

Draft Concession Agreement

Between

Ujjain Smart City Limited

And

[●]

For

**Appointment of the Concessionaire for implementation of
She Lounge Projectat Ujjain**

On

Design, Build, Finance, Operate and Transfer (DBFOT) Basis

Volume - II

Dated [●]

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CONCESSION AGREEMENT

This AGREEMENT is made on this [●] day of [●], at Ujjain, Madhya Pradesh, India.

BETWEEN

Ujjain Smart City Limited, represented by the Chief Executive Officer, (hereinafter referred to as the “**Authority**”, which expression shall, unless the context otherwise requires, include its successors and permitted assigns);

AND

[●], represented by [●], a [limited liability company/ limited liability partnership company] incorporated under the [Companies Act, 1956 or Companies Act, 2013/ Limited Liability Partnership Act, 2008] with [company/ firm] registration number [●] and having its registered office at [●] (hereinafter referred to as the “**Concessionaire**”), which expression shall, unless the context otherwise requires, include its successors and permitted assigns.

The Authority and Concessionaire are collectively referred to as the ‘**Parties**’ and individually as a ‘**Party**’.

WHEREAS:

- A. The Authority, a special purpose vehicle formed specifically to develop an area selected under Government of India’s Smart City initiative (the “**ABD Area**”) and to implement the smart technology solutions under pan city initiative for the Ujjain city, has been incorporated on November 02, 2016 as a State Government Company under Companies Act, 2013, has been mandated to provide urban services and facilities to the citizens of the ABD Area.
- B. The Authority had issued a Request for Proposal (the “**RFP**”) to prospective bidders through its Request for Proposal Notice No. [mention RFP notice no] dated [11/12/2017] for short listing of bidders for further evaluation of their Financial Proposal.
- C. In response to the RFP, the Concessionaire submitted his Bid,, for the Project and thereafter the Authority short-listed the Concessionaire along with certain other bidders (“**Short Listed Bidders**”) for the opening of their Financial Proposals.
- D. The Authority, after evaluating the Bid and Financial Proposals from all Short Listed Bidders, accepted the Concessionaire’s Financial Proposal for the Project, submitted as a part of the Bid and issued a Letter of Acceptance dated [mention LOA date] (“**LOA**”) to the Concessionaire, a copy whereof is hereto annexed as **Schedule A**.

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- E. The Authority acknowledges that as on this day, the Concessionaire has submitted the Performance Security, in a format provided in **Schedule G**.
- F. Pursuant to the Request for Proposal, the Selected Bidder has since promoted and incorporated the special purpose company, which is the 100% (one hundred percent) subsidiary of the Selected Bidder, as a [limited liability company/ limited liability partnership firm] incorporated under the [Companies Act, 1956 or Companies Act, 2013 / Limited Liability Partnership Act, 2008]and amendments thereof and has requested to the Authority to accept this special purpose company as the Concessionaire, the entity which shall undertake and perform the obligations and exercise the rights of the Concessionaire under the LOA, including the obligation to enter into this Concession Agreement for executing the Project.

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS AND AGREEMENTS SET FORTH IN THIS CONCESSION AGREEMENT, THE SUFFICIENCY AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

CHAPTER I: PRELIMINARIES

1. DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

The following words and expressions used in this Concession Agreement and beginning with capital letters shall, unless the context otherwise requires, have the meaning hereinafter respectively ascribed to them:

“Accounting Year” means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.

“Additional Cost” means the additional capital expenditure and/or the additional operating costs or additional taxes or both as the case may be, which the Concessionaire has or would be required to incur and which would have arisen as a result of Change in Scope or Change in Law.

“Additional Facilities” means the facilities or assets which the Concessionaire may, in his discretion and subject to Applicable Laws, provide or procure for the benefit of the Users, and which are in addition to the Project Facilities, and may or may not be situated in the Service Area.

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with **Clause 22.1**.

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

“Applicable Laws” means all laws, brought into force and effect by GOI or GOMP 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” shall mean all clearances, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws, in order to implement the Project and to provide Project Facilities in accordance and during the subsistence of this Agreement.

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

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

“Authority Event of Default” shall have the meaning ascribed thereto in **Clause 25.4.1**.

“Bank” shall mean a scheduled bank, i.e. a bank which is listed in the 2nd Schedule of the Reserve Bank of India Act, 1934, incorporated in India, and having a branch in the city of Ujjain.

“Bid” shall mean the documents in their entirety comprised in the bid submitted by the Concessionaire in response to the Request for Proposal in accordance with the provisions thereof.

“Bidder” shall mean the Person that has submitted its Bid for undertaking the Project and in the event of it being accepted by Authority to implement the Project through a special purpose company formed and incorporated by it in India.

“Change in Law” shall have the meaning ascribed to it in **Article 29**.

“Change in Scope” shall have the meaning ascribed to it in **Article 16**.

“COD for Project” shall mean the commercial operations date of the Project, which shall be the date on which the Authority has issued the Provisional Readiness Certificate or the Readiness Certificate, for the Project, certifying the successful fulfilment of the obligations of the Development Period.

“Concessionaire” shall mean the Person that has submitted its Bid for undertaking the Project and being accepted by the Authority as the Selected Bidder in accordance with the Request for Proposal

document- Volume I to implement the Project through a special purpose company formed and incorporated by it in India.

“**Concessionaire’s DPR**” shall mean the detailed Project reports in respect of the Project, which have been prepared by the Concessionaire, for the Project Facilities, which shall be submitted by the Concessionaire within 45 (forty five) days from the Appointed Date and shall be duly approved by the Authority within 60(sixty) days from the Appointed Date, before the issue of Notice to Proceed for Construction Works.

“**Concessionaire Event of Default**” shall have the meaning ascribed thereto in **Clause 25.1.1**.

“**Concession**” shall have the meaning ascribed thereto in **Article 3**.

“**Concession Fee**” shall have the meaning ascribed thereto in **Article** Error! Reference source not found..

“**Concession Period**” shall mean the period of Agreement specified in **Clause 3.1**, as applicable.

“**Conditions Precedent**” shall mean the conditions set out in **Article4**.

“**Construction Commencement Date**” shall mean, in relation to the Project Facilities, the date Concessionaire commences construction thereof and such date shall not be later than 15 (fifteen) days from the date of issue of Notice to Proceed for Construction Works.

“**Construction Works**” shall mean all works and activities required to be undertaken by the Concessionaire, in accordance with this Agreement.

“**Contractor**” shall mean any Person with whom the Concessionaire has entered into / may enter into any of the Project Agreements.

“**Contamination**” shall mean all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or gas or vapour) and including without limitation genetically modified organisms.

“**Cure Period**” shall mean the period specified in the 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 Liquidated Damages or compensation under the provisions of this Agreement; and

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- 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 should be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval.

“Debt Due” shall mean the aggregate of the following sums expressed in Indian Rupees outstanding and payable to the Senior Lenders under the Financing Documents for the purpose of financing the debt component of the Estimated Project Cost as on the Termination Date:

- i. The principal amount of the debt provided by the Senior Lenders under the Financing Documents for financing the Estimated Project Cost (the **“Principal”**) but excluding any part of the Principal that had fallen due for repayment on the Termination Date; and
- ii. All accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in Sub-clause (a) above until the Termination Date but excluding (i) any penal interest or charges payable under the Financing Documents to any Senior Lender, and (ii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Event of Default

“Debt Service Payments” shall mean 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 Documents.

“Defect Liability Period” shall have the meaning ascribed thereto in **Article 27**.

“Development Period” shall mean the period beginning from the Effective Date for the construction of the Project Facilities, to the end of 6(six) months.

“Dispute” shall have the meaning ascribed thereto in **Article 32**.

“Dispute Resolution Procedure” shall mean the procedure for resolution of Dispute set forth in **Article 32**.

“Divestment Requirements” shall mean the obligations of the Concessionaire and the Authority for and in respect of the Expiry Date of this Agreement as set forth in **Clause 26.2**.

“Document” or **“Documentation”** shall mean documentation printed or in written form or in digital form, tapes, discs, drawings, computer programs, writings, reports, photographs, cassettes or expressed in any other digital, written, audio or visual form.

“Drawings” shall mean all of the drawings, designs, calculations and documents pertaining to the Project.

“Easementary Rights” shall mean all easements, reservations, rights-of-way, utilities and other similar purposes or zoning or other restrictions as to the use of real property, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project.

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

“Emergency” shall mean a condition or situation that is likely to endanger the safety of the Project Facilities including safety of the Users thereof or which poses an immediate threat of material damage to any of the Project Assets or which poses an immediate or mid-to-long-term health risk to the Users or which poses an immediate or mid-to-long-term risk to the environmental conditions.

“Encumbrance” shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Assets.

“Estimated Project Cost” shall mean the lowest of the following:

- a) A sum of [Rs xx crore (Rupees xx crore)], as estimated by the Concessionaire and agreed by the Authority in Concessionaire’s DPR; and
- b) A sum of [Rs xxxx (Rupees xxxx crore)], as estimated by the Authority

“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 Estimated Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily or optionally convert into equity share capital of the Concessionaire, and any interest-free funds advanced by any shareholder of the Concessionaire for meeting such equity component.

“Equity Documents” shall mean collectively the documents evidencing subscription to Concessionaire’s Equity capital to the extent of Equity component of the Estimated Project Cost.

“Expiry Date” shall mean expiry of the Agreement by efflux of time at the end of 3,650(three thousand six hundred and fifty only) days from the Effective Date or the Termination Date in case of the early Termination of the Agreement.

“Financial Close” shall mean the date on which the Financing Documents have become effective, and the Concessionaire has access to the funds and financial assistance committed thereunder.

“Financing Documents” shall mean the documents executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans relating to the financing of the Estimated Project Cost and includes amendments or modifications made.

“Financing Package” means the financing package of the Project furnished by the Concessionaire along with its Bid indicating the Estimated Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding of the Project.

“Financial Proposal” shall mean the financial bid submitted by the Concessionaire in accordance with the Request for Proposal Volume I.

“Force Majeure Event” shall have the meaning ascribed thereto in **Article 22**.

“GoI” shall mean Government of India, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of India.

“GOMP” shall mean Government of Madhya Pradesh, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Madhya Pradesh.

“Good Industry Practice” shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced Person 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 Agency” shall mean GoI, GOMP, the Authority or any central or state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Service Area / Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“Government Instrumentality” shall mean any department, division or sub-division of the GOI or GOMP and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the GOI or GOMP, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“IGAAP” shall mean the Indian generally accepted accounting principles consistently applied.

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to **Clause 30.4**.

“Indirect Political Event” shall have the meaning ascribed thereto in **Clause 22.3**.

“Insurance Proceeds” shall mean the proceeds of the insurance policies taken by the Concessionaire in terms of **Article 20** or otherwise.

“Lenders’ Representative” shall mean the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes.

“Liquidated Damages” shall have the meaning ascribed thereto in **Clause 1.2 (o)**.

“Material Adverse Effect” shall mean 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.

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

“Minimum Maintenance Requirement” shall mean minimum maintenance requirements from the Concessionaire for maintenance of the Project Facilities as ascribed to it at **Schedule M**.

“Monthly Premium” shall mean the payment to be made by the Concessionaire to the Authority during the Concession Period and, more specifically, as detailed in **Article 19**.

“Non-Political Event” shall have the meaning ascribed thereto in **Clause 22.2**.

“Notice to Proceed for Construction Works” shall mean the letter issued by the Authority, on a recommendation of the Authority, to the Concessionaire, authorizing the Concessionaire to commence the Construction Works for the development of Project Facilities.

“Operations Period” shall mean the period commencing from expiry of the Development Period for Project and ending at the Expiry Date.

“O&M” shall mean the operation and maintenance of the Project that includes but is not limited to functions of operation and maintenance of the She Lounge, receive Allocated Water and Allocated

Power from the Authority, provide services to the Users, address Consumer grievances, meet the Service Requirements and performance of other services incidental thereto.

“**O&M Contract**” means the operation and maintenance contract that may be entered into between the Concessionaire and the Contractor, if any for O&M of the Project.

“**O&M Expense**” shall mean expenses incurred by or on behalf of the Concessionaire duly certified by its statutory auditors or by the Authority, as the case may be, for all regularly scheduled and reasonably anticipated O&M during Operations Period, including, without limitation (a) Monthly Premium payable to the Authority (b) Concession Fee payable by the Concessionaire to the Authority (c) all cost of salaries and other employee compensation (d) cost of materials, supplies, utilities and other services (e) premium for insurance (f) all franchise, excise, property, advertisement and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project at its full design capacity, (g) all repair, replacement and maintenance costs of the Project, and (h) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the O&M of the Project according to the Service Requirements at its full design capacity.

“**Performance Security**” shall mean an irrevocable bank guarantee, from the Scheduled Bank, for a value of [Rs. xx Crores (Rupees xx crore only)], to be provided by the Concessionaire in accordance with **Article 7**, as a Performance Security, on or before signing of this Concession Agreement, that shall be valid and effective for the expiry of the Concession Period or Termination of this Agreement, whichever is earlier, and refundable not later than 90 days from the expiry of the Concession Period, and as provided in the format provided at **Schedule G**.

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

“**Political Event**” shall have the meaning ascribed thereto in **Clause 22.4**.

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

“**Preparatory Period**” shall mean a period starting from Appointed Date, and ending on the Effective Date, and not exceeding 90 (ninety) days.

“**Preservation Costs**” shall have the meaning ascribed thereto in **Clause 14.4(b)**.

“**Project**” shall mean, among others, but not limited to the development and O&M of the smart public toilets for women and other facilities, providing services to the Users within the Service Area, meet the Service Requirements during the Concession Period, and to be developed on design, build,

finance, operate and transfer basis, and all activities incidental hereto including without limitation, engineering, testing, commissioning and insurance of the Project Assets, for the purposes of providing the Services in accordance with the provisions of this Agreement.

“**Project Agreements**” shall mean collectively this Agreement, and any other material contract (other than equity Documents and Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

“**Project Assets**” shall mean all physical and other assets, excluding Additional Facilities, relating to and forming part of the Project including but not limited to:

- i. Rights over the Service Area or outside the Service Area in form of license, right of way or otherwise;
- ii. Project Facilities developed by the Concessionaire during the Concession Period;
- iii. All rights of the Concessionaire under the Project Agreements;
- iv. Specific technology developed for the Project;
- v. Financial assets, such as security deposits for electricity supply, telephone, etc.;
- vi. Insurance proceeds;
- vii. Applicable Permits and authorization relating to or in respect of the Project; and
- viii. Any other civil works and plants & equipment constructed and installed by the Concessionaire during the Concession Period for the Project.

“**Project Completion**” shall have the meaning ascribed thereto in **Clause15.1**.

“**Project Completion Schedule**” shall mean the progressive Project milestone set forth in **Schedule F** for realization of the Project, complete in all aspects by the Scheduled Project Completion Date.

“**Project Facilities**” shall mean the physical facilities of She Lounge as enlisted in **Schedule I** and installed during the Concession Period for the implementation of the Project.

“**Project Site**” shall mean the real estate particulars within and outside Service Area, on which the Project is to be implemented and the Project Facilities are to be provided by the Concessionaire in accordance with the Concession Agreement and to be operated and maintained by the Concessionaire to meet the Service Requirements.

“**Provisional Readiness Certificate**” shall mean the certificate that may be issued by the Authority pending completion of the Punch List items in accordance with **Article15.5**.

“**Punch List**” shall have the meaning ascribed thereto in **Clause15.5**.

“**RBI**” shall mean the Reserve Bank of India.

“Readiness Certificate” shall mean the certificate issued by the Authority certifying completion of construction of the Project Facilities by the Concessionaire in accordance with the Concession Agreement.

“Re. or Rs. or Rupees or Indian Rupees or INR” refers to the lawful currency of the Republic of India.

“Scheduled Project Completion Date” shall mean, in relation to Project Facilities, to be developed by the Concessionaire, on or before expiry of the Development Period and in accordance with **Clause 15.3**.

“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 Documents for meeting all or any part of the Estimated Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire.

“Slected Bidder” shall have the meaning ascribed thereto in Request for Proposal.

“Service Area” shall mean the area covered under the Lounge where the Concessionaire shall provide the Services and as set out in this Agreement, and as specified in **Schedule C**.

“Service Requirements” shall mean the Service Requirements specified at **Schedule H**, which are to be adhered by the Concessionaire during the Concession Period.

“Site Conditions” shall mean, at any time, the condition of the Service Area including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions.

“The Lounge” shall mean a dedicated smart public toilets for women in Ujjain at a designated place, as described at **Schedule C**, where the Concessionaire is entitled to provide the services as stipulated in accordance with the Concession Agreement.

“Suspension” shall have the meaning set forth in **Clause 23.1**.

“Taxes” shall mean any taxes, applicable in India, including, but not limited to Goods and Service Tax (GST), excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income.

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

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

“Termination Notice” shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement.

“Termination Payment” shall mean the amount payable by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Equity, as the case may be, which form part of the Estimated Project Cost in accordance with the provisions of this Agreement. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Estimated Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Estimated Project Cost.

“User(s)” shall mean the visitors at She Lounge to be developed and managed under the Project, to whom the Concessionaire shall provide services.

“Willful Default” shall mean an intentional disregard of any provision of this Agreement, which has a Material Adverse Effect on the Project Facilities.

1.2. Interpretation

In this Agreement, unless the context otherwise requires,

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. references to Applicable Law shall include laws, acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Republic of India;
- c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- d. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words “include” and “including” are to be construed without limitation;

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- f. references to “construction” include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
 - g. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
 - h. any reference to day shall mean a reference to a Gregorian calendar day;
 - i. any reference to month shall mean a reference to Gregorian calendar month;
 - j. the Schedules 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;
 - k. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
 - l. references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
 - m. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Authority shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Authority, as the case may be, in this behalf and not otherwise;
 - n. unless otherwise stated, 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; and
 - o. the Liquidated 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 “**Liquidated Damages**”).

1.3. **Measurements and Arithmetic Conventions**

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.4. **Priority of contract documents and errors / discrepancies**

- 1.4.1. The several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in order they are set out, i.e. document at (i) below shall prevail over the document at (ii) below:
 - i. Amendments to this Agreement
 - ii. This Agreement along with the Schedules
 - iii. Letter of Acceptance

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- iv. Addendum / Corrigendum to the Request for Proposal (if any)
 - v. Clarifications issued by the Authority dated [●] during the Bidding Process
 - vi. Request for Proposal document, and
 - vii. All other documents forming part of this Agreement

- 1.4.2. In case of ambiguities or discrepancies within this Agreement, the following shall apply:
- i. Between two Clauses of this Agreement, the provisions of specific clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - ii. Between the Clauses and the Schedules, the Clauses shall prevail save as otherwise expressly set forth in **Clause 1.4.1**;
 - iii. Between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail;
 - iv. Between any value written in numerals and that in words, the latter shall prevail.

2. SCOPE OF THE PROJECT

The Scope of the Project for Preparatory Period, Development Period, and Operations Period shall comprise following:

2.1. Preparatory Period

2.1.1. Preparatory Period activity

- a) To fulfil the Concessionaire's Conditions Precedent

2.2. Development Period and Operations Period activity

The Concessionaire for the Project is expected to Design, Build, Finance, Operate, Maintain and Transfer She Lounge. The following section describes the scope of the Concessionaire during Development Period and Operations Period.

2.2.1. Development Period and Operations Period activity

- a) Design, build and operate & maintain the She Lounge aesthetically and functionally such that the She Lounge (with other amenities such as smart public toilets, ATMs, kiosks, solar panels, Wi-Fi hotspots, mobile phone booster towers, mobile phone charges, etc.) become a hallmark of the city;
- b) Ensure that all design of She Lounge and other amenities ensures universally accessible design;
- c) Provide essential services for Users such as adequate Treated Potable Water for drinking and general cleanliness of the She Lounge, adequate power supply for proper lighting of the She Lounge and commercial activities; public conveniences such as smart toilets and kiosks, wherever possible;

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- d) Undertake adequate measures for safety and security of Users, including but not limited to deployment of security personnel and gadgets such as CCTV etc. The Concessionaire is required to employ trained professionals to operate and maintain the She Lounge and other amenities system;
 - e) Provide structurally sound and aesthetically appealing Users facilities such as clock, bus route maps, information on Ujjain, etc.
 - f) Provide adequate and comfortable seating facilities for Users;
 - g) Make special arrangements for the differently abled such as voice guidance system to help the Users to operate the She Lounge without manual assistance, provide ramps, hand rails, beepers etc. for the differentially abled Users and the senior citizens for accessing each of the component of the She Lounge;
 - h) Provide essential services such as soaps, napkins, dust bins etc. for Users of the smart public toilets at such She Lounge;
 - i) Take necessary precaution for environmental and social safeguards in accordance with applicable norms and guidelines;
 - j) Operate the She Lounge during the Concession Period, including regular cleaning of the She Lounge and its surrounding areas, monitoring and functioning of Users' amenities, handling emergency situations, functioning of information and communication systems, availability of basic infrastructure requirements such as electricity for lighting purposes, proper drainage, removal of municipal solid waste, and telecommunication etc. The Concessionaire is to specifically ensure that the She Lounge and all amenities are clean and free of debris, garbage through regular monitoring, maintenance and solid waste collection;
 - k) Maintain the Project Facilities in accordance with Minimum Maintenance Requirements as stipulated in **Schedule M**, i.e. maintain all Project Facilities in good, clean and usable condition and perform routine and periodic maintenance works including civil, electrical & mechanical works as well as maintenance and servicing of furniture & equipment;
 - l) The Concessionaire is required to bear all expenses towards the operation of the She Lounge and amenities;
 - m) Carry out only those commercial activities at the She Lounge that are permitted by the Authority, such as advertisements at the She Lounge in accordance with the Advertisement Policy of Ujjain Municipal Corporation, smart public toilets, ATM, kiosks, solar panels, Wi-Fi hotspots, , mobile phone charges, etc., and earn revenues from such permitted commercial activities during the Concession Period;
 - n) Make timely payments as per mutually agreed terms and conditions to the Authority;
 - o) Transfer She Lounge to the Authority at the end of the Concession Period, pursuant to successful completion of necessary inspection, renewals/repairs/replacement;
 - p) The Concessionaire is required to equip the She Lounge and other amenities with solar panels for generation of electricity;
 - q) The Concessionaire is required to procure and use software and hardware for the processing of Users' payments via cash, credit card, net banking, mobile based banking systems, and other media;

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- r) The Concessionaire shall ensure that software and hardware procured for the She Lounge system is compatible with City-wide Command and Communication Center that is being taken up as a separate project by the Authority. The same may be integrated to the Command and Communication Center (CCC) of the Authority for which necessary integration coordination/APIs shall be provided by the Concessionaire. The integration to the CCC shall be the responsibility of the system integrator of the CCC and not the Concessionaire;
 - s) The Concessionaire is required to establish customer service platforms for the She Lounge, including a call centre, website, smart phone applications and physical kiosks, to disseminate information and address grievances;
 - t) The Concessionaire may propose more amenities at the proposed She Lounge, integrate the same with smart solutions, such as smart poles etc. in addition to components included in this Concession Agreement; and
 - u) Meet the prescribed environmental norms, notified by Ministry of Environment & Forests, Government of India, and Madhya Pradesh Pollution Control Board

CHAPTER II: GRANT OF CONCESSION

3. GRANT OF CONCESSION

- 3.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of 10 (ten) years, i.e. 3,652 (three thousand six hundred and fiftytwo only) days commencing from the Effective Date and ending on the Expiry Date (the “**Concession Period**”), including the license and authority during the subsistence of this Agreement to implement the Project and the Concession in respect of the Project.
- 3.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Agreement hereby granted shall oblige the Concessionaire to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and Applicable Permits:
- a) To design, and construct Project Facilities in accordance with this Agreement;
 - b) To provide services to Users within the Service Area as stipulated in **Clause 2.2.1**;
 - c) To investigate, study, design, engineer, procure, construct, operate and maintain the Project Facilities in accordance with this Agreement and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement to provide the services in Service Area (“**the Concession**”);
 - d) To enter upon and use the Service Area including all rights of way and easements relating to the Project to perform its rights and obligations under this Agreement free of charge, including the right to conduct any kind of work in the streets and other public places of the Service Area, in order to develop the Project Facilities and provide Services to the Service Area during the Concession Period;
 - e) To generate revenue by way of:
 - i. Leasing out advertisement space at She Lounge
 - ii. User charges for smart public toilets;
 - iii. Leasing space for various activities such as ATMs, kiosks, mini-shops at She Lounge;
 - iv. Power generation through solar panels;
 - v. License fee for Wi-Fi hotspot(s) operator;
 - vi. License fee for mobile phone booster tower(s) operator, etc.;
 - f) To fulfill its obligations under this Agreement, the Concessionaire shall have the right to undertake activities either by itself or through subcontracting arrangements which shall be entered into only after obtaining prior written approval of the Authority.;
 - g) To exercise such other rights as the Authority may determine as being necessary or desirable and which it consents to in writing, for the purposes incidental and necessary for the provision of the Services having regard to the needs of the Users;

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- h) To bear and pay all expenses, costs and charges incurred in the fulfillment of all the Concessionaire's obligations under this Agreement;
 - i) To file first information report with police department regarding unauthorized / illegal connections, damages to the Project Facilities by any Person, etc.; and
 - j) Not to assign or create any lien or Encumbrance on the Contract hereby granted or on the whole or any part of the Project nor transfer, lease or part possession therewith save and except as expressly permitted by this Agreement.

4. CONDITIONS PRECEDENT

4.1. The Concessionaire and the Authority shall fulfil their respective Conditions Precedent during the Preparatory Period.

4.2. The rights and obligations of the Concessionaire shall be subject to the satisfaction in full of the following conditions precedent to be fulfilled unless any such condition has been waived. The Concessionaire shall make all reasonable endeavors to procure the satisfaction in full of the Conditions Precedent set out below. Each Party shall bear its respective cost and expense of satisfying such Conditions Precedent.

4.3. Concessionaire's Condition Precedent

4.3.1. The Concessionaire shall fulfil following Conditions Precedent, before expiry of the Preparatory Period, before the Authority issue the Notice to Proceed for Construction Works to the Concessionaire:

- a) The Performance Security in full has been provided by the Concessionaire to the Authority in accordance with this Agreement;
- b) The Concessionaire shall have provided the first monthly instalment of the Monthly Premium of the first year of the Concession Period;
- c) The Concessionaire shall have prepared the Concessionaire's DPR and got it approved by the Authority;
- d) The Concessionaire shall have prepared following plans and got it approved by the Authority:
 - i. Construction and rehabilitation of Project Facilities; and
 - ii. Plan for putting in place a consumer complaint recording and monitoring system
- e) The Concessionaire shall have provided evidence in the form of Financing Documents and Equity Documents, reasonably acceptable to the Authority that the Concessionaire has the funds available to undertake the Project.
- f) The Concessionaire shall have provided evidence, reasonably accepted to the Authority that the Concessionaire has funds available to provide Monthly Premium in Year 1 of the Concession Period.

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- g) The Concessionaire shall have obtained all Applicable Permits, at its own cost, and as per **Schedule D** for the implementation of the Project, including licenses, consents, exemptions, permissions and approvals from the Government Agencies concerned necessary or desirable for development of the Project Facilities and as required under Applicable Law;
 - h) All of the representations and warranties of the Concessionaire are true and correct as on the Appointed Date;
 - i) The Authority shall have received from the Concessionaire's copies, duly notarized, of the constitutional documents, including but not limited to Shareholders' Agreement, articles of association, memorandum of association, and incorporation certificate of the Concessionaire;
 - j) The Authority shall have received copies, duly notarized, of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance by the Concessionaire of this Agreement and each of the Project Agreements;
 - k) The Concessionaire shall have obtained, or caused to be obtained, the Project insurances in accordance with **Article 20**; and
 - l) The Concessionaire shall have fulfilled any other task or obligation as specified in the LOA.

4.4. Authority's Condition Precedent

4.4.1. The Authority shall fulfil following Conditions Precedent, before expiry of the Preparatory Period, and before issuing the Notice to Proceed for Construction Works to the Concessionaire:

- a) Ensure the receipt the Concessionaire's copies, duly notarized, of the constitutional documents, including but not limited to articles of association, memorandum of association, and incorporation certificate of the Concessionaire;
- b) Ensure the receipt of copies, duly notarized, of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance by the Concessionaire of this Agreement and each of the Project Agreements;
- c) The Authority shall have approved the Concessionaire's DPR and other plans;
- d) The Authority shall have handed over to the Concessionaire the possession of the Service Area for She Lounge;
- e) The Authority shall have granted to the Concessionaire or caused to be granted to the Concessionaire all necessary rights including Easementary Rights in order to permit design, construction, testing, commissioning and operation and maintenance of the Project Facilities;
- f) The Authority shall have granted or caused to be granted all Applicable Permits, as per **Schedule D** for the Project including licenses, consents, exemptions, permissions and approvals from the government agencies concerned necessary or desirable for development of the Project Facilities in the form and substance satisfactory to the

Concessionaire provided that the Concessionaire has made the applicable applications for the grant of such Applicable Permits;

- g) The Authority shall have received authorizations required for the execution and implementation of the Project and of its rights under this Agreement, including but not limited to the approval of this Agreement by Authority's Board of Directors; and
- h) The Authority shall have received authorizations required for the execution and implementation of the Project Package and of its rights under this Agreement, including but not limited to the approval of this Agreement by the Government of Madhya Pradesh;
- i) The Authority shall have appointed an Authority Representative;

4.5. Non-fulfillment of Concessionaire's Conditions Precedent

- 4.5.1. In the event that the Concessionaire's Conditions Precedent have not been fulfilled on or before expiry of the Preparatory Period, other than for reasons of:
- a) Force Majeure; or
 - b) Non-satisfaction of the Authority's Conditions Precedent; or
 - c) The Authority's waiver of the Concessionaire's obligations in accordance with **Clause 4.7(a)**,

then, subject to the Authority having satisfied the Authority's Conditions Precedent, the Authority will have the right to elect to either –

- i. Extend the time for the Concessionaire to fulfill the Concessionaire's Conditions Precedent; or
- ii. Immediately terminate this Agreement

- 4.5.2. If the Concessionaire has not fulfilled the Concessionaire's Conditions Precedent by the extended time period as described in i) above, then subject to the Authority having satisfied the Authority's Conditions Precedent, shall have the right to immediately terminate this Agreement.

4.6. Non Fulfillment of the Authority's Condition Precedent

- 4.6.1. In the event that the Authority's Conditions Precedent have not been fulfilled on or before expiry of the Preparatory Period, other than for reasons of:
- a) Force Majeure; or
 - b) Non-satisfaction of Concessionaire's Conditions Precedent; or
 - c) Concessionaire's waiver of the Authority's obligations in accordance with **Clause 4.7(b)**,

then, subject to Concessionaire having satisfied the Concessionaire Conditions Precedent, the Concessionaire will have the right to elect to either –

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- i. Extend the time for the Authority to fulfill the Authority's Conditions Precedent; or
 - ii. Immediately terminate this Agreement
- 4.6.2. If the Authority has not fulfilled the Authority's Conditions Precedent by the extended time period as described in i) above, then subject to the Concessionaire having satisfied the Concessionaire's Conditions Precedent, shall have the right to immediately terminate this Agreement.
- 4.7. Waiver of Conditions Precedent
- a) The Authority may at its sole discretion waive, in writing, the performance by the Concessionaire of any of the Concessionaire's Conditions Precedent.
 - b) The Concessionaire may at its sole discretion waive, in writing, the performance by the Authority of any of the Authority's Conditions Precedent.
- 4.8. Termination Payment on termination of this Agreement for non-fulfillment of Conditions Precedent
- a) If the Conditions Precedent set forth above have not been satisfied on or before the expiry of Preparatory Period and the other Party has not extended the said period or waived, fully or partially, such condition(s), then the Parties may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement.
 - b) Upon Termination on account of non-fulfillment of Concessionaire's Conditions Precedent, the Performance Security submitted by the Concessionaire shall be forfeited by the Authority. Notwithstanding anything contrary in this Agreement, it is expressly clarified that the Authority shall not be allowed to forfeit the Performance Security submitted by the Concessionaire in case of non-fulfillment of the Authority's Conditions Precedent.
- 4.9. Upon Termination on account of non-fulfillment of the Authority's Conditions Precedent, the Authority shall release the Performance Security submitted by the Concessionaire.

5. PROJECT SITE

- 5.1. General provisions relating to the Project Site
- a) The Authority shall hand over possession of the Project Site, free of any Encumbrance and/or encroachment, to the Concessionaire during Preparatory Period or on fulfillment of the Concessionaire's Conditions Precedent, whichever is earlier, unless extended by the Concessionaire at the request of the Authority, which extension shall not be more than 30 (thirty) days. The Authority shall grant a right of way to the Concessionaire, over the Project Site to implement the Project;
 - b) The Authority shall at its own cost and expense and in accordance with Applicable Law evacuate, relocate, rehabilitate and resettle residents, close or divert roads and take

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- other similar action within its authority that may be reasonably necessary or appropriate to enable the Concessionaire to carry out the Project.
- c) The Concessionaire shall, from the date of the Project Site been handed over pursuant to **Clause 5.1(a)**, on a best efforts basis, ensure that the Project Site is kept free from encroachment and the Authority shall support the Concessionaire in fulfilling this obligation.
 - d) The Authority shall be liable to pay all or any property taxes or any cess, tax, duties or imposts in relation to the Project Site.
 - e) Except as permitted by the Authority in writing, the Concessionaire shall use the Project Site only for the purposes of implementing the Project as contemplated by this Agreement.

5.2. Other provisions in relation to the Project Site

5.2.1. Except as expressly provided in **Clause 5.3** of this Agreement, the condition of the Project Site shall be the sole responsibility of the Concessionaire, at all times from the date of handover of the Project Site. Accordingly, without prejudice to any other obligation of the Concessionaire under this Agreement, the Concessionaire shall be deemed to have:

- a) Inspected and examined the Project Site and its surroundings and (where applicable) any existing structures or works on, over or under the Project Site
- b) Satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Project Site, the load bearing and other relevant properties of the Project Site, the risk of injury or damage to persons or property affecting the Project Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution of the Project Facilities;
- c) Satisfied itself as to the adequacy of the rights of access to and through the Project Site and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Project Site);
- d) Satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority), with access to or use of, or rights in respect of, the Project Site, with particular regard to the owners or occupiers of any land adjacent to the Project Site; and
- e) Satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

5.3. Unforeseen Adverse Site Conditions

- a) Notwithstanding the provisions set out in **Clause 5.2**, to the extent that any adverse Site Conditions and/or Contamination exists in any parts of the Project Site which would not have been reasonably foreseeable by the Concessionaire, and acting in accordance with Good Industry Practice ("**Unforeseen Adverse Site Conditions**"), the Concessionaire shall

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- not be responsible for such Unforeseen Adverse Site Conditions or Contamination if the Concessionaire brings an Unforeseen Adverse Site Condition and/or Contamination relating to the Project Site within 30 (thirty) days from the Appointed Date;
- b) If in case the Concessionaire brings to the notice of the Authority any Unforeseen Adverse Site Condition within 30(thirty)days from the Appointed Date, the Authority agrees to indemnify the Concessionaire for any reasonable costs that it incurs in ensuring that the Project Site conditions are in accordance with Applicable Law.
 - c) For the avoidance of doubt it is expressly clarified that the Authority shall have no liability whatsoever to compensate the Concessionaire for any Unforeseen Adverse Site Conditions and/or Contamination that is brought to the attention of the Authority after 30(thirty) days from the Appointed Date in respect of the Project Site.

6. DEPRECIATION

For the purposes of claiming benefit for the depreciation, the Concessionaire may refer the accounting standards guidelines issued by the Institute of Chartered Accountants of India (ICAI). The Authority shall not be liable in respect of any depreciation claimed by the Concessionaire.

7. PERFORMANCE SECURITY

7.1. Subject to the terms and conditions of this Agreement, the Concessionaire shall provide Performance Security of Rs 10,00,000, comprising an irrevocable bank guarantee that shall be valid and effective for the expiry of the Concession Period or Termination of this Agreement, whichever is earlier, and refundable not later than 90 days from the Expiry Date.

7.2. Appropriation of Performance Security

7.2.1. The Concessionaire agrees and undertakes that upon occurrence of a Concessionaire Event of Default, the Authority shall, without prejudice to other rights and remedies of the Authority, as mentioned herein, be entitled to encash, either partially or full and in accordance with the provisions of this Agreement, the Performance Security and appropriate the amounts as Liquidated Damages for such Concessionaire Event of Default.

7.2.2. Upon any partial encashment of the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish the Performance Security to the extent of its full value. In case of encashment of the entire Performance Security, the Concessionaire shall provide a fresh Performance Security within 15 (fifteen) days of such appropriation in accordance with the terms of this Agreement, failing which the Authority shall be entitled to terminate this Agreement in accordance with **Clause 25.1** of this Agreement. Any encashment of the Performance Security shall be made by the Authority if it has been (i) recommended by the Authority; and consequently (ii) concurred by the Authority.

7.2.3. Release of Performance Security

The Performance Security, submitted by the Concessionaire in accordance with this Agreement, shall be released in accordance with **Clause 7.1**. Provided, such release shall be effective only after:

- a) Issue of a certificate from the Authority mentioning that the Concessionaire is not in default of its obligations under the Agreement and that the Performance Security can be released; and
- b) Concurrence of the Authority to such certificate with respect to performance of such obligations as per the Agreement.

8. TOILET CHARGES

8.1. Setting of Toilet Charges

- a) The Toilet Charges for the Users shall be Rs 5/- (Rupees five) for the Year 1 of the Concession Period;
- b) The Concessionaire may increase the Toilet Charges by upto 10% every 3 years with the prior approval of the Authority. and

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- c) The Concessionaire shall have sole right to the Toilet Charges collected in accordance with this Agreement.

9. **CONCESSION FEE**

- 9.1. In consideration of the grant of Concession under this Agreement, the Concession Fees payable by the Concessionaire to the Authority shall be as quoted by the bidder (excluding GST).
- 9.2. The Concession Fees shall be paid on 7th day of next month for every amounting fees of the previous month.

CHAPTER III: OBLIGATIONS AND UNDERTAKINGS

10. OBLIGATIONS OF THE CONCESSIONAIRE

10.1. The Concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere setout in this Agreement, the following:

- a) Provide Monthly Premium to the Authority in accordance with this Agreement;
- b) Submit to the Authority certified true copies of each of the Project Agreements within 7(seven) days of their execution, for Authority's approval;
- c) Not make any replacement, amendment or modifications to any of the Project Agreements without the prior written consent of the Authority, where such replacement, amendment or modification has or may have the effect of increasing or imposing any financial liability or obligation on the Authority in any manner, and where such amendment or modification is made without such consent, not to enforce such amendment or modification nor permit enforcement thereof against the Authority in any manner whatsoever;
- d) Give Authority not less than 30 (thirty) days written notice prior to entering into, amending or replacing any Project Agreement so as to enable the Authority to provide its consent or offer its comments, if any thereon which, if made, shall be duly considered and given effect to by the Concessionaire before entering into, amending or replacing such Project Agreement;
- e) Adhere to the Minimum Maintenance Requirement as stipulated at **Schedule M**;
- f) Remove promptly from the Project Site all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and shall keep the Project Site in a neat and clean condition and in conformity with Applicable Laws and Applicable Permits;
- g) Procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- h) Shall obtain the necessary permissions and authorizations from the relevant Government Agencies, as may be applicable and necessary for display of advertisements. The Concessionaire shall pay the statutory levies, taxes and duties connected with and/or arising out of display of advertisements including Advertisement Tax;
- i) Shall ensure that the creative / advertising material content and form complies with the prevailing norms, codes and other statutory requirements as may be applicable from time to time. The Concessionaire shall screen the contents of the advertisements to be displayed and ensure that they are not indecent / obscene or otherwise offensive to good taste or against public sentiments or in contravention of the Applicable Laws;

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- j) The unutilized / unoccupied advertisement space shall carry social messages or any other use as approved by the Authority;
 - k) All She Loungeshall be lighted during night;
 - l) Ensure uninterrupted supply of the Treated Water and electricity at Project Site;
 - m) Provide all assistance to the Authority as it may require for the performance of its duties and services;
 - n) Provide to the Authorityreports on a monthly basis during the Concession Period in the form and manner set forth in this Agreement and **Schedule J**;
 - o) Obtain and maintain in force on and from the Effective Date all insurance in accordance with the provisions of this Agreement, and Good Industry Practice;
 - p) Ensure that no water logging within Service Area;
 - q) Ensure and procure that each Project Agreement contains provisions that entitle Authority to step into such Project Agreement in its discretion in place and substitution of the Concessionaire in the event of Termination of this Agreement on account of Concessionaire Event of Default or breach by the Concessionaire;
 - r) Appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
 - s) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of Concessionaire's obligations under this Agreement;
 - t) Comply with all Applicable Permits and Applicable Laws in the performance of the Concessionaire's obligations under this Agreement including those being performed by any of the Contractors;
 - u) Develop, implement and administer a safety programme for the Service Area and the Contractors' personnel engaged in provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
 - v) Take all reasonable precautions for prevention of accidents on or about the Service Area and provide all reasonable assistance and emergency medical aid to accident victims;
 - w) Not place or create or permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance or security interest over all or any part of Project Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly set forth in this Agreement;
 - x) Observe and fulfill the environment and other requirements under the Applicable Laws and Applicable Permits at Concessionaire's own cost and expense;
 - y) Be responsible for safety, soundness and durability of the Project Assets under Service Area, including other structures forming part thereof;

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- z) Be responsible for safety, soundness and durability of the water supply, sewerage, drainage, electricity, telephone lines, etc. at the Service Area or at vicinity of the Service Area during the Concession Period;
 - aa) Not claim or demand possession or control of any structures or real estate which do not form part of the Project;
 - bb) Ensure that such Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any, upon receiving vacant possession of the Project Site or part thereof;
 - cc) Indemnify Authority against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Concessionaire in connection with the performance of its obligations under this Agreement; and
 - dd) Comply with the Divestment Requirements and hand over the Project to the Authority on the Expiry Date.
- 10.2. Subject to the terms and conditions of this Agreement the Concessionaire shall at its cost and expenses:
- a) Undertake the design, engineering, procurement, and construction of the Project in accordance with this Agreement;
 - b) Construct, operate and maintain the Project in conformity with this Agreement, confirming the Service Requirements set forth in **Schedule H** and Good Industry Practice;
 - c) Operate and maintain the Project in Service Area during the Operations Period in conformity with this Agreement including but not limited to the Service Requirements set forth in **Schedule H** and Good Industry Practice.
- 10.3. The Concessionaire shall, before commencement of construction of the Project in the Service Area:
- a) Submit to the Authority, with due regard to Project Completion Schedule as set forth in **Schedule F** and Scheduled Project Completion Date, a Concessionaire's DPR comprising of its design, engineering and construction time schedule and shall formulate and provide critical path method (CPM) or program evaluation and review technique (PERT) charts for the completion of the said activities;
 - b) Finalize the design and detailed engineering basis as part of the Concessionaire's DPR. Concessionaire shall be free to adopt his own design in consultation with the Authority and in accordance with the provisions of **Clause 10.4** of this Agreement. However, it would not be considered as Change in Scope as specified in **Article 16**;
 - c) Have requisite organization in place and designate and appoint Key Personnel and such other managers, officers and representatives as it may deem appropriate to supervise the Project and to deal with the Authority and be responsible for all necessary exchanges of information required pursuant to this Agreement; and

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- d) Undertake, do and perform such acts, deeds and things as may be necessary or required for construction under and in accordance with this Agreement.

10.4. Obligations with respect to the Concessionaire's DPR of the Project, the following shall apply:

- a) The Concessionaire shall prepare and submit with reasonable promptness within 45(forty five) days from the Appointed Date and in such sequence as is consistent with the Project Completion Schedule, three copies of the Concessionaire's DPR to the Authority for review and comments;
- b) By forwarding the Concessionaire's DPR for review and comment to the Authority, the Concessionaire represents that it has determined and verified that the design and engineering and quality set forth in this Agreement for and in respect of the Project;
- c) Within 15 (fifteen) days of the receipt of the Concessionaire's DPR, the Authority shall review the same and convey its comments or observations to the Concessionaire. It is expressly agreed that notwithstanding any review and comment or observations of the Authority on the Concessionaire's DPR or failure of the Authority to provide comments or observations thereon, the Authority shall not be liable for the same in any manner whatsoever and the Concessionaire shall remain solely responsible for and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement. The Concessionaire shall not be obliged to await the comments or observations of the Authority on the Concessionaire's DPR submitted pursuant hereto beyond the period set forth herein above.
- d) If the comments or observations of the Authority indicate that the Concessionaire's DPR is not in conformity with the requirements set forth in this Agreement, such Concessionaire's DPR shall be revised by the Concessionaire to the extent necessary and resubmitted to the Authority for review, observations and comments within 7 (seven) days of receipt of such comments from either Authority or Authority. The Authority shall give its observations and comments, if any, within 7 (seven) days of receipt of such revised Concessionaire's DPR provided, however, that any observations and comments of the Authority or failure of the Authority to give any observations or comments on such revised Concessionaire's DPR shall not relieve or absolve the Concessionaire of its obligation. The Concessionaire shall not be obliged to await the comments or observations of the Authority on the Concessionaire's DPR submitted pursuant hereto beyond the period set forth herein above.
- e) The Concessionaire shall be responsible for delays in Project Completion Schedule caused by reasons of Concessionaire's DPR not being in conformity with the Authority's requirements, and the Development Period shall not be extended in any manner whatsoever on account of submission or revision of the Concessionaire's DPR.
- f) The Concessionaire's DPR shall also include monthly milestones (the "**Monthly Milestones**") of the Construction Works.
- g) Within 30 (thirty) days of the COD for Project, the Concessionaire shall furnish the Authority with "as built" drawings reflecting the Project, under Service Area for She

Loungeas actually designed, engineered and constructed, including without limitation an “as built” survey illustrating the layout of the Project Facilities.

- 10.5. The Concessionaire shall submit to the Authority the drafts of the Project Agreements including in particular the O&M Contract for its review. The Authority shall have the right but not the obligation to provide its comments and observations, if any, in respect of the Project Agreements within 15 (fifteen) days of the receipt thereof by the Authority and the Concessionaire shall consider all such comments or observations. Any such comments or observations by the Authority on any Project Agreements or the failure to provide such comments shall not relieve or absolve in any manner whatsoever the Concessionaire of its obligations, duties and liabilities under this Agreement nor shall it make the Authority and/or Authority liable to the Concessionaire in any manner whatsoever and shall be without prejudice to the rights of the Authority hereunder.
- 10.6. During the Concession Period, the Concessionaire shall be responsible for maintaining the Lounge at its own cost and expense. During this period, the Concessionaire shall be responsible for providing expected services to the Users. The Concessionaire shall promptly undertake all such repairs and maintenance works as may be necessary to adhere to the Service Requirements during the Concession Period.
- 10.7. The Concessionaire shall, at all times, afford access to the Project Site to the Authority, Authority and to the persons duly authorized by any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facilities 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 with minimum disruption to the construction, operation and maintenance of the Project Facilities consistent with the purpose for which such persons have gained such access to the Project Site.

11. OBLIGATIONS OF THE AUTHORITY

- 11.1. The Authority agrees to observe, comply and perform the following:
 - a) Enable access to the Project Site, free from Encumbrances, in accordance with this Agreement;
 - b) Permit peaceful use of the Project Site during Concession Period by the Concessionaire as licensee under and in accordance with the provisions of this Agreement without any let or hindrance from the Authority or persons claiming through or under it;
 - c) assist and provide all reasonable support to the Concessionaire in obtaining Applicable Permits;
 - d) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity,

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- internet connection and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- e) Ensure that no barriers are erected or placed by any Government Agency or any other Person on the Project Facilities except on account of any law and order situation or upon national security considerations;
 - f) Assist the Concessionaire in obtaining Police assistance from GOMP, for traffic regulation, removing encroachment over Project Site/ Project Facilities, patrolling and provision of security on the Project Facilities;
 - g) Indemnify Concessionaire against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Authority in connection with the performance of its obligations under this Agreement; and
 - h) Observe and comply with its obligations set forth in this Agreement.

12. REPRESENTATIONS AND WARRANTIES

12.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- b) It has full power, financial resources and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d) It has the financial standing and capacity to undertake the Project;
- e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- g) All the information furnished in the Bid is, and shall be, true and correct as on the Appointed Date and COD for Project and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of its Accounting Years after the Appointed Date to be furnished to the Authority shall give true and fair view of the affairs of the Concessionaire;
- h) It shall furnish a copy of the audited accounts of the Concessionaire within 180 (one hundred eighty) days of the close of its each Accounting Year after the Appointed Date;
- i) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Memorandum and Articles of Association of the Concessionaire or any Applicable Laws or any covenant, agreement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;

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- j) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
 - k) 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 Governmental Agency which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
 - l) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
 - m) All rights and interests of the Concessionaire in and to the Project Facilities shall pass to and vest in the Authority on the Expiry Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Concessionaire or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;
 - n) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority, or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
 - o) It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any Person by way of fees, commission or otherwise for securing the Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority, GOI or GOMP in connection therewith.

12.2. Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- a) The Authority is duly organized and validly existing under the laws of India;
- b) The Authority has full power, financial resources and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) The Authority has taken all necessary action to authorize the execution, delivery and performance of this Agreement;

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- d) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
 - e) The Authority is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

13. DISCLAIMER

- 13.1. 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 Project, Service Requirements, Project Site and all the information provided by the Authority and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- 13.2. 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 13.1** hereinabove and hereby confirms that The Authority shall not be liable for the same in any manner whatsoever to the Concessionaire.

CHAPTER IV: PROJECT DEVELOPMENT AND OPERATIONS

14. MONITORING AND SUPERVISION OF CONSTRUCTION

- 14.1. During the Concession Period, the Concessionaire shall furnish to the Authority monthly progress reports of actual progress of the Project and shall give all such other relevant information as may be required by the Authority and/or the Authority;
- 14.2. The Authority shall inspect the Project Facilities, at least once a month during the Concession Period and make out an inspection report of such inspection (the “**Inspection Report**”). The Concessionaire shall take necessary action to remedy the lapses, if any, stated in the Inspection Report for ensuring compliance with the provisions of this Agreement. Such inspection or submission of Inspection Report by the Authority shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever;
- 14.3. For the purposes of determining that Construction Works are being undertaken in accordance with Concession Agreement and Good Industry Practice, the Authority shall require the Concessionaire to carry out such tests at such time and frequency and in such manner as may be necessary in accordance with Good Industry Practice for quality assurance. The Concessionaire shall with due diligence carry out, or cause to be carried out, all such tests in accordance with the instructions of the Authority and furnish the results of such tests forthwith to the Authority. The Concessionaire shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such test results and furnish a report to the Authority in this behalf;
- 14.4. If the Authority shall reasonably determine that the rate of progress of the Construction of the Project Facilities is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date by the Concessionaire, it shall so notify the Concessionaire about the same and the Concessionaire shall within 7 (seven) days thereof notify the Authority about the steps it proposes to take to expedite progress and the period within which it shall achieve COD for Project.
- a) The Authority may by written notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in the reasonable opinion of the Authority such work is being carried on in a manner which threatens the safety of the works or Concessionaire Employees or Users.
 - b) The Concessionaire, shall upon instructions of the Authority pursuant to sub-clause (a) above suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and subject to sub-clause (c) below, the costs incurred during such suspension to properly protect and secure the Construction Works or such part thereof as is necessary in the opinion of the Authority (“**Preservation Costs**”), shall be borne by the Concessionaire.

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- c) If the suspension pursuant to sub-clause (a) above, is caused by:
 - i. any reason other than default or breach of this Agreement by the Concessionaire including breach of any of the obligations of the Concessionaire under this Agreement, the Preservation Costs shall be borne by the Authority;
 - ii. reason of default or breach of this Agreement by the Authority the Preservation Costs shall be borne by the Authority; or
 - iii. reason of default or breach of this Agreement by the Concessionaire including breach of any of the obligations of the Concessionaire under this Agreement or any Force Majeure Event, the Preservation Costs shall be borne by the Concessionaire save and except to the extent otherwise expressly provided in **Article 24**.
 - d) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Authority shall determine any extension to the Project Completion Schedule, the Scheduled Project Completion Date and the Development Period, to which the Concessionaire is reasonably entitled and shall notify the Authority accordingly. The Authority shall extend the Project Completion Schedule, the Scheduled Project Completion Date, the Development Period and Expiry Date in accordance with the recommendations of the Authority.

15. COMPLETION

- 15.1. The Project shall be deemed to be complete only when the Readiness Certificate is issued in accordance with the provisions of **Article 15** (the "**Project Completion**"). The Authority shall issue the Provisional Readiness Certificate to the Concessionaire for each zone meeting Service Requirements.
- 15.2. COD for Project shall be the date on which the Authority has issued the Readiness Certificate or the Provisional Readiness Certificate, as the case may be, under this Agreement. The Provisional Readiness Certificate shall be issued on receiving Readiness Certificate for 95% (ninety five percent) of the Construction Works identified in the Concessionaire's DPR.
- 15.3. The Concessionaire guarantees that the Project Completion shall be achieved in accordance with the provisions of this Agreement on a date not later than 6 (six) months from the Effective Date ("**Scheduled Project Completion Date**").
- 15.4. If the Project Completion is not achieved by the Scheduled Project Completion Date for any reason other than conditions constituting Force Majeure or for reasons attributable to the Authority or any Government Agency, the Concessionaire shall pay to the Authority Liquidated Damages in accordance with **Clause 15.5** and the Authority shall be entitled to Terminate this Agreement in accordance with the provisions of **Clause 25.1**.

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- 15.5. Authority may at the request of the Concessionaire issue a provisional certificate of completion (“**Provisional Readiness Certificate**”) if the tests are successful and all parts of Project Facilities can be legally, safely and reliably placed in commercial operation though certain works or things forming part thereof are not yet complete. In such an event such Provisional Readiness Certificate shall have appended thereto a list of outstanding items signed jointly by the Authority and the Concessionaire (“**Punch List**”). All Punch List items shall be completed by the Concessionaire within 15 (fifteen) days of the date of issue of such Provisional Readiness Certificate. Subject to payment of Liquidated Damages equal to Rs.25,000 (Rupees twenty five thousand) per week or part thereof on account of any delay beyond the aforesaid period of 15 (fifteen) days, the Concessionaire shall be entitled to a further period of upto 15(fifteen) days for completion of Punch List items. Upon completion of all Punch List items to the satisfaction of the Authority, the Authority shall issue the Readiness Certificate to the Concessionaire. Failure to complete the Punch List items in the manner set forth in this **Clause 15.5** shall entitle the Authority to initiate Termination of this Agreement in accordance with the provisions of **Clause 25.1**;
- 15.6. The Concessionaire shall bear all the expenses relating to tests under this Agreement. For avoidance of doubt, it is clarified that if the Authority requires any test to be conducted which is not specified in this Agreement and such test is considered necessary in the opinion of the Authority, then the expenses on such test shall be borne by the Authority.

16. CHANGE IN SCOPE

- 16.1. The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works, including repairs or replacement of the Project Facilities damaged as a result of Force Majeure Event and services on or about the Project Facilities under Service Area which are not included in the scope of the Project as contemplated by this Agreement (the “**Change in Scope**”). Any such Change in 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 16.5**.
- 16.2. If the Concessionaire determines at any time that a Change in Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change in Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change in 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 in Scope.

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

16.4. Procedure for Change in Scope

- a) In the event of the Authority determining that a Change in Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change in Scope Notice**”).
- b) Upon receipt of a Change in Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
 - i. the impact, if any, which the Change in Scope is likely to have on the Scheduled Project Completion Date if the works or Services are required to be carried out during the Development Period; and
 - ii. the options for implementing the proposed Change in 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 Bid, and if in case any specific item is not covered in the Bid then in accordance with the market rates applicable atUjjainregion to the works assigned by the Authority to its contractors, along with the proposed premium or 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 Authority as reasonable.
- c) Upon receipt of information set forth in **Clause 16.4 (b)** above, if the Authority decides to proceed with the Change in Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Authority, 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 in 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 in 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 16.7**.
- d) The provisions of this Agreement, insofar as they relate to Project, shall apply mutatis mutandis to the works undertaken by the Concessionaire under this **Article 16**.

16.5. Payment for Change in Scope

- a) Within 7 (seven) days of issuing a Change in Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 10% (tenper cent) of the cost of Change in Scope as agreed hereunder, and in the event of a Dispute, 10% (tenper cent) of the cost assessed by the Authority. 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 Authority 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.

- b) Notwithstanding anything to the contrary contained in **Clause 16.5 (a)**, all costs arising out of any Change in Scope Order issued during the Development Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 5% (five per cent) of the Estimated Project Cost. For the avoidance of doubt, it is agreed that the aforesaid 5% (five per cent) of the Estimated Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.6. Restrictions on certain works

- a) Notwithstanding anything to the contrary contained in this **Article 16**, but subject to the provisions of **Clause 16.6 (b)**, the Authority shall not require the Concessionaire to undertake any works or Services if such works or Services are likely to delay Scheduled Project Completion Date; provided that in the event that the Authority considers such works or Services to be essential, it may issue a Change in 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 COD for Project and issuing the Readiness Certificate.
- b) Notwithstanding anything to the contrary contained in this **Article 16**, the Concessionaire shall be entitled to nullify any Change in Scope Order if it causes the cumulative costs relating to all the Change in Scope Orders to exceed 5% (five per cent) of the Estimated Project Cost at any time during the Concession Period.

16.7. Power of the Authority to undertake works

- a) Notwithstanding anything to the contrary contained in **Clause 16.1**, **Clause 16.4** and **Clause 16.5**, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or Services, contemplated under **Clause 16.5**, 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. The Authority shall transfer 75% (seventy five percent) of the amount so received by the Concessionaire to the first ranked bidder whose bid shall have been matched by the Concessionaire. 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 percent)

thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the Person who undertakes the works or Services hereunder.

- b) The works undertaken in accordance with this **Clause 16.7** shall conform to the Concessionaire's DPR and Service Requirements, and shall be carried out in a manner that minimises the disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Project, shall apply mutatis mutandis to the works carried out under this **Clause 16.7**.

16.8. Reduction in Estimated Cost of the Project during the Concession Period

- a) Upon issuing any Change in Scope Orders, and if it causes the cumulative decreased costs relating to all the Change in Scope Orders to exceed 5% (five per cent) of the Estimated Project Cost at any time during the Concession Period, the Authority shall assess the impact of such Change in Scope Orders is likely to have on the Concessionaire's financial, and the expected accrued benefits to the Concessionaire. The Authority shall then calculate the revised upward Monthly Premium payable by the Concessionaire.

17. OPERATIONS AND MAINTENANCE OF PROJECT FACILITIES UNDER SERVICE AREA

- 17.1. The Concessionaire shall, during the Operations Period, operate and maintain the Project Facilities, to ensure that they meet the Service Requirements and to ensure that the Project Facilities transferred to the Authority upon expiry of the Concession Period or earlier Termination, are in good condition, normal wear and tear excepted having regard to their use, and in accordance with **Article 26**.

17.2. Maintenance and repairs

- 17.2.1. During the Operations Period, the Concessionaire shall not carry out any material modifications to the Project Facilities save and except where such:

- i. Modification is required by Good Industry Practice; or
- ii. Modification is necessary for the Project to operate in conformity with the Service Requirements prescribed under this Agreement.

Provided that the Concessionaire shall notify the Authority of the proposed modifications along with details thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider such suggestions as the Authority may make within 15 (fifteen) days of receipt of such details by the Authority.

- 17.3. On each day of the Operations Period, the Concessionaire shall provide services to the Users as envisaged in this Agreement.

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- 17.4. Save and except as otherwise be expressly provided in this Agreement, if the Project Facilities or any part thereof shall suffer 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 in a manner so as to make the Project conform in every respect to the Authority's requirements as prescribed by this Agreement.
- 17.5. In the event the Concessionaire does not maintain and/ or repair the Project Facilities or a part thereof upto and in accordance with the Concession Agreement and shall have failed to commence remedial works within 7 (seven) days of receipt of notice in this behalf from the Authority, the Authority shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Project Facilities at the risk and cost of the Concessionaire and to recover the same from the Concessionaire. The Authority shall have the right and the Concessionaire hereby expressly grants to the Authority the right to deduct the same directly from the Performance Security, as a Liquidated Damages. Recovery of such Liquidated Damages shall be without prejudice to the rights of the Authority under this Agreement, including Termination thereof.
- 17.6. In the event the Authority does not exercise its option to undertake the required repair and maintenance after expiry of the 7 (seven) days period stipulated in **Clause 17.5** it shall recover Liquidated Damages from the Concessionaire for default in operating and maintaining the Project Facilities in conformity with this Agreement. Such Liquidated Damages shall be payable after the aforesaid period of 7 (seven) days and until the default is cured. The amount of Liquidated Damages shall be calculated for each day of default at the lower of the following, namely (a) Rs. 5,000 (Rs. five thousand), and (b) 1% (one percent) of the cost of such repair as estimated by the Authority. Recovery of such Liquidated Damages shall be without prejudice to the rights of the Authority under this Agreement, including Termination thereof.
- 17.7. If the Concessionaire commences any works for curing any defects or deficiencies in the Project Facilities, it shall complete such works expeditiously in accordance with Good Industry Practice. If such works are carried out in a manner that results in a delay of more than 7 (seven) days as compared to the time required in accordance with Good Industry Practice and as certified by the Authority, the Authority shall recover Liquidated Damages from the Concessionaire as if a default had occurred under **Clause 17.6**.
- 17.8. The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Facilities is not available for operations and maintenance after the COD for Project on account of any of the following for the duration thereof:
- i. An event of Force Majeure;
 - ii. Measures taken to ensure the safe use of the Project Facilities except when unsafe conditions on the Project Site occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

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- iii. Compliance with a request from the Authority or the directions of any Government Agency the effect of which is to close all or any part of the Project Site

Notwithstanding the above, the Concessionaire shall operate and maintain all unaffected parts of the Project Site provided they can be safely operated.

CHAPTER V: FINANCING ARRANGEMENTS

18. FINANCIAL CLOSE

- 18.1. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire covenants with Authority that it shall achieve Financial Close within 90 (ninety) days from the Appointed Date. If the Concessionaire fail to achieve Financial Close within the said 90 (ninety) days period from Appointed Date, then the Concessionaire shall be entitled to a further period of 15 (fifteen) days subject to an advance weekly payment by the Concessionaire to the Authority of a sum of Rs.25,000 (Rupees twenty five thousand) per week or part thereof for any delay beyond the said 90 (ninety) days period from the Appointed Date, as Liquidated Damages on account of such delay in achieving Financial Close within the said 90 (ninety) days period from the Appointed Date. The Concessionaire shall make such payment within 3 (three) days of receiving such demand from the Authority and any delay in making such payment shall attract interest at the rate of State Bank of India base rate, applicable on that date plus two per cent;
- 18.2. Notwithstanding anything to the contrary contained in this Agreement, and if the Authority is not in default under the provisions of this Agreement, Authority shall be entitled to Terminate this Agreement forthwith, without being liable in any manner whatsoever to the Concessionaire, by a communication in writing to the Concessionaire pursuant to **Clause 25.1** if the Concessionaire shall have failed to pay in advance the Liquidated Damages to the Authority under and in accordance with **Clause 18.1** above;
- 18.3. Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close shall not occur within 105 (one hundred and five) days as set forth in **Clause 18.1** above, all rights, privileges, claims and entitlements, if any, 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.
- 18.4. Upon Termination of this Agreement under **Clause 18.2** and **Clause 18.3**, the Authority shall forfeit the Performance Security, as Liquidated Damages.

19. MONTHLY PREMIUM

- 19.1. The Concessionaire, during the Concession Period under this Agreement shall pay Monthly Premium to the Authority that will be paid in the manner as detailed below and more specifically on the 7th (seventh) day of each Calendar month when the Monthly Premium is due, and if such day is holiday in Ujjain, then on a previous working day.

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- 19.1.1. The Bid submitted by the Concessionaire shall form the basis for the payment of the Monthly Premium during the Concession Period. The Concessionaire during the Concession Period shall pay Authority the Monthly Premium of [Rs. xx crore (Rupees xx crore) in year 1 of the Concession Period, which will be escalated by 7% (seven percent) per annum;
- 19.1.2. For avoidance of doubt, it is clarified that the GST shall be payable extra by the Concessionaire at prevailing rate, if applicable on Monthly Premium during the Concession Period.
- 19.2. If the Concessionaire unreasonably delays the payment of any amounts due to the Authority for a period in excess of 7 (seven) days from the date on which such amount falls due, the Concessionaire shall be liable to pay interest on the said amount for each day of delay at the rate of prevailing State Bank of India base rate plus two percent.
- 19.3. Unless otherwise specified, the Concessionaire shall pay such taxes, duties, fees and other impositions as may be levied on the Monthly Premium under the Applicable Law.

20. INSURANCE

- 20.1. **Insurance during the Development Period:** The Concessionaire shall effect and maintain, or cause to be effected and maintained, at no cost to the Authority during the Development Period such insurances upto such maximum sums as may be required under and in accordance with this Agreement, the Financing Documents, Applicable Laws and such insurance as the Concessionaire may reasonably consider necessary or desirable in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurance as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act of omission by the Concessionaire during the Development Period.
- 20.2. **Insurance during the Operations Period:** Not later than 2 (two) months prior to the anticipated COD for Project, the Concessionaire shall obtain and maintain at no cost to the Authority during the Operations Period in respect of the Project Facilities and its operations such insurance as may be required under any of the Financing Documents, Applicable Laws and such insurance as the Concessionaire may reasonably consider necessary or desirable in accordance with Good Industry Practice.

For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Concessionaire pursuant to this **Article 20** are herein referred to as the “**Insurance Cover**”. The Concessionaire shall at his cost and expense, purchase and maintain by due reinstatement or otherwise, such Insurance Cover, during the Development Period and Operations Period, as are necessary including but not limited to the following:

- a) Concessionaire’s all risk insurance;

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- b) Project Facilities risk insurance;
 - c) Comprehensive third party liability insurance including injury or death to personnel/representatives, of Persons who may enter the Service Area;
 - d) Workmen's compensation insurance;
 - e) Third Party Motor Vehicle Liability Insurance Covering use of all vehicles used by the Concessionaire or its Sub-Contractors, whether or not owned by them, in connection with its obligation under Agreement; and
 - f) Concessionaire's general liability arising out of the rights granted by the Authority under this Agreement

20.3. **Evidence of Insurance Cover:** All insurance obtained by the Concessionaire in accordance with this **Article 20** shall be maintained with insurer or reinsurers, and on terms consistent with Good Industry Practice. Within 30 (thirty) days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Authority, copies of certificates of insurance, copies of the insurance policies signed by an authorized representative of the insurer and copies of all premia payment receipts in respect of such insurance received from each insurance carrier, and such insurance will not be cancelled, changed or not renewed until the expiration of at least 45 (forty five) days after written notice of such cancellation, change of non-renewal has been received by the Authority.

20.4. **Remedy on Failure to Insure:** If the Concessionaire fails to effect and keep in force the insurance for which it is responsible pursuant hereto, the Authority shall have the option to keep in force any such insurance, and pay such premia and recover the costs thereof from the Concessionaire, or for the purposes of computation of payments to the Concessionaire pursuant to **Article 20** treat the insurance cover i.e. the maximum sums which such insurance was providing for had it been in force and effect as being deemed to have been received by the Concessionaire.

20.5. **Waiver of Subrogation:** All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers thereunder against, inter alia, the Authority, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of 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.

20.6. **Concessionaire Waiver:** The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the Authority, and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss 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.

20.7. **Application of Insurance Proceeds:** The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire (unless otherwise required by the Financing Documents) who shall, subject to its obligations under the Financing Documents, and notwithstanding anything contained in the Concession Agreement, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities.

21. ACCOUNTS AND AUDIT

21.1. The Concessionaire shall furnish, within one week of its publication, which shall not be later than the timeline stipulated in **Clause 12.1 (h)** of this Agreement, a certified copy of the audited accounts and annual report published by the Concessionaire under the Applicable Laws.

CHAPTER VI: FORCE MAJEURE

22. FORCE MAJEURE

- 22.1. A Force Majeure Event shall mean occurrence of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in **Clause 22.2**, **Clause 22.3** and **Clause 22.4** respectively hereinafter which prevent the Party claiming Force Majeure (the “**Affected Party**”) from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and (iii) has a Material Adverse Effect on the Project.
- 22.2. Non-Political Events shall mean one or more of the following acts or events:
- a) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Project Site or beyond design specifications for the Construction Works) or landslide;
 - b) radioactive contamination or ionizing radiation;
 - c) 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 Site for a period exceeding a continuous period of 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in **Clause 22.3** hereof;
 - d) 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;
 - e) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by the Authority; and
 - f) Any event or circumstance of a nature analogous to any of the foregoing
- 22.3. Indirect Political Event shall mean one or more of the following acts or events:
- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents Concessionaire to provide Services for a period exceeding a continuous period of 7 (seven) days in an Accounting Year;

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- b) industry wide or state wide or India wide strikes or industrial action which prevent Concessionaire to provide Services for a period exceeding a continuous period of 7 (seven) days in an Accounting Year; or
- c) any public agitation which prevents Concessionaire to provide Services for a period exceeding a continuous period of 7 (seven) days in an Accounting Year.
- 22.4. Political Event shall mean one or more of the following acts or events by or on account GOI, GOMP, the Authority or any other Governmental Agency:
- a) Change in Law, only when provisions of **Article 29** cannot be applied;
- b) Strikes or boycotts by Authority or Ujjain Municipal Corporation's employees, interrupting supplies and services to the Project Site for a period exceeding a continuous period of 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in **Clause 22.3** hereof;
- c) expropriation or compulsory acquisition by any Governmental Agency of any Project Assets or Project Facilities or rights of the Concessionaire or of the Contractors; or
- d) unlawful or unauthorized 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 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 grant, maintenance or renewal of such consents or permits.
- 22.5. Upon the occurrence of any Force Majeure Event prior to Financial Close as set forth in **Article 18**, the following shall apply:
- a) There shall be no Termination except as provided in **Clause 22.8**;
- b) The date for achieving Financial Close shall be extended by the period for which such Force Majeure event shall subsist; and
- c) The Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs arising out of such Force Majeure Event.
- 22.6. Upon occurrence of any Force Majeure Event after Financial Close, the following shall apply:
- a) There shall be no Termination of this Agreement except as provided in **Clause 22.8**;
- b) Where the Force Majeure Event occurs before COD for Project, the dates set forth in the Project Completion Schedule, and the Development Period shall be extended by the period for which such Force Majeure Event shall subsist;
- c) Where the Force Majeure Event occurs after COD for Project, the Concessionaire shall continue to make all reasonable efforts to meet the Service Requirements; and
- d) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of **Clause 22.7**.

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- 22.7. Subject to the provisions of **Clause 22.6**, upon occurrence of a Force Majeure Event after Financial Close, the costs arising out of such event shall be allocated as follows:
- a) 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 costs arising out of any such Force Majeure Event;
 - b) 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 the Insurance Claims, and to the extent such Force Majeure Costs exceed the Insurance Claims, one half of the same to the extent actually incurred and duly certified by the Statutory Auditors of Concessionaire and the Authority shall be reimbursed by the Authority to the Concessionaire in one lump sum or paid in three equal annual installments with interest payable at prevailing State Bank of India base rate plus 2 (two) percent; and
 - c) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and certified by the Statutory Auditors of Concessionaire and the Authority shall be reimbursed by the Authority to the Concessionaire in one lump sum;
 - d) For avoidance of doubt, Force Majeure Costs shall not include any debt repayment or debt servicing obligations but shall include interest payments on such debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event.
- 22.8. If a Force Majeure Event subsists for a period of 180 (one hundred eighty) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion Terminate this Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever, save as provided in **Clause 22.9**.
- 22.9. Upon Termination of this Agreement pursuant to **Clause 22.8**, Termination Payment to the Concessionaire shall be made in accordance with the following:
- a) If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 80% (eighty percent) Debt Due less Insurance Cover.
 - b) If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 100% (hundred per cent) of such unpaid claims shall be included in the computation of Debt Due; and
 - c) If the Termination of this Agreement is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
 - i. Debt Due, and
 - ii. 100% (one hundred percent) of the Equity

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- 22.10. 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 however 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.
- 22.11. Save and except as expressly provided in this **Article 22**, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this **Article 22**.
- 22.12. The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:
- a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
 - b) Any notice pursuant to this **Clause 22.12** shall include full particulars of:
 - i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this **Article 22** with evidence in support thereof;
 - ii. 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;
 - iii. the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such Force Majeure Event; and
 - iv. any other information relevant to the Affected Party's claim.
 - c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this **Clause 22.12**, and such other information as the other Party may reasonably request the Affected Party to provide.
- 22.13. 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

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- c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

CHAPTER VII: SUSPENSION AND TERMINATION

23. MATERIAL BREACH AND SUSPENSION

- 23.1. If the Concessionaire shall be in Material Breach of this Agreement, the Authority shall be entitled in its sole discretion and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (i) suspend all or any of the rights of the Concessionaire under this Agreement and (ii) exercise the rights of the Concessionaire under this Agreement itself or authorize any other person to exercise the same during such suspension (the “**Suspension**”). Such Suspension by the Authority shall be by a communication in writing to the Concessionaire and shall be effective forthwith upon the issue thereof to the Concessionaire. The period of such Suspension under this **Article 23** shall not exceed 120 (one hundred twenty) days.
- 23.2. Subject to **Clause 23.1**, the Authority shall have the right to utilize the Performance Security for meeting the costs incurred by the Authority to remedy and rectify the cause of such Suspension and for defraying the O&M Expenses during such Suspension period. Provided, however, that if the Concessionaire is making diligent efforts to remedy and rectify such cause, then the Authority shall allow the Concessionaire reasonable time and opportunity for such remedy or rectification.
- 23.3. The Suspension of the rights of the Concessionaire by the Authority pursuant to **Clause 23.1** above shall be revoked by the Authority forthwith upon the Concessionaire having remedied the Material Breach during such Suspension period to the satisfaction of the Authority unless in the meantime this Agreement has been Terminated by the Authority in accordance with **Article 25**.
- 23.4. At any time during the period of Suspension under this **Article 23**, the Concessionaire may in writing notify to the Authority that it does not intend to cure the breach or default that had caused such Suspension. Within 7 (seven) days of receipt of such notice, the Authority shall Terminate this Agreement as if a Material Breach of this Agreement had occurred on account of a Concessionaire Event of Default.

24. COMPENSATION FOR BREACH OF AGREEMENT

- 24.1. In the event of Concessionaire being in material default of this Agreement and such default is cured before Termination, the Concessionaire shall pay to the Authority as compensation, all direct additional costs suffered or incurred by the Authority arising out of such material default by the Concessionaire, in one lumpsum within 30 (thirty) days of receiving the demand from the Authority.

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- 24.2. In the event of the Authority being in material default of this Agreement and such default is cured before Termination, the Authority shall pay to the Concessionaire as compensation, all direct additional costs suffered or incurred by the Concessionaire arising out of such material default by the Authority, in one lumpsum within 30 (thirty) days of receiving the demand from the Concessionaire.

25. TERMINATION

- 25.1. Termination for the Concessionaire Event of Default

25.1.1. Concessionaire Event of Default

Following events shall constitute an event of default by the Concessionaire (the “**Concessionaire Event of Default**”) unless such Concessionaire Event of Default has occurred as a result of the Authority Event of Default or a Force Majeure Event;

- a) The Concessionaire has failed to achieve any one or more than one of its Conditions Precedents on or before the 90 (ninety) days from the Appointed Date;
- b) The Concessionaire fails to achieve any Project milestone other than Scheduled Project Completion Date within the period set forth in **Schedule F** and fails to cure such default within a period of 7 (seven) days from the date of its occurrence.
- c) The Concessionaire is in Material Breach of this Agreement;
- d) The Concessionaire commits default in complying with any of the terms and conditions of this Agreement, save and except those defaults in respect of which Cure Period has been expressly provided in this Agreement and fails to remedy or rectify the same within the period provided in a notice in this behalf from the Authority which shall:
 - i. Require the Concessionaire to remedy the breach or breaches referred to in such notice within 15 (fifteen) days (or such longer period as may be agreed by the the Authority at its absolute discretion); or
 - ii. Permit the Concessionaire to put forward within 7 (seven) days of such notice a reasonable programme for the remedying of the breach or breaches, such programme to specify in reasonable detail the manner in which such breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that such breach or all such breaches shall be remedied.
- e) The Concessionaire creates any Encumbrance, charges or lien in favour of any Person save and except as otherwise expressly permitted;
- f) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;

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- g) The Concessionaire fails to inform Authority about the change in shareholding and the Concessionaire does not suo moto cure such default within 30 (thirty) days of its occurrence;
 - h) The transfer, pursuant to law of either (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (ii) all or material part of the assets or undertaking of the Concessionaire except where such transfer in the reasonable opinion of the Authority does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Project Agreements;
 - i) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
 - j) 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;
 - k) 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 for the purpose of amalgamation or reconstruction provided that, as part of such amalgamation or reconstruction, 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 the Project Agreements, and provided that:
 - i. the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Financial Close; and
 - iii. each of the Project Agreements remains in full force and effect;
 - l) The Concessionaire is in Material Breach of any of the Project Agreements;
 - m) The Concessionaire abandons the operations of the Project Facilities in the Service Area for more than 7 (seven) consecutive days without the prior consent of the Authority, provided that the Concessionaire shall be deemed not to have abandoned such operation if such abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations by the Authority.
 - n) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;

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- o) The Concessionaire suffers an execution being levied on any of its assets/ equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 15 (fifteen) days; and
- p) The Concessionaire has delayed any payment that has fallen due under this Agreement if such delay exceeds 60 (sixty) days.
- 25.1.2. Save and except as otherwise provided in **Clause 25.2**, and without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of any breach or default by the Concessionaire under this Agreement including any Concessionaire Event of Default, the Authority shall be entitled to Terminate this Agreement by a communication in writing (the “**Termination Notice**”) to the Concessionaire if the Concessionaire has failed to cure such breach or default within the period provided for the same in this Agreement provided that before issuing the Termination Notice, the Authority shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the “**Preliminary Notice**”) and grant 7 (seven) days time to the Concessionaire to make its representation, if any, against such intended Termination Notice and shall after the expiry of said 7 (seven) day period whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.
- 25.1.3. Subject to **Clause 25.2**, the following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement.
- i. The Cure Period shall commence from the date on which a Termination Notice in writing is delivered by the Authority to the Concessionaire asking the latter to cure the breach or default specified in such notice.
 - ii. The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for Liquidated Damages caused by its breach or default;
 - iii. The Cure Period shall not in any way be extended by any period of Suspension under this Agreement; and
 - iv. If the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by the Authority hereunder the applicable Cure Period (and any liability of the Concessionaire for damages incurred) shall be extended by the period taken by the Authority to accord their required approval.
- 25.2. Notwithstanding anything to the contrary contained in this Agreement, in the event of the Concessionaire being in default under any of the provisions hereof expressly providing for Termination under or in accordance with this **Clause 25.2**, the Authority shall be entitled to Terminate this Agreement forthwith by issuing a Termination Notice to the Concessionaire and upon issue of such Termination Notice by the Authority, this Agreement shall stand terminated forthwith. Provided, however, that prior to such Termination, the Authority shall by notice grant to the Concessionaire a Cure Period of one month for curing the relevant breach or default of the provisions of this Agreement.

25.3. Upon Termination by the Authority on account of occurrence of Concessionaire Event of Default the the Authority shall pay to the Concessionaire by way of Termination Payment an amount equal to 80% (eighty percent) Debt Due less insurance claims, if any, provided, however, that if all or any of the insurance claims are not admitted and paid, then 100% (hundredper cent) of such unpaid claims shall qualify for being included in the computation of Debt Due. Additional Liquidated Damages shall not apply. For avoidance of doubt, it is expressly clarified that the Termination Payment, as stipulated in this **Clause 25.3** shall be applicable only in case of the Concessionaire achieving COD for Project and completing at least one year of Operations Period.

25.4. Termination for the Authority Event of Default

25.4.1. The Concessionaire may after giving 90 (ninety) days notice in writing to the Authority Terminate this Agreement upon the occurrence and continuation of any of the following events (each a “**Authority Event of Default**”), unless any such the Authority Event of Default has occurred as a result of Concessionaire Event of Default or due to a Force Majeure Event.

- a) The Authority has failed to achieve any one or more than one of its Conditions Precedents on or before the 90 (ninety) days from the Appointed Date;
- b) Any representation made or warranty given by the Authority under this Agreement is found to be false or misleading;
- c) The Authority is in breach of this Agreement and such breach has a Material Adverse Effect on the Concessionaire and the Authority has failed to cure such breach or take effective steps for curing such breach within 60 (sixty) days of receipt of notice in this behalf from the Concessionaire;
- d) The Authority repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;
- e) The Authority has delayed any payment to the Concessionaire or any agency concerned, that has fallen due under this Agreement if such delay exceeds 90 (ninety) days;
- f) GoI or GOMP or any Governmental Agency have by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and have failed to cure the same within 90 (ninety) days of receipt of notice by the Authority in this behalf from the Concessionaire; and
- g) Authority has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect.

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- 25.4.2. Upon Termination by the Concessionaire on account of the Authority Event of Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- i. Debt Due, and
 - ii. 100% (one hundred per cent) of the Equity
- 25.5. Upon Termination of this Agreement for any reason whatsoever, the Authority shall:
- i. Take possession and control of Project Facilities and all Project Assets forthwith;
 - ii. Take possession and control forthwith of any materials, construction plant, implements, stores etc. on or about the Project Site;
 - iii. Restrain the Concessionaire and any Person claiming through or under the Concessionaire from entering upon the Project Site or any part of the Project Site; and/or
 - iv. Succeed upon election by the Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreement as the Authority may in its discretion deem appropriate and shall upon such election be required to compensate such contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire as aforesaid. All sums claimed by such Contractors as being due and owing for work 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 in no way or manner be liable or responsible for such sums.
- 25.6. The Termination Payment pursuant to this Agreement shall become due and payable to the Concessionaire by the Authority or vice-a-versa within thirty days of a demand being made by the Concessionaire with the necessary particulars duly certified by the Authority. If the Authority or the Concessionaire, as the case may be, fails to disburse the full Termination Payment within 30 (thirty) days, the amount remaining unpaid shall be disbursed along with interest at the prevailing State Bank of India base rate plus two per cent for the period of delay on such amount.
- 25.7. Payment of compensation of costs by the Authority pursuant to this **Article 25** and such payment shall constitute valid discharge of the Authority's obligations for Termination Payment hereunder.

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

26. DIVESTMENT OF RIGHTS AND INTERESTS

- 26.1. Upon Termination of this Agreement, the Concessionaire shall comply with the following:
- a) Notify to the Authority forthwith the location and particulars of all Project Assets;
 - b) Deliver forthwith actual or constructive possession of the Project Assets free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by the Authority for fully and effectively divesting the Concessionaire of all of the rights, title and interest of the Concessionaire in the Project Facilities and conveying the Project Facilities free of any charge or cost to the Authority; and
 - c) Comply with the Divestment Requirements set out in **Clause 26.2**.
- 26.2. Upon Termination of this Agreement, the Concessionaire shall comply and conform to the following Divestment Requirements in respect of the Project Facilities:
- a) all Project Facilities shall have been renewed and cured of all defects and deficiencies as necessary so that the Project Facilities are compliant with the Authority's requirements set forth in this Agreement;
 - b) the Concessionaire delivers relevant records and reports pertaining to the Project Facilities and its design, engineering, construction, operation, and maintenance including all operation and maintenance records and programmes and manuals pertaining thereto and complete as built Drawings on the Divestment Date;
 - c) the Concessionaire executes such deeds of conveyance, documents and other writings as the Authority may reasonably require to convey, divest and assign all the rights, title and interest of the Concessionaire in the Project Facilities free from all Encumbrances absolutely and free of any charge or tax unto the Authority or its Nominee; and
 - d) the Concessionaire complies with all other requirements as may be prescribed under Applicable Laws to complete the divestment and assignment of all the rights, title and interest of the Concessionaire in the Project Facilities free from all Encumbrances absolutely and free of any charge or tax to the Authority or its nominee.

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- 26.3. Not earlier than 3 (three) months before the expiry of the Concession Period but not later than 30 (thirty) days before such expiry, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) days from the date of issue of Termination Notice, the Authority shall verify, in the presence of a representative of the Concessionaire, compliance by the Concessionaire with the Divestment Requirements set forth in **Clause 26.2** in relation to the Project Facilities and, if required, cause appropriate tests to be carried out at the Concessionaire's cost for determining the compliance therewith. If any shortcomings in the Divestment Requirements are found by either Party, it shall notify the other of the same and the Concessionaire shall rectify the same at its cost. The provisions of **Article 27** shall apply mutatis mutandis in relation to repair or curing of defects under this **Article 26**.
- 26.4. Upon the Concessionaire conforming to all Divestment Requirements and handing over actual or constructive possession of the Project Facilities to the Authority or a person nominated by the Authority in this regard, the Authority shall issue a certificate (the "**Vesting Certificate**") which will have the effect of constituting evidence of divestment of all rights, title and lien in the Project Facilities by the Concessionaire and their vesting in the Authority pursuant hereto. Issue of the Vesting Certificate shall not be unreasonably withheld by the Authority. The divestment of all rights, title and lien in the Project Facilities shall be deemed to be complete on the date when all the Divestment Requirements have been fulfilled or the Vesting Certificate has been issued, whichever is earlier, it being expressly agreed that any defect or deficiency in any Divestment Requirement shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on or in respect of the Project Facilities on the footing as if all Divestment Requirements have been complied with by the Concessionaire.
- 26.5. Notwithstanding anything to the contrary contained in this Agreement, any Termination Payments to be made by the Authority shall not be applicable for any purpose whatsoever until the Vesting Certificate has been issued by the Authority under this Article.

CHAPTER VIII: MISCELLANEOUS

27. DEFECTS LIABILITY

- 27.1. Not less than 6 (six) months nor more than 12 (twelve) months prior to the expiry of the Concession Period, the Concessionaire and the Authority shall conduct a joint inspection (the “**Initial Inspection**”) of the Project Site and all Project Facilities.
- 27.2. Within 30 (thirty) days after the completion of the Initial Inspection, the Concessionaire shall provide to the Authority a report on the condition of the Project Site and the Project Facilities and a notice setting out the Concessionaire’s proposals as to the renewal works required to comply with the Divestment Requirements.
- 27.3. The Authority may, within 15 (fifteen) days after receipt of the notice from the Concessionaire in accordance with **Clause 27.2**, by notice to the Concessionaire object to the proposals giving details of the grounds for such objection and shall give the Authority’s proposals in respect of the renewal works.
- 27.4. If no agreement is reached between the Concessionaire and the Authority within 30 (thirty) days of receipt of such notice, then either the Concessionaire or the Authority may refer the matter to the Disputes Resolution Procedure.
- 27.5. Upon agreement or determination in accordance with the Disputes Resolution Procedure, the Concessionaire shall carry out the renewal works at its own cost.
- 27.6. Not less than 3 (three) months nor more than 6 (six) months prior to the expiry of the Concession Period, the Concessionaire and the Authority shall conduct a joint inspection (the “**Second Inspection**”) of all elements of the Project Site and Project Facilities (whether or not the Renewal Works have been carried out).
- 27.7. Within 15 (fifteen) days after the completion of the Second Inspection, the Concessionaire shall provide to the Authority a report on the condition of the Project Site and Project Facilities and a notice setting out any revisions or additions to the renewal works required in order to ensure compliance with the Divestment Requirements.

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- 27.8. The Authority may, within 15 (fifteen) days after receipt of the notice from the Concessionaire in accordance with **Clause 27.7**, by notice to the Concessionaire object to the proposed revisions giving details of the grounds for such objection and shall give the Authority proposals in respect of such matters.
- 27.9. If no agreement is reached between the Concessionaire and the Authority within 10 (ten) days of receipt of such notice, then either the Concessionaire or the Authority may refer the matter to the Dispute Resolution Procedure.
- 27.10. Upon agreement or determination in accordance with the Disputes Resolution Procedure, the Concessionaire shall carry out the renewal works (as so revised) at its own cost.

28. ASSIGNMENT AND CHARGES

- 28.1. This Agreement shall not be assigned by the Concessionaire, save and except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.
- 28.2. The Concessionaire shall neither create nor permit to subsist any encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreements to which 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 whatsoever. For avoidance of doubt, it is expressly clarified that the restraint set forth in this Clause 40.2 shall not apply to:
- i. Liens/ Encumbrances arising by operation of Applicable Law (or by an Agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - ii. Pledges/ hypothecation of goods/ stocks, and revenue as security for in favor of the Senior Lenders and working capital providers for the Project;
 - iii. Assignment of Concessionaire's rights and benefits under this Agreement to or in favour of the Senior Lenders as security for financial assistance provided by them;
 - iv. Receivables as security in favour of the Senior Lenders

28.3. For avoidance of doubt, it is expressly clarified that the Authority may authorise Concessionaire, in its own discretion, to create any Encumbrance over the Project Assets constructed on the Project Site, excluding Land and this Agreement in favor of the Senior Lenders for enabling Financial Close. The Authority may enter into such agreement as may be required by the Senior Lenders to enable Financial Close of the Project and creation of the Encumbrance required by the Lenders. Without prejudice to the terms of this Agreement, the Authority shall be governed by the terms of any agreement that the Senior Lenders may have entered into with the Authority in respect of the Encumbrance over the Project Facilities (other than the land constituting the Site which shall not be mortgaged), any assets of the Project and this Agreement, created in favour of the Senior Lenders.

28.4. Notwithstanding anything to the contrary contained in this Agreement the Authority may assign any of its rights and benefits and/or obligations under this Agreement pursuant to any direction of GOI or by operation of law or in the course of its own business.

29. CHANGE IN LAW

29.1. The occurrence of any of the following events post Bid shall be considered as Change in Law:

- 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; or
- d) a change in the interpretation or application of any Indian law by a judgement of a Supreme Court of India 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

29.2. If as a result of Change in Law, the Concessionaire suffers an increase in costs, the aggregate financial effect of which exceeds Rs. 5Lakh (Rupees five lakh) in any Accounting Year, the Concessionaire may notify the Authority and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Upon notification by the Concessionaire as aforesaid, the Parties shall meet as soon as reasonably practicable, but no later than 30 (thirty) days and either agree on amendments to this Agreement or on alternative arrangements to implement the foregoing.

Provided that if no agreement is reached as aforesaid by the Parties within 45 (forty five) days of the meeting pursuant to this **Clause 29.2**, the Concessionaire may by notice in writing require the Authority to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been so such Change in Law

resulting in such cost increase, reduction in return or other financial burden as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Statutory Auditors of the Concessionaire. If the Authority disputes the quantum of such compensation claim of the Concessionaire, the same shall be finally settled in accordance with the Dispute Resolution Procedure.

- 29.3. If as a result of Change in Law, the Concessionaire enjoys a reduction in costs or other financial benefit, the aggregate financial effect of which exceeds Rs. 5 Lakh (Rupees five lakh) in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been so such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Upon notification by the Authority as aforesaid, the Parties shall meet as soon as reasonably practicable, but no later than 30 (thirty) days and either agree on such amendments to this Agreement or on alternative arrangements to implement the foregoing.

Provided that if no agreement is reached as aforesaid by the Parties within 45 (forty five) days of the meeting pursuant to this **Clause 29.3**, the Authority may by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Authority. If the Concessionaire disputes such claim of the Authority, the same shall be finally settled in accordance with the Dispute Resolution Procedure.

30. LIABILITY AND INDEMNITY

30.1. General indemnity

- a) The Concessionaire will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and, third party claims (other than a claim by the Authority or GOI for loss, damage and expense of whatever kind and nature arising out of the design, engineering, construction and procurement for Service Area, and O&M of the Project or arising out of a breach by Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to the Authority Event of Default).
- b) The Authority will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of the Authority in the land comprised in the Project Site adversely affecting the performance of the Concessionaire's obligations under this Agreement and/or arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants, agents,

subsidiaries and contractors (“**Authority Indemnified Persons**”) including the Authority Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents including due to Concessionaire Event of Default.

- 30.2. Without limiting the generality of **Clause 30.1** the Concessionaire shall fully indemnify, save harmless and defend the Authority including its officers, servants, agents, advisors and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) payments of taxes relating to the Concessionaire’s Contractors, suppliers and representatives, income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, 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.
- 30.3. Without limiting the generality of the provisions of this **Article 30**, the Concessionaire shall fully indemnify, save harmless and defend the Authority indemnified Person from and against any and all 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, 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 suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authoring 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 parts or process, or modify the same so that it becomes non-infringing.

30.4. In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this **Article 30** (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

30.5. Defence of Claims

30.5.1. 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 their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this **Article 30**, 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 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, 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.

30.5.2. If the Indemnifying Party has exercised its rights under **Clause 30.4**, 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).

30.5.3. If the Indemnifying Party exercises its rights under **Clause 30.4** then 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 such Indemnified Party, when and as incurred, unless:

- a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or

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- 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 clauses (b), (c) or (d) shall be applicable, counsel for the Indemnified Party shall have the right to direct the defence of such claim, 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.

31. RIGHTS AND TITLE OVER THE PROJECT SITE

- 31.1. The Concessionaire shall have exclusive rights to the use of the Project Site during the Concession Period, in accordance with the provisions of this Agreement.
- 31.2. The Concessionaire shall allow access to, and use of the Project Site for telegraph lines, electric lines or such other public purposes as the Authority may specify. Where such access or use causes any damage to the Project and consequent financial loss to the Concessionaire, it may seek compensation or damages from such user of the Project Site as per Applicable Laws.
- 31.3. For the purposes of claiming benefit for the depreciation, the Concessionaire may refer the accounting standards guidelines issued by the Institute of Chartered Accountants of India (ICAI). The Authority shall not be liable in respect of any depreciation claimed by the Concessionaire.
- 31.4. The Concessionaire shall not be liable to pay any property taxes for the Project Site.

31.5. The Concessionaire shall not sublet the whole or any part of the Project Site save and except as may be expressly set forth in this Agreement provided however that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project Site including Project Facilities.

32. DISPUTE RESOLUTION

32.1. Amicable Resolution

- a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including incompleteness of the Project Facilities between the Parties and so notified in writing by either Party to the other (the “**Dispute**”) in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Sub-clause (b) below.
- b) In the event of any Dispute between the Parties, either Party may call upon the Chairman of the Authority to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Chairman of the Authority or without the intervention of the Authority, either Party may refer the dispute to arbitration in accordance with the provisions of **Clause 32.2**.
- c) If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the provisions of **Clause 32.2** shall apply.

32.2. Arbitration

32.2.1. Any Dispute, which is not resolved amicably as provided in **Clause 32.1** shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to **Clause 32.2.2** below. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to provisions of the Indian Arbitration and Conciliation Act, 1996 and any amendments thereto.

32.2.2. There shall be a Board of three arbitrators of whom each party shall select one and the third arbitrator shall be appointed in accordance with the Rules of Arbitration of the Indian Council of Arbitration.

32.2.3. The arbitrators shall issue a reasoned award.

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- 32.2.4. The venue of such arbitration shall be Ujjain, Madhya Pradesh, India.
- 32.2.5. The Concessionaire and the Authority undertake to carry out any decision or award of the arbitrators (the “**Award**”) without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.
- 32.2.6. 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.
- 32.2.7. This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.
- 32.2.8. The proceeding of Arbitration to be conducted in English language and in Ujjain; and
- 32.2.9. The cost of Arbitration shall be shared equally between the Parties.

33. DISCLOSURE

- 33.1. The Authority shall make available for inspection by members of public free of charge during normal business hours on all working days copies of Request for Proposal document, this Concession Agreement along with its Schedules and Project Information Memorandum (hereinafter collectively referred to as “**Public Documents**”) at the Authority’s head office and on Authority’s website during the subsistence of this Agreement. The Authority shall prominently display the public notices about the availability of the Public Documents for inspection and shall make available upon request and payment in advance of copying charges on no profit-no loss basis to members of public copies of the said Public Documents.

34. REDRESSAL OF PUBLIC GRIEVANCE

- 34.1. The Concessionaire shall maintain a public relations office and keep it open to public access at all times. At each such office, the Concessionaire shall open and maintain a register (the “**Complaints Register**”), in a physical form and soft form, and as an online complainant mechanism through its website or kiosks or citizen service centres or through e-mail or through SMS system, for recording of complaints by any person (the “**Complainant**”) at any time of the day. The availability of and access to such office and the Complaints Register shall be prominently displayed by the Concessionaire at each public relations office so as to bring it to the attention of all persons entering and exiting the office.

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- 34.2. Each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered the Complainant shall be given a receipt, either in physical form or soft form, by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns including but not limited to the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.
- 34.3. The Concessionaire shall inspect the Complaints Register at intervals of every 30 minutes on a daily basis and take prompt steps for redressal of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the 'Action taken' column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post and/or courier and/or SMS and/or e-mail.
- 34.4. Within one week following the close of each calendar month, the Concessionaire shall send to the Authority a copy of the Complaints Register on which any entries have been recorded of any Complaint on the Concessionaire during the course of such month. The Authority may in its discretion direct the Concessionaire to take such further reasonable action as the Authority may deem appropriate for a fair and just redressal of any grievance. Where the Authority is of the opinion that the Complainant is entitled to any further redressal or compensation beyond what the Concessionaire is willing to provide, the Authority may refer the matter to the consumer redressal forum having jurisdiction for its disposal in accordance with the provisions of the Consumer Protection Act, 1986.

35. ADVERTISING ON THE PROJECT SITE

- 35.1. The Concessionaire shall be allowed of any commercial advertising, display or hoarding at any place on the Project Site, only in accordance with the Authority's advertisement policy, and if no such advertisement policy in place, then by consent of the Authority, which shall not be withheld unreasonably.

36. GOVERNING LAW AND JURISDICTION

- 36.1. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Madhya Pradesh, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

37. MISCELLANEOUS

- 37.1. Waiver
- a) Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement.

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- i. 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;
 - ii. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
 - iii. shall not affect the validity or enforceability of this Agreement in any manner.
 - b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation 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.

37.2. Survival

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

37.3. Entire Agreement

This Agreement and the Schedules together with the any addendum/amendments to this Agreement, the Letter of Acceptance; the clarifications issued by the Authority dated [●] and [●], the Addendum/Corrigendum to the Request for Proposal (if any) and Request for Proposal document constitutes the complete and exclusive statement of the terms of this Agreement between the Parties on the subject hereof, and no amendment or modification hereto will 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.

37.4. Notices

Any notice or other communication to be given by 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 letter delivered by hand to the address given and marked for the attention of the person set out opposite the corresponding signature below or to such other address marked for such other attention 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 [ABC] may (if they are subsequently confirmed by sending a copy thereof by first class registered airmail or by courier) be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to the Authority; and

- b) in the case of the Authority, be given by letter delivered by hand and be addressed to the Chief Executive Officer, Ujjain Smart City Limited

Copies of all notices shall also be sent by facsimile and by registered acknowledgement due pre-paid post or courier.

Copies of all notices shall also be sent to the Authority.

37.5. 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 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 this Agreement or otherwise.

37.6. No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

37.7. 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.

37.8. Stamp Duty

Notwithstanding anything to the contrary contained elsewhere in this Agreement, all charges and expenses including stamp duty and registration charge, if any, relating to this Agreement or arising in relation to this Agreement, or any amendment of this Agreement will be borne by Concessionaire or the selectee as the case may be.

37.9. Exclusion of Implied Warranties, etc.

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

37.10. Counterparts

This Agreement may be executed in two 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

SIGNED SEALED AND DELIVERED

For and on behalf of

Ujjain Smart City Limited

By

_____ (Signature)

_____ (Name)

_____ (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of

CONCESSIONAIRE by:

_____ (Signature)

_____ (Name)

_____ (Designation)

In the presence of:

1.

2.

SCHEDULE A: LETTER OF ACCEPTANCE

(To be attached before signing of the Concession Agreement)

SCHEDULE B: BID SUBMITTED BY THE CONCESSIONAIRE

(To be attached before signing of the Concession Agreement)

SCHEDULE C: SERVICE AREA

(Authority to attach Service Area details, i.e. Project Sites for the proposed She Lounge with authorized map)

SCHEDULE D: APPLICABLE PERMITS

Indicative list of Applicable Permits:

- a) Planning permissions
- b) Public way-leaves that may be required from time to time
- c) Building permits
- d) Right to use Electrical power
- e) Equipment licenses
- f) Licenses to work during other than normal working hours
- g) Licenses if any to operate water supply facilities
- h) Health and Safety certificates
- i) Fire certificate, if required
- j) Approval from Labour Auditor, etc.

(Authority to provide a list of other Project specific approvals / permits required)

SCHEDULE E: CONCESSIONAIRE'S DETAILED PROJECT REPORT

(To be attached after signing of the Concession Agreement, during Preparatory Period)

SCHEDULE F: PROJECT COMPLETION SCHEDULE

(To be attached after signing of the Concession Agreement, during Preparatory Period and on finalization of the Concessionaire's Detailed Project Report)

SCHEDULE G: PERFORMANCE SECURITY

The Chief Executive Officer,
Ujjain Smart City Limited
[ABC]

WHEREAS:

- (A) (the “**Concessionaire**”) and the Chief Executive Officer, Ujjain Smart City Limited (the “**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the ‘Appointment of the Concessionaire for implementation of She Lounge’ Project at Ujjain on design, build, finance, operate and transfer (DBFOT) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs xxxx (Rupees xxxx) crore (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Concession Period (as defined in the Agreement).
- (C) We, through our Branch at Ujjain, Madhya Pradesh, India (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 Concession Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority under the hand of an officer not below the rank of General Manager in Ujjain Smart City Limited 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 Concession 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 contrary 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, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect not before Expiry Date, and in accordance with the Agreement.

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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 ----- 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 Bank officer(s) signing the guarantee.

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 H: SERVICE REQUIREMENTS

A.	S. No.	Assessment Criteria	Benchmark	Consequences
	1	Days of operations	The lounge shall function minimum of 28 days every month.	Rs 10000 per day shall be forfeited for the number of non-functional days
	2	Operation of toilet and vending kiosk	The toilets in the lounge shall be functional all the time and in no condition the vending kiosk should function without the functioning of the lounge.	Rs 10000 shall be forfeited per day if such operation is observed.
	3	Operation timings	The operational timing for the lounge shall be functional from 6 AM to 10 PM every functional day.	Rs 5000 shall be forfeited per day if the operation hours are less than the benchmark.
	4	Maintenance	All the component as specified in the Terms of reference shall be functional	Rs 10000 shall be forfeited for every non-functional component every month.
	5	Cleanliness	Toilets shall be checked and cleaned after every use.	Rs 5000 shall be forfeited per day if the feedback on cleanliness is negative for more than 10% of the users. (Rating 1 & 2 out of 5 shall be considered as negative)

***Note:**

- 1. The Selected Concessioner shall submit the formats for measurement of Service Level Assessment (SLA) for Approval to USCL before commencement of Services. The SLA shall be monitored in the approved format of USCL.*
- 2. Exception may be considered with prior notice and approval of the client.*

SCHEDULE I: PROJECT FACILITIES

(To be incorporated at the end of Development Period, and the same shall be updated every quarter of the Accounting Year)

SCHEDULE J: REPORTING REQUIREMENTS

A list of reports required to be submitted by the Concessionaire to the Authority are given below¹. The format of such reports will be decided during Preparatory Period in consultation with the Authority. Apart from these, the Concessionaire should submit any additional reports as required under the Agreement or to meet compliance, regulatory and oversight requirements of the Project, as required by the Authority, Authority, and other regulatory / compliance enforcement authorities.

1. During Development Period

The Concessionaire will submit the following reports during the Development Period to the Authority:

- a. Monthly progress report – Physical and financial progress of the Project

2. During Operations Period

The Concessionaire will submit the following reports during the Operations Period to the Authority:

- a. Monthly report on the performance as against Service Requirements; and
- b. Yearly audited balance sheet and profit & loss statements with all schedules, in a format as described by Securities and Exchange Board of India for any listed entity

¹ The list is an indicative one, the Authority may stipulate its own requirement

SCHEDULE K: READINESS CERTIFICATE

I/We, ***** (Name of Authority) acting as Authority on the Project “Appointment of the Concessionaire for implementation of She Lounge’ Project at Ujjain on design, build, finance, operate and transfer (DBFOT) basis” through the Concessionaire (Name of the Concessionaire) hereby issue this Readiness Certificate in terms of **Article** Error! Reference source not found. of the Concession Agreement since the said Project has been completed and successfully tested as per **Schedule O** as stipulated in the said Concession Agreement and is ready for commissioning as provided in the Concession Agreement dated (Date of Agreement) between the said Concessionaire and the Authority. The date of issue of this Readiness Certificate shall be the COD for Project, as defined in the said Concession Agreement.

Dated: *****

(Date of issue)

Authority

a. **PROVISIONAL READINESS CERTIFICATE**

I/We, ***** (Name of Authority) acting as Authority on the Project “Appointment of the Concessionaire for implementation of She Lounge’ Project at Ujjain on design, build, finance, operate and transfer (DBFOT) basis” through the Concessionaire (Name of the Concessionaire) hereby issue this provisional readiness certificate in terms of **Article** Error! eference source not found. of the Concession Agreement dated (Date of Agreement) between the said Concessionaire and the Authority, on request of the said Concessionaire subject to the appended Punch List containing a list of outstanding items since the tests stipulated in **Schedule O** have been successfully carried out and all parts of the Project Facilities can be legally, safely and reliably placed in commercial operations though certain works and things forming part thereof are not yet complete as indicated in the said Punch List. All the items of the said Punch List shall be completed by the said Concessionaire within 90 (ninety) days of the date of issue of this Provisional Readiness Certificate.

Dated: *****

(Date of issue)

Authority

SCHEDULE L: DIVESTMENT REQUIREMENT

Divestment Requirements

- a. **Upon Expiry Date, the Concessionaire shall comply with and conforms to the following Divestment Requirements:**
- i. Notify to the Authority forthwith the location and particulars of all Project Facilities;
 - ii. Deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances;
 - iii. Cure all Project Assets for all defects and deficiencies so that they are compliant with the Good Industry Practice; provided that in the event of Termination during the Development Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
 - iv. Deliver and transfer relevant records, reports, intellectual property and other licenses pertaining to the Project Facilities, and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' drawings as on the Expiry Date. For the avoidance of the doubt, the Concessionaire represents and warrants that the intellectual property delivered hereunder shall be adequate and complete for the design, construction, operation and maintenances of the Project Facilities, and shall be assigned to the Authority free of any Encumbrance;
 - v. Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
 - vi. Execute such deeds of conveyance, documents and other writing as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Facilities, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
 - vii. 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 Water Supply Network, free from all Encumbrances, absolutely onto the Authority or to its nominee.
- b. 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.

1. Inspection and cure

Not earlier than 90 (ninety) days prior to Expiry Date but not later than 30 (thirty) days prior to the effective date of such Expiry Date, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) days from the date of issue of Termination Notice, the Authority shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by Concessionaire's with the O&M requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any in the O&M requirements shall be cured by the Concessionaire at its cost and the provisions of defects liability after termination shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under the divestment of rights and interest.

2. Cooperation and assistance on transfer of Project

- a. 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 Project Site.
- b. The Parties shall provide to each other, 6 (six) months prior to the Expiry Date and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the transfer date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, or nominee may reasonably require for operation of the Project until the expiry of 6 (six) months after the transfer date.

3. Vesting Certificate

The divestment of all rights, title and interest in the Water Supply Network shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a Vesting Certificate, which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project Assets, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project Assets on the footing that all Divestment Requirements have been complied with by the Concessionaire.

4. Divesting costs etc.

- a. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Water Supply Network in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- b. In the event of any dispute relating to matters covered by and under this **Schedule W**, the Dispute Resolution Procedure shall apply.

SCHEDULE M: MINIMUM MAINTENANCE REQUIREMENTS

All She Lounge and any Project Facilities within the Service Area to be kept cleaned at all times. The litre bins should not be overflowing at any time and disposal of garbage to be arranged to as required;

- The advertisement panels to be kept clean from dust, stains, etc. at all times. It is to be ensured that posters, etc. are not posted on any of the panels and on structural part of She Lounge;
- The solar panels to be kept clean from dust, stains, etc. at all times;
- No leakage from the roof of the She Lounge to be permitted at any time;
- Proper utilities, i.e. supply of 24x7 Treated Water and power supply, an internet connectivity and mobile signal of appropriate bandwidth to be ensured at all She Lounge;
- Proper drainage system is to be maintained at all She Lounge and no accumulation of water, liquid, etc. to be allowed at any time;
- The proper lighting system at all She Lounge to be maintained at all times;
- The safety of the electrical wiring and switches be ensured for Users at all times;
- Any broken Project Facilities, including but not limited to floor tiles to be replaced within 3 days of such event;
- All attending staff at She Lounge shall be women employees with proper identification cards;
- The attending staff at all She Lounge should be literate and courteous towards the Users and provide help to the handicapped and old age Users;
- The flower plants and shrubs are to be maintained and watered regularly and the wastes to be disposed off immediately;
- The closed circuit TV at all She Lounge should be functional at all times;
- The security of all Project Facilities to be ensured at all times; and
- The advertisement on the electronic panels at all She Lounge should change periodically, especially post-sun set hours