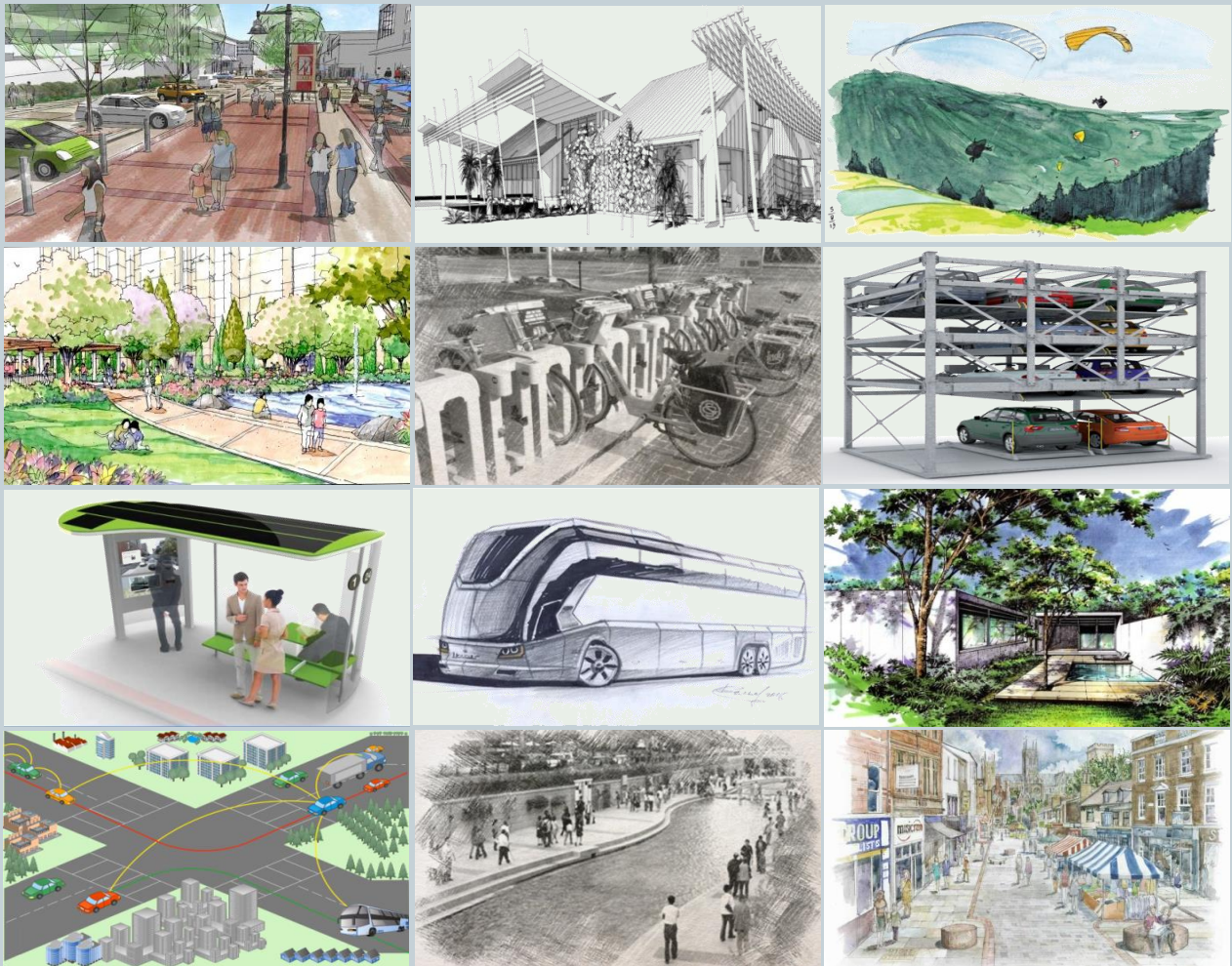




DHARAMSHALA SMART CITY LTD.



RFQ-CUM-RFP FOR DESIGN, IMPLEMENT AND OPERATE A COMPREHENSIVE DIGITAL PAYMENT SYSTEM IN DHARAMSHALA

Project Development and Management Consultant



In Joint Venture with



June.2020

PDMC-DSCL-ACT-05(a)-09 (R6)



Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala



Dharamshala Smart City Limited
Old Himuda Building, Chilgari,
Dharamshala, Himachal Pradesh, 176215
Phone: 01892 – 226677

NOTICE INVITING TENDER (NIT)

REF No. *DSCL/Smart Card for Citizen & Tourists -61/2018-84* Date: 01-06-2020

DHARAMSHALA SMART CITY LIMITED (hereafter referred to as "AUTHORITY"), Dharamshala Smart City Limited (DSCL) is a Special Purpose Vehicle (SPV) setup to implement Smart City projects in Dharamshala, invites online bids from the eligible bidders through www.hptenders.gov.in for Selection of a Concessionaire for "Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala".

BID INFORMATION

Sr. No.	Particulars	Information
1	RFP No	DSCL/02/2020
2	Scope of work	Invest, Design, Develop, Procure, Implement, Integrate, Operate and Manage a Comprehensive Digital Payment System that includes open loop smart cards, software and mobile application, in Dharamshala on Public Private Partnership (PPP) basis on Design, Implement, Operate and Manage mode, under implementation of Smart City Mission projects
3	Location of Work	Dharamshala
4	Time of completion of the work	183 days from the Appointed Date as provided in the Draft Concession Agreement (Vol 2).
5	Defect Liability Period	Not Applicable
6	Type of Contract	Public Private Partnership (PPP) – Design, Implement & Operate concession.
7	Date of issue of Tender documents online	3 rd June 2020
8	Last date for sending pre-bid queries	17 th June 2020, 17:00 hours at dscltender@gmail.com
9	Date, Time & Place of Pre-bid Meeting	No pre-bid meeting shall be conducted due to restrictions on social distancing




Design, Implement and Operate a Comprehensive Digital
Payment System in Dharamshala



BID INFORMATION

Sr. No.	Particulars	Information
10	Last date for Online Purchase of Tender Document.	22 nd June 2020 till 17:30 hrs.
11	Last date of Online submission of Bids	22 nd June 2020 till 17:30 hrs.
12	Last date of EMD + Hard Copy (Technical Proposal) Submission of Proposals.	23 rd June 2020 till 12:30 hrs.
13	Date & Time for Opening of Technical Proposal	23 rd June 2020 at 15:00 hrs.
14	Date & Time for Opening of Financial Proposal	To be informed later to technically qualified bidders
15	Letter of Award (LOA)	Within 60 days from Bid Due Date
16	Signing of Concession Agreement	Within 15 days from award of LOA
17	Tender document Fee	Rs.5,000/- (Rupees Five Thousand only), inclusive of GST, to be paid only through Demand Draft (DD) in favor of "Dharamshala Smart City Limited" payable at par, at Dharamshala
18	Bid Security/Earnest Money Deposit (EMD)	Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only)
19	Security Deposit/Performance Bank Guarantee (PBG)	Rs.12,00,000/- (Rupees Twelve Lakhs Only) by the successful bidder (to be furnished within 15 days of issue of Letter of Award)
20	Project Award Criteria	Highest Annual Concession Fee payable to the Authority
21	Bid Validity Period	120 days from the Bid Due Date

For further details and general enquiries, prospective bidders may contact the MD cum CEO, Dharamshala Smart City Limited, Old HIMUDA building, Chilgari, Distt Kangra, PIN 176215, Himachal Pradesh during working hours before the last date and time of submission of tender document. Any modification / corrigendum / Addendum made in Tender documents will be hosted on website. Bidders are advised to visit the website regularly till the date of submission and opening of bids.


MD- CUM- CEO

DHARAMSHALA SMART CITY LIMITED



Disclaimer

The information contained in this Request for Qualification cum Request for Proposal (RFQ-cum-RFP) document or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of Dharamshala Smart City Limited or any of its employees or advisers, is provided to Bidders on the terms and conditions set out in this RFQ-cum-RFP document and such other terms and conditions subject to which such information is provided.

This RFQ-cum-RFP document is not an agreement or an offer to the prospective Bidders or any other person. The purpose of this RFQ-cum-RFP document is to provide interested parties with information that may be useful to them in the formulation of their proposals pursuant to this RFQ-cum-RFP document. This RFQ-cum-RFP document includes statements, which reflect various assumptions and assessments arrived in relation to the proposed assignment. Such assumptions, assessments and statements do not purpose to contain all the information that each Bidder may require. This RFQ-cum-RFP document may not be appropriate for all persons, and it is not possible for Department, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFQ-cum-RFP document. The assumptions, assessments, statements and information contained in this RFQ-cum-RFP document, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFQ-cum-RFP document and obtain independent advice from appropriate sources.

Information provided in this RFQ-cum-RFP document to the Bidders may be on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Dharamshala Smart City Limited accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

Dharamshala Smart City Limited, its employees and advisers make no representation or warranty and shall have no liability to any person including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFQ-cum-RFP document or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFQ-cum-RFP document and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ-cum-RFP document or arising in any way in this Selection Process. Dharamshala Smart City Limited also accepts no liability of any nature whether resulting from negligence or otherwise



however caused arising from reliance of any Bidder upon the statements contained in this RFQ-cum-RFP document.

Dharamshala Smart City Limited may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFQ-cum-RFP document.

The issue of this RFQ-cum-RFP document does not imply that DSCL is bound to select a Bidder or to appoint the Selected Bidder, as the case may be, for the proposed Assignment and Dharamshala Smart City Limited reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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



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Abbreviations

AEPS	Aadhaar Enabled Payment System
ABD	Area Based Development
ATM	Automated Teller Machine
BBPS	Bharat Bill Payment System
BHIM	Bharat Interface for Money
BEC	Bid Evaluation Committee
CAMC	Comprehensive Annual Maintenance Contract
CDPS	Comprehensive Digital Payment System
CEO	Chief Executive Officer
D.C	Deputy Commissioner
DBFOO	Design, Build, Finance, Own and Operate
DSCL	Dharamshala Smart City Limited
DPR	Detailed Project Report
EFT-POS	Electronic funds transfer at point of sale
EIC	Engineer in Charge
EMD	Earnest Money Deposit
EMV	Euro MasterCard Visa
FR	Feasibility Report
GST	Goods and Services Tax
HP	Himachal Pradesh
HPSEB	Himachal Pradesh State Electricity Board Limited
IEC	International Electro-technical Commission
INR	Indian Rupees
IP	Internet Protocol
IPR	Intellectual Property Rights
ISBT	Inter-State Bus Terminal
IT	Information Technology
JV	Joint Venture
JVC	Joint Venture Company
KYC	Know Your Customer
LD	Liquidated Damages
LOA	Letter of Award
MD	Managing Director
MCD	Municipal Corporation of Dharamshala
MoU	Memorandum of Understanding
NBFC	Non-Banking Finance Company
NCCM	National Common Mobility Card
NEFT	National Electronic Fund Transfer
NIT	Notice Inviting Tender
O&M	Operation and Maintenance
PBG	Performance Bank Guarantee



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PCP	Pan-City Proposals
PMC	Project Management Consultants
POS/PoS	Point of Sale
PPI	Prepaid Payment Instrument
PPP	Public Private Partnership
PSU	Public Sector Undertaking
RBI	Reserve Bank of India
RFQ-cum-RFP	Request for Qualification cum Request for Proposal
RTGS	Real-Time Gross Settlement
SCP	Smart City Proposal
SPOC	Single Point of Contact
SPV	Special Purpose Vehicle
SWAGAT	Swachalit Gate
SWEEKAR	Swachalit Kiraya: Automatic Fare Collection System
TCB	Total Cost of Bid
UPI	Unified Payments Interface
USSD	Unstructured Supplementary Service Data



Glossary

Annual Concession Fee	As defined in Clause 1.2.6(a)
Associate	As defined in Clause 2.1.14
Authority	As defined in Clause 1.1.1
Bidders	As defined in Clause 1.2.1
Bidding Documents	As defined in Clause 1.1.7
Bid Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Bid Stage	As defined in Clause 1.2.1
CPDS	As defined in Clause 1.1.1
Concession	As defined in Clause 1.1.5
Concessionaire	As defined in Clause 1.1.2
Concession Agreement	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.1.14
Consortium	As defined in Clause 2.2.1
Damages	As defined in Clause 2.1. 14
DBFOO	As defined in Clause 1.1.1
Demand Draft	As defined in Clause 2.23.1
Estimated Project Cost	As defined in Clause 1.1.4
Financial Capacity	As defined in Clause 2.2.2 (B)
Highest Bidder	As defined in Clause 1.2.6(b)
Jt. Bidding Agreement	As defined in Clause 2.2.6 (g)
Lead Member	As defined in Clause 2.2.6 (c)
LOA	Letter of Award, as defined in Clause 3.4.5
Member	Member of a Consortium
O&M	Operation and Maintenance
PPP	As defined in Clause 1.1.1
Processing Fee	As defined in Clause 1.2.2
Project	As defined in Clause 1.1.1



Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFQ-cum-RFP	As defined in the Disclaimer
Selected Bidder	As defined in Clause 3.4.1
JVC	As defined in Clause 2.2.6
Technical Capacity	As defined in Clause 2.2.2 (A)

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein above.



1 INTRODUCTION

1.1 Background

1.1.1 Dharamshala lies at the foot of the majestic Dhauladhar range of the Himalayas. Picturesque surroundings and the presence of his holiness Dalai Lama have made Dharamshala a popular destination, both among domestic and foreign tourists. Dharamshala is the headquarters of the Kangra district in Himachal Pradesh, India. The tourist footfalls in Kangra district in the year 2018 were estimated at 21,17,675 of which about 60% were estimated to visit Dharamshala.

Dharamshala Smart City Limited (the “**Authority**”) is engaged in the implementation of the Smart City Mission projects in Dharamshala and as part of this endeavour, the Authority seeks to appoint a reputed entity as the concessionaire to “**Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala**” (hereinafter referred to as the “**Project**”) for Citizens and Tourists, on Public Private Partnership (PPP) basis on Design-Build-Finance-Own-Operate(**DBFOO**) mode and has, therefore, decided to carry out the bidding process for award of the project to a Bidder.

“**Comprehensive Digital Payment System**” (**CDPS**) refers to a digital payment system that facilitates monetary transactions (payments/collections) through, contactless banking smart cards that are EMV compliant and provide for offline transactions by users; digital wallets and mobile apps including Bharat Interface for Money (BHIM) app and those that permit QR code based payments (including Bharat QR); USSD (Unstructured Supplementary Service Data), Aadhaar Enabled Payment System (AEPS); Unified Payments Interface (UPI); Point of Sale (PoS) including QR code based POS; and Internet Banking. The CDPS shall be integrated with Bharat Bill Payment System and the smart cards issued under CDPS shall be compliant with the specifications of National Common Mobility Card (NCMC) as well as operable with SWEEKAR (Swachalit Kiraya: Automatic Fare Collection System) and SWAGAT (Swachalit Gate).

The Bid Documents may be also be downloaded from the website www.hptenders.gov.in

The Authority intends to qualify suitable entities (the “**Bidders**”) and select amongst them a Bidder for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

1.1.2 The Selected Bidder, if it is a consortium, undertakes to incorporate a company under the Companies Act, 2013 or the Limited Liability Partnership Act, 2008 prior to execution of the concession agreement (the “**JVC**”). The



single entity Bidder or the JVC formed by a Consortium of Bidders that emerges as the Selected Bidder during the Bid Stage (the “**Concessionaire**”) shall be responsible for carrying out investigations, surveying, designing, financing, procurement, implementation, operation and maintenance of the Project under and in accordance with the provisions of a concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

- 1.1.3 The scope of work will broadly include designing, carrying out investigations and surveys, procuring, implementing, financing, operating and maintaining a Comprehensive Digital Payment System (CPDS) in Dharamshala on Public Private Partnership (PPP) basis on Design-Build-Finance-Own-Operate (DBFOO) mode, under implementation of Smart City Mission projects in Dharamshala.
- 1.1.4 The assessment of actual costs including capital cost of the Project will have to be made by the Bidders.
- 1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.6 The statements and explanations contained in this RFQ-cum-RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFQ-cum-RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFQ-cum-RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFQ-cum-RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.7 The Authority shall receive Bids pursuant to this RFQ-cum-RFP in accordance with the terms set forth in this RFQ-cum-RFP and other documents to be provided by the Authority pursuant to this RFQ-cum-RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

1.2 Brief description of Bidding Process

The Authority has adopted a single stage bidding process (referred to as the “**Bidding**”



Process) for selection of the Bidder for award of the Project. The first sub-stage (the **“Qualification Stage”**) of the bidding process involves qualification (the **“Qualification”**) of interested parties/consortia (the **“Bidders”**, which expression shall, unless repugnant to the context, include the Members of the Consortium) in accordance with the provisions of this RFQ-cum-RFP. Only those Bidders who satisfy the conditions of eligibility related to Technical Capacity shall be qualified (the **“Qualified Bidders”**). The second sub-stage involves evaluation of the Financial Proposals of Qualified Bidders (the **“Bid Stage”**), in order to identify the Selected Bidder. Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFQ-cum-RFP.

- 1.2.1 Bidders are required to furnish all the information specified in this RFQ-cum-RFP and other documents to be provided by the Authority (collectively the **“Bidding Documents”**).
- 1.2.2 The Bidding Documents can be downloaded from www.hptenders.gov.in. Bidders are required to pay a sum of Rs.5,000 (Rupees Five Thousand only) as the process fee (the **“Processing Fee”**) at the time of submission of their Bids. The Processing Fee is inclusive of GST and shall be paid only through Demand Draft (DD) issued by a Scheduled Bank in India, in favour of **“Dharamshala Smart City Limited”** and payable at par in Dharamshala (the **“Demand Draft”**) having a validity of not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of Bids (the **“Bid Due Date”**)
- 1.2.3 The Bidding Documents include the draft Concession Agreement for the Project which is enclosed. Subject to the provisions of Clause 2.1.4, the aforesaid document and any addenda issued subsequent to this RFQ-cum-RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to deposit, along with its Bid, a bid security (the **“Bid Security”**) of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders have to provide Bid Security in the form of a Demand Draft (DD) issued by a Scheduled Bank in India, in favour of **“Dharamshala Smart City Limited”** and payable at par in Dharamshala (the **“Demand Draft”**) having a validity of not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective



Bids for award of the Concession including implementation of the Project.

- 1.2.6 (a) Bids are invited for the offer to share an annual concession fee with the Authority (the “**Annual Concession Fee**”) exclusive of applicable GST.
- The Bidder shall specify the Annual Concession Fee for the first year of the concession in its Financial Proposal. The Annual Concession Fee payable to the Authority shall be increased by 5% (five per cent) in each subsequent year.
- (b) In this RFQ-cum-RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Annual Concession Fee. The concession period and other terms are pre-determined, as indicated in the draft Concession Agreement, and the Annual Concession Fee shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Clause 2.19, the Project will be awarded to the Highest Bidder.
- (c) The Annual Concession Fee for a year shall be paid in quarterly instalments in advance during the same year. The quarterly instalments shall be payable within 10 days of the beginning of the quarter for which the instalment is due. Delay in payment of instalments upto 30 days from the date the instalment is due shall attract an interest at the rate of 12% (twelve per cent) per annum. Non-payment of the due instalment of Annual Concession Fee and/or interest due, beyond the 30 days from the date it becomes due shall result in Concessionaire’s Default.
- 1.2.7 Generally, the Highest Bidder shall be the Selected Bidder. The Second Highest Bidder shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFQ-cum-RFP, be invited to undertake the Project in case the Highest Bidder withdraws or is not selected for any reason. Notwithstanding anything mentioned in this clause 1.2.7, the Authority may, at its sole discretion, annul the Bidding Process and invite fresh Bids for the Project.
- 1.2.8 The Concessionaire shall, in consideration of its investment, be entitled to demand, collect and appropriate Revenue from the Users.
- 1.2.9 Any queries or request for additional information concerning this RFQ-cum-RFP shall be submitted in writing by speed post/courier/special messenger and by e-mail so as to reach the officer designated in Clause 2.14.4 by the specified date. The envelopes/communication shall clearly bear the following identification/ title:
- “Queries/Request for Additional Information: **RFQ-cum-RFP for “Selection of a Concessionaire for Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala”**”



1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the schedule provided in the Notice Inviting Tender (NIT).

1.4 Pre-Bid Conference

The date, time and venue of the Pre-Bid Conference shall be as provided in the Notice Inviting Tender (NIT).

1.5 Concession Period

The Concession period for the Project as indicated in the draft Concession Agreement, is for a total period of 7 (Seven) years inclusive of Implementation Period of 183 (One Hundred and Eighty Three) days.

1.6 First Right of Refusal

At the end of the Concession Period either by efflux of time or otherwise, the Authority would either operate the Project itself or may re-bid the same by suitably re-defining or re-structuring the Project parameters at its sole discretion. In the event of re-bidding, if the present Concessionaire chooses to participate in the re-bidding process and does not emerge as the successful bidder (by being the highest bidder i.e. H1 or the lowest bidder i.e. L1 as required), then the present Concessionaire shall be provided with the right of first refusal to match the bid of the highest bidder and enter into fresh concession agreement upon the terms and conditions frozen as a part of the bid documents to be then issued by the Authority, provided its financial bid is within the range of 10% of the financial bid quoted by the H1 or the L1 bidder, as the case may be. However, the terms and conditions including the financial parameters, if any with regard to the mode, manner etc. of the right of first refusal and the provisions related thereto in the bidding documents shall be determined by the Authority at its sole discretion.



2 INSTRUCTIONS TO BIDDERS

A GENERAL

2.1 General terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this RFQ-cum-RFP, but defined in any other Bidding Document for the Project shall have the meaning assigned thereto.
- 2.1.3 Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFQ-cum-RFP, the detailed terms specified in the Draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5 The Financial Proposal should be furnished in the format at Appendix–VII, clearly indicating the Annual Concession Fee in both figures and words, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.6 The Bid shall consist of an Annual Concession Fee to be quoted by the Bidder. The Annual Concession Fee shall be payable by the Concessionaire to the Authority, as per the terms and conditions of this RFQ-cum-RFP and the provisions of the Concession Agreement.
- 2.1.7 The Bidder shall furnish a Bid Security in accordance with the provisions of this RFQ-cum-RFP. The Bidder has to provide the Bid Security in the form of a Demand Draft, in accordance with the provisions of Clause 1.2.4 of this RFQ-cum-RFP.
- 2.1.8 The validity period of the Bid Security shall be in accordance with the provisions of Clause 1.2.4 of this RFQ-cum-RFP.
- 2.1.9 The Bidder should submit a Power of Attorney as per the format at Appendix–IV, authorising the signatory of the Bid to commit the Bidder.
- 2.1.10 In case the Bidder is a Consortium, the Members thereof should furnish a



Power of Attorney in favor of the Lead Member in the format at Appendix–V.

- 2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.13 The documents including this RFQ-cum-RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.14 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more



intermediate persons shall be computed as follows:

- (a) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and
- (b) subject always to sub-clause (a) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (b) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, Member or any Associate thereof, has a relationship with another Bidder, Member or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
- (vi) such Bidder, Member or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

Explanation: In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.14, shall include each Member of such Consortium.

- 2.1.15 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is



engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Sale of Bid Documents. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.1.16 This RFQ-cum-RFP is not transferable.

2.1.17 Any award of Concession pursuant to this RFQ-cum-RFP shall be subject to the terms of Bidding Documents.

2.1.18 Other Bid conditions shall include:

- (i) the Bidder shall pay the transaction fee chargeable and the taxes applicable, as provided in www.hptenders.gov.in, for the purpose of submitting its bid online.
- (ii) Single entity Bidder or Member (in case of a Consortium) that is not a bank is required to disclose any material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the last 3 (three) years preceding the Bid Due Date, in the format furnished in Appendix – II.

2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of Bidders, the following shall apply:

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) A Bidder may be a single entity or a combination of entities with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.



- (c) The Bidder must have the experience of Contactless Smart Card design, supply and operations.
- (d) Other eligibility conditions shall include:

- (i) The single entity Bidder or the Lead Member of a Consortium shall be an entity authorized by the Reserve Bank of India to issue and/or manage Pre-paid Payment Instruments or a bank permitted to issue pre-paid cards in India by the Reserve Bank of India. The Consortium Member, other than the Lead Member, shall be a company incorporated in India and registered under the Companies Act, 1956 or the Companies Act, 2013 or the Limited Liability Partnership Act, 2008.

The single entity Bidder or the Lead Member of a Consortium is required to submit the Certificate of Authorisation issued by RBI as either a bank permitted to issue pre-paid cards or as an Issuer of PPIs. The authorization by RBI shall not have been cancelled or under the process of cancellation, as on the Bid Due Date.

- (ii) The single entity Bidder or the Lead Member of a Consortium shall have a branch or office in Himachal Pradesh. The Bidder is required to submit a valid proof in the form of rental agreement/ lease deed/ Khata Certificate/ Sale Deed/ Property Tax receipt etc.
- (iii) The Bidder or any Member (in case of a Consortium) that is not a bank, is a party to any litigation (required to be disclosed in the format furnished in Appendix – II), which, in the Authority's opinion, affects or could have a material adverse effect on the financial condition, prospects or business of such Bidder or Member or its ability to fulfil its obligations under the Concession Agreement, the Bid will not be evaluated further by the Authority.
- (iv) Bidder or any Member (in case of a Consortium) shall not have been barred by the Central or a State government or a statutory authority in India or elsewhere or by an enterprise owned by a government or any entity controlled by it, from participating in any project (PPP or otherwise), as on the Bid Due Date.
- (v) The single entity Bidder or any member of the consortium should not be blacklisted by Central Government/any State Government/Statutory Regulator/Public Sector undertaking entity in India or similar agencies globally or by any donor agencies/development finance institutions for unsatisfactory past performance or corrupt, fraudulent or any other unethical



business practices as on the Bid Due Date.

- (vi) The single entity Bidder or any member of the consortium of the Bidder should, in the last 3 (three) years preceding the Bid Due Date, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Consortium Member, as the case may be, nor has been expelled from any project or contract by any public entity in India or elsewhere nor have had any contract terminated by any public entity in India or elsewhere for breach by such Consortium Member. Provided, however, that where an Bidder claims that its disqualification arising on account of any cause or event specified in this Clause is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.
- (vii) The Consortium Member, as on Bid Due Date or in the 3 (three) years immediately preceding the Bid Due Date, shall not be undergoing/have undergone any corporate debt restructuring or similar process; shall not have been categorized as a willful defaulter; is not subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver; is not declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended; is convicted or otherwise not found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied or that resulted in the suspension of the



rights of the Bidder to provide any service permanent or temporary or carry on any type of business or operations. The Bidder is required to submit a certificate from its Chartered Accountant/Statutory Auditor/Company Secretary to the above effect.

If any Bidder or any Member (in case of a Consortium) is found to be ineligible under this Clause 2.2.1(d), then its Bid shall be rejected and the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security submitted by the Bidder, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise.

2.2.2 To be eligible for qualification, a Bidder shall fulfil the following conditions of eligibility:

Technical Capacity: For demonstrating technical capacity and experience (the “**Technical Capacity**”),

- (i) The Sole Bidder/Lead Member shall have issued debit cards or credit cards or PPI cards or shall have implemented a payment solution for Transit system/Toll Solution/City-wide payment solution/any other project. The number of unique subscribers of the solution or cards, in total, shall not be less than 10,000 (ten thousand) as on Bid Due Date.
- (ii) The Bidder shall have provided Card Management and Program Management Solution (including provision of services as a Technical Partner for Card Hosting/Clearing House Solution/establishing Top-up facilities through banking channels or POS solution), for not less than 10,000 (ten thousand) cards under a single project or work order in the past 10 (Ten) financial years preceding the Bid Due Date.

In case of a Consortium, the combined technical capacity of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the JVC, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the JVC; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

Proposals of Bidders who do not meet the Technical Capacity laid out above shall be summarily rejected.

2.2.3 **O&M Experience:** Deleted

2.2.4 The Bidder shall enclose with its Bid, to be submitted as per the format at



Appendix – I, complete with its Annexes, the following:

- (i) Certificate(s) from the concerned client(s) stating the details of the eligible project including the date of award of the project, status of the project, Bidding entity's role in the Project and share in work done and the completion date of the project, for the projects undertaken by the Bidder or its Associates during the last 10 (Ten) years preceding the Bid Due Date in respect of the projects specified in paragraph 2.2.2 above. Bidder's or its Associates' experience should be certified by an officer not below the rank of Executive Engineer or equivalent in the case of a PSU or government agency or the rank of Director of the client in the case of a private enterprise or the rank of a General Manager or equivalent in case of a Bank or NBFC.

2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix – IV, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix – V.

2.2.6 In case the Bidder is a Consortium, it shall comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 2 (two), and information sought in the Bid is also restricted to 2 (two) members in the order of their equity contribution;
- (b) subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each member of the Consortium;
- (c) The Lead member of the Consortium shall be a Bank who shall be responsible for the execution of the project.
- (d) members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall have an equity share holding of at least 26% (Twenty Six) of the paid up and subscribed equity of the JVC. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix – V, signed by all the other members of the Consortium;
- (e) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (f) an individual Bidder cannot at the same time be member of a Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for qualification;



- (g) the members of a Consortium shall form an appropriate JVC to execute the Project, if awarded to the Consortium;
- (h) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix – VI (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid and submitting it. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
 - (i) convey the intent to form a JVC with shareholding/ownership equity commitment(s) in accordance with this RFQ-cum-RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFQ-cum-RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the JVC and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (1) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the JVC and (2) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
 - (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the JVC at all times until the second anniversary of the commercial operation date of the Project; and
 - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (i) except as provided under this RFQ-cum-RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

2.2.7 In computing the Technical Capacity of the Bidder/Consortium Members



under Clauses 2.2.2 and 4.2, the Technical Capacity of their respective Associates would also be eligible hereunder.

For purposes of this RFQ-cum-RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/Consortium Member (the "Associate"). As used in this definition, the expression "**control**" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate shall be provided in the format provided at Appendix IX.

2.2.8 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder/Member named in the Bid and not, unless specifically requested, to other associated companies or firms.
- (c) in responding to the qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 4.1 and 4.2 below;

2.2.9 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after date of the Bid, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;



then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and any amendments thereof, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.3 Change in composition of the Consortium

- 2.3.1 Where the Bidder is a Consortium, change in composition of the Consortium may be permitted by the Authority during the Bid Stage, only where:
- (a) the Lead Member continues to be the Lead Member of the Consortium;
 - (b) the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the eligibility, qualification and short-listing criteria for Applicants; and
 - (c) the new Member(s) expressly adopt(s) the Bid already made on behalf of the Consortium as if it were a party to it originally, and is not a Bidder or Member of any other Consortium bidding for this Project.
- 2.3.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing. The Bidder must submit its application for change in composition of the Consortium no later than 15 (fifteen) days prior to the Bid Due Date.
- 2.3.3 The modified/reconstituted Consortium shall submit a revised Jt. Bidding Agreement and a Power of Attorney, substantially in the form at Appendix – VI, prior to the Bid Due Date.
- 2.3.4 The option of change in composition of the Consortium which is available under Clause 2.3.1 may be exercised by any Bidder who is either a Consortium or a single entity. In the case of a single entity Bidder adding a Consortium Member at the Bid Stage, the single entity Bidder shall be the



Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be a Bidder or the member of another bidding Consortium.

2.4 Change in Ownership

- 2.4.1 By submitting the Bid, the Bidder acknowledges that it will be qualified on the basis of Technical Capacity of those of its Consortium Members who shall, until the 2nd (second) anniversary of the date of commercial operation of the Project, individually hold equity share capital representing not less than (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.4.1 shall apply only when the Bidder is a Consortium.
- 2.4.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member whose Technical Capacity was taken into consideration for the purposes of qualification under and in accordance with this RFQ-cum-RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.5 Number of Bids and Cost of Bidding

- 2.5.1 No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case



may be.

- 2.5.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.6 Site visit and verification of information

- 2.6.1 Bidders are encouraged to submit their respective Bids after ascertaining for themselves the prevailing situation in Dharamshala, applicable laws and regulations, and any other matter considered relevant by them for design and development of the Project.

- 2.6.2 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.6.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.6.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

- 2.6.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFQ-cum-RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.



2.7 Right to accept or reject any or all Bids

- 2.7.1 Notwithstanding anything contained in this RFQ-cum-RFP, the Authority reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.7.2 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ-cum-RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 2.7.3 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:
- (a) at any time, a material misrepresentation is made or uncovered, or
 - (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.
- Such misrepresentation/improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified /rejected. If such disqualification/rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/rejected, then the Authority reserves the right to:
- (i) Identify the Selected Bidder through the first round of bidding or the second round of bidding or the third round of bidding in accordance with the provisions of Clauses 3.4.3 and 3.4.4; or
 - (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.
- (c) The Bidder or member of a Consortium is part of another Consortium.
- 2.7.4 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA



or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ-cum-RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under this RFQ-cum-RFP, Bidding Documents and/or the Concession Agreement, or otherwise.

B. DOCUMENTS

2.8 Contents of the RFQ-cum-RFP

2.8.1 This RFQ-cum-RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Criteria for Evaluation
- Section 5. Fraud and Corrupt Practices
- Section 6. Pre-Bid Conference
- Section 7. Miscellaneous

Appendices

- I Letter comprising the Bid
- II Format for Information on Litigation
- III (DELETED) Bank Guarantee for Bid Security
- IV Power of Attorney for signing of Bid
- V Power of Attorney for Lead Member of Consortium
- VI Joint Bidding Agreement for Consortium
- VII Format for the Financial Proposal



VIII Format for sending Pre-Bid Queries

IX Certificate from the Chartered Accountant/Statutory Auditor/Company Secretary regarding Associate

2.8.2 The draft Concession Agreement provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFQ-cum-RFP.

2.9 Clarifications

2.9.1 Bidders requiring any clarification on the RFQ-cum-RFP may notify the Authority in writing by speed post/courier/special messenger and by e-mail in accordance with Clauses 1.2.9 and 2.14. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10 Amendment of RFQ-cum-RFP

2.10.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFQ-cum-RFP by the issuance of Addenda.

2.10.2 Any Addendum issued hereunder will be in writing and shall be sent to all the Bidders.

2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

2.11 Proprietary data

All documents and other information supplied by the Authority or submitted by a Bidder



to the Authority shall remain or become the property of the Authority. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bids. The Authority will not return any Bid or any information provided along therewith.

C. PREPARATION AND SUBMISSION OF BIDS

2.12 Language

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.13 Format and Signing of Bid

- 2.13.1 The Bidder shall provide all the information sought under this RFQ-cum-RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.13.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

2.14 Sealing and Marking of Bids

- 2.14.1 The Bidder shall submit online in www.hptenders.gov.in:
- (i) The Qualification Proposal, and all associated documents in the format specified at Appendix – I.
 - (ii) The Financial Proposal, in the format specified at Appendix – VII.

The Bidder shall submit the hardcopies (bound in hard cover) of the Qualification Proposal of the Bid in the format specified at Appendix – I. The Qualification Proposal shall comprise of the documents specified in Clause 2.14.2 shall be sealed in an envelope and marked as “QUALIFICATION PROPOSAL”.

A duly signed printed copy of the Financial Proposal that has been uploaded by the Bidder on www.hptenders.gov.in shall be submitted in a sealed envelope marked as “FINANCIAL PROPOSAL”.



- 2.14.2 (a) The envelope marked as “QUALIFICATION PROPOSAL” shall contain:
- (i) Bid in the prescribed format (Appendix – I) along with Annexes and supporting documents such as Certificate(s) from the concerned client(s), Certificate of Incorporation/partnership deed/VAT and/or GST registration etc.;
 - (ii) Power of Attorney for signing the Application as per the format at Appendix – IV;
 - (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix – V;
 - (iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix – VI;
 - (v) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
 - (vi) information on Litigation, as per the format at Appendix – II
- (b) The documents accompanying the Bid shall be placed in a separate envelope and marked as “Enclosures of the Bid”. The documents shall include:
- (i) Bid Security in the form of a Demand Draft;
 - (ii) A copy of the RFQ-cum-RFP and the Concession Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (a) hereinabove.

All the above mentioned documents, including those listed under Enclosures of the Bid shall be submitted on www.hptenders.gov.in

- 2.14.3 The envelopes specified in Clauses 2.14.1 and 2.14.2 shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification: “**Bid for Selection of Concessionaire for Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala**” and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

- 2.14.4 Each of the envelopes shall be addressed to:

ATTN. OF:	MD cum CEO Dharamshala Smart City Limited
ADDRESS:	Old HIMUDA building, Chilgari, Dharamshala -176215, Himachal Pradesh
E-MAIL ADDRESS	dscltender@gmail.com

- 2.14.5 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the



Bidder.

- 2.14.6 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.15 Bid Due Date

- 2.15.1 Bids should be submitted before the date and time specified in Clause 1.3 of this RFQ-cum-RFP. Submission of hardcopies (bound in hard cover) shall be at the address provided in Clause 2.14.4 in the manner and form as detailed in this RFQ-cum-RFP. A receipt thereof should be obtained from the person specified at Clause 2.14.4.

- 2.15.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Bidders.

2.16 Late Bids

Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.17 Contents of the Financial Proposal

- 2.17.1 The Financial Proposal shall be furnished in the format at Appendix–VII and shall consist of an Annual Concession Fee to be quoted by the Bidder. The Bidder shall specify (in figures) the Annual Concession Fee offered by it, to undertake the Project in accordance with this RFQ-cum-RFP and the provisions of the Concession Agreement.
- 2.17.2 Generally, the Project will be awarded to the Highest Bidder.
- 2.17.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFQ-cum-RFP.
- 2.17.4 The proposed Concession Agreement shall be deemed to be part of the Bid.
- 2.17.5 The Financial Proposal shall be submitted on www.hptenders.gov.in

2.18 Modifications/Substitution/Withdrawal of Bids

- 2.18.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.18.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.14, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.18.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought



for by the Authority, shall be disregarded.

2.19 Rejection of Bids

- 2.19.1 Notwithstanding anything contained in this RFQ-cum-RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.19.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.
- 2.19.3 Notwithstanding anything contained in this RFQ-cum-RFP, the Authority reserves the right to reject any Bid if the Financial Proposal or any document that forms a part of Qualification Proposal is not uploaded on www.hptenders.gov.in.

2.20 Validity of Bids

The Bids shall be valid for a period specified in Clause 1.2.2. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.21 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

2.22 Correspondence with the Bidder

Save and except as provided in this RFQ-cum-RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.



D. BID SECURITY

2.23 Bid Security

- 2.23.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 1.2.4, 2.1.7 and 2.1.8 hereinabove in the form of a Demand Draft (DD) issued by a Scheduled Bank in India, in favour of “Dharamshala Smart City Limited” and payable at par in Dharamshala (the “**Demand Draft**”) having a validity of not be less than 80 (eighty) days from the Bid Due Date. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.23.2 The Authority shall not be liable to pay any interest on the Bid Security and the same shall be interest free.
- 2.23.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.23.4 Save and except as provided in Clause 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority.
- 2.23.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder’s option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.23.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.23.7 herein below. The Bidder, by submitting its Bid pursuant to this RFQ-cum-RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of bid validity as specified in this RFQ-cum-RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.23.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, if
- (a) A Bidder submits a non-responsive Bid;
 - (b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 5 of this RFQ-cum-RFP;



- (c) a Bidder withdraws its Bid during the period of bid validity as specified in this RFQ-cum-RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
- (d) the Selected Bidder fails within the specified time limit -
 - (i) to sign and return the duplicate copy of LOA; or
 - (ii) to sign the Concession Agreement; or
 - (iii) to furnish the Performance Security within the period prescribed therefor in the Concession Agreement.
- (e) the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.



3 EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

- 3.1.1 The Authority shall open the Bids on the date and time specified in Clause 1.3 of this RFQ-cum-RFP, at the place specified in Clause 2.14.4 and in the presence of the Bidders who choose to attend.
- 3.1.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.18 shall not be opened.
- 3.1.3 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.4 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.
- 3.1.5 Bidders are advised that qualification of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 3.1.6 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 3.1.7 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 3.1.8 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project while determining the Technical Capacity of the Bidder.
- 3.1.9 In the event that a Bidder claims credit for an eligible project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from determining the Technical Capacity of the Bidder. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.
- 3.1.10 For the purpose of Evaluation of Bids, the Authority shall evaluate the contents of the Bid and associated documentary proofs that have been uploaded by the Bidder on www.hptenders.gov.in. It is further clarified that in the event of any discrepancy between the uploaded and the hard copy of the Bid, the uploaded one shall prevail.



3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFQ-cum-RFP. A Bid shall be considered responsive if:
- (a) it is received as per the format at Appendix-I;
 - (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.15.2;
 - (c) it is signed, sealed, bound together in hard cover and marked as specified in Clauses 2.13 and 2.14;
 - (d) it is accompanied by the Bid Security as specified in Clause 2.1.7;
 - (e) it is accompanied by the Power of Attorneys as specified in Clause 2.2.5;
 - (f) it contains all the information (complete in all respects) as requested in this RFQ-cum-RFP and/or Bidding Documents (in formats same as those specified);
 - (g) The Qualification Proposal and Financial Proposal are submitted on www.hptenders.gov.in
 - (h) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as specified in Clause 2.2.6(h);
 - (i) it does not contain any condition or qualification; and
 - (j) it is not non-responsive in terms hereof.
- 3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

3.3 Clarifications

- 3.3.1 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 3.3.2 If a Bidder does not provide clarifications sought under Clause 3.3.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of



the Authority.

3.4 Qualification and Selection of Bidder

- 3.4.1 Subject to the provisions of Clause 2.17.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the highest Annual Concession Fee offered to the Authority shall ordinarily be declared as the selected Bidder (the “**Selected Bidder**”). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 3.4.2 In the event that two or more Bidders quote the same Revenue Share (the “**Tie Bidders**”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.4.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 3.4.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.4.3, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.4.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission



thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

- 3.4.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.5 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/rejection to the Bidders. While the Bids are under consideration, Bidders and/or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

3.6 Bid Parameter

The Bid shall comprise the Annual Concession Fee Share to be quoted by the Bidder in accordance with the provisions of the Concession Agreement. The Bidder who offers the highest Annual Concession Fee shall ordinarily be the Best/Selected Bidder.



4 CRITERIA FOR EVALUATION

4.1 Evaluation parameters

4.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2.2 shall qualify for evaluation under this Section 4. Bids of firms/consortia who do not meet these criteria shall be rejected.

4.1.2 The Bidder's competence and capability is proposed to be established by the following parameters:

- (a) Technical Capacity; and
- (b) Financial Capacity.

4.2 Technical Capacity for purposes of evaluation

4.2.1 The following methodology shall be used to assign the score of the technical proposal:

Sr. No.	Parameter	Maximum Marks
1	Experience in Smart card based payment solution project for Transit system/Toll Solution/City-wide payment solutions/any other project for which the Bidder has undertaken (either implemented or in process of implementation) Card Services either as a single Bidder or along with its Technical Partner (Card Hosting/ Clearing House Solution/ establishing Top up facilities through banking channels/and acted as a co-branded partner and /or have retail merchants) <ul style="list-style-type: none">▪ 10 marks for one project – 10 marks▪ 5 marks for every additional project, subject to a maximum of 2 projects.	20
2	Number of cards issued to unique users in Smart card based payment solution project for Transit system/Toll Solution/ City wide payment solutions/any other project for which the Bidder has undertaken (either implemented or in process of implementation) Card Services either as a single Bidder or along with its Technical Partner (Card Hosting/Clearing House Solution/establishing Top up facilities through Banking Channels/and acted as a Co- Branded Partners and/or have retail merchants) <ul style="list-style-type: none">▪ 10 marks for 10,000 cards issued▪ 5 marks for every additional 10,000 cards, subject to a maximum of 20,000 cards	20
3	Average daily volume (count) of card/mobile based financial transactions (in number) on smart cased based payment solution project for Transit system/Toll Solution/City wide	20



Sr. No.	Parameter	Maximum Marks
	payment solutions/any other project for which the bidder has undertaken (either implemented or in process of implementation) Card services either as a single Bidder or along with its Technical Partner (Card Hosting/Clearing House Solution/establishing Top up facilities through Banking Channels/ and acted as Co-branded and/or have retail merchants) <ul style="list-style-type: none">▪ 5 marks for 8,000 transactions per day – 5 marks▪ 5 marks for every additional 4,000 transactions per day, subject to a maximum of 12,000 additional transactions per day	
4	Existing payment acceptance mechanism in Himachal Pradesh: <ul style="list-style-type: none">▪ 10 marks for 100 POS Machines▪ 5 marks for every additional 100 POS machines, subject to a maximum of 200 additional POS machines▪ 5 marks for BharatQR/ QR Code based payment acceptance in Dharamshala▪ 5 marks for existing Payment gateway integration with at least 3 utilities anywhere in India	30
5	Experience in co – branded loyalty cards	5
6	Experience in multiple instruments for same purpose (pre-paid cards, debit, credit and mobile based payment systems) <ul style="list-style-type: none">▪ 3 marks for one▪ 1 mark for every additional project, subject to a maximum of 2 projects	5

The financial proposals of only those Bidders who have scored 70 or more under the marking pattern above, shall be opened.

- 4.2.2 the entity claiming experience should have held, in the entity owning the eligible project, a minimum of 26% (twenty six per cent) equity in the eligible project.
- 4.2.3 Double counting for a particular eligible project shall not be permitted in any form. Experience for any activity relating to an eligible project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

4.3 Details of Experience

- 4.3.1 The Bidder should furnish the details of eligible experience for the last 10(Ten) years immediately preceding the Bid Due Date.
- 4.3.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex – II of Appendix – I.



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- 4.3.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex – IV of Appendix – I.
 - 4.3.4 The Bidder should furnish Certificate(s) from the concerned client(s) as stipulated in Clause 2.2.4 (i).
 - 4.3.5 The Bidder should furnish the list of merchants, their addresses, their contact details (Name, Contact Number, E-mail ID etc.) and Serial Number of POS Machines installed in Himachal Pradesh.



5 FRAUD AND CORRUPT PRACTICES

- 5.1 Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 5.2 Without prejudice to the rights of the Authority under Clause 5.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFQ-cum-RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 5.3 For the purposes of this Clause 5, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means
- (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters



concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or

- (ii) save and except as permitted under the Clause 2.1.15 of this RFQ-cum-RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.



6 PRE-BID CONFERENCE

- 6.1 Pre-Bid Conference(s) of the Bidders shall be convened at the designated date, time and place. Only those persons who have purchased the RFQ-cum-RFP document shall be allowed to participate in the Pre-Bid Conference(s). A maximum of 3 (three) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 6.2 During the course of Pre-Bid Conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.



7 MISCELLANEOUS

- 7.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in Dharamshala shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 7.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) qualify or not to qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 7.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 7.4 The Draft Concession Agreement and RFQ-cum-RFP are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFQ-cum-RFP, in the event of any conflict between them the priority shall be in the following order:
- (a) the Draft Concession Agreement;
 - (b) the RFQ-cum-RFP.
- i.e. the Draft Concession Agreement at (a) above shall prevail over the RFQ-cum-RFP at (b) above.



APPENDIX–I: Letter Comprising the Bid

(Refer Clauses 2.2.4 and 2.14)

Dated:

To,
The MD cum CEO,
Dharamshala Smart City Limited
Old HIMUDA building, Chilgari, Dharamshala - 176215, Himachal Pradesh

Sub: Bid for **Selection of a Concessionaire for Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala**

Dear Sir/Madam,

With reference to your RFQ-cum-RFP document dated, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Concessionaire for the design, finance, implementation, operation and maintenance of the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we/any of the Consortium Members¹ or our/their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

¹ If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.



I/We also certify that we/any of the Consortium Members² or our/their Associates have neither been barred by the Central or a State government or a statutory authority in India or elsewhere or by an enterprise owned by a government or any entity controlled by it, from participating in any project (PPP or otherwise) nor been blacklisted by a Central Government/any State Government/Statutory Regulator/Public Sector undertaking entity in India or similar agencies globally or by any donor agencies/development finance institutions for unsatisfactory past performance or corrupt, fraudulent or any other unethical business practices as on the Bid Due Date.

7. I/We declare that:

- (a) I/We have examined and have no reservations to the Bidding Documents, including any Addendum/Corrigendum issued by the Authority; and
- (b) I/We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFQ-cum-RFP document; and
- (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 5.3 of the RFQ-cum-RFP document, in respect of any tender or request for proposals issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
- (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 5 of the RFQ-cum-RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
- (e) the undertakings given by us along with the Bid in response to this RFQ-cum-RFP for the Project are true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.

8. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.19 of the RFQ-cum-RFP document.

9. I/We declare that we/any Member of the Consortium, or our/its Associates are

² If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.



not a Member of a/any other Consortium submitting a Bid for the Project.

10. I/We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the government or convicted by a Court of Law.
12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/managers/employees.³
13. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
14. I/We acknowledge and undertake that our Consortium shall be qualified on the basis of Technical Capacity of those of its Members who shall together hold, for a period of 2 (two) years from the date of commercial operation of the Project, equity share capital not less than: (i) 51% (fifty one) of the subscribed and paid-up equity of the Concessionaire. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
15. I/We understand that the Selected Bidder may be required to incorporate a company under the Indian Companies Act, 2013 or the Limited Liability Partnership Act, 2008 prior to execution of the Concession Agreement.
16. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above

³ In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.



mentioned Project and the terms and implementation thereof.

17. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
20. I/We have studied all the Bidding Documents carefully and also surveyed the banked population and other financial inclusion conditions, locations, surroundings, climate/weather data, availability of power, water and other utilities, incomes including disposable incomes, payment transaction volumes and sizes, applicable laws and regulations etc. prevailing in Dharamshala, Himachal Pradesh. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
21. I/We offer a Bid Security of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only), to the Authority in accordance with the RFQ-cum-RFP Document.
22. The Bid Security in the form of a Demand Draft is attached.
23. The documents accompanying the Bid, as specified in Clause 2.14.2 of the RFQ-cum-RFP, have been submitted in a separate envelope and marked as "Enclosures of the Bid".
24. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project/Concession is not awarded to me/us or our Bid is not opened or rejected.
25. The Revenue Share has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFQ-cum-RFP, Draft Concession Agreement, our own estimates of costs & demand and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
26. I/We agree and undertake to abide by all the terms and conditions of the RFQ-cum-RFP document.
27. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}
28. I/We shall keep this offer valid for 120 (one hundred and twenty) days from



the Bid Due Date specified in the RFQ-cum-RFP.

29. I/We certify that in the last three years that we/any of the Consortium Members⁴ or our/their Associates are not be undergoing/have undergone any corporate debt restructuring or similar process; have not have been categorized as a willful defaulter; are not subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver; are not declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended; are convicted or otherwise not found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied or that resulted in the suspension of its rights to provide any service permanent or temporary or carry on any type of business or operations.

Yours faithfully,

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

Place: Name and seal of Bidder/Lead Member

⁴ If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.



Annex-I: Particulars of the Bidder

The Table below provides the format in which general information about the bidder/consortium member must be furnished¹.

S No	Information	Details
1.	Name of Bidder	
2.	Address and contact details of bidder	
3.	Firm Registration Number and Year of Registration	
4.	Web Site Address	
5.	Status of Company (Public Ltd., Pvt. Ltd., Scheduled Bank etc.)	
6.	GST Registration No.	
7.	Permanent Account Number (PAN)	
8.	Name, Designation and Address of the contact person to whom all references shall be made regarding this RFQ-cum-RFP	
9.	Telephone number of contact person:	
10.	Mobile number of contact person:	
11.	Fax number of contact person:	
12.	E-mail address of contact person:	
13.	Organization chart with Name, designation and contact nos. of the management team to be attached	
14.	Bidder Type (Sole Bidder / Consortium Member) Mention the name of the Consortium and the role of the Member in the Consortium.	
15.	% of Shareholding in case of a Consortium/JV	
16.	Previous experience with consortium member. Please provide details.	
17.	Number of POS machines installed in Himachal Pradesh ² .	
18.	Number of Merchants in Dharamshala enrolled under BharatQR/QR Code based payment system of Bidder ³ .	
19.	Office/Branch Address in Himachal Pradesh ⁴ with Name and Designation of the branch head Telephone number of the branch head Fax number of the branch head E-mail address of the branch head	
20.	Any other Documents/information demonstrating Bidder's capability	



Please submit the relevant proofs for all the details mentioned above along with your bid response.

Authorized Signatory

Name

Seal

¹Provide details, individually, of all members of a consortium

² & ³Provide the list of merchants with address, name of contact person, telephone number, e-mail address and the POS machine(s) installed in Himachal Pradesh.

⁴ Provide Valid Rental Agreement/Lease Deed/Khata Certificate/Sale Deed/Property Tax Receipt etc.



Annex-II (a): Technical Capacity of the Bidder

(Refer to Clauses 2.2.2(A) and 4.3)¹

Statement showing the similar works completed in the last ten years.

Sr. No	Name of the Bidder	Name of Department/ Client with Address	Name of work/ Project	Date of Work Order	Project Duration		Date of Go-Live of the Project	Primary Instrument	No. of Primary instruments issued	No. of unique users or subscribers under the Project	Status (ongoing/ completed)	Primary Instrument Type*	Avg. No. of financial transactions per day in the last financial year preceding the Bid Due Date	Branding (Self/ None/Co-branded)	Whether Bidder provided Card Mgmt. Program Mgmt. Soln. as a Technical Partner(Y/N)	Usage Purpose** of Instruments in the Project	Other Instruments under the Project and their No.s	Utilities in HP integrated with under the Project
					Start Date	End Date												
1	2	3	4	5	6a	6b	7	8	9	10	11	12	13	14	15	16	17	18

* Use the following codes. Illustrative usage are II(5) for EMV chip and I(2)b for Gift card, etc.

I PPI

(1) *m-Wallet*

(2) *PPI Card*

a Gift instrument

b PPIs for Mass Transit Systems (PPI-MTS)

(3) *Paper Voucher*

II ATM, Debit or Credit Card

(4) *Magnetic Stripe*

(5) *EMV Chip & PIN*

(6) *Contactless NFC*

** Use the following codes

1. General 2. Transportation (Transit system / toll payment) 3. Retail payments/Gift 4. Others (please specify)

Note: -

- (1) Attested Copies of Work Order or Agreements and Completion Certificates from concerned client(s) issued by not below the rank of officer mentioned in stipulated in Clause 2.2.4 (i) shall be attached.
- (2) It is mandatory to furnish details in this format only.

Signature of Authorized Signatory

Name

Seal

¹Provide details of only those projects that have been undertaken by the Bidder under its own name specified in Clause 2.2.2, 2.2.9 and/or by a project company eligible under Clause 4.2.2. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.10.

²A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.2, 2.2.9, shall be provided in the format provided at Appendix IX.



Annex-III: DELETED(Financial Capacity of the Bidder)



Annex-IV: Details of Eligible Projects

(Refer to Clauses 2.2.2, 4.2 and 4.3)

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Name of the Bidder/Consortium Member		
Title of the project		
Brief description of the project, including: Details such as number of city-wide payment services catered, number of retail merchants, cobrandedpartners, loyalty program, Top-Up Channels, PCI DSS Compliant payment, CentralClearing House, card host and Card Management System etc.)		
Status of the project (completed/ongoing)		
Entity for which the project was implemented		
Country of the Project		
Project Location		
Details of Client Name Designation Address Telephone Fax Email		
Date of work order		
Date of commencement of project/ contract		
Date of completion/commissioning	4	
Date of Go-live/Commercial operations of the project		
Role of the Bidder in the eligible project	3	
Equity shareholding (with period during which equity was held)	5	
Details of Instruments (instrument-wise) issued under the project. Instrument: No.s issued: Number of unique users/ subscribers: Purpose of usage: average number of financial transactions per day in the last financial year preceding the Bid Due Date:		



Instrument-wise average number of financial transactions per day in the last financial year preceding the Bid Due Date		
Instrument-wise branding details		
Details of utilities in Himachal Pradesh integrated with under the Project		
If the bidder was not the technical partner implementing Card Management and Program Management Solution under the project, details of the entity acting as Technical Partner under the project Name of the entity Name of the contact person in the entity Designation Address Telephone Fax Email		
Details of the Card Management and Program Management Solution provided by the Technical Partner.		

Signature of Authorized Signatory

Name

Seal

Instructions:

1. Bidders are expected to provide information in respect of each eligible project in this Annex. Information provided in this section is intended to serve as a back-up for information provided in the Bid. Bidders should also refer to the Instructions below.
2. A separate sheet should be filled for each Eligible Project.
3. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LP means Lead Partner, TP means Technical Partner, FP means Financial Partner, OMP means Operation & Maintenance Partner; and OP means Other Partner.
4. The date of commissioning of the project, upon completion, should be indicated. In the case of ongoing projects, the likely date of completion or commissioning, as the case may be, shall be indicated.
5. The equity shareholding of the Bidder, in the company owning the Eligible



Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 4.2.2).

6. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
7. Certificate from the respective client must be furnished for each Eligible Project.
8. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in determining the Technical Capacity of the Bidder.



**APPENDIX–II: Deleted (Format for Information on
Litigation)**



APPENDIX–III: Deleted (Bank Guarantee for Bid Security)



Appendix-IV: Power of Attorney for signing of Bid

To be submitted in original, (Refer Clause 2.1.9, 2.2.5 & 2.14.2)

Know all men by these presents, We,
(name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./Ms.(Name), son/daughter/wife of and presently residing at, who is presently employed with us/the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for "Selection of a Concessionaire for Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala"(the "Project")proposed or being developed by the DharamshalaSmart City Limited (the "Authority") including but not limited to signing and submission of all bids and other documents and writings, participate in bidders' and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20.....

For.....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Accepted

Notarised

(Signature, name, designation and address of the Attorney)



Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants (s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.



Appendix-V: Power of Attorney for Lead Member of Consortium

To be submitted in original, (Refer Clause 2.2.5, 2.1.10 & 2.14.2)

Whereas the Dharamshala Smart City Limited (the “**Authority**”) has invited bids from interested entities/ consortia for “**Selection of a Concessionaire for Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala**” (the “**Project**”).

Whereas,, and (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification cum Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, and M/s. having our registered office at, (hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “**Attorney**”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other government agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.



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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20....

For

(Signature, Name & Title)

For

(Signature, Name & Title)

(Executants)

(To be executed by all the Members of the Consortium)

Witnesses:

- 1.
2.

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

The Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.



APPENDIX-VI: Joint Bidding Agreement

(Refer Clause 2.2.6(h), 2.14.2 & 3.2.1),

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. Limited, a company incorporated under the Companies Act, 1956/2013 or the Limited Liability Partnership Act, 2008¹ and having its registered office at (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. Limited, a company incorporated under the Companies Act, 1956/2013 or the Limited Liability Partnership Act, 2008 and having its registered office at (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST and SECOND PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

WHEREAS,

The Dharamshala Smart City Limited, established under the Companies Act, 2013, represented by its Managing Director cum Chief Executive Officer and having its principal offices at Old HIMUDA Building, Chilgari, Dharamshala - 176215, Himachal Pradesh, India, (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the “**Bids**”) for “**Selection of a Concessionaire for Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala**” (the “**Project**”). The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFQ-cum-RFP document and other bid documents in respect of the Project, and

It is a necessary condition under the RFQ-cum-RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

¹ In case of a bank, replace with “..... a bank incorporated under



In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ-cum-RFP.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a joint venture company (the “**JVC**”) under the Indian Companies Act, 2013 or the Limited Liability Partnership Act, 2008 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the JVC shall become effective;

(b) Party of the Second Part shall be {the Technical Member of the Consortium; and}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ-cum-RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the JVC

6.1 The Parties agree that the proportion of shareholding among the Parties in the JVC shall be as follows:

First Party:



Second Party:

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the JVC shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, and Second Part whose experience has been reckoned for the purposes of qualification of Bidders for the Project in terms of the RFQ-cum-RFP.
- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of the JVC equivalent to at least 5% (five per cent) of the Total Project Cost.
- 6.4 The Parties undertake that they shall collectively hold more than 51% (fifty-one per cent) of the subscribed and paid up equity share capital of the JVC at all times until the second anniversary of the commercial operation date of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other



governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SECOND PART by:

(Signature)



Appendix–VII: Format for the Financial Proposal

(Refer Clause 2.1.5, 2.17.1)

To be submitted on e-Tendering Portal(www.hptenders.gov.in)

RFP Reference No: _____

“Selection of a Concessionaire for Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala”.

Sr. No.	Description	Amount (Rs.)
	Annual Concession Fee to be paid to Dharamshala Smart City Ltd	

(In words:)

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

Place: _____ Name and seal of Bidder/Lead Member

Instructions:

1. The financial proposal of the Bidder shall include all components/fixtures/ancillaries/adjuncts to the Project.
2. The financial proposal of the Bidder shall be exclusive of applicable GST.
3. The financial proposal applies to the Annual Concession Fee payable to the Authority by the Bidder during the first year of the concession. The Annual Concession Fee payable to the Authority shall be increased by 5% (five per cent) in each subsequent year.



Appendix–VIII: Format for sending pre-bid queries

RFP Reference No:

Bidder's Request For Clarification				
Name and complete official address of Organization submitting query/request for clarification			Tel:Fax: Email:	
S.No.	Clause No.	Page No.	Content Of RFQ-cum-RFP Requiring Clarification	Change Requested/ Clarification required
1				
2				

Signature:

Name of the Authorized signatory:

Company seal:

Date and Stamped

Note: Bidders are requested to send the queries in PDF with Sign and Company Seal and also in **MS Excel** in the above format for making consolidation process easy.



Appendix–IX: Certificate from the Chartered Accountant/Statutory Auditor/Company Secretary regarding Associate

Certificate from the Chartered Accountant/Statutory Auditor/Company Secretary regarding Associate[§]

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Bidder/Consortium Member/Associate) is held, directly or indirectly[£], by (name of Associate/ Bidder/Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.7 of the RFQ-cum-RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the share-holding of the Applicant/ Consortium Member and the Associate. In the event the Associate is under common control with the Applicant/ Consortium Member, the relationship may be suitably described and similarly certified herein.}

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, name and designation
of the authorised signatory)

[§] In the event that the Applicant/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[£] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.



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PART I: PRELIMINARY

Concession Agreement

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

BETWEEN

1. **DHARAMSHALA SMART CITY LIMITED**, represented by The **Managing Director cum Chief Executive Officer**, a special purpose vehicle set-up for the purpose of implementing Smart City Mission projects in Dharamshala and having its principal office at Old HIMUDA Building, Chilgari, Dharamshala – 176215, Himachal Pradesh, India (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 {.....}, a company incorporated under the provisions of the Companies Act, 2013/the Limited Liability Partnership Act, 2008^s 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 has decided to undertake Designing, Implementing, Financing and Operating a Comprehensive Digital Payment System in Dharamshala (the “**Project**”) through Public-Private Partnership (the “**PPP**”) on Design, Build, Finance, Own and Operate (the “**DBFOO**”) basis.
- (B) The Authority is accordingly inviting bids by its Request for Qualification cum Request for Proposal No. ----- (the “**Request for Qualification cum Request for Proposal**” or “**RFQ-cum-RFP**”) for **Selection of a Concessionaire for Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala** on DBFOO basis and had selected a Concessionaire *inter alia*, the {the selected Concessionaire/ consortium comprising and (collectively the “**Consortium**”) with as its lead member (the “**Lead Member**”)}.
- (C) The Authority had prescribed the technical and commercial terms and conditions, in the invited bids for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected Concessionaire/ Consortium} and issued its Letter of Award No.

^s The provisions in curly parenthesis and the blank spaces along with their respective footnotes, if any, shall be retained in the draft Agreement and shall be suitably modified/filled after completion of the bid process to reflect the particulars relating to the selected bidder.
 Replace with “....., a scheduled bank in India” in case of a bank.



dated..... (hereinafter called the “LOA”) to the {selected Concessionaire/ Consortium} requiring, *inter alia*, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.

- (E) {The selected Concessionaire/Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013 or as a limited liability partnership firm under the Limited Liability Partnership Act, 2008, 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 Concessionaire/ Consortium under the LOA,} including the obligation to enter into this Agreement pursuant to the LOA for executing the Project. }
- (F) {By its letter dated, the Concessionaire has also joined in the said request of the selected Concessionaire/Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected Concessionaire/Consortium including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected Concessionaire/Consortium for the purposes hereof}.
- (G) The Authority {has agreed to the said request of the selected Concessionaire/ Consortium and the Concessionaire, and} has accordingly agreed to enter into this Agreement with the Concessionaire for execution of the Project on DBFOO 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 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 Himachal Pradesh, 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 Implementation 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 “**Implementation**” 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 Implementation, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, Implementation, renovation, refurbishing, augmentation, up gradation 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 “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
 - (j) any reference to day shall mean a reference to a calendar day;
 - (k) references to a “**businessday**” shall be construed as a reference to a day (other than a Sunday) on which banks in Dharamshala are generally open for business;
 - (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - (m) 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;
 - (n) 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;
 - (o) the words importing singular shall include plural and vice versa;
 - (p) references to any gender shall include the other and the neutral gender;
 - (q) “**Lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
 - (r) “**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;
 - (s) 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;
 - (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;



-
- (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Expert shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Expert, as the case may be, in this behalf and not otherwise;
 - (v) the Schedules and Recitals to this Agreement form 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;
 - (w) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, references to an Annex shall, subject to any contrary indication, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
 - (x) 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**”);
 - (y) 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; and
 - (z) capitalised terms used in the Agreement, but not defined herein, shall be construed in accordance with Good Industry Practice.
- 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 Expert, shall be provided free of cost and in three copies, and if the Authority and/ or the Independent Expert 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 Implementation, 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 2 (two) decimal places, with the third 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;
- (b) the RFQ-cum-RFP; and
- (c) 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) and (c) above.

1.4.2 Subject to the 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:

- 2.1.1 (a) carrying-out detailed investigations related to the Project and designing, implementing/procuring the Project Assets in conformity with the provisions specified in Schedule-B, Service Level Requirements specified in Schedule-C and the Specifications and Standards set forth in Schedule-D;
- (b) operation and maintenance of the Comprehensive Digital Payment System in accordance with the provisions of this Agreement;
- (c) 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.
- (d) to transfer the Project including the Project Assets to the Authority upon Termination for reasons other than efflux of time, in accordance with the provisions of this Agreement;

2.2 Detailed Scope of Work

2.2.1 Introduction

Dharamshala Smart City Limited (DSCL) plans to introduce Smart Cards for its Citizens and Tourists to achieve the objective to offer citizens and tourists a common platform of comprehensive digital payment facility which would enable them to pay for any products and services within the city. The project is envisaged to bring all stakeholders such as government, utilities, merchants, citizens and tourists on a single platform by way of creating a single payment gateway for the entire city. The objective is also to bring about change in the payment habit by utilising a smart card to be used for payments all perceivable services including municipal services, utility payments, entertainment and amusement activities, parking, bill payments, etc. At the same time, this will help realise the vision of digital India and forward the endeavour of less-cash economy.

The popularity of these cards and the usage of smart cards can only be enhanced if multiple vendors, services, utility payments, etc. are all, brought on this single common platform. Apart from this the time to issue the cards and personalisation shall play a crucial role in popularising these cards. The cards are envisaged to be of two types – a prepaid card with certain top up or recharge limit and credit or debit card.



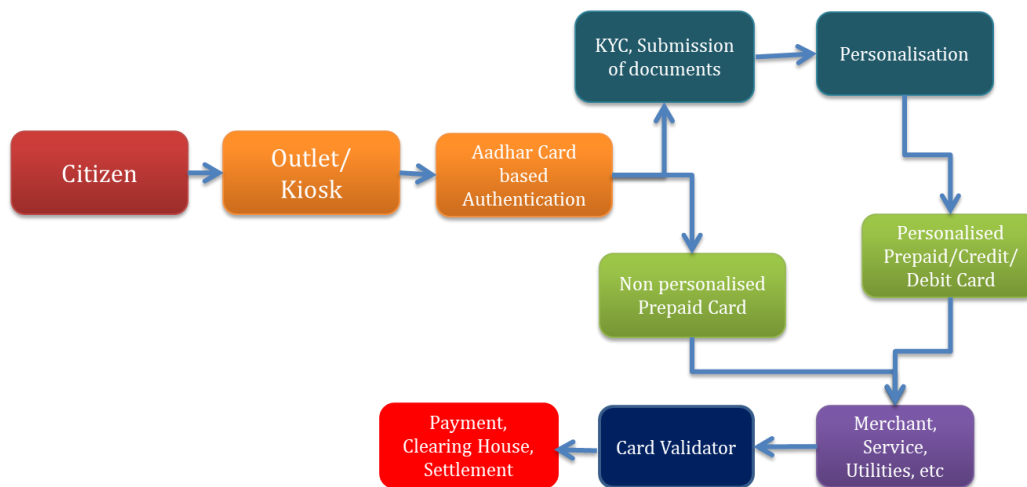
The project is hereby to be called as Comprehensive Digital Payment System for Dharamshala City (Comprehensive Digital Payment System).

2.2.2 Project Objective

The objective of Comprehensive Digital Payment System is to advance the following goals:

- Introduce Open loop based electronic payments platform and provide the citizens and tourists of Dharamshala a comprehensive digital payment system for all payment requirements.
- Integrate with banking infrastructure for best industry technology, practices and services, stimulate growth in digital payments.
- Provide single platform for payment of all the government services and for other services and products.
- Integrate with the automatic fare collection system in future.
- Help realise the dream of digital India and cashless economy.

The overall project objective can be represented as follows:



Comprehensive Digital Payment System Objective

2.2.3 Scope of Work

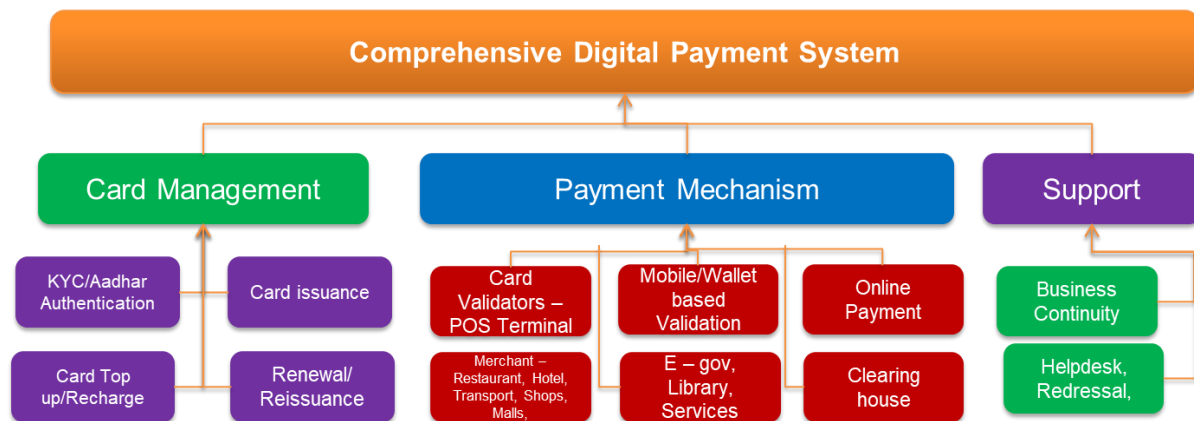
(a) In order to realise the objectives of Comprehensive Digital Payment System for Dharamshala city the successful bidder is required to successfully complete the following scope of work and successfully execute the following list of activities:

1. Design, Develop, Print/Manufacture, Supply/Market DSCL Smart Card and associated mobile application and online payment system
2. Design, develop and maintain interoperable Smart Card Application.



3. The card issued shall be an open loop, interoperable with other payment mechanisms including e-payment and for payments both within and outside Dharamshala.
4. The cards shall be personalised with name (and photograph) of the users.
5. Marketing and distribution of Smart Cards through various channels.
6. Design, Develop and maintain Top-Up channels and e-Payment services including service delivery points within Dharamshala City
7. Design, Deploy and maintain Interoperable Smart card payment system and clearing house.
8. Security – develop, deploy and maintain security system for the card to prevent unlawful use of the smart card and wallet.
9. Develop and maintain an entire ecosystem of payment acceptance and making covering including POS machines, QR Code, etc.
10. Helpdesk, MIS, Documentation and deployment of personnel.
11. Exit management
12. MIS Monitoring and Reporting
13. Audit and Certifications

The entire Comprehensive Digital Payment System can be represented as follows:



Scope of Work for Comprehensive Digital Payment System

- (b) The overview of the scope of works and services include:
1. Supply/Manufacture, Personalise and Issue contactless EMV/ RuPay smart cards for payment for goods and services in line with the Reserve Bank of India regulations/approvals.
 2. Provide transaction clearing, reconciliation of accounts and money settlement functions of all parties participating in the digital payment system.



3. In addition to the physical top up of the DSCL smart cards from Point of Sale machines and service delivery locations within city as per RFP, setup of web enabled online card money top-up over dedicated web channel with payment gateways and other banking channels.
4. Provide card customer support over Phone and Internet for card issuance, renewal, refunds, customer account management and customer support with payment gateway and authentication services as per RBI requirements.
5. Manage the entire smart card life cycle management of open standards card specifications, card applications, payment scheme, card account management and card transactions.
6. Develop suitable application for the Authority that can be integrated with the One City App of Dharmashala Smart City.
7. Manage and undertake marketing and sales of DSCL smart cards, the DSCL mobile application and interfaces through web portal with citizens, tourists, retailers/ merchants within Dharamshala Municipal Corporation limit and urban agglomeration around with the objective of increasing card penetration, mobile payment and doing e commerce transactions.
8. Though presently, there is no Transportation system of Dharamshala of its own, however, HRTC operates buses, and in future E-buses are envisaged to ply in and around Dharamshala. Therefore, the vendor should enable and undertake card usage to cover transportation apart from usage at retail outlets, hotels, restaurants, etc. with a view to make it the card of choice for citizens and tourists of Dharamshala.
9. The card shall be able to work in offline mode so that if there is any disruption in the network, the card should allow the user to effect a payment. The details of such transactions shall be transmitted for processing and reconciliation after the network connectivity is restored.
10. The bidder shall be required to integrate the Comprehensive Digital Payment System with Bharat Bill Payment System so as to enable the users of the system to make payments.



Article 3: Grant of Concession

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and Authority to design, procure, implement, own, operate, maintain and manage the Comprehensive Digital Payment System in Dharamshala and offer related Services to citizens of the city and its tourists (the “**Concession**”) for a period of 7 (Seven) years commencing from the Appointed Date, 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 in this Agreement.
- 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) investigate, study, design, procure, finance, implement, equip the Project Assets as per the terms and conditions of this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits, terms of Clearances, Good Industry Practice
 - (b) achieve COD on or before 183rd day from the Appointed Date or any other period from the Appointed Date that the Parties may by mutual consent determine and subsequently, operate, maintain, upgrade and manage the Smart Cards and other Project Assets throughout the Concession Period and regulate the use thereof by third parties, as per the terms and conditions of this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits, terms of Clearances, Good Industry Practice and transfer the same to the Authority or the Nominated Entity agency on the early termination of the Concession Period;
 - (c) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Project Assets, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
 - (d) on and from the Commercial Operation Date and until the Termination of Concession Period, provide Services to the Users in accordance with the standards and terms set out in this Agreement including the Service Level Requirements as defined in Schedule C of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice; and demand, charge, collect, retain, appropriate and periodically revise the User Charges in accordance with the provisions of this Agreement and refuse usage if the Fee due is not paid;



- (e) perform and fulfil all of the Concessionaire's obligations in accordance with this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits, terms of Clearances, Good Industry Practice;
- (f) 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;
- (g) 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, sub-lease, sub-licence or part possession of the Project Assets save and except as expressly permitted by this Agreement.
- (h) pay Annual Concession Fee to the Authority in accordance with the provisions of Article 24;
- (i) appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms;
- (j) upon Termination before the expiry the Concession Period for reasons other than efflux of time, transfer the Project to the Authority in accordance with the terms of this Agreement;
- (k) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, development, management, operation or maintenance of the Project and the Project Assets, subject only to the terms of this Agreement and in accordance with Applicable Permits, Applicable Laws and Good Industry Practice;
- (l) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Project; and
- (m) do all things incidental or related thereto or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period.

3.1.3 The Concessionaire shall not without the prior written consent or approval of the Authority use the Project Assets for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by the Authority.

3.1.4 Subject to any substitution rights exercised by the Lenders, the Concession granted by the Authority shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.

3.2 Concession Period

3.2.1 The Concession hereby granted in favour of the Concessionaire is for a total period of 7 (Seven) years from the Appointed Date ("**Concession Period**") inclusive of Implementation Period, subject to non-occurrence of early Termination as provided in this Agreement.



3.2.2 In the event of Termination of this Agreement for any reason other than efflux of time, all rights given under this Concession Agreement shall cease to have effect and the Project Assets shall revert to the Authority without any obligation of the Authority to pay or adjust any consideration or other payment to the Concessionaire.

3.2.3 Deleted

3.3 Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring undertaken in pursuance of the Applicable Laws, substitute itself by any other entity having the capacity to undertake and discharge the duties and obligations of the Authority with a similar or greater creditworthiness, and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to the Applicable Laws; provided, however, that prior to any such substitution, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder.



Article 4: Conditions Precedent

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 22,28, 35, 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 **Deleted** (Conditions Precedent required to be satisfied by the Authority)
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to the Authority;
 - (b) executed and procured execution of the Escrow Agreement and opened and operationalised the Escrow Account in accordance with Article 25;
 - (c) completed all surveys and investigations;
 - (d) Submitted to and obtained approval from the Authority the Project Implementation Plan, Solution Design and Architecture document, System Requirement Specification document, an End-use Requirement document, hardware and Software Documentation and Drawing, User Acceptance Test Plans, Operational Manuals and other operational documents, quality assurance procedures, Smart card design, smart card application design, integration documentation with payments applications, Central Clearing House System, System Requirement Specification, Test Cases, Security Policy document and Business Rules of the Comprehensive Digital Payment System;
 - (e) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
 - (f) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - (g) 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;
 - (h) delivered to the Authority from {the existing promoters/selected Concessionaire/Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement;



- (i) provide proof of its current shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire.
- (j) delivered to the Authority the certified true copies of constitutional documents of the concessionaire including the certificate of incorporation/registration certificate from the Registrar of Companies or equivalent certificate, duly attested by director of the concessionaire, certifying the share holding pattern of the concessionaire.
- (k) delivered to the Authority copies (certified as true copies by a Director/Partner of the Concessionaire) of all resolutions adopted by the Board of Directors or the Partners of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of the Agreement; and
- (l) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the Authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder, with such conditions as it may deem fit.

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.

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 Deleted (Damages for delay by the Authority)

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 a period of 90 (ninety) days from the date of this Agreement, 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 5% (Five Percent) of the Performance Security for each month's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 30% (thirty per cent) of the Performance Security.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 180 (one hundred eighty) 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 delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security 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, implementation, installation, operation and maintenance of the Comprehensive Digital Payment System 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 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall Act as Principal Issuer, Acquirer and Settlement Bank for Comprehensive Digital Payment System.
- 5.1.5 The Concessionaire shall design, implement, operate and maintain the Comprehensive Digital Payment System in accordance with the scope defined in Article 2 of this Agreement and Specifications and Standards as specified in Schedule-D.
- 5.1.6 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 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 the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Comprehensive Digital Payment System;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) 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;
 - (e) 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;
 - (f) not do or omit to do any act, deed or thing which may in any manner be violat of any of the provisions of this Agreement or Applicable Laws;



- (g) procure that all equipment and facilities comprising the Comprehensive Digital Payment System are operated and maintained in accordance with the Specifications and Standards and Good Industry Practice;
- (h) 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 Comprehensive Digital Payment System to the Authority upon Termination of this Agreement for reasons other than efflux of time, in accordance with the provisions thereof.
- (j) Manage and run the operations of Comprehensive Digital Payment System in line with the provisions of this Agreement.
- (k) Generate revenue from the operations
- (l) Provide for daily report on the operational and financial aspect of the project.
- (m) cause the backend systems to deliver and provide for end of day reports on operational and financial aspects to the Authority.
- (n) submit operational and financial reports weekly and monthly basis to the Authority.
- (o) provide full access equivalent to the system administrator access to the Authority, to the mobile app, website and IT systems related to the Project.
- (p) Procure and implement Software and hardware for the processing of customer payments via credit card, debit card, closed loop smart card, net banking, wallets and other mobile-based payment systems
- (q) Procure or arrange top up or recharging mechanisms for payment systems in (w) above
- (r) Achieve COD on or before 183rd day from the Appointed Date or any other period from the Appointed Date that the Parties may by mutual consent determine;
- (s) Ensure functional integration of Project Assets and also facilitates integration with automatic fare collection system, public bike sharing system, Bharat Bill Payment System and any other system that requires digital payments, that shall be introduced by the Authority during the Concession Period.
- (t) Ensure reliability, availability, maintainability and safety requirements of the system by analysis, testing and system demonstrations.
- (u) Respond to requests for clarifications of information made by Authority, other Government Departments or Agencies and their Representatives and provide all information, data, records, documents etc. as required by Authority, from time to time and respond to all notices, letters, and communications received from the Authority within the given time frame with complete and full replies.



- (v) Set up communication system to facilitate smooth and bidirectional data transmission between Data centres/Servers residing in Authority's Control in the Integrated Command and Control Centre (ICCC) for sending details/information pertaining to card-based transaction.
- (w) Ensure timely sending of transaction settlement data from Concessionaire's servers to the servers in ICCC for reconciliations of transactions settled. The Concessionaire shall undertake complete reconciliation responsibilities.
- (h) Complete all functions associated with the Project completion in the time specified and obtain Completion Certificate as per terms of this Agreement.
- (x) Provide revenue reporting to the Authority on Comprehensive Digital Payment System and provide access to the Authority to statutory and regulatory reports related to the Comprehensive Digital Payment System.
- (y) Co-operate with the Authority, other Government Departments or Agencies and their Representatives and facilitate their operations for integrated and inter-operable Comprehensive Digital Payment System.
- (z) Handle the operations, maintenance and management of Comprehensive Digital Payment System and ensure continuity of Comprehensive Digital Payment System project by establishing provision of Disaster Recovery/back up in case of any stoppages.
- (aa) Establish backup system to make up for any loss of database.
- (bb) Submit the following documents for Authority's approval and obtain approval from the Authority:
 - (i) Project implementation Plan that shall include details of the project implementation team and benchmarks and timeline of delivery of equipment, installation of equipment, integration and setting up of the Central Control Centre,
 - (ii) Solution design and architecture document of complete Comprehensive Digital Payment System, System Requirement specification document, an end-use requirement document, hardware and Software Documentation and Drawing, user acceptance Test Plan and operational manual of each component of Comprehensive Digital Payment System after studying the solution requirement.
 - (iii) operational Documents specifying Type of Accounts required and settlement procedures etc
 - (iv) quality assurance procedures
- (cc) Establish the marketing channels as stipulated hereunder for recharging, dispensing and/or bill payment services as per the provision of scope of work.



- (dd) Provide Top-up/recharging/E- KYC/ Balance Enquiry services through e-payment gateways (web, Mobile etc.) and other banking channels.
- (ee) Set up marketing channels at stores, side stores, grocery stores where users shall avail all card recharging and dispensing services as per scope of work for maximizing the use of Comprehensive Digital Payment System.
- (ff) Market the concept and increase card penetration by introducing innovative loyalty program or any other program.
- (gg) Ensure deployment of Helpdesk to address issues related to Smart Cards.
- (hh) Implement the changes in business rules in consultation with the Authority.
- (ii) Abide by all Applicable Laws including labour laws, minimum wages, PF, ESIC and Applicable Taxes including Goods and Services Tax (GST), etc during the Concession period.
- (jj) Deploy adequate numbers of qualified and skilled manpower and participate in all the meetings, committees etc. as directed by the Authority from time to time.
- (kk) Appoint a Project Manager responsible for the implementation, operation, maintenance and management of Comprehensive Digital Payment System, who shall also interface and act as single point contact with the Authority for all matters concerning the performance on this Agreement and the Concessionaire shall share his name and contact details with the Authority.
- (ll) Ensure efficient services, polite and courteous behaviour and conduct towards end users and to the staff and representative of Authority. In case of any of Concessionaire's employee or staff members being found guilty of any unreasonable offenses, the Concessionaire shall be liable for any misconduct of its staff and upon request from the Authority, the Concessionaire shall take appropriate actions. It shall be clarified that any such actions towards staff members shall not absolve the Concessionaire from its obligations.
- (mm) Take all precautions to ensure that the Comprehensive Digital Payment System including all Software and hardware involved remains safe and secure in general and free from attacks arising from attempted manipulation, fraud, break down, compromising of data security, malware and virus attacks or damage due to neglect or omission.
- (nn) Ensure smooth transfer of all hardware, customised software, equipment, standard third-party software and other Project Assets forming the part of Comprehensive Digital Payment System, in case of Termination due to any reason other than efflux of time without imposing any additional financial burden on the Authority.
- (oo) Get the approved third-party auditor to carry out security audit of the database and CCPS system on half-yearly basis during the Concession Period as per the



direction of the Authority and furnish report/certificate thereof to Authority as an evidence. The Concessionaire shall also take the required measure promptly to rectify any bug/default found during such audit.

(pp) Perform each activity, responsibilities and obligations specified elsewhere in this Agreement or the RFQ-cum-RFP during the Concession Period.

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 its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. 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. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 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.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination (the “**Covenant**”). 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.

- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the 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 endeavour to 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 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.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (i) 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 not less than 25% (twenty-five per cent) of the total Equity of the Concessionaire; or
 - (ii) 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 endeavour to 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:

- (a) 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;
- (b) 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
- (c) 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 not less than 25% (twenty five per cent) 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 sub-contractors 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 training Authority personnel and employment of trained personnel

5.5.1 Training of Authority's Personnel

- (a) The Concessionaire shall be responsible for the selection, engagement and training of its personnel in all work with regard to the performance of this Agreement.
- (b) The Concessionaire shall also offer training program at its own costs to Authority staff and Authority nominated persons, and enable them to understand the operation of Comprehensive Digital Payment System, specifically with regards to functioning of functioning of POS machines, validators, smart card top-up, POS Operation, safety of Comprehensive Digital Payment System equipment etc.
- (c) The Concessionaire shall prepare Standard Operating Procedures for every situation including unique situations with regards to functioning of the Comprehensive Digital Payment System and train its own/Authority's staff.

5.5.2 Human Resource Deployment

- (a) The Concessionaire shall be responsible for deployment of trained and qualified staff members during the entire Concession Period. The Concessionaire shall also ensure that the personnel engaged by it or by its Contractors in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.
- (b) If the Authority asks the Concessionaire to remove a person who is a member of the Concessionaire's staff or work force, stating the valid reasons, the Concessionaire shall ensure that the person leaves the Project within seven days and has no further connection with the Comprehensive Digital Payment System in the Contract.
- (c) The Concessionaire shall abide by all Applicable Laws including labour laws, minimum wages, PF, ESIC and Applicable Taxes including Service Tax, etc., for the Human Resource deployed by them. There shall not be employee and employer relationship between the manpower deployed by the Concessionaire (either permanent or contractual employee) and the Authority through this Contract. The Concessionaire shall solely liable for any liabilities arising due to breach in labour laws including minimum wages, PF, ESIC and Applicable Taxes.
- (d) The Concessionaire shall be solely responsible for any liabilities arising to act or death, injuries of employee deployed by Concessionaire or its sub-contractor or any third-party damages due to act of omission of Concessionaire or its employee.



5.6 Deleted (Obligations relating to medical aid)

5.7 Obligations relating to taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Comprehensive Digital Payment System.

5.8 Obligations relating to operations

The Concessionaire shall at all times operate the Comprehensive Digital Payment System in accordance with Applicable Laws, Good Industry Practice and the provisions of this Agreement.

5.9 Deleted (Branding of Comprehensive Digital Payment System)

5.10 Deleted (Obligations relating to basic amenities)

5.11 Deleted (Obligations relating to noise control)

5.12 Obligations relating to Sharing of Program Protocol

- (a) The Concessionaire shall be required to furnish all interfacing protocols, APIs related to hardware and Software being implemented within scope of Comprehensive Digital Payment System to Authority. The sharing shall be in a way that allows Authority to enable any other Service Provider to integrate their services with Concessionaire's Card Host, CCHS, Smart Cards or any Project Assets.
- (b) The protocol documentation shall clearly state all interface requirements including the Software dependency, communication protocols, networking diagrams and APIs.
- (c) In the event of dispute or new vendors getting added to the system at a later date, it shall be obligatory to share Communication and program protocols of the equipment supplied by Concessionaire in the interest of interoperability. The Concessionaire shall be solely responsible for any delay on account of lack of inter-compatibility between different parts of the system due to non-sharing of such program protocols.

5.13 Sole purpose of the Concessionaire

The Concessionaire having been accorded the concession of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not under the Project, 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.



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 the Applicable Laws, the following:
- (a) Approve the Project Implementation Plan, Solution Design and Architecture document, System Requirement Specification document, an End-use Requirement document, hardware and Software Documentation and Drawing, User Acceptance Test Plans, Operational Manuals and other operational documents, quality assurance procedures, Smart card design, smart card application design, integration documentation with payments applications, Central Clearing House System, System Requirement Specification, Test Cases, Security Policy document and Business Rules of the Comprehensive Digital Payment System, submitted by the Concessionaire provided that the Concessionaire incorporates the Authority's observations on such documents;
 - (b) Carry out Testing and acceptance of the system as per the Tests specified in the Schedule I of this Agreement;
 - (c) 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 the Applicable Permits required from any Government Instrumentality for implementation and operation of the Comprehensive Digital Payment System;
 - (d) Coordinate between various Departments or agencies of the Government of Himachal Pradesh who would be users of the Comprehensive Digital Payment System and facilitate their adoption of the system;
 - (e) Formulate KPIs and SLAs in addition to the Service Level Requirements specified in the Schedule – C of this Agreement;
 - (f) 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 favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
 - (g) Work closely with the Concessionaire, attempt to grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from the Authority in connection with the implementation, operation and maintenance of the Comprehensive Digital



Payment System and the performance of the Concessionaire's obligations under this Agreement;

- (h) make best endeavours to procure that no local Tax or charge is levied or imposed on the use of whole or any part of the Comprehensive Digital Payment System;
- (i) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (j) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws; and
- (k) 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 obligations under this Agreement and the Project Agreements.



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 organised 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) along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of 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 thereunder 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; and that the {existing promoters/selected Bidder/Consortium Members}, together with {its/their} Associates, hold not less than 51%(fifty one per cent) of {its/their} issued and paid up Equity as on the date of this Agreement; and that no Member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification cum Request for Proposal (RFQ-cum-RFP) shall hold less than 26% (twenty-six per cent) of such Equity which shall also be no less than 5% (five per cent)] of the Total Project Cost, for a period of 2 (two) years from the date of commercial operation of the project;
- (l) {the selected Bidder/Consortium Members and its/their} Associates 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;
- (m) {the selected Bidder/each Consortium Member} is duly organised 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;
- (n) all its rights and interests in the Comprehensive Digital Payment System, 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;
- (o) 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;



- (p) 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; and
- (q) all information provided by the {selected Concessionaire/Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

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 the Applicable Laws to authorise 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; and
- (f) it has complied with Applicable Laws in all material respects;

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 Qualification cum Request for Proposal, Scope of the Project, Specifications and Standards, locations, local conditions, banked population and other financial inclusion conditions, surroundings, climate/weather data, availability of power, water and other utilities, incomes including disposable incomes, payment transaction volumes and sizes, applicable laws and regulations etc. prevailing in Dharamshala, Himachal Pradesh, 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, assumption, 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 and their} Associates 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 during the Concession Period, provide to the Authority on the date of signing of this Agreement, an irrevocable and unconditional guarantee from a Scheduled Bank in India for a sum equivalent to Rs.12,00,000/- (Rupees Twelve Lakhs Only) 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 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire on the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon 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 this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Deleted (Operation Performance Security)

9.3 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 the relevant amounts from the relevant Performance Security as Damages for such Concessionaire Default or 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. 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 60 (Sixty) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent 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.



9.4 Release of Performance Security

9.4.1 Deleted

9.4.2 The Performance Security shall remain in force and effect for the entire Concession Period until the Divestment Requirements have been fulfilled in accordance with Article 32 of this Agreement and shall be released pursuant to this Article 9 after all defects and deficiencies have been repaired or rectified in accordance with Article 33; provided the Concessionaire is not 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 under this Article 9, the Authority shall release the Performance Security forthwith.

9.5 Deleted (References to Performance Security)



Article 10: Deleted (Right of Way)



Article 11: Deleted (Utilities, Roads and Trees)



Article 12: Implementation of Comprehensive Digital Payment System

12.1 Obligations prior to commencement of Implementation

Prior to commencement of Implementation Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Expert its Project Implementation Plan, Solution Design and Architecture document, System Requirement Specification document, an End-use Requirement document, hardware and Software Documentation and Drawing, User Acceptance Test Plans, Operational Manuals and other operational documents, quality assurance procedures, Smart card design, smart card application design, integration documentation with payments applications, Central Clearing House System, System Requirement Specification, Test Cases, Security Policy document and Business Rules of the Comprehensive Digital Payment System;
- (b) appoint its representative duly authorised 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 Implementation under and in accordance with this Agreement, the Applicable Laws and Applicable Permits.

12.2 Deleted (Drawings)

12.3 Implementation of Comprehensive Digital Payment System

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake Implementation of the Comprehensive Digital Payment System as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-D. The 183rd (one hundred and eighty-third) 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 Implementation of the Project shall be completed on or before the Scheduled Completion Date.

12.3.2 The Concessionaire shall implement the Comprehensive Digital Payment System 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 a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.5% (zero point five 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 Project Completion Date 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 Comprehensive Digital Payment System is not completed within 60 (sixty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.



Article 13: Monitoring of Implementation

13.1 Monthly progress reports

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

13.2 Inspection

During the Implementation Period, the Independent Expert shall inspect the Project Assets at least once a month 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 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 Expert 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 Implementation Works conforms to the Specifications and Standards, the Independent Expert 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 Expert 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 that the owner or implementing agency of such project would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. The costs to be incurred on any test 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 Implementation Works of the Project, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Expert in this behalf. The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Implementation Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until the Implementation Works conforms 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 Expert forthwith.

13.4 Delays during Implementation

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Expert shall have reasonably determined that the rate of progress of Implementation 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 Expert in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Implementation Works

- 13.5.1 Upon recommendation of the Independent Expert to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Implementation Works if, in the reasonable opinion of the Authority, such work threatens the safety or security of any person or property.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Implementation Works of the Project 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 or security of suspended works and affected persons or properties. The Concessionaire may by notice require the Independent Expert 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 Expert, 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 Implementation Works of the Project 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 Implementation Works is for reasons not attributable to the Concessionaire, the Independent Expert 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 Expert. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Deleted (Video recording)



Article 14: Completion Certificate

14.1 Tests

14.1.1 No later than 30 (thirty) days prior to the likely completion of implementation of the Comprehensive Digital Payment System, the Concessionaire shall notify the Independent Expert of its intent to subject the Comprehensive Digital Payment System to Tests. The date and time of each of the Tests shall be determined by the Independent Expert 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 Expert may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Expert 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 Expert.

14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Concessionaire. The Independent Expert shall observe, monitor and review the results of the Tests to determine compliance of the Comprehensive Digital Payment System with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Expert during the course of any Test that the performance of the Comprehensive Digital Payment System 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 Expert 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 Expert 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 Comprehensive Digital Payment System with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Implementation Works, and the Independent Expert 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").

14.3 Provisional Certificate

14.3.1 The Independent Expert may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "Provisional Certificate") if the Tests are successful and the Comprehensive Digital Payment System can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of



outstanding items signed jointly by the Independent Expert and the Concessionaire (the “**Punch List**”); provided that the Independent Expert shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued if the Tests undertaken in terms hereof establish that part of the Comprehensive Digital Payment System can be safely and reliably placed in commercial operation in accordance with the provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to the completed part of the Comprehensive Digital Payment System.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List, including any shortfall in Comprehensive Digital Payment System, shall be completed or rectified, as the case may be, by the Concessionaire within 60 (sixty) days from the Scheduled Completion Date and any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.5% (zero point five per cent) of the Performance Security, and (b) 0.5% (zero point five per cent) of the cost of completing such items as estimated by the Independent Expert. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 60 (sixty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Expert in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Expert shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.4.3 Notwithstanding anything to contrary contained in Clause 14.4.2, the Parties here to expressly agree that the Completion Certificate shall, subject to the provisions of this Agreement be issued if the Project Assets are 90% complete and fully operational commercially.



14.5 Withholding of Provisional or Completion Certificate

- 14.5.1 If the Independent Expert determines that the Comprehensive Digital Payment System or any part thereof 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 Expert and after conducting its own inspection, if the Authority is of the opinion that the Comprehensive Digital Payment System 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 Comprehensive Digital Payment System and direct the Independent Expert to withhold issuance of the Provisional Certificate 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 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Expert under that Clause, direct the Independent Expert to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, 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. Provided, however, that the Concessionaire shall be excused for the delay in Tests arising hereunder if such delay is not solely attributable to the Concessionaire.

14.7 Phased Completion of Comprehensive Digital Payment System

The Comprehensive Digital Payment System, for the purposes of completion, shall be in a single phase. Upon issue of provisional certificate, it shall enter into commercial service in accordance with the provisions of Article 15. For the avoidance of doubt the Parties agree that notwithstanding anything to the contrary contained in this Clause 14.7 the obligations contained in Clauses 12.3 and 15.2 shall continue to be binding on the concessionaire.

14.8 Safety certification prior to COD

The Concessionaire shall, not later than 1 (one) month prior to the likely COD, notify the Authority and the Independent Expert and invite them to observe any or all the tests that may be specified by the Independent Expert in accordance with Applicable Laws and Good Industry Practice to determine and certify that the Comprehensive



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Digital Payment System is safe and secure for entering into commercial service, and the costs of such tests shall be shared equally between the Concessionaire and the Authority; provided that in case of failure in any test requiring repetition thereof, the cost of such second or subsequent test shall be borne entirely by the Concessionaire.



Article 15: Entry into Commercial Service

15.1 Commercial Operation Date (COD)

Implementation of the Comprehensive Digital Payment System shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, 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 or the Provisional Certificate is issued (the “COD”). The Comprehensive Digital Payment System shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 24.

15.2 Damages for delay

Subject to the provisions of Clause 12.3, if the Completion Certificate is not issued prior to the 60th (Sixtieth) day after the Scheduled Completion Date, unless the delay is on account of reasons solely 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 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until the Completion Certificate is issued.

15.3 Delivery of Interfacing Protocols

The Concessionaire shall share the Interfacing protocols and APIs of the Comprehensive Digital Payment System to the Authority in accordance with the provisions of Clause 5.12 within 30 days from the COD.



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 works and services which are not 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, 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.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Comprehensive Digital Payment System 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 Implementation 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 Expert 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 Expert, 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 Implementation 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 Expert. 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 Expert as reasonable 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 Facility 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 Order shall not be reckoned for purposes of determining completion of the Project Facility and issuing the Provisional 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 2.5% (two and half per cent) of the Total Project Cost before the Scheduled Completion Date.



16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 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 1% (one 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.
- 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 minimises the disruption in operation of the Comprehensive Digital Payment System. The provisions of this Agreement, insofar as they relate to Implementation Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

- 16.6.1 If the Concessionaire shall have failed to complete the Implementation Works of the Project or any part thereof, on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project, and for this purpose, the Parties shall conform to the provisions of Clause 35.3. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.
- 16.6.2 For determining the obligations of the Concessionaire under this 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.

[£] 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 selected bidder.



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 Comprehensive Digital Payment System 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 Comprehensive Digital Payment System 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) Ensuring safe, smooth and uninterrupted services from the Comprehensive Digital Payment System, including prevention of loss or damage thereto, during normal operating conditions;
- (b) undertaking operation and maintenance of the Comprehensive Digital Payment System in an efficient, coordinated and economical manner, in compliance with the Standards and Specifications, in accordance with the provisions of this Agreement and Applicable Laws;
- (c) Deleted
- (d) minimising disruption in the event of accidents or other incidents affecting the safety and security of the Users;
- (e) carrying out periodic preventive maintenance and upgradation of the Comprehensive Digital Payment System;
- (f) undertaking routine maintenance including prompt repairs of all elements and components of the Comprehensive Digital Payment System so as to ensure compliance with the Specifications and Standards;
- (g) undertaking major maintenance including upgradations, replacement of components and parts, repairs to structures, and repairs and refurbishments;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any unauthorised entry into the Comprehensive Digital Payment System;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Comprehensive Digital Payment System and for providing services;
- (k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
- (l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice; and
- (m) maintaining reliability in operating the Comprehensive Digital Payment System.



17.1.2 Deleted

17.1.3 Deleted.

17.1.4 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement.

17.2 Deleted (Maintenance Requirements)

17.3 Maintenance Manual

17.3.1 No later than 90 (Ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Expert, evolve a repair, operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project Assets in conformity with the Specifications and Standards and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Expert. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 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 maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including upgradation or replacement thereof, such that its overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

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 Expert, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Manual. Such Maintenance Programme 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 Comprehensive Digital Payment System;



- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) intervals for carrying out intermediate and periodic overhaul of the equipment.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Expert shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Manual.

17.4.3 The Concessionaire may modify the Maintenance Programme 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.

17.4.4 Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Clause 17.4 shall be deemed to be scheduled maintenance (the “**Scheduled Maintenance**”).

17.5 Upgradation

17.5.1 The Concessionaire may, as and when necessary, undertake upgradation of the Comprehensive Digital Payment System.

17.6 Safety and Security

17.6.1 The Concessionaire shall ensure safe and secure conditions for the Users, and in the event of unsafe conditions, it shall follow the relevant operating procedures and undertake removal of threats without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.7 De-commissioning due to Emergency

17.7.1 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 Comprehensive Digital Payment System, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Comprehensive Digital Payment System 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.

17.7.2 The Concessionaire shall re-commission the Comprehensive Digital Payment System 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 Comprehensive Digital Payment System and shall notify the Authority of the same without any delay.



17.7.3 Any de-commissioning or closure of any part of the Comprehensive Digital Payment System and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.8 Section closure

17.8.1 Upon notice given by the Authority to this effect prior to commencement of an Accounting Year, the Concessionaire shall, save and except as provided in Clause 17.7, not schedule a closure of any part of the Comprehensive Digital Payment System at any time during a continuous period of 30 (thirty) days as may be specified by the Authority for and in respect of such Accounting Year.

17.8.2 Save and except as provided in Clause 17.7, the Concessionaire shall not shut down or close any part of the Comprehensive Digital Payment System for undertaking maintenance or repair or upgradation not forming part of the Maintenance Programme, except with the prior written approval of the Authority. Such approval shall be sought by the Concessionaire through a written request to be made to the Authority at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Authority shall grant permission with such modifications as it may deem necessary.

17.8.3 Upon receiving the permission pursuant to Clause 17.8.2, the Concessionaire shall be entitled to shut down the designated Project Asset for the period specified therein, and in the event of any delay in re-opening such Project Asset, 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 the Project Asset has been re-opened for operations.

17.9 Unscheduled Maintenance

Any maintenance, repair or rectification of the Comprehensive Digital Payment System not forming part of Scheduled Maintenance shall be deemed to be unscheduled maintenance (the “**Unscheduled Maintenance**”). For the avoidance of doubt, it is agreed that any maintenance arising out of de-commissioning and forced closure of the whole or any part of the Comprehensive Digital Payment System under the provisions of Clause 17.7 shall be deemed to be Unscheduled Maintenance.

17.10 Deleted (~~Damages for breach of maintenance obligations~~)

17.11 Authority’s right to take remedial measures

17.11.1 In the event the Concessionaire does not maintain and/or repair any Project Assets or any part thereof in conformity with the Maintenance Manual or the Maintenance Programme, 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 Expert, 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 17.11.1 shall be without prejudice to its rights and remedies provided under Clause 17.10.

17.11.2 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 17.11.1 from any payments due to the Concessionaire from time to time.

17.12 Overriding powers of the Authority

17.12.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its Maintenance obligations or any other obligations under this Agreement and such breach is causing or likely to cause material hardship or danger to any person or property, 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.

17.12.2 In the event that the Concessionaire, upon notice under Clause 17.12.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.12.2 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 17.11 along with the Damages specified therein.

17.12.3 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 Comprehensive Digital Payment System 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



17.12.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.13 Restoration of loss or damage to the Comprehensive Digital Payment System

Save and except as otherwise expressly provided in this Agreement, in the event that the Comprehensive Digital Payment System 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 Comprehensive Digital Payment System conforms to the provisions of this Agreement.

17.14 Modifications to the Comprehensive Digital Payment System

The Concessionaire shall carry out any material modifications to the Project Assets where such modifications are necessary for the Project Asset to operate in conformity with the Specifications and Standards, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Expert 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 Expert may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, if any modification to the Comprehensive Digital Payment System has a material effect on the safety and security thereof or the safety and security of users and other persons, the same shall be subjected to the tests and certification specified in Clause 14.8. For the avoidance of doubt, all modifications made hereunder shall comply with Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

17.15 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Comprehensive Digital Payment System is 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 Comprehensive Digital Payment System 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 Comprehensive Digital Payment System;

Provided further that the Concessionaire shall ensure all unaffected parts of the Comprehensive Digital Payment System can be operated safely.



17.16 Safety and Security Requirements

17.16.1 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 and security of the Comprehensive Digital Payment System, Users and other persons. In particular, the Concessionaire shall develop, implement and administer a surveillance, safety and security programme for providing a safe environment on the Comprehensive Digital Payment System.

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

17.17 Deleted (Barriers and diversions)

17.18 Deleted (Advertising on the Comprehensive Digital Payment System)



Article 18: Monitoring of Operation and Maintenance

18.1 Monthly status reports

18.1.1 The Concessionaire shall, no later than 7 (seven) days after the close of each month during the Operation Period, furnish a monthly report to the Authority and the Independent Expert stating in reasonable detail the condition of the Comprehensive Digital Payment System including its compliance or otherwise with the Maintenance Manual and Maintenance Programme and shall promptly give such other relevant information as may be required by the Independent Expert or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

18.2 Reports of unusual occurrence

18.2.1 Prior to the close of each day, the Concessionaire shall furnish to the Authority and the Independent Expert, by facsimile or e-mail, a report stating accidents and unusual occurrences, if any, on the Comprehensive Digital Payment System relating to the safety and security of the Comprehensive Digital Payment System or the persons affected by it. A weekly and monthly summary of such reports shall also be sent within 7 (seven) days of the closing of each week and month, as the case may be. For the purposes of this Clause 18.2.1, accidents and unusual occurrences at the Comprehensive Digital Payment System shall include:

- (a) death or injury to any person;
- (b) any damage or obstruction on the Comprehensive Digital Payment System;
- (c) disablement of any element or system of the Comprehensive Digital Payment System during operation thereof;
- (d) communication failure affecting the operation of the Comprehensive Digital Payment System;
- (e) any security breach or unauthorized entry into the Comprehensive Digital Payment System; or
- (f) such other relevant information as may be reasonably required by the Authority or the Independent Expert.

Provided, however, that in the event no report is sent prior to the close of any day as required hereunder, it shall be presumed that no accident or unusual occurrence, as specified in this Clause 18.2.1, has occurred on that day.

18.2.2 In the event of an Emergency, the Concessionaire shall furnish a report, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such Emergency, setting out the details of the same and the measures taken to mitigate the impact thereof.



18.3 Inspection

The Independent Expert shall inspect the Comprehensive Digital Payment System at least once a quarter. 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 Manual, the Maintenance Programme and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

18.4 Tests

For determining that the Comprehensive Digital Payment System conforms to the Specifications and Standards set forth in Schedule-D, the Independent Expert 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 own expenses, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Expert and furnish the results of such tests forthwith to the Independent Expert.

18.5 Remedial measures

- 18.5.1 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 18.4 and furnish a report in respect thereof to the Independent Expert 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.
- 18.5.2 The Independent Expert 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 Comprehensive Digital Payment System into compliance with the Maintenance Requirements and the procedure set forth in this Clause 18.5 shall be repeated until the Comprehensive Digital Payment System conforms to the Specifications and Standards set forth in Schedule-D. 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 17.10.



Article 19: Security of the Comprehensive Digital Payment System

19.1 Security

- 19.1.1 The Concessionaire acknowledges and agrees that it shall, at its own cost and expense, procure security of the Comprehensive Digital Payment System for the prevention of terrorism, hijacking, hacking, sabotage and/or similar acts or occurrences.
- 19.1.2 The Concessionaire shall be responsible for the security arrangements for the Comprehensive Digital Payment System in order to maintain orderly conduct of its business and the security thereof.
- 19.1.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the Comprehensive Digital Payment System. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of the Government or of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them for the security of the Comprehensive Digital Payment System, without unduly or unreasonably disrupting the operations of the Comprehensive Digital Payment System or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Government in the discharge of their obligations for and in respect of the security of the Comprehensive Digital Payment System.
- 19.1.4 Deleted
- 19.1.5 The Concessionaire shall ensure and procure that the authorized personnel and representatives/agents of the Authority, other Government Agencies and the Independent Expert are allowed free access to the Comprehensive Digital Payment System without any unreasonable interference by the personnel of the Concessionaire, all its contractors, suppliers, sub-contractors and agents.
- 19.1.6 The Concessionaire's System must allow security categories to be assigned to sensitive records like merchant data, customer data etc.
- 19.1.7 The Administrator should be able to determine the highest security category of any record in any class or file by means of one simple enquiry
- 19.1.8 The System should support routine, scheduled, review of security categories
- 19.1.9 Users only have to log onto the system once to be allowed to access all application modules for which he/she is authorized to access.



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- 19.1.10 Security provided at the network, application, and database levels as well as at the client level.
- 19.1.11 Supports standard Internet security including, but not limited to:
- a. Digital Certificates
 - b. Various levels of encryption
 - c. Secure Socket Layers (SSL)
 - d. Secure Hypertext Transfer Protocol (HTTPS)
- 19.1.12 Prevent access to sensitive application data by highly privileged users. Super user should not be able to select, insert, update or delete data from audit.
- 19.1.13 All security breach detections shall be confidential, and accessible only to users of the appropriate class and reported immediately to the Authority.
- 19.1.14 The system security shall provide features to maintain data integrity, including error checking, error monitoring, error handling and encryption.
- 19.1.15 Validator-to-Smart Card communication shall be secured using multiple security keys and layers of information protection or encryption to mitigate risk against the possibility of being “hacked” or read by an unauthorized device.
- 19.1.16 The Concessionaire should maintain City Payment Cards in a secure location and with security guidelines as per PCI guidelines and EMV guidelines (MasterCard, Visa and RuPay standard for key management, personalization etc. should be followed).
- 19.1.17 The Comprehensive Digital Payment System security policy should be aligned to standard industry practices and Reserve Bank of India (RBI) or any applicable regulating agency’s guidelines. Both application and the underlying infrastructure operations/physical environments should employ security frameworks that span multiple standards.
- 19.1.18 The system security shall include, as a minimum, protection against, fraud, theft, falsification of data, false accounting, external threats including viruses and other malware, denial of service, eavesdropping, loss or corruption of information, masquerading (spoofing) and unauthorized access, etc.

19.2 Security of Information Generated from the Project

The Concessionaire shall take all necessary steps to ensure security, safety, confidentiality and integrity of data and keep Authority informed of all such steps taken from time to time

19.2.1 Integrity of Information

The Comprehensive Digital Payment System shall have routine checks for the verification of integrity of information. Errors detected will be automatically corrected, in order to prevent propagation of invalid data across the database. Duplicated or incomplete transactions will be



detected and corrected, without causing the Project to come to a halt. If there is interruption in communication, the part of the system affected shall be repaired immediately and record the error.

19.2.2 Security and Encryption of Information Stored and other database

- (a) The Concessionaire shall take all other necessary measures to protect the database generated from the Comprehensive Digital Payment System.
- (b) The Concessionaire shall implement highly protected, hierarchical access control system to control to access of Comprehensive Digital Payment System to only to authorized personnel.
- (c) The Concessionaire shall take all necessary steps to ensure security, safety, confidentiality and integrity of Database and shall not share or transfer any information from the Database to any person except with prior written consent of Authority.
- (d) The Concessionaire shall ensure that appropriate firewall is implemented to protect the Database and Comprehensive Digital Payment System's components from external access and outside connections.

19.3 Insurance Premium

The Concessionaire shall make best endeavours to ensure that the security of the Comprehensive Digital Payment System is maintained such that all perceived and probable risks associated with a system such as Comprehensive Digital Payment System are covered under insurance.



Article 20: Change in Specifications

- 20.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree and acknowledge that the Authority may, from time to time, introduce technical improvements or new specifications for the Comprehensive Digital Payment System (the “**Modified Specifications**”)
- 20.2 In the event that the Authority introduces any Modified Specifications which require material alterations in the Comprehensive Digital Payment System, the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16.



Article 21: Independent Expert

21.1 Appointment of Independent Expert

The Authority has appointed its Project Management Consultant (the “**PMC**”) for assisting it to Design, Develop, Manage, and Implement Smart City Project under Smart City Mission to be the independent consultant under this Agreement (the “**Independent Expert**”), until the expiry of the contract between the Authority and the PMC or achieving of COD whichever is earlier.

21.2 Duties and functions

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

21.2.2 The Independent Expert 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.

21.3 Deleted (Remuneration)

21.4 Deleted (Termination of appointment)

21.5 Deleted (Authorised signatories)

21.6 Deleted (Dispute resolution)



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 within 90(ninety) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 60 (sixty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.

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 Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 22.2.1 shall not apply.

22.2.2 Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.



Article 23: Annual Concession Fee

23.1 Annual Concession Fee

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority Rs..... (Rupees) as the Annual Concession Fee (the “**Annual Concession Fee**”) for the first year of the concession. The Annual Concession Fee payable to the Authority shall be increased by 5% (five per cent) in each subsequent year.

23.1.1 The Annual Concession Fee for a year shall be paid in quarterly instalments in advance during the same year. The quarterly instalments shall be payable within 10 days of the beginning of the quarter for which the instalment is due. Delay in payment of instalments up to 30 days from the date the instalment is due shall attract an interest at the rate of 12% (twelve per cent) per annum.

23.1.2 In the event of the Concessionaire failing to pay the due instalment of Annual Concession Fee and/or the interest due within 30 days of the due date of the said instalment, it shall be considered as an event of default by the Concessionaire.

23.1.3 (a) The Authority shall, within 10 (ten) days of receiving the Instalment of Annual Concession Fee, notify the Concessionaire of the disputed amounts along with details thereof (the “**Disputed Amounts**”). Within 7 (seven) days of receiving such notice, the Concessionaire shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are not payable. The Authority may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with Article 38 shall apply.

(b) If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Article 23.1.1



Article 24: User Charges

24.1 User Charges

The Concessionaire shall charge user transaction charges (The “**Transaction Charges**”) on the Services related to transactions by the user on the Comprehensive Digital Payment system. The Transaction Charges shall comply with the notifications, circulars, rules and regulations published by the Reserve Bank of India that are applicable to the transaction charges for digital transactions and payments, from time to time and the Business Rules of the Concessionaire.

24.2 Taxes and duties

It is agreed that the Concessionaire shall pay all taxes and duties, including the taxes and duties specified in Clauses 24.1.2, in accordance with Applicable Laws.



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-R.

25.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the inflows and receipts into the Escrow Account as specified in Schedule – R (The Escrow Agreement) of this Agreement.

25.3 Withdrawals during Concession Period

25.3.1 The Concessionaire shall, at the time of opening of 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 order specified in Schedule – R (The Escrow Agreement) of this Agreement, 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.

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 order specified in Schedule – R (The Escrow Agreement) of this Agreement.

25.4.2 The provisions of this Article 25 and 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 Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements and the 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 Concession Period. 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.

26.2 Insurance Cover

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

- (i) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (ii) Fire and allied natural calamities for the data hardware and Software at replacement value;
- (iii) comprehensive third-party liability insurance including injury to or death of personnel of Authority or others caused by the Comprehensive Digital Payment System;
- (iv) the Concessionaire's general liability arising out of the Concession;
- (v) Concessionaire's all risk insurance with the Authority as co-beneficiary;
- (vi) Fire and allied natural calamities for the data hardware and Software at replacement value;
- (vii) liability to third parties for goods or property damage;
- (viii) workmen's compensation insurance;
- (ix) workmen's compensation insurance;
- (x) Insurance against liabilities arising out of loss, fraud, theft and misuse of information, financial or otherwise, and monies of the Users of the Comprehensive Digital Payment System;
- (xi) Any other perceived and probable risks associated with the security of the Comprehensive Digital Payment System; and



- (xii) 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 (i) to (xi) above.

26.3 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Implementation 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 and with the Authority as co-beneficiary. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia 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 non-renewal 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 premia 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 the credit to Escrow Account and it shall, notwithstanding anything to the contrary contained in this Agreement, apply such proceeds towards payment of Damages and the balance remaining, if any, shall be applied for any necessary repair, re-implementation, reinstatement, replacement, improvement, delivery or installation of the Comprehensive Digital Payment System, in accordance with the provisions contained in this behalf in the Financing Agreements.

26.9 Validity of Insurance Cover

The Concessionaire shall pay the premium payable on such insurance Policy/Policies so as to keep the insurance in force and valid throughout the Concession Period.



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 incomes and Transaction Charges and other charges from the users of the Comprehensive Digital Payment System and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. 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.

27.2 Appointment of Security auditors

The Concessionaire shall also get approved third party auditor to carry out security audit of the database and the Comprehensive Digital Payment System on half-yearly basis during the Concession Period and furnish report/certificate thereof to Authority as an evidence. The Concessionaire shall also be required to take prompt measure to rectify any bug/default found during such audit.

27.3 Deleted (Certification of claims by Statutory Auditors)

27.4 Deleted (Dispute resolution)



PART V: FORCE MAJEURE AND TERMINATION

Article 28: Force Majeure

28.1 Force Majeure Event

In this Concession Agreement, "**Force Majeure**" means an event occurrence in India of any or all of the Non-Political Force Majeure Event, Indirect Political Force Majeure Event and Political Force Majeure Event described in Articles 28.2, 28.3 and 28.4 respectively hereinafter which prevents the Party claiming Force Majeure (the "**Affected Party**") from performing its obligations under this Concession Agreement and which act or event:-

- (i) Is beyond the reasonable control of and not arising out of the fault or negligence of the Affected Party or the failure of such Party to perform its obligations hereunder;
- (ii) The Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care and
- (iii) Has a Materially Adverse Effect on the Project

28.2 Non-Political Force Majeure Events

For the purposes of Article 28.1, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- i) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, extreme adverse weather or environmental conditions, lightning, earthquakes, heavy rains, cyclones, tempest, whirlwind, landslides, storms, floods, volcanic eruptions or fire (to the extent originating from a source external or not designed for in Implementation Works);
- ii) Radioactive contamination or ionising radiation;
- iii) 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 exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 28.3;
- iv) 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;
- v) Any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for the reason other than failure of the Concessionaire to comply with any Applicable Law or Clearances or on account of breach thereof, or of any contract, or



enforcement of this Concession Agreement or exercise of any of its rights under this Concession Agreement by the Authority; or

- vi) Any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Concessionaire will ensure that it has insured itself against such risks.

28.3 Indirect Political Force Majeure Event

For the purposes of Article 28.1, Indirect Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Authority, GoHP, GoI or any other Competent Authority:

- (i) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, blockade, embargo, rebellion, riot, religious strife, bombs or civil commotion, sabotage, terrorism which prevents collection of User Charges by the Concessionaire for a period exceeding a continuous period of 7(seven) days in an Accounting Year;
- (ii) Industry wide or state wide or India wide strikes or industrial action which prevent collection of User Charges by the Concessionaire for a period exceeding a continuous period of 7(seven) days in an Accounting Year; or
- (iii) Any public agitation which prevents collection of User Charges by the Concessionaire for a period exceeding a continuous of 7(seven) days in an Accounting Year.

28.4 Political Force Majeure Event

For the purposes of Article 28.1, Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Authority, GoHP, GoI or any other Competent Authority:

- (i) Expropriation or compulsory confiscation, by any Competent Authority of any Project Assets or rights of the Concessionaire or of the Contractors; or
- (ii) Any unlawful or unauthorised or without jurisdiction, revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent, the obtaining of which is a condition precedent) 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 the grant, maintenance or renewal of such consents or permits.



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 Exceptions Applicable to the Concessionaire

The Concessionaire shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Concession Agreement other than the circumstances resulting from an event of Force Majeure:-

- (a) Delay in performance by the Concessionaire, Subcontractor(s), sub-licensee, agents and employees of the Concessionaire; or
- (b) Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Public Bile Sharing system.

28.7 Exceptions Applicable to the Authority

The Authority shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Concession Agreement:



- a) the expropriation, confiscation, nationalisation or requisition of the Project, Project Assets by GoHP or the Authority;
- b) the imposition of any blockade, embargo, import restrictions, rationing or allocation by the Authority or any Competent Authority; or
- c) any delay or difficulty in handing over possession of the Project Assets as a result of any intervention or directive of GoHP or Authority or any Competent Authority.

28.8 Effect of Force Majeure before the issue of Notice to Commence

Upon occurrence of any Force Majeure Event prior to the issuance of the Notice to Commence, the following shall apply:

- i) There shall be no Termination except as provided in Article 28.11.
- ii) The Compliance Date shall be extended by the period of which such Force Majeure event shall subsist and
- iii) The Parties shall bear their respective costs arising out of such Force Majeure Event.

28.9 Effect of Force Majeure after Compliance Date

Upon occurrence of any Force Majeure Event after the Compliance Date, the following shall apply:

- i) There shall be no Termination of this Concession Agreement except as provided in Article 28.11.
- ii) Where the Force Majeure Event occurs before the issue of Implementation Completion Certificate or Provisional Certificate, the dates set forth in the Project Implementation Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- iii) Where the Force Majeure Event occurs after the issuance of Implementation Completion Certificate or Provisional Certificate, the Concessionaire shall make all reasonable efforts to collect Project Revenues, but if he is unable to collect Project Revenues during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which collection of Fees remains suspended on account thereof and
- iv) All cost arising out or concerning such Force Majeure Event shall be borne in accordance with provisions of Article 28.10

28.10 Allocation of costs arising out of Force Majeure

Upon occurrence of a Force Majeure Event after Compliance Date, the cost arising out of such event shall be allocated as follows:



- i) When the Force Majeure Event is a Non-Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any cost arising out of any such Force Majeure Event;
- ii) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the Force Majeure Costs) shall be borne by the Concessionaire to the extent of Insurance Cover, and to the extent Force Majeure Costs as duly certified by the Statutory Auditors exceed the Insurance Cover, one half of the same shall be reimbursed by the Authority to the Concessionaire within 120 (one hundred and twenty) days from the date of receipt of Concessionaire's claim therefore;
- iii) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and duly certified by the Statutory Auditors shall be reimbursed by the Authority to the Concessionaire in one lump sum not later than 120 (one hundred and twenty) days after the end of the Force Majeure Event and receipt of notice by the Authority to that effect.

For avoidance of doubt, “**Force Majeure Cost**” shall not include loss of fee revenues or any debt repayment obligations but shall include interest payments on such debt, O & M expenses/ increase in cost of Implementation Works on account of inflation and all other costs directly attributable to the Force Majeure event.

28.11 Termination Notice for Force Majeure Event

If the Force Majeure Event subsists for a period of 270 (two hundred seventy) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion terminate this Concession Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever, save and except as per the provisions of in Article 28.12.

28.12 Termination Payment for Force Majeure Event

28.12.1 Upon Termination of this Concession Agreement pursuant to Article 28.11, the Authority shall return the Performance Security to the Concessionaire in full after deduction of any due payable by the Concessionaire under this Agreement, within 30 (thirty) days of actual or constructive transfer of the Project Assets by the Concessionaire to the Authority free from all encumbrances, charges and liens whatsoever, unless expressly directed by the Authority otherwise.

28.13 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.



28.14 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;
- (b) 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
- (c) 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.



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 on account of User Charges, debt repayment obligations, or other consequential losses, 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 Compensation to be in addition

Compensation payable under this Article 29 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

29.4 Mitigation of costs and damage

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.



Article 30: Deleted (Suspension of Concessionaire's Rights)



Article 31: Termination

31.1 Concessionaire Event of Default

Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure and if not cured within the “Cure Period” which shall be 60 (sixty) days from the date of notice of default (the “Default Notice”) from the Authority, shall be considered for the purpose of this Agreement as Event of Default of the Concessionaire (“Concessionaire Events of Default”):

- i) The Concessionaire is in breach of its obligations under this Concession Agreement or any other Project Agreements that has caused a Material Adverse Effect upon the Authority or the Project.
- ii) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- iii) The Concessionaire fails to meet the progressive milestones set forth in the Project Implementation Schedule or amendments thereto as provided for in this Concession Agreement.
- iv) The Concessionaire abandons the Project or manifests intension to abandon the Project or any of its material obligations as provided under this Agreement, without the prior written consent of the Authority.
- v) The Concessionaire not issuing, renewing, replacing or providing the Performance Security in accordance with the terms of this Agreement
- vi) The Concessionaire fails to pay the Annual Concession Fee instalment due and/or interest due for the delay in payment of the instalment, as applicable and as provided in article 23.1.2 of this Agreement.
- vii) The Concessionaire does not comply with its Minimum Equity Requirements under Articles 5.3 and 7.1.
- viii) The Concessionaire fails to achieve Financial Close within the stipulated time period of 90 days from the Proposal Acceptance Date, unless expressly extended by the Authority.
- ix) an Escrow Default has occurred, and the Concessionaire fails to cure the default within the applicable Cure Period in accordance with the terms of this Agreement;
- x) A Senior Lender recalls its loan under the Financing Documents on the ground that the Concessionaire has defaulted on its obligations to the Senior Lender under the Financing Documents.
- xi) Upon occurrence of a Financial Default, the Lender’s Representative has by notice required the Authority to undertake Termination and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;



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- xii) The Concessionaire creates any Encumbrances, charges or lien in favour of any Person, save and except as otherwise expressly permitted in this Concession Agreement.
 - xiii) The Concessionaire fails to complete the Project within the Implementation Period.
 - xiv) Project COD does not occur on or before the Scheduled Completion Date;
 - xv) Any transfer pursuant to law of either (a) the rights and/or obligations of the Concessionaire under this Concession Agreements and/ or (b) all or material part of the assets or undertaking of the Concessionaire; except (i) to the extent permitted by this Concession Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Concessionaire to perform its obligations under this Concession Agreement.
 - xvi) In the event a resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
 - xvii) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
 - xviii) occurrence of any Insolvency Event;
 - xix) The Concessionaire fails to comply with the provisions laid down in Article 7.1;
 - xx) 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;
 - xxi) The Concessionaire is in breach of any representation or warranty made under this Agreement or it repudiates this Concession Agreement.
 - xxii) the Concessionaire issues Termination Notice in violation of the provisions of this Agreement;
 - xxiii) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by court, except if such petition is for the purpose of amalgamation or re-implementation, provided that as part of such amalgamation and re-implementation, the 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 Project Agreements, and provided that:
 - (a) The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under this Agreement and Project Agreements;



- (b) The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Concessionaire as on the Compliance Date and
- (c) All the Project Agreements remain in full force and effect.
- xxiv) The Concessionaire assigns this Concession Agreement or any of its rights or obligations under the Concession Agreement, where such assignment is not in accordance with the terms and conditions of the Concession Agreement.
- xxv) 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;
- xxvi) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- xxvii) a Change in Ownership has occurred in breach of the provisions of Article 5.3;
- xxviii) 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;
- xxix) the Concessionaire repudiates this Agreement or otherwise takes an action or evidences or conveys an intention not to be bound by the Agreement;
- xxx) the Concessionaire commits a default in complying with any other provisions of this Agreement if such default causes or may cause a Material Adverse Effect on the Authority.
- xxxi) The Concessionaire fails to share the Interfacing Protocols in accordance with Clause 15.3 of this Agreement.
- xxxii) The Concessionaire fails to settle the User accounts or reconcile the User accounts within the timeframe stipulated in the Business Rules or is in violation of any of the Business Rules.
- xxxiii) The Concessionaire fails to cooperate with other Service Providers appointed by Authority or other Government Departments or Agencies in the integration of the Service Providers' Systems with the Comprehensive Digital Payment System and settlement is delayed on account of such failure.
- xxxiv) The Concessionaire repeatedly fails breaches the Service Level Requirements set forth in Schedule – C of this Agreement, which has Material Adverse Effect on Authority or Comprehensive Digital Payment System.



xxxv) In the event of Damages, Instalments of Annual Concession Fees and interest thereof, and other outstanding payments to the Authority exceeds the value of Performance Security.

31.2 Termination by Authority

Without prejudice to any other right or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Event of Default, the Authority shall be entitled to terminate this Agreement by following the procedure set forth hereinafter:

- a. The Authority shall be entitled to issue a Termination Notice to the Concessionaire. The Termination Notice shall grant the Concessionaire 30 (thirty) days (the “Termination Period”) to make a representation and if during the Termination Period the Concessionaire takes suitable steps to remedy the default/situation, the Authority shall be entitled to withdraw the Termination Notice.
- b. The Authority shall be entitled to terminate this Concession Agreement with no liability of the Concessionaire or the Senior Lender, save and except as provided in Article 31.6 hereof.

31.3 The Authority Events of Default

Each of the following events or circumstances, to the extent not caused by a default of the Concessionaire or Force Majeure, and if not cured within the Cure Period, which shall be 60 (sixty) days (unless provided otherwise in this Concession Agreement), from the date of notice of default (the “**Default Notice**”) from the Concessionaire, shall be considered for the purpose of this Agreement as Event of Default of the Authority (“**The Authority Event of Default**”):

- (i) The Authority is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Concessionaire or the Project and this breach is not cured within a Cure Period of 90 days from the date of Default Notice.
- (ii) The Authority is in breach of any representation or warranty made under this Agreement or it repudiates this Concession Agreement.
- (iii) GoHP or any Competent Authority have by an act of commission or omission created circumstance that has a Material Adverse Effect on the Concessionaire, and the Authority has failed to compensate the Concessionaire for the same through an adjustment to the Annual Concession Fee/ Concession Period.

31.4 Termination by Concessionaire

Without prejudice to any right or remedy, which the Concessionaire may have under this Agreement, upon occurrence of an Authority Event of Default, the Concessionaire shall be entitled to issue a Termination Notice to the Authority. The Termination Notice shall grant the Authority a further period of 30 (thirty) days (the “Termination



Period”) to make a representation and if, during the Termination Period the Authority takes suitable steps to remedy the situation, the Concessionaire shall be entitled to withdraw the Termination Notice. If the Termination Notice is not withdrawn within the Termination Period, this Concession Agreement will automatically terminate on the expiry of the Termination Period.

31.5 Termination Payment for Termination by Concessionaire

Upon Termination by the Concessionaire on account of the Authority Event of Default under Articles 31.3, the Authority shall return the Performance Security to the Concessionaire in full after deduction of any due payable by the Concessionaire under this Agreement, within 30 (Thirty) days of fulfilment of Divestment Requirements in accordance with Article 32 of this Agreement and repair or rectification of all defects and deficiencies in accordance with Article 33 of this Agreement. In the event the Concessionaire defaults on complying with the Divestment Requirements or its liabilities for defects after Termination, the Authority shall be entitled to recover all costs incurred by it towards fulfilment of the same from the Performance Security.

31.6 Termination Payment for Termination by Authority

Upon Termination by the Authority on account of the Concessionaire Event of Default, the Authority shall encash the Performance Security in full.

The Concessionaire shall fulfil the Divestment Requirements in accordance with Article 32 of this Agreement and repair or rectify all defects and deficiencies in accordance with Article 33 of this Agreement.

31.7 Deleted (Certain limitations on Termination Payment)

31.8 Other rights and obligations of the Authority

Upon Termination of this Agreement, the Authority shall:

- (i) Take possession and control of the Project Assets forthwith;
- (ii) Take possession and control of all materials, stores and equipment;
- (iii) Restrain the Concessionaire and any person claiming through the Concessionaire from accessing the Comprehensive Digital Payment System or any of the Project Assets;
- (iv) Require the Concessionaire to comply with the provisions relating to Article 32 and
- (v) Succeed upon election by the Authority, without 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 Third Party contractors under the Project Agreements 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, it is hereby agreed and the Concessionaire hereby acknowledges 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.

31.9 Obligations of Concessionaire upon Termination

Upon Termination of this Agreement it shall be the responsibility of the Concessionaire to do the following:

- (i) Hand over the Project Assets and licenses of Intellectual Properties to the Authority, along with the balance/unused float amount;
- (ii) Provide all relevant data, database, design and drawings, records and information, accede to all reasonable requests from the Authority in connection with taking over the Project Assets.
- (iii) Cease all further Implementation Works and Services, except for such essential Implementation Works and Services as may be necessary and as instructed by Authority, for the purpose of making safe, protecting or continuing operations on the Project.
- (iv) Hand over all the Implementation Documents, Equipment, Materials and Project Assets; repatriate all its staff and labour from the Project, except for such essential equipment, Project Assets, staff and labour as may be necessary and as instructed by Authority, for the purpose of making safe, protecting or continuing operations on the Project.
- (v) Co-operate with the Authority, its authorized personnel and representatives/agents/nominees, other Government Agencies and the Independent Expert and comply with all reasonable requests thereof, including the execution of any documents and other actions, provided the Authority bears any reasonable Costs incurred by the Concessionaire relating thereto.

(vi) **Service Continuity**

Notwithstanding this Article 31 and Article 32, upon Termination, the Concessionaire shall comply with and conform to the following service continuity requirements (“**Service Continuity Requirements**”):

- (a) submit to the Authority, a plan outlining the handover procedures, training of authority staff and plan for management of human resources (the “**Service Continuity Plan**”); and
- (b) continue operation of the Project and providing Services for a period of 180 (one hundred and eighty) days from the date of Termination of this Agreement or any other period mutually agreed between the Parties (the “**Service Continuity**”). All Obligations of the Concessionaire, Service Level Requirements and Damages applicable before Termination shall continue be applicable during the aforementioned 180 days period.



31.10 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, 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 locations and particulars of all the Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Comprehensive Digital Payment System and the Project Assets free and clear of all Encumbrances;
- (c) cure all Comprehensive Digital Payment System of all defects and deficiencies so that the Comprehensive Digital Payment System compliant with the Specifications and Standards set forth in Schedule – D; provided that in the event of Termination during the Implementation Period, all Comprehensive Digital Payment System shall be handed over on ‘as is where is’ basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, licenses of Intellectual Property and other licences pertaining to the Comprehensive Digital Payment System and its design, Implementation, operation and maintenance, including all programmes and manuals pertaining thereto, and complete ‘as built’ designs and drawings as on the Transfer Date at no cost to the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that the licenses of Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, Implementation, operation and maintenance of the Comprehensive Digital Payment System 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;
- (e) transfer and/or deliver all data related to the Comprehensive Digital Payment System in the possession of the Concessionaire from COD;
- (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 Comprehensive Digital Payment System, including manufacturers’ warranties in respect of any equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or the Nominated Entity, as directed by the Authority;
- (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 Comprehensive Digital Payment System and, free from all Encumbrances, absolutely unto the Authority or the Nominated Entity, as directed by the Authority.

- (h) Handover the balance/unused float amount in the various payment instruments under the Comprehensive Digital Payment System;
- (i) Ensure that all payment methods under the Comprehensive Digital Payment System are interoperable with the Nominated Entity's systems.
- (j) provide all the support to the Authority or the Nominated Entity as the case maybe, during the transition period of 180 (one hundred and eighty) days during which the users shall use float amount remaining under individual payment mechanism under the Comprehensive Digital Payment System. For the avoidance of doubt, all Obligations of the Concessionaire, Service Level Requirements and Damages applicable before Termination shall continue be applicable during the aforementioned 180 days period.
- (k) handover instances and APIs related to the Comprehensive Digital Payment System and related software/systems, to the Authority and the Nominated Entity upon instruction from the Authority.
- (l) provide the same level of access and rights to the Nominated Entity as the Authority, in/to the Comprehensive Digital Payment System, upon instruction of the Authority.

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 giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

32.2 Inspection and cure

32.2.1 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 Expert shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Specifications and Standards set forth in Schedule-D, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, 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 Comprehensive Digital Payment System.
- 32.3.2 The Parties shall provide to each other, immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, 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. The Concessionaire shall ensure that the smart card payment system and other digital payment mechanism under the Comprehensive Digital Payment System is interoperable with new service provider during the transfer.

32.4 Deleted (Vesting Certificate)

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 Comprehensive Digital Payment System in favour of the Authority upon Termination.
- 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 Comprehensive Digital Payment System for a period of 180 (One Hundred and Eighty) 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 Expert in the Comprehensive Digital Payment System during the aforesaid period. In the event that 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 Comprehensive Digital Payment System conform to the Specifications and Standards set forth in Schedule-D. 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 Performance Security.

33.2 Deleted (Retention in Escrow Account)



PART VI: OTHER PROVISIONS

Article 34: Assignment and Charges

34.1 Restrictions on assignment and charges

34.1.1 Subject to the provisions of Clauses 34.2, 34.3 and 34.4, 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 Comprehensive Digital Payment System;
- (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 Comprehensive Digital Payment System, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Comprehensive Digital Payment System; and
- (c) liens or encumbrances required by any Applicable Law.

34.3 Deleted (Substitution Agreement)

34.4 Assignment by the Authority

34.4.1 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 of the Authority's then outstanding obligations under this Agreement.

34.4.2 Any assignment under this Article 34 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.



Article 35: Change in Law

35.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs.50,00,000 (Rupees fifty lakh) and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (Ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs.50,00,000 (Rupees fifty lakh) and 0.5% (zero point five per cent) of the Realisable Fee Charges in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (Ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount



specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.3 Protection of NPV

Pursuant to the provisions of Clauses 35.1 and 35.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

35.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 35 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

35.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users for and in respect of the capacity utilised by such Users.



Article 36: Liability and Indemnity

36.1 General indemnity

36.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority 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 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 will 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 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 from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages 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 Facility, 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 licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence 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. In the event that 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 Defence 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 defence 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 defence. 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 authorised in writing by the Indemnifying Party; or
- (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 defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence 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 defences 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 defence 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

37.1 Deleted (Licensee rights)

37.2 Access rights of the Authority and others

37.2.1 The Concessionaire shall allow free access to the Comprehensive Digital Payment System at all times for the authorised representatives of the Authority, Senior Lenders, and the Independent Expert, and for the persons duly authorised by any Government Instrumentality to inspect the Comprehensive Digital Payment System 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 Deleted.

37.3 Deleted (Property taxes)



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.

38.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either Party may require such Dispute to be referred to Managing Director 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 subject to the provisions of the Arbitration and Conciliation (Amendment) Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 or as amended by the Arbitration and Conciliation (Amendment) Act, 2019 and any statutory modification or re-enactment thereof as in force from time to time.

The venue of such arbitration shall be Dharamshala, Himachal Pradesh 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. In the event of delay in complying with the Award (forty-five) days beyond the date of Award the Party responsible for such delay shall pay compounded interest at rate equal to 5% (five percent) above the Bank Rate, to the other Party.

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.

38.4 Adjudication by a tribunal or Regulatory Authority or Commission

38.4.1 In the event of constitution of a statutory tribunal 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 tribunal in accordance with the Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

38.4.2 In the event of constitution of a statutory Regulatory Authority or Commission 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 41.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly.

38.4.3 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 High Court, 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 Agreement and the Maintenance Manual, the Maintenance Programme (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and its offices related to the Comprehensive Digital Payment System in Dharamshala or in Himachal Pradesh. The Concessionaire shall prominently display at the Concessionaire’s Registered Office and its offices related to the Comprehensive Digital Payment System in Dharamshala or in Himachal Pradesh, 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 and security of the Comprehensive Digital Payment System, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office and its offices related to the Comprehensive Digital Payment System in Dharamshala or in Himachal Pradesh. 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 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 39 .1 and 39 .2, but subject to the Applicable Laws, 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 at the offices related to the Comprehensive Digital Payment System in Dharamshala or in Himachal Pradesh, where it shall keep a register (the “**Complaint Register**”) open to the officials of the Authority and Users at all times for recording of complaints by such persons (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Comprehensive Digital Payment System so as to bring it to the attention of all Users.
- 40.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 40.1.3 Without prejudice to the provisions of Clauses 40.1.1 and 40.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

40.2 Redressal of complaints

- 40.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 40.2.2 Within 7(seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Expert 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, it may refer the matter to the competent forum for its disposal in accordance with Applicable Law, and advise the Complainant to pursue the complaint 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 at Dharamshala, Himachal Pradesh 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 judgement 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 judgement that may be made or given in connection therewith).

41.3 Depreciation

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Comprehensive Digital Payment System 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 the Applicable Laws.

41.4 Deleted (Delayed payments)

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 authorised 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 Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the Implementation, operation or maintenance of the Comprehensive Digital Payment System 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, the 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 Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

41.10 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 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.

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 set out below or to such other 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 Dharamshala 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 Managing Director cum Chief Executive Officer, Dharamshala Smart City Limited, Dharamshala, Himachal Pradesh 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 Dharamshala it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier.

The Managing Director cum Chief Executive Officer

Dharamshala Smart City Limited

Old HIMUDA Building, Chilgari, Dharamshala – 176215,

Himachal Pradesh, India

Email:dscltender@gmail.com

- (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 Confidentiality

- (a) The "**Receiving Party**" (either the Authority or the Concessionaire) shall keep confidential and shall not, without the written consent of the other party to this Agreement ("**the Disclosing Party**"), divulge to any third party any documents, data, or other information of a confidential nature ("**Confidential Information**") connected with this Agreement, and furnished directly or indirectly by the Disclosing Party prior to or during performance, or following termination, of this Contract. Notwithstanding the generality of the foregoing, Confidential Information shall include any proprietary or confidential information of Authority relating to the Comprehensive Digital Payment System or services provided under the Concession Agreement in relation thereto and information relating to Authority's business or operations.
- (b) Disclosing Parties shall not without Receiving Parties' prior written consent use, copy or remove any Confidential Information, except to the extent necessary to carry out Disclosing Parties obligations hereunder. Upon expiry of the Concessionaire Agreement, Parties shall return materials containing Receiving Parties Confidential Information.
- (c) Sub-Article (a) and (b) shall not apply in the following circumstances:
 - (i) any disclosure required by Applicable Laws or in respect of information already in the public domain;
 - (ii) any disclosure required by any applicable stock exchange listing rule; and
 - (iii) disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.
- (d) Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.
- (e) In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and co-operate with other Party's efforts to obtain confidential treatment of material so disclosed.



- (f) Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.
- (g) Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive 3 (three) years from Termination.

The Obligations of Parties related to Confidential Information, however shall not apply to the information which;

- (i) now or hereafter enters the public domain through no fault of the Receiving Party;
- (ii) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party;
- (iii) Otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.

41.17 Stamp Duty

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Concessionaire.

41.18 Ownership of the Project, Project Assets and Intellectual Property Rights

41.18.1 Ownership of the Comprehensive Digital Payment System

- (a) The ownership of all Project Assets including hardware, equipment, goods and all Software installed and commissioned and forming part of the Comprehensive Digital Payment System shall remain vested with the Concessionaire during the Concession Period.
- (b) In the event of early Termination, the ownership of all the Project Assets including hardware, equipment, goods, customized hardware and Software, standard software licenses, Third party software licenses forming part of the Comprehensive Digital Payment System, software including licenses of proprietary Software and hardware shall be transferred to the Authority for the duration of remaining Concession Period at no additional cost to the Authority. The Authority reserves the right to transfer the Project Assets to the Nominated Entity on lease/license or ownership basis to the Nominated Entity.
- (c) The software licenses of all third-party software and standard hardware shall be transferred to the Authority upon early Termination at no additional cost to the Authority.



(d) The Concessionaire shall remain sole owner of the database designed, developed and maintained by the Concessionaire all times during the Concession period. The Concessionaire shall own any and all data created out of the Comprehensive Digital Payment System at all the times, except in the event of early Termination, in case of which the Concessionaire shall transfer all the data and the complete Database without withholding such data from Authority for any reason whatsoever. In the event of early Termination of the Concession Agreement, the Concessionaire shall not have any claim on and for such data and shall not for any reason withhold such data from Authority.

(e) The Concessionaire shall exercise all due caution to protect and maintain the data created out of Comprehensive Digital Payment System.

(f) The Concessionaire shall not share, sell or in any manner use the data created by Concessionaire out of the Comprehensive Digital Payment System otherwise than in accordance with the terms of the Licensee Agreement.

41.18.2 Intellectual Property Rights

(a) The Intellectual Property Rights in all standard and proprietary hardware and Software shall remain vested in the owner of such rights. The Authority shall have rights to use the same during the Concession Period exclusively for purposes of effective implementation, operation and maintenance of the Comprehensive Digital Payment System Project. Authority shall not assign license, or otherwise voluntarily transfer its contractual rights to any other third party provided such assignment is required for performance of the Comprehensive Digital Payment System.

(b) The Intellectual Property Rights of customized hardware/Software which is developed and installed exclusively for the Comprehensive Digital Payment System shall remain with the Concessionaire ~~during~~ at all times during the Concession Period.

(c) Licenses of Intellectual Property of Project Assets and the Comprehensive Digital Payment System shall be provided to the Authority on the Transfer Date for the remaining Concession Period at no cost to the Authority.

(d) The Concessionaire shall not assign license, or otherwise voluntarily transfer its contractual rights to any other third party without approval from the Authority.

(e) In the event of Termination, the Authority shall have rights to use the Licenses of Intellectual Property Rights of all standard and proprietary hardware and Software and the Comprehensive Digital Payment System or any part thereof, during the remaining Concession Period exclusively for purposes of effective implementation, operation and maintenance of the Comprehensive Digital Payment System Project and may, for the same purpose assign such rights to Nominated Entity for the performance of the Comprehensive Digital Payment System.



(f) For purposes of this Agreement and the Concessionaire Agreement the terms “Software”, and “Software Programs/ Software License” shall include instances of the Comprehensive Digital Payment System or any part thereof, any and all related design concepts and ideas, specifications, documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to any of the foregoing related to the Comprehensive Digital Payment System. The terms “firmware” and “hardware” shall include without limitation the designs, drawings, specifications, custom designed electronic devices, documentation, technical information and all corrections, modifications, additions, improvements and enhancements to any of the foregoing related to the Comprehensive Digital Payment System.

(g) The Concessionaire may in its sole discretion allow the marketing to a third party, any and all product(s) developed for the Comprehensive Digital Payment System. Provided however that such marketing shall be done only after prior consultation with Authority and upon written approval from the Authority.

41.19 Training of Authority Personnel

(a) The Concessionaire shall be responsible for the selection, engagement and training of its personnel in all work with regard to the performance of this Agreement.

(b) The Concessionaire shall also offer training program at its own costs to Authority staff and Authority nominated persons, and enable them to understand the operation of Comprehensive Digital Payment System, specifically with regards to functioning of POS machines, validators, smart card top-up, POS Operation, safety of Comprehensive Digital Payment System equipment etc.

(c) The Concessionaire shall prepare Standard Operating Procedures for every situation including unique situations with regards to functioning of the Comprehensive Digital Payment System and train its own/Authority’s staff.

41.20 Outsourcing/Sub-Contracting

(a) Concessionaire is permitted to outsource the work upon approval from the Authority.

(b) In the event of failure or breach of any sub-contractor or vendor of the Concessionaire in performance of its tasks and functions, the Authority shall have the right to have the services of such sub-contractor or vendor terminated and the Concessionaire shall forthwith and at no extra cost to the Authority, replace such sub-contractor or vendor or may even undertake to execute the task by itself.

(c) Outsourcing or Sub-contracting does not absolve the Concessionaire from its obligations.



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.



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;

“**Affected Party**” shall have the meaning set forth in Clause 28.1;

“**Agreement**” or “**Concession Agreement**” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**API**” means Application Programming Interface;

“**Appendix**” shall have the meaning set forth in Clause 10.3.1;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, 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, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the Implementation, operation and maintenance of the Comprehensive Digital Payment System and Project Assets under it, during the subsistence of this Agreement;

“**Appointed Date**” means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 and shall include any statutory modifications to or any re-enactment thereof, as in force from time to time;

“**Associate**” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a



company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Authority Default**” shall have the meaning set forth in Clause 31.2.1;

“**Authority Representative**” means such person or persons as may be authorised 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 fulfil 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;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {selected Concessionaire/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs.3,00,000 (Rupees Three Lakhs), in accordance with the Request for Qualification cum Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“**Business Rules**” means the set of rules, policies, procedures drafted by the Concessionaire and accepted by the Authority for implementing, operating and maintaining the Comprehensive Digital Payment System.

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Clause 15.1;

“**Change in Law**” means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement 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 date of Bid; or
- (e) 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 {existing promoters/selected Concessionaire/Consortium Members}, together with {its/their} Associates in the total Equity to decline below (i) 51% (fifty one percent) thereof during the Implementation Period and a period of 2 (two) years following COD, and (ii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {existing promoters/selected Concessionaire/ any Consortium Member} to the total Equity, if it occurs prior to the first anniversary of COD, shall constitute Change in Ownership;

“**Change of Scope**” shall have the meaning set forth in Clause 16.1;

“**Company**” means the company acting as the Concessionaire under this Agreement;

“**Completion Certificate**” shall have the meaning set forth in Clause 14.2;

“**Concession**” shall have the meaning set forth in Clause 3.1.1;

“**Concessionaire**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Concession Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**Concessionaire Default**” shall have the meaning set forth in Clause 31.1.1;

“**Conditions Precedent**” shall have the meaning set forth in Clause 4.1.1;

{“**Consortium**” shall have the meaning set forth in Recital (B);}

{“**Consortium Member**” means a company specified in Recital (B) as a member of the Consortium;}

“**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 Implementation, operation and/or maintenance of the Comprehensive Digital Payment System 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:

- (a) 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;



(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) 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 Expert hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Expert to accord their approval;

“**DBFOO**” or “**Design, Build, Finance, Own and Operate**” shall have the meaning set forth in Recital (A);

“**Damages**” shall have the meaning set forth in Sub-clause (x) of Clause 1.2.1;

“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) 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;
- (b) 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
- (c) 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 under the Financing Agreements;

“**Development Period**” means the period from the date of this Agreement until the Appointed Date;

“**Dispute**” shall have the meaning set forth in Clause 38.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes 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 Assets as set forth in Schedule-H, and shall include ‘as built’ drawings of the Comprehensive Digital Payment System;

“**EPC Contract**” means the engineering, procurement and Implementation contract or contracts entered into by the Concessionaire with one or more Contractors for, *inter alia*, engineering and Implementation of the Project in accordance with the provisions of this Agreement;

“**Emergency**” means a condition or situation that is likely to endanger the security of the individuals on or about the Comprehensive Digital Payment System, including Users thereof, or which poses an immediate threat of material damage to any of the Comprehensive Digital Payment System;

“**Encumbrances**” means, in relation to the Comprehensive Digital Payment System or 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 Comprehensive Digital Payment System, where applicable herein but excluding utilities referred to in Clause 11.1;

“**Equity**” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Support;

“**Escrow Account**” means and 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 set forth in clause 25.1.2;

“**Escrow Bank**” shall have the meaning set forth in clause 25.1.1;

“**Escrow Default**” shall have the meaning set forth in Schedule-R;

“**Financial Close**” means the fulfilment of all Conditions Precedent to the initial availability of funds under the Financing Agreements;



“**Financial Default**” shall have the meaning set forth in Schedule-Q;

“**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, Subordinated Debt and Support, 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 5.2.2;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 28.1;

“**GoHP**” means the Government of the state of Himachal Pradesh in India;

“**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;

“**Government**” means the Government of the State;

“**Government Instrumentality**” means any department, division or sub-division of the Government of India 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 of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Facility or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“**Implementation Period**” means the period beginning from the Appointed Date and ending on COD;



“**Implementation Works**” means all works and things necessary to implement and complete the Comprehensive Digital Payment System in accordance with 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 Expert**” shall have the meaning set forth in Clause 21.1;

“**Indirect Political Event**” shall have the meaning set forth in Clause 28.3;

“**Insolvency Event**” in respect of a Party means:

(a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party’s ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 ("Code"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect happen under the provisions of the Companies Act, 1965 or the Companies Act, 2013 or its equivalent or the Code in relation to the winding up of the company;

“**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 Clauses 26.1 and 26.3 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, programmes 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 (B);

“**Lenders’ Representative**” means the person duly authorised 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;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 17.3;

“**Maintenance Programme**” shall have the meaning ascribed to it in Clause 17.4.1;

“**Material Adverse Effect**” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“**Nominated Entity**” means an entity selected by the the Authority for substituting the Concessionaire, in the event of Termination, in accordance with the provisions of this Agreement;

“**Non-Political Event**” shall have the meaning set forth in Clause 28.2;

“**O&M**” means the operation and maintenance of the Comprehensive Digital Payment System and includes all matters connected with or incidental to such operation and maintenance, 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) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, re-Implementation, 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 set forth in Clause 18.3;

“**Operational Fleet**” means the fleet of two-wheelers available for rent which shall not be less than 300 (three hundred).



“**Operation Period**” means the period commencing from COD and ending on the Transfer Date;

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 27.2.1;

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

“**Performance Security**” shall have the meaning set forth in Clause 9.1;

“**Political Event**” shall have the meaning set forth in Clause 28.4;

“**Project**” shall have the meaning as set forth in Recitals, including Project Assets;

“**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 any agreement for procurement of goods and services involving a consideration of up to 0.5% (zero point five percent) of the Total Project Cost;

“**Project Assets**” means all physical and other assets relating to and forming part of the Project including:

- (a) tangible assets such as smart cards; point of sale terminals; card issuing mechanism, KYC authentication hardware - workstation and biometric sensor etc.; application hosting hardware - servers, work-stations, network routers and switches etc.; licenses of proprietary hardware; other hardware associated with the Comprehensive Digital Payment System; office equipment - printer, workstation, furniture, etc.; help desk - IP phones, headphone etc.;
- (b) intangible assets such as Central Digital Payment System application, database, data, mobile application, digital payment system application, KYC authentication software application, help desk application, financial switch and clearing house, or instances thereof; licenses of software including proprietary software; and security certificates for the applications; etc.
- (c) Immovable fixtures or structures forming part of the Project;
- (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, approvals from NPCI or RBI etc. and authorisations relating to or in respect of the Project;

“**Project Completion Date**” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;



“**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 Milestones**” means the project milestones set forth in Schedule-G;

“**Provisional Certificate**” shall have the meaning set forth in Clause 14.3.1;

“**Punch List**” shall have the meaning ascribed to it in Clause 14.3.1;

“**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 Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“**Realisable Fee**” means all the user charges due and realisable under this agreement, but does not include user charges that a concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt Realisable fees shall be the amount so declared by the concessionaire on the basis of its provisional accounts and audited accounts as the case may be and in the event of the Dispute Resolution Procedure shall apply;

“**Request for Qualification cum Request for Proposals**” or “**RFQ-cum-RFP**” shall have the meaning set forth in Recital (B);

“**Revenues**” means all of the present and future funds, payment, obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Concessionaire in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Concessionaire for and in relation to any capital expenditure for creation of assets;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.3.1;

“**Scheduled Maintenance**” shall have the meaning set forth in Clause 17.4.4;

“**Scope of the Project**” shall have the meaning 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 pari-passu charge on the assets, rights, title and interests of the Concessionaire;

“**Site**” shall have the meaning 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 Comprehensive Digital Payment System, as set forth in Schedule-D, and any modifications thereof, or additions



thereto, as included in the design and engineering for the Comprehensive Digital Payment System submitted by the Concessionaire to, and expressly approved by, the Authority;

“**State**” means the State of Himachal Pradesh and “**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 statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;

“**Services**” means the provision of all the services by the Concessionaire for running a Comprehensive Digital Payment System in Dharamshala, in accordance with the provisions of this Agreement;

“**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:

- (a) 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
- (b) 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 Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 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;

“**Support**” shall have the meaning set forth in Clause 23.2.1;

“**Suspension**” shall have the meaning set forth in Clause 30.1;

“**Taxes**” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, goods and services tax, 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 Comprehensive Digital Payment System, including Services, charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

“**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, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination, for the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 31.5;

“Tests” means the tests set forth in Schedule-I to determine the completion of Comprehensive Digital Payment System in accordance with the provisions of this Agreement;

“Total Project Cost” means the capital cost incurred on Implementation and financing of the Project Capacity and shall be limited to the lowest of:

- (a) the capital cost of the Project, {less Equity Support} as set forth in the Financial Package; and
- (b) the actual capital cost of the Project upon completion of the Project {less Equity Support};

“Transfer Date” means the date on which this Agreement and the Concession hereunder is terminated by a Termination Notice;

“User(s)” shall mean the parties using the Comprehensive Digital Payment System or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws;

“Vesting Certificate” shall have the meaning set forth in Clause 32.4;

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

For and on behalf of Authority

(Name and Designation)

For and on behalf of Concessionaire

(Name and Designation)

Witness1;

Witness2;



SCHEDULES

Schedule – A: Deleted (Sites of the Project)



Schedule – B: Deleted (Development of the Comprehensive Digital Payment System)



Schedule – C: Service Level Requirements

(See Clause 2.1)

The Concessionaire shall develop an SLA (Service Level Agreement) Measurement and Monitoring System (SMMS) for measuring and reporting the SLAs. All SLA measurement and calculation of penalties shall be automated. The Concessionaire shall ensure that proposed SMMS address all the SLA measurement requirements and calculation of applicable penalties. All data related to SLAs shall be made available to the Authority for audit. It would be the responsibility of the Concessionaire to generate appropriate MIS (Management Information System) reports both in hard and soft copies to ensure accurate capturing of the work carried out during the month.

1. The Concessionaire shall implement all necessary tools to monitor SLA parameters and generate reports pertaining to availability, performance, downtime, usage, etc. and same shall be made accessible to authorized users.
2. The system should be able to generate different type of reports which will be used to track status of deployment, technical and operational SLA's
3. The SLA reports will be monitored by the authority regularly. The Concessionaire shall calculate the total penalties arising due to non-compliance of the SLA on quarterly basis.
4. The Concessionaire shall develop an SLA Measurement and Monitoring System (SMMS) for measuring and reporting the SLAs.
5. SLA tracking application should have a web-based application which can be interfaced with Integrated Command Control Centre (ICCC) application for central monitoring.
6. All SLA measurement and calculation of penalties shall be automated. Manual intervention for measurement of SLAs shall be after prior approval of authority.
7. Severity and service enhancement levels will be defined after freezing the process flows and application complexity by the Concessionaire in agreement with authority
8. The System integrator (SI) to be appointed by the Authority for ICCC project shall ensure that proposed SMMS address all the SLA measurement requirements and calculation of applicable penalties.
9. All data related to SLAs shall be made available to Authority for audit
10. The Concessionaire should provide the following helpdesk performance monitoring reports:
 - a. Details of Calls logged on weekly, monthly or any other duration as decided
 - b. Numeric and graphical representation of calls logged at Helpdesk



11. It would be the responsibility of the Concessionaire to generate appropriate MIS reports both in hard and soft copies to ensure accurate capturing of the work carried out during the month.

Although service levels shall be decided in consultation with the successful Concessionaire the key performance indicators (KPI) and the performance level expected from the Concessionaire are as follows:

Sl. No.	Performance Indicator	Below Acceptable Levels	At Acceptable Levels	Above Acceptable Levels
1.	Customer Satisfaction Index	<=75%	76-90%	=>90%
2.	Logistical errors in card personalization (wrong dispatch)	>4.00%	1.00-4.00%	<1.00%
3.	Incorrect/Failed personalization – Citizen Inconvenience	>2%	0.2%-2%	<0.2%
4.	Card validators/readers not accepting cards	>1% occurrences in a calendar month	0.2%-1%	<0.2%
5.	Errors in cashback/reward point calculations and reporting to authority	>0.5% of monthly throughput	0.1%-0.5%	<0.1%
6.	Percentage of cards issued within agreed hours of completing the card application process	<=90%	90-95%	>=95%

The above KPIs and acceptable levels are indicative and may change on the final discussion with the Concessionaire. Critical KPIs shall have financial implications in form of penalty on the Concessionaire. Indicative measurement methods for the above mentioned KPIs are provided in the table below.

Sl. No.	Performance Indicator	Measurement Methods
1.	Customer Satisfaction Index	At every customer touch point, a customer feedback needs to be recorded. The solution for this would be provided by the Concessionaire and discussed with Authority. In parallel, authority conduct independent customer survey.
2.	Logistical errors in card personalization (wrong dispatch)	Customer complaints system would pass the information to the KPI measurement system.
3.	Incorrect/Failed personalization – Citizen Inconvenience	If the wrong card is printed by FI, count of reprints need to be captured. Sum total of such



Sl. No.	Performance Indicator	Measurement Methods
		reprints can be used to monitor incorrect personalization.
4.	Card validators/readers not accepting cards	Based on customer complaints, this information should be fed into the KPI measurement system.
5.	Errors in cashback/reward point calculations and reporting	Recon reports and verification mechanisms deployed.
6.	Percentage of cards issued within agreed hours of completing the card application process	Card issuance reports and customer complaints

MIS and Reporting

Indicative reports but not limited to below

1. **Payment Scrolls** – The payment scroll MIS shall be available during custom specified dates, mode of payments and value of payments
 - a. Date of Transaction
 - b. Mode of Transaction
 - c. Value of Transaction
 - d. Smart Card Identity
 - e. Name of Remitter
 - f. Amount
 - g. AFCS Payment Reference no
 - h. Account No
 - i. Remarks as entered
2. **MIS of Statements** - The Concessionaire website shall provide MIS view of Statements without any limitation on the period. The following shall be provided
 - a. Date of Realization
 - b. Bank Transaction Remarks
 - c. Date of Transaction
 - d. Credit Amount
 - e. Debit Amount
 - f. Merchant details



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3. **Bank Statements** – The Bank website shall provide a view of Bank Statements, in their own format, without any limitation on the period
 4. **Unique Reference No. MIS** – The Bank shall provide an MIS report providing necessary details linking collection accounts with unique reference nos. The following shall be provided
 - a. Date of Transaction
 - b. Date of Realization
 - c. Amount
 - d. Name of Remitter
 - e. Unique Reference no
 - f. Bank Statement Remarks
 5. **Upload of Payment Scrolls** – The Bank shall provide the details of Time and Date of upload of payment scrolls based on duration of days as selected. The MIS report may be in the following format
 - a. Scroll Details
 - b. Date and Time of Upload
 - c. Penalties, if applicable
 6. **MIS Dashboard** – The Bank shall provide MIS dashboard displaying the following
 - a. Closing Balance in each Account
 - b. Amount eligible to be withdrawn
 - c. No. of Transactions + Value of transactions (mode-wise) for last 7 days
 - d. No. of EMDs refunded + total value for last 7 days
 - e. Status of Payment Scrolls



Schedule – D: Design and Implementation Specifications & Standards

(See Clause 2.1)

1. Design of Smart Card

- a) Detailed sample look and feel shall be submitted to the Authority for approval. The Concessionaire shall submit at least 3 (Three) different designs in discussion with the Authority.
- b) The design of the cards shall be approved by the Authority before printing/manufacturing of the card.
- c) The bidder shall consider personalisation of cards with photograph of the user as option.
- d) The bidder shall also provide chip and pin-based cards to bring better security measures for the usage of the card apart from magnetic strip.

1.1 Characteristics of Smart Cards

- a) The smart card should be compliant with all EMV/RuPAY regulations.
- b) The smart card shall comply with various ISO/IEC standards – 7810, 7811, 10373.

1.2 Print/Manufacture and Supply of the Smart Cards

- a) In the initial phase the Concessionaire shall print/manufacture and supply the cards based on the requirement estimated by the Authority which shall be 10,000. The exact split of personalised and non-personalised smart cards shall be taken after discussion with the successful bidder.
- b) After the initial phase the Concessionaire shall supply the card as per the demands of the customer and shall keep certain number of cards ready with the merchants, Lok Mitra Kendra, Agent or Agent Institution of Bharat Bill Payment System scheme or any other point of distribution of cards.
- c) The cards shall be stored securely so as to avoid any loss to any of the stakeholder.
- d) All personalised smart cards shall be issued to the citizens within 7 days. These shall be prepaid complying with the RBI regulations.
- e) Non personalised smart cards shall be issued to the tourists on immediate basis.
- f) No cost shall be borne by the Authority on print/manufacture, supply, storage and security of cards.



- g) The cards can be supplied from various touch points such as Dharamshala Airport, ISBT Dharamshala, McLeodGanj bus terminal and various other government and business agents of the selected bidder.

1.3 Personalisation Management of Smart Cards

- a) The Concessionaire shall undertake the complete responsibility of issuance, personalisation and management of smart cards.
- b) The personalisation shall include the printing/embossing the name of the user on the card along with default background design approved by the authority or that of the user's preference.
- c) The Concessionaire shall be responsible for carrying out the KYC of the customers and merchants at its own cost.
- d) The Concessionaire shall maintain all the hardware and Software required for the issuance, personalisation, etc for the smart cards.
- e) The bidder is free to issue the cards for free or charge the users. In case of loss or damage to a personalised card, the selected bidder can reissue the card on chargeable basis.
- f) The cards issued shall meet the standards of security as per the payment card industry data security standard.
- g) No cost shall be borne by the Authority for personalisation management of smart cards.

1.4 Marketing and Distribution of Smart Cards

- a) The Concessionaire shall undertake the task of popularising Dharamshala Smart Card and the entire mobile wallet – payment system with a vision to make it as the preferred choice of both citizens and tourists for making and receiving all payments.
- b) The Concessionaire shall undertake marketing of the Dharamshala Smart Card in concurrence from the Authority.
- c) The Concessionaire shall market the card with a mission to make the card as preferred choice of both citizens and tourists for all payments.
- d) The Concessionaire shall develop marketing strategies and distribution strategy for the card.
- e) The Concessionaire shall plan and acquire merchants, retailers, restaurants, hotels, etc so that the card is accepted at majority of places and popularise the usage of card.
- f) The Concessionaire shall carry out a marketing campaign at its own cost.



2. Operational Requirements of Smart Card

- a) The Concessionaire shall establish counters, point of recharges/top – ups for the issuance of card, etc. these could be at the airport, ISBT, government offices, tourist registration centre and Himachal tourism offices and hotels.
- b) The Concessionaire shall allow easy recharge of the prepaid cards up to a limit as per the norms of RBI and any other regulatory agency through various mechanisms including online bank transfer or through credit or debit cards.
- c) The smart cards shall be prepaid open loop cards and shall allow the users to transfer the balance from the card back to the source.
- d) Managing the top-ups carried out using cash at the counters and cash collection and management shall be in the scope of the Concessionaire. (Two or a single)
- e) The personalised smart cards for citizens shall be zero balance smart card. The prepaid smart cards for tourists shall require minimum balance of Rs.50 (Rupees Fifty) to top up and recharge.
- f) The Concessionaire shall provide the user with a facility to view the balance of the smart cards through SMS, mobile application or customer portal.
- g) The Concessionaire shall also setup customer service centre/helpdesks that is available to address queries/provide customer service 24 x 7.
- h) The Concessionaire shall manage the complete lifecycle of the smart card right from issuance, personalisation, top – up/recharges, renewals, including blocking/unblocking the cards and deactivating, and blocking of smart cards whether citizen or tourist smart card.
- i) The card user shall be able to make payments using these smart cards wherever the cards are accepted and also be able to make payment using a smart phone mobile application, QR code, online or through any other possible interface.
- j) The Concessionaire shall operate the project without any cost to the Authority.
- k) The Concessionaire shall keep a book of accounts detailing all the transactions done through the Comprehensive Digital Payment System.
- l) The Concessionaire shall manage the loyalty program for the citizens and tourists to provide them with better services and greater benefits.

2.1 Business Continuity Plan

The Concessionaire shall have to ensure that the business continues unhindered. The Concessionaire has to design “Control Centre System” with a backup system in high availability (all the times) mode so that risk of any outage due to hardware/Software/Connectivity failure is mitigated. The service provider has to guarantee up time of 99.9% as per the Schedule C.



2.2 SLA Monitoring

Service Level Agreement (SLA) shall be as per the Schedule C. The agreed service levels shall be monitored with automatic tools and without any human interference. Any human intervention shall require authorisation by the Authority.

The system shall generate SLA reports which shall be monitored by the Authority regularly and any penalty arising as mentioned in Schedule C due to breaching of the SLA shall be calculated and levied on monthly basis.

3. Functional Requirements

The comprehensive digital payment system (Comprehensive Digital Payment System) shall provide the tourists and citizens of Dharamshala a common digital payment mechanism for all the products and services used by them. The Comprehensive Digital Payment System is envisaged to provide payment mechanism through following channels:

- (a) A prepaid smart card – Rupay compliant which could be upgraded as contact less card in the future. The card shall conform to the regulations of RBI and adhere to the specifications of ISO/IEC. The card shall be a non – personalised or personalised card depending on the user requirement.
- (b) A debit card – RuPay/EMV compliant card that shall provide the citizens greater benefits whilst integrating payments for all the services offered by the government including utility payments.
- (c) A mobile wallet that takes care of payments using BharatQR code technology.
- (d) A web – enabled mechanism for the user to top-up/recharge prepaid card through other wallets, net banking, debit card apart from paying cash at select counters.
- (e) A mechanism to know the balance in the prepaid card.
- (f) A mechanism i.e. either through Unstructured Supplementary Service Data (USSD) or SMS that would allow users to use ordinary phone to make/collect payments.

3.1 Usage Cases

The card shall be used in various number of places and for purpose of authentication as well. The card shall be able to identify if the person is eligible for certain benefits. For instance, card for senior citizens shall allow them benefits in availing services for instance at hospital, for students it would allow certain benefits when they visit zoo or similar government run services such as library. While these would require the cards to be personalised there would be certain benefits that would have to be provided on non – personalised cards in specific restaurants, hotels, shops, malls, transportation - taxis and auto rickshaw etc.

Sr. No.	Type of usage	Type of Card
1.	Shops, Malls Restaurants, Parking	Personalised and non-personalised
2.	E-gov services and utilities payments	Personalised and non -personalised



Sr. No.	Type of usage	Type of Card
3.	Hospitals, Parks, and gardens	Personalised and non -personalised
4.	Library membership and schools, Wi-Fi hotspots	Personalised

3.2 Mobile Application and Payment Methods

- (a) The Concessionaire shall design, develop, integrate and maintain a mobile application that shall allow the user to pay through the mobile application for all the services and products.
- (b) The Concessionaire shall provide BharatQR code based QR codes to the merchants to facilitate the ease of payments apart from the POS machines.
- (c) The Concessionaire shall acquire the merchants, services, etc for facilitating ease of payments.

3.3 Design, Develop and Maintain Interoperable Smart Card Application for Payments

- (a) The Concessionaire shall design, develop and maintain interoperable smart card application.
- (b) The Concessionaire shall develop such application using open standards and avoid using any proprietary software or standards. The smart card application shall contain the following information such as:
 - i. Smart card number with unique reference. The possibility of attaching a mobile number with the smart card should be explored by the Concessionaire.
 - ii. Personalization information with unique reference.
- (c) The Concessionaire shall define the interoperable data format.
- (d) The Concessionaire shall provide all relevant documentation card specification and terminal interfaces.
- (e) In the near future E-buses within Dharamshala shall be introduced and the card shall be made compatible with the automatic fare collection system of the E-buses.
- (f) The system shall maintain an inventory of all the cards issued according to the type and user (tourist/citizen).
- (g) A daily/weekly/monthly report shall be available with the Authority on the status of the cards issued, blocked, renewed, etc.
- (h) The system shall be integrated with payment mechanism for all payments to be made for the municipal corporation including utility bills.



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- (i) The system shall be integrated with Dharamshala One City One App so that all payments can be made online through this app.

3.4 Design, Develop and Maintain Clearing House

- (a) All the charges, refunds, top-ups, etc shall be settled using this clearing house.
- (b) All the transactions carried out through the cards shall be settled by the Concessionaire as per its business rules and as per the guidelines of Reserve Bank of India.
- (c) Clearing house will be hosted, managed and secured by the Concessionaire at its own cost.
- (d) The smart card shall adhere to ISO/IEC 7816 standards for security. The card shall also meet the Payment Card Industry data security standards.
- (e) The users of the smart card shall be allowed to access their associated account details using secured mechanism. The user shall be allowed to access the details of the non-personalised card through unique card number. In case the card is brought in reuse by the FI, the details of the smart account shall be available from the date of reissuance of the card to the card holder. Post return of the card the same data shall be available for the cardholder to view/download for one year from the date of return of the card.
- (f) Security shall be provided at the point of issuance and top – up/recharges.
- (g) Both smart cards for citizens and tourists shall be secured through standard security measures for cards prescribed by RBI or any other regulating agency.
- (h) Security must be provided at all levels.
- (i) Audit trail of all access of the system by merchant, retailers, users, authorised personnel, etc shall be maintained by the Concessionaire.
- (j) No user (even highly privileged or super user) shall be allowed to edit, insert or delete any records.

3.5 Helpdesk, MIS, Documentation and Deployment of Personnel

- (a) The Concessionaire shall at its own cost deploy helpdesk and contact centre with a toll-free number to cater to the support and technical requirements of the users, merchants, etc.
- (b) The helpdesk staff shall resolve all the queries and provide technical support to all the card users and merchants, etc. in a time bound manner.
- (c) The calls/emails to the helpdesk shall be properly logged, recorded and reported. The data for such shall be shared with the Authority on daily/weekly/monthly basis.
- (d) The helpdesk shall run 24x7.
- (e) The helpdesk shall be well conversed with the services offered on the card, types of card, recharge, top – up, blocking, etc.



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- (f) The performance of the helpdesk shall be provided by the Concessionaire as a report to the Authority on regular basis. In case any deficiency is found the Authority shall ask it to rectify within a reasonable period of time.
 - (g) The Concessionaire shall provide reports on the usage of the cards based on various parameters to the Authority as and when required. This shall include daily, weekly, fortnightly or monthly reports. The reports shall cover but not limited to number of cards issued, type of cards issued, recharges done, etc. The scope of reports required may change from time to time.
 - (h) The Concessionaire shall provide complete documentation to the Authority on the initiation of the project, support, change and exit management plan.
 - (i) The Concessionaire at its own cost shall recruit, train and deploy essential manpower to run the project. The manpower shall carry out all the functions of card management (issuance may be done through select agents as well across Dharamshala), renewal, top – up, blocking, activation, etc.
 - (j) The Concessionaire shall also appoint a single point of contact (SPOC) to carry out and lead the operations of the project. The SPOC shall be authorised and competent enough to handle all the issues, sort and manage the project.



Schedule – E: Applicable Permits

(See Clause 4.1.3)

The successful bidder shall obtain necessary licences and approvals from the RBI to implement the Comprehensive Digital Payment System at its own cost. The successful bidder shall provide services on a globally accepted certification for information security/SSL.



Schedule – F: Performance Security

(See Clause 9.1)

Managing Director cum Chief Executive Officer
Dharamshala Smart City Limited
Old HIMUDA Building, Chilgari,
Dharamshala – 176215, Himachal Pradesh, India

WHEREAS:

- (A)(the “Concessionaire”) and the Dharamshala Smart City Limited having its principal offices at Old HIMUDA Building, Chilgari, Dharamshala – 176215, Himachal Pradesh, India (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on have entered into a Concession Agreement dated(the “Agreement”) whereby the Authority has agreed to the Concessionaire undertaking the Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala in the State of Himachal Pradesh on design, build, finance, own and operate (“**DBFOO**”) basis, subject to and in accordance with the provisions of the Concession Agreement between the parties.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs.12,00,000/- (Rupees Twelve Lakhs Only) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Implementation 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 Implementation 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 up to 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 of a General Manager or equivalent, 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 Implementation 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 for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, before the date of its, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.



8. The Performance Security shall remain in force and effect for a period of 3 (three) month from **the Commercial Operation Date or COD** as defined in the Agreement, for the purposes of this Guarantee, and provided the Concessionaire is not in breach of the Agreement.

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 within 60 days of the request.

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 seven years and three months from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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)

(Address)

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: Project Completion Schedule

(See Clause 12.1)

1 Project Completion Schedule

The successful bidder shall develop an implementation plan with clear timeline and dates to accomplish all the objectives of the Comprehensive Digital Payment System. The implementation plan shall include the following but not limited to:

- Design, manufacture, procurement, delivery, installation/implementation, testing, and commissioning of the Comprehensive Digital Payment System including mobile wallet, cards, and integration of payment gateway with various services and products.
- Establish an office, helpdesk, deploy personnel and carry out the tasks related to establishing Comprehensive Digital Payment System.
- Design, develop, and maintain the clearing house.
- Acquire merchants, develop BharatQR code and train the merchants.

The successful bidder shall develop a detailed project plan that will ensure that the work is completed within 6 months from the date of issue of the work order.

Project Milestone I

- Project Milestone-I shall occur on the date falling on the 90th (ninetieth) day from the Appointed Date (the “**Project Milestone-I**”).
- Prior to the occurrence of Project Milestone-I, the Concessionaire shall have completed carrying out all investigations, surveys, and developed an implementation schedule.
- Prior to the occurrence of Project Milestone-I, the Concessionaire shall have identified various merchants, areas for attracting the customers, surveyed the sites of setting up information kiosks/distribution points.
- Prior to the occurrence of Project Milestone-I, the Concessionaire shall have obtained permission from RBI/NCPI for setting up the card payment service.

Project Milestone II

- Project Milestone – 2 shall occur on 136th day from the appointed date.
- Prior to the occurrence of Project Milestone – II, the Concessionaire shall have completed development of the Comprehensive Digital Payment System, clearing house, QR code, etc.
- Testing of the application to meet the set operational standards.
- The Concessionaire shall have set up helpdesk/personnel to train the merchants and acquire the merchants.



- Acquisition of the merchants, training of the merchants, etc.

Project Milestone – III

- Project Milestone – III shall occur on 181st Day from the appointed date.
- Prior to the occurrence of the Project Milestone – III the Concessionaire shall have completed the testing of the application, dry run of the application, dry campaign to acquire the merchants.
- The system shall be ready to Go – live

Scheduled Completion Date

The Scheduled Completion Date shall occur on the 183rd (one hundred and eighty third) day from the Appointed Date.

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

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: (Deleted) Drawings



Schedule – I: Tests

(See Clause 14.1.2)

Acceptance Testing of Concessionaire's System

The objective of testing is to ensure that the entire system performs as per requirements mentioned in RFQ-cum-RFP. The testing objectives will have the following dimensions – testing in technical, functional and operational aspects:

- Testing on Technical Aspects
- Testing on Functional Aspects
- Testing on Operational Aspects
 - a. The testing will be done at the test environment of authority or the Concessionaire as mutually agreed.
 - b. The Concessionaire shall provide requisite technical and operational support for the testing. Specifically, the Concessionaire has to take specific efforts to ensure that all Smartcard based payment, e-Payment transactions, QR-code based payments, etc are done in a safe and secured manner as it is the norm for all such e-Payment transactions.
 - c. The Concessionaire has to complete one round of System Integrated testing in the testing environment before taking the solution for Use Acceptance Testing (UAT). Under this testing the Concessionaire has to simulate all the functions including payment transactions, upload of payment scrolls, refunds, MIS generation etc. The Methodology of Simulation and Testing has to be part of the Technical Presentation.
 - d. The Concessionaire shall obtain the sign-off from authority or its nominees on testing approach and plan.
 - e. The Concessionaire shall support testing of the solution based on the approved test plan and criteria; document the results and shall fix issues observed during testing.
 - f. It is the responsibility of the Concessionaire to ensure that Smart Card based payment, e-Payment services, QR-code based payment provided by them meet all requirements specified in the RFP. The responsibility of testing the system is with the Concessionaire.
 - g. The Concessionaire shall ensure all systems are appropriately tested in the staging area and are applied on live instance only after such comprehensive testing.



Annex – I of Schedule I: Type Tests

If the Independent Expert determines that for discharging its duties and functions under this Agreement, it requires any Tests to be performed, it may by notice require the Concessionaire to conduct or cause to be conducted such Tests forthwith at the Concessionaire's own cost or expense. Upon receiving a requisition to this effect, the Concessionaire shall promptly conduct such Tests and furnish the results of the Tests to the Independent Expert. Such tests shall include but not limited to

- Integration testing
- User Acceptance Testing
- Functionality testing
- Load testing
- Regression test
- OS security testing
- Vulnerability and penetration testing
- Web security testing
- Admin and User Access testing
- Secure socket layer testing

Additional Tests

For determining that works conform to the Specifications and Standards, the Authority/Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency as desired by the Authority/Independent Expert and in accordance with Good Industry Practice for quality assurance.



Schedule – J: Completion Certificate

(See Clauses 14.2 & 14.3)

- 1 I/We, (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Agreement dated (the “**Agreement**”) for the Project of Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala on Public Private Partnership 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 Assets with the provisions of the Agreement, and I/We am/are satisfied that the Facilities can be safely and reliably placed in commercial service of the Authority and the users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project Assets have been completed, and are ready for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT EXPERT by:

(Signature)

(Name)

(Designation)

(Address)



PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Agreement dated (the “**Agreement**”), for the Project of Designing, Implementing and Operating a Comprehensive Digital Payment System in Dharamshala on Public Private Partnership Basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the Project Assets of the Project to determine compliance thereof with the provisions of the Agreement.
- 2 Implementation Works forming part of the Project Asset of the Project that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)[§] I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Assets of Project, pending completion thereof.
- 3 In view of the foregoing, I/We am/are satisfied that the Project Assets of the Project can be safely and reliably placed in commercial service of the Authority and the users thereof, and in terms of the Agreement, the Project Assets of the Project thereby provisionally ready for entry into commercial operation on this the day of 20....

ACCEPTED, SIGNED, SEALED AND DELIVERED
For and on behalf of
Concessionaire by:

(Signature)
(Name and Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
INDEPENDENT EXPERT by:

(Signature)
(Name and Designation)
(Address)

[§]May be struck out if not applicable. Also strike out other parts which are not applicable.



Schedule – K: Deleted (Maintenance Requirements)



Schedule – L: Deleted (Safety Requirements)



Schedule – M: Selection of Independent Expert

(See Clause 21.1)

1 Selection of Independent Expert

- 1.1 The Authority nominates its Project Management Consultant (the “PMC”), appointed by it for assisting in Designing, Developing, Managing, and Implementing Smart City Project under Smart City Mission, as the independent consultant under this Agreement (the “**Independent Expert**”), until the expiry of the contract between the Authority and the PMC or the achieving of COD, whichever is earlier.
- 1.2 The Authority, in the event of termination of an Independent Expert appointed shall appoint another firm, that it deems capable, 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 Expert shall substantially conform to Schedule-N.

3 Deleted (Fee and expenses)

- 3.1 The Authority, in the event of termination of PMC as the Independent Expert and appointment of another firm as Independent Expert, in determining the nature and quantum of duties and services to be performed by the Independent Expert, other than the PMC, during the Implementation Period, shall ensure that payments to the Independent Expert on account of fee and expenses do not exceed 1% (one per cent) of the Total Project Cost. Payments not exceeding such 1% (one per cent) shall be borne by the Authority in accordance with the provisions of this Agreement.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Expert during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Expert on account of fee and expenses during the Operation Period shall be borne by the Authority. The annual payment on account of fees and expenses to the Independent Expert during the Operation Period, shall not exceed 6% (six per cent) of the Total Project Cost.

4 Deleted (Selection every three years)

5 Appointment of government entity as Independent Expert

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Expert; provided that a government-owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Independent Expert.



Schedule – N: Terms of Reference for Independent Expert

(See Clause 21.2.1)

1 Scope

- 1.1 These Terms of Reference for the Independent Expert (the “**TOR**”) are being specified in accordance with the Concession Agreement dated.....(the “**Agreement**”), which has been entered into between the Authority and..... (the “**Concessionaire**”) for Designing, Implementing and Operating a Comprehensive Digital Payment System in Dharamshala (the “**Project**”) in Public Private Partnership (PPP) on Design, Implement, Finance, Own and Operate (the “**DBFOO**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to implementation of the Public Bike Sharing in Dharamshala.

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.

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 Expert

- 3.1 The role and functions of the Independent Expert shall include the following:
 - Independent Expert shall review the project setup plan for the project and monitor the progress of the project with regard to the
 - Check that the Concessionaire has obtained necessary approvals from the RBI/NCPI or any regulatory body responsible for providing the necessary approvals for setting up the smart card payment system.
 - Check that the system security certificates are in accordance to the set payment card industry.
 - Check the specifications of the cards are in accordance with the set standards in the RFP document.
 - Check the mobile application, server and related hardware and Software are ready and in place to be operated from ICCC or through web-based access.



-
- The Independent Expert shall ensure that the Concessionaire trains the Authority employees on accessing and using the backend system to check in real time basis the number of cards issued, the value loaded in the card, etc. and provide other relevant information including the revenue generated on daily, weekly or monthly basis and provides user manual to the employees of Authority.
 - Submit compliance report to the Authority.
 - Undertake the review work with regard to the implementation and report to the Authority on the progress of the implementation.



Schedule – O: Deleted (Panel of Chartered Accountants)



Schedule – P: Deleted (Vesting Certificate)



Schedule – Q: Deleted (Substitution Agreement)



Schedule – R: Escrow Agreement

(See Article 25)

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

- 1 , a company incorporated under the Companies Act, 1956/2013 or as a limited liability company under the Limited Liability Partnership Act, 2008¹ 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 authorised 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 Dharamshala Smart City Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at Old HIMUDA Building, Chilgari, Dharamshala – 176215, Himachal Pradesh, India (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS:

- A. The Authority has entered into an agreement dated with the Concessionaire (the “**Concession Agreement**”) for **Designing, Implementing and Operating a Comprehensive Digital Payment System in Dharamshala** on Design-Build-Finance-Own-Operate (DBFOO) 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.

¹ Replace with “....., a scheduled bank in India” in case of a bank.



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

Unless contrary to the provisions of this Agreement, the capitalised terms used in the Agreement but not defined in this Agreement, shall have meaning assigned to it under the

Concession Agreement. 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

Reference to Lenders' Representatives shall, unless repugnant to the context or meaning thereof, mean reference 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 authorises 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 in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies 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 Entity, it shall be deemed for the purposes of this Agreement that the Nominated Entity is a Party hereto and the Nominated Entity 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 Entity.

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 share-holders, in any manner or form;
- (c) all Revenues from the third-party usage of the Project;
- (d) any other Revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- (e) 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) Any monies disbursed by the Authority to the Concessionaire;
- (b) all Revenues collected by the Authority, if any, in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments.

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee 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 Concessionaire 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

4.1.1 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) all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) 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;
- (e) monthly proportionate provision of Annual Concession Fee due and payable to the Authority in an Accounting Year;
- (f) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (g) monthly proportionate provision of Debt Service due in an Accounting Year;
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) 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 be 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) Outstanding Annual Concession Fee payable to the Authority;
- (c) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire;



- (d) 50% (fifty per cent) of Debt Due less Insurance Cover, excluding Subordinated Debt;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

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 utilised for any necessary repair, re-Implementation, 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 31 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 INDEMNITY

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

9.2.1 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

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 (Amendment) Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof as in force from time to time.

10.2 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.

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 Dharamshala 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 judgement 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 judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of a 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 authorised representatives of the Parties.

11.5 Waiver

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.

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
- (c) 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 page 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 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised 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 authorised 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 DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

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 theday of 20 hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

SIGNED, SEALED AND DELIVERED

For and on behalf of The Authority by:



Design, Implement and Operate a Comprehensive Digital Payment System in Dharamshala



(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

(e-mail address)

(e-mail address)