of 5 square metre per facility.**

- 2.2.13. Lighting systems should be adequate and all fixtures shall be vandalism proof.
- 2.2.14. 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
- 2.2.15. 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.
- 2.2.16. 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.
- 2.2.17. Waterless urinals, modular toilets and such other recent technology alternatives to be generously considered and provided for.
- 2.2.18. Solar power and such other green energy sources to be generously considered and provided for.
- 2.2.19. 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 and for each Site 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.
- 2.2.20. 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.
- 2.2.21. 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.
- 2.2.22. 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.

2.2.23. Installation of the CCTV shall be such as not to infringe upon privacy and/or cause embarrassment to the Users, for example, the CCTVs need not be focused such as to capture facial features of Users. The primary purpose of the CCTV shall be more for capturing vandalism and out of turn events rather than capturing record of who goes in and who comes out – essentially as a safety and surveillance tool at the toilet Site.

2.2.24. ***The Concessionaire shall all times adhere to the MIOP and revisions thereto from time to time, at all times during the Project Construction Period.*** The indicative framework for preparation of MIOP shall include detailing of the following but not limited to:

- Take Over Plans (of the Project Sites from the Authority) – Project site wise and on a Timeline and taking cognisance of ground realities
- Resource (Manpower) mobilisation Plans
- Capital (Financial) mobilisation and Utilisation Plans
- Plans for mobilising Machinery, Equipments and the necessary Vehicles for construction and for transportation of manpower resources, as applicable
- Construction Plans - to achieve and abide by Project Milestones as specified
- Plans for procurement and utilisation of Mobile Toilets - optimisation of cost, need and coverage perspectives, factoring the milestone based project construction plans.
- Plans for Operations and maintenance of facilities from time of takeover till securing the Phased Completion Certificate/ Completion Certificate, through the pre construction and construction periods
- Operations and maintenance (preventive, periodic, major, replacement etc.) plans
- Utility (Water and Electricity) sourcing plans (to also include water conservation measures like low-flow fixtures, energy efficient lighting and ventilation, integration and sustainable practices viz., rainwater harvesting etc.)
- Drainage and Septage Plans (to also include plans for waste management – septic tank management, solid waste management etc.)
- Plans for CCMS & Other Digital Infrastructure installation and usage of these for Monitoring & Measuring Project performance
- Management Information Systems (MIS) and Complaint Redressal Plans
- Advertisement Plans, if any
- Design Plans (for new constructions)
- Issues, Challenges, Risks and their Mitigation Plans
- Contingency Plans – for physical and financial contingencies, if any
- Emergency and Disaster Management Plans, as applicable
- IEC (Information, Education and Communication) Plans for spreading awareness and seeking cooperation and compliance from Users of the Project Facilities/ Local community.
- Handover (at expiry of Concession) Plans
- And any and all other aspects related to and relevant to MIOP

## **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.
- 1.3 The Concessionaire shall also abide by all the Standards and Specifications specified under Annex-I, Schedule-D, as applicable, from time to time.

## 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 -I, the Concessionaire shall have commenced construction of the Project and achieved atleast 20% Physical Progress. This progress shall also include completion of atleast 0% [i.e., no minimum specification] of those Project Facilities that are, in aggregate, to be constructed new.

#### **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 a cumulative of atleast 50% Physical Progress. This progress shall also include completion of atleast 30% of those Project Facilities that are, in aggregate, to be constructed new)

#### **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 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 a cumulative of atleast 80% Physical Progress. This progress shall also include completion of atleast 60% of those Project Facilities that are, in aggregate, to be constructed new.

**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 and for each Site.

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

## **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 Sites and details thereof

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

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, at all the Sites, for all the Project Facilities, and commencing from the date of Issuance of the Phased Completion Certificate and into 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, Bathrooms and Modular Toilets 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 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 be operated 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. **Manpower resources:** Besides the minimum manpower specified in para 3.1.2 of Annex 1, Schedule C, the Project shall be appropriately staffed – on headcount and skill aspects depending on the type and usage of that particular Site. 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.
  - o Concessionaire shall deploy staff so that **minimum 1 (one) personnel is available at the Site, during all times of operational hours of a shift (which means, given atleast two shifts in a day, atleast 2 (two) personnel per Site)** 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.
  - o Concessionaire shall deploy staff so that **minimum 1 (one) supervisory personnel is available between two Sites (which means, given atleast two shifts in a day, atleast 2 (two) supervisory personnel between 2 (two) Sites)** who shall be responsible for all aspects related to managing the operating personnel at the Site, planning for and managing the inventory (consumables, stores and spares, equipments, aprons and gloves etc.), monitoring maintenance and performance parameters, liasoning with the Authority and their authorised representatives etc. This personnel staff is expected to comprehensively supervise the overall operations and maintenance in the most efficient and effective manner.
- m. 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.
- n.
- o. 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
- p. 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.

- q. 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.
  - r. Recycling facility: Concessionaire shall ensure proper working and maintenance of water/solid waste recycling facility so that it is operational at all times.
  - s. 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
  - t. 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.
  - u. 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 have adequate provisions / inventory of the following, including not limited to:***
- ***a vehicle containing jetting cum - suction machine,***
  - ***cleaning agents/chemicals like Floor Cleaning Liquids, Germ Protector/Toilet Seat Disinfectant, Flush Cleaner Liquids, Napthalene Balls, Stain removing chemicals, Wall Cleaning Liquids,***
  - ***Spare consumables, Spare fittings and fixtures – electrical, plumbing and mechanicals,***
  - ***Buckets, Mugs and Dust Bins***
  - ***Aprons and Gloves and Identity badges for Sanitation cum Maintenance staff,***
  - ***atleast one vacuum cleaner per location***
  - ***mopping equipments, brushes, brooms, duster cloths,***
  - ***air fresheners and hand sanitiser and sanitary napkin vending machines (if feasible to be provided at the Site***
  - ***and any and all other items that are necessary to undertake a thorough cleaning, monitoring, maintenance and upkeep of the Project Facilities.***

- 1.17. 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.
- 1.18. 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.
- 1.19. 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.
- 1.20. 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.
- 1.21. 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.
- 1.22. 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.

- 1.23. 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. Concessionaire shall provide for insurance and annual maintenance contracts for all digital infrastructure in use. Concessionaire shall also ensure that periodic / preventive maintenance is carried out through the Concession term, on the following, including but limited to:

- ***Painting of the exterior and interior surfaces of the toilet assets so as to keep them fresh and stain free at all times***
- ***Replacement of Pipe and pipe fittings on a periodic basis so that these are not stretched beyond their normal useful life***
- ***Replacement of Closets, Taps, Doors and fittings, basins and mirrors so that they are always in in good condition and not stretched beyond their normal useful life***
- ***Replacement of electrical wires and fittings, including the fans and motors so that they are always in an efficient running condition and not stretched beyond their normal useful life***
- ***Replacements of CCTVs, CCMS and such other Digital Infrastructure at intervals such that always in an efficient running condition and not stretched beyond their normal useful life***

**1.24. The Concessionaire shall all times adhere to the MIOP and revisions thereto from time to time, at all times during the Operations and Maintenance Period.**



**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. Provisions of this Annex-II of Schedule-K shall apply commencing from the date of Issuance of the Phased Completion Certificate and into the Operation Period,

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

<b>Sl.No.</b>	<b>Nature of Defect/deficiency</b>	<b>Time limits for repair/rectification</b>	<b>Penalty per instance per day</b>
17.	Replacement of any lost/ stolen/ damaged asset created/ provided for in the PCT	1 day	Rs.1000
18.	Maintenance of Greenery in /surrounding toilet premises	Daily	Rs. 1000
19.	(If installed) 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 period commencing from the date of Issuance of the Phased Completion Certificate and into the Operations period will be monitored by the Authority (by itself or through the Independent Engineer), and the performance shall be evaluated on a daily basis on 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 daily 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 Location and for each Unit within that, 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 Location – 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 Location, viz., the Site/Location Score
- 2.1.5. Individual Site Scores for all the Sites 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)
KPI 1		Attendance & Availability of Cleaning/caretaker staff and of the supervisor (to check attendance sheet on daily basis and staff salary payment details on monthly basis)	20	Atleast <b>1 cleaning staff per shift per location</b> AND atleast <b>1 supervisor per shift for not more than 4 locations</b>	20					Cleaning staff and/or Supervisor NOT as per performance indicator	0	
KPI 2	\$	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	
KPI 3		Wash basin(s) clean and usable	10	100% clean	10	Partially clean	7	Not clean	4	Not available	0	
KPI 4		Water availability at tap outlets	20	Water is available in all service counters	20	Water is available in >50% of all service counters	10	Water is available outside (in/ around the premises), BUT not inside the premises	5	Water is not available	0	
KPI 5		Adequate ventilation facility	15	Well ventilated and absolutely odour free	15					Ventilation not available and the Units "stinks"	0	
KPI 6		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	

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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)
KPI 7		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	
KPI 8		<b>NO</b> Overflow/spillage/clogging of untreated faecal sludge/septage and sewage from the Unit	15	Yes	15					No	0	
KPI 9		Floor is clean and dry throughout the Unit	15	Very clean and absolutely dry	15	Clean and dry	10	Partially unclean and wet	5	Not clean and wet	0	
KPI 10		Mirrors are clean and polished	5	Very Clean	5	Clean	3	Partially clean	1	Not clean	0	
KPI 11	@, #, \$	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	
KPI 12	\$	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	

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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)
KPI 13		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	
KPI 14		Entrance/ accessibility (like ramp, stairs) to Toilet Site is barrier free for all Users	15	Yes	15					No	0	
KPI 15		Premises are visible to passers-by, with clear signage	10	Signages available and visible both during day and night	10					No signage available	0	
KPI 16		Staff is provided with necessary and sufficient supplies of consumables, and inventory	20	Yes, inventory of consumables, available and inventory is sufficient atleast for 2 weeks	20	Yes, inventory of consumables available but inventory is available for just about a week	10	Yes inventory of consumables available but that is barely insufficient for even couple of days requirements	5	Inventory of Consumables NOT available	0	
KPI 17		Staff is provided with necessary and sufficient supplies of equipment, and protective gear	15	Yes, cleaning equipment is available and protective gear supplies are sufficient for atleast a month	15	Yes, cleaning equipment is available BUT supplies of protective gear available for just one change	10	Cleaning equipment available but under repair; Supplies of Protective gears not available	5	Neither the cleaning equipment Not supplies of protective gears are available	0	

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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)
KPI 18		Roster is available and is regularly updated and being maintained for regular cleaning and maintenance	15	Yes (Roster is available and regularly updated and maintained on a daily basis )	15	Yes-( Roster is available but not updated/main tained on a daily basis)	10	Yes- Roster is available but not updated at all	5	No (Roster Not available)	0	
KPI 19		Complaint registration and redressal mechanism is in place and is functional	20	Yes	20					No	0	
KPI 20		All walls (inside and outside of the premises) are poster/graffiti free	15	Yes	15					No	0	
KPI 21	@, #, \$	Existing Plants / shrubs in the vicinity of Site well maintained	10	Yes	10					No	0	
KPI 22	@, #, \$	An acceptable (to Authority) arrangement for safe disposal of sanitary napkins is available and functional	15	Arrangement is available and functional	15					Not available	0	
KPI 23		Premises are well lit, both within and outside, without any dark, shadowy areas in	20	Yes	20					Not available	0	

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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)
		the vicinity of the toilet										
KPI 24		Premises free of vermin / insects	15	Absence of any infestation by Vermin/ Insects	15	Minor level of infestations	8			Heavily Infested with Vermin/insects	0	
KPI 25		Availability of Premises for Users during Operational hours	20	Premises open and available for Users	20					Unscheduled/un-notified closure	0	
KPI 26		CCTV Facility available and functional	20	Arrangement is available and functional	20					Not available and or non-functional	0	
<b>Summation of score across all KPIs for this Location (B)</b>												
<b>No of Units (seats/service counters) for the particular Location - [to be filled] (C)</b>												
<b>Total number of Units (seats/ service counters) across all Locations - 2301 (or any other number that's settled at the time of Commencement of Commercial Operation) (D)</b>												
<b>Weighted Score for that Location – TO BE CALCULATED AND CARRIED FORWARD, MANDATORILY ROUNDED UPTO 5 DECIMALS <math>B * (C/D) = E</math></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 Sites with only Standalone urinals
#	Not applicable in Sites with only Modular toilets
\$	Not applicable in Sites with onlu Standalone Bath rooms



^ - In case any of the said Performance Indicators is not applicable for any of the Project Site, 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.

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

Assuming that the aggregate number of seats/service counters across all the Sites settles at the design capacity of 2301, the Weighted Score of each Site (285 Project Sites in total in base case) is then summated to arrive at the Final Score as calculated in Table below:

Table 11.: Final Score – KPI related calculations

Description	Final Score
Weighted Score (weighted by seats/service counters in each Site)	E (from Table 10 above) – individual score, for each of the sites 1 to 285
Final Score (FS) is the Weighted Score <b>Summated</b> for all the Project Sites	Summation of Score E's for Sites 1 to 285

The Maximum Possible Score assuming performance at Case 1 levels across all the KPI rows listed in Table 10 above works to 400. Final Score that the Concessionaire may secure as per Table 10 above is then expressed as a fraction of the Maximum Possible Score (viz., 400), to determine the Effective Performance by the Concessionaire on the particular date for that particular Site 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, 336.32812 (as an example)</b>
Concessionaire's Final Score as fraction of Maximum Possible Score	$336.32812/400 = 84.08\%$

The Effective Performance score (calculated as a measure across all the Sites) is matched with the graded slab structure as indicated in Table 13 to get to the relevant and applicable Penalty Stage for the particular Site on that particular date, under their (performance) evaluation exercise.

Table 13: 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

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 14: KPI Deductions – KPI related calculations

<b>Penalty Stage and Description</b>		<b>KPI DEDUCTION: As %age of (then applicable) O&amp;M Payment</b>
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%

For illustration purposes, an effective performance score of 84.08% in say the first day of the 3rd month of the 2nd operational year would indicate (i) a penalty stage corresponding to a Minor performance, and (ii) attract a deduction of 2.00% of the O&M Payment applicable for the 3rd month of the 2nd operational year, pro-rated for a daily basis of measurement, under the Concession.

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 hereinabove shall be calculated based on the number of days for which the relevant O&M Payment was applicable during the period of calculation.

The Authority shall have the right to recover deductions if any leviable on the Concessionaire from the periodic O&M Payments due and payable to the Concessionaire by the Authority.

The Authority shall, for the purposes of deducting penalties, 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.

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 Less KPI related deductions 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 the period till Appointed Date**

- 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 Review of Drawings**

4.1 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 – O

(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, 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) Outstanding payments to the Authority
- (e) 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;
- (f) Retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 33 of the Concession Agreement;
- (g) Outstanding Debt Service including the balance of Debt Due;
- (h) Outstanding Subordinated Debt;
- (i) Incurred or accrued O&M Expenses;
- (j) Any other payments required to be made under the Concession Agreement;

and

(k) 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 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 Concessionaire by: at its meeting held on the.....day of the .....20.....here	For and behalf of THE AUTHORITY



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	
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**Schedule S**

**Not Used**