

Greater Warangal Municipal Corporation

DRAFT CONCESSION AGREEMENT

FOR

**DEVELOPMENT, OPERATION & MAINTENANCE OF PAY & USE PUBLIC
TOILETS IN WARANGAL ON DESIGN, BUILD, FINANCE, OPERATE AND
TRANSFER (DBFOT) BASIS**

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CONCESSION AGREEMENT

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

BETWEEN

1. GREATER WARANGAL MUNICIPAL CORPORATION (GWMC), represented by its ----- and having its principal offices at -----, Warangal (hereinafter referred to as the "AUTHORITY" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of ONE PART; AND
2. -----, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at -----, (hereinafter refer to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof, include its successors, and permitted assigns and substitutes) of the SECOND PART;

WHEREAS:

- A. Greater Warangal Municipal Corporation, with a view to address the problem of open defecation in public areas and to promote access to safe sanitation facilities that would lead to improved public health, has decided to develop Pay & Use Public Toilets under Public Private Partnership (PPP) framework by engaging Private Operator on Design, Build, Finance, Operate & Transfer (DBFOT) basis. The Authority has identified locations where there is prevalence of open defecation due to absence of public toilets and so is the demand for public sanitation facilities. The initiative adopts a participatory approach where the public toilets are demanded by the community with willingness to pay for their usage.

Accordingly, the AUTHORITY had resolved to avail the services of experienced private service providers for efficient execution of the above Project through Public Private Partnership (the "PPP") on Design-Build-Finance-Operate-Transfer (the "DBFOT") basis, and has therefore, decided to carry out the bidding process for selection of a private entity as the "Concessionaire" to whom the Project may be awarded in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.

- B. The Authority had prescribed the technical and commercial terms and conditions, and invited bids for construction, operation and maintenance of the above referred Public Toilets Project in Greater Warangal on DBFOT basis by its Tender Notice No. --- dated ---- (the "Tender Notice") for undertaking the Project.
- C. After evaluation of the bids received, the Authority had accepted the bid of the Selected Bidder and issued its letter of acceptance No. *** dated *** (hereinafter called the "LOA") to the Selected Bidder requiring, inter alia, the execution of this Concession Agreement within ---- (----) days of the date of issue thereof.

- D. The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956/2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- E. The Authority has agreed to the said request of the Selected Bidder and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 33) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation

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

- a. The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- b. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- c. any reference to day shall mean a reference to a calendar day;
- d. references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Warangal are generally open for business;
- e. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- f. references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- g. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

- h. "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - i. any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - j. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;
 - k. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - l. references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
 - m. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages").
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Engineer-in-Charge shall be provided free of cost and in three copies, and if the Authority and/or the Engineer-in-Charge is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.3 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

1.3. Priority of Agreements and errors/discrepancies

- 1.3.1. This agreement, and all other agreements and documents forming part of this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this agreement, the priority of this agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:
- a) this agreement; and
 - b) all other agreements and documents forming part hereof;

i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

ARTICLE 2: SCOPE OF THE PROJECT

2.1. Scope of the Project

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

- a. Construct and commission of Public Toilets on design, build, finance, operate and transfer basis at the Sites as set forth in Schedule I and in conformity with the Specifications and Standards as set forth in Schedule II;
- b. To install a bore well at the Public Toilets and it includes re-boring, in case of failure of water source; either at the same place or at a suitable alternate place;
- c. Operate & maintain such Public Toilets in accordance with the provisions of the Concession Agreement;
- d. Educate & to undertake Social Marketing, the concept of safe sanitation facility and the advantages of usage of Public Toilets to the communities on Pay and Use basis;
- e. Perform and fulfill all other obligations in accordance with the provisions of the Concession Agreement, and the matter incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire;
- f. The Concessionaire shall have to provide the facilities on Pay and Use basis as per the User Fee defined in this RFP document;

- g. The Concessionaire is also given the Advertisement Rights whereby to generate additional source of revenue in accordance with the provisions of Concession Agreement; and
- h. The Concessionaire can propose any additional sources of revenue subject to the approval of the Authority and in accordance with the provisions of Concession Agreement.

ARTICLE 3: GRANT OF CONCESSION

3.1. The Concession

- 3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority during the subsistence of this Agreement to construct, operate and maintain the Project (the "Concession") for a period of ---- (-----) years and -- (---) months commencing from the Appointed Date.
- 3.1.2. Subject to and in accordance with the provisions of this Agreement, the Concessionaire shall:
 - a) investigate, study, design, engineer, procure, finance, construct, augment, rehabilitate, operate and maintain the Project Facilities and to exercise and/or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement;
 - b) demand, collect, and appropriate Fee from Public Toilet Users and refuse its usage from any person(s) who do not pay the Fees;
 - c) 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 to the Users;
 - d) perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement;
 - e) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - f) not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

ARTICLE 4: CONDITIONS PRECEDENT

4.1. Conditions Precedent

- 4.1.1. The Concessionaire may, upon furnishing the Performance Security to the Authority in accordance with Article 9, within 21 (one hundred and fifty) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the

Conditions Precedent set forth in this Clause 4.1.1 within a period of 15 (fifteen) days of the notice, or such longer period not exceeding 45 (forty five) days as may be specified therein, and the conditions precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:

- a) Procured to the Concessionaire the necessary access rights to the Site in order to permit design, construction, rehabilitation, testing, commissioning and operation and maintenance of the Project facilities;
- b) give comments/ observations (if any) to the drawings & designs, the Project implementation approach, the methodology and the work plan of the Project submitted by the Concessionaire under Clause 4.1.2(a), within a time period of 14 (fourteen) days from the date of its receipt. Failure to do so will be considered deemed approval of the same by the Authority;

4.1.2. The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- a) submitted Design cum Detailed Project Implementation Report of Public Toilets to the Authority for its approval, within a time period of 21 (twenty one) days from the date of this Agreement, consisting of the following:
 - Design and detailed Drawings for the Project
 - Approach and Methodology
 - The work plan
 - Detailed layout of the Public Toilet
 - Design criteria of all the areas
 - Water Connectivity to the Public Toilets
- b) incorporated the necessary suggestions/ amendments proposed by the Authority, within a period of 7 (seven) days from the date of receipt of such suggestions from the Authority;
- c) procured all Applicable Permits that are required during Project execution; and
- d) furnished the commitment / in-principle approval letters from the Project Sponsors and the Senior Lenders if any the true copies thereof, duly attested by the Authorized Signatory of the Concessionaire;

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3. Each Party, at its respective costs and expenses, shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.4. Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith notify in writing to such Party the compliance with Conditions Precedent.

4.1.5. The later of the date of notification of compliance to the Concessionaire or the Authority shall be the Appointed Date, whereupon the obligations of the Parties under this Concession Agreement shall commence.

4.2. Non-fulfilment of Conditions Precedent

4.2.1. In the event that any of the Conditions Precedents relating to the Concessionaire have not been fulfilled within 45 (forty five) days of the signing of this Agreement and also, the Authority has not waived them fully or partially, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.

4.2.2. Damages for delay by the Government

In the event that the Concessionaire has fulfilled its Conditions Precedent and (i) the Government does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.1 within a period of 60 (sixty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Government shall pay to the Concessionaire damages in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.2.3. Damages for delay by the Concessionaire

In the event that the Authority has fulfilled its Conditions Precedent and (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within a period of 60 (sixty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Government or due to Force Majeure, the Concessionaire shall pay to the Government Damages in an amount calculated at the rate of 1% (one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.2.4. Instead of terminating this Agreement as provided in Clause 4.2.1 above or as the case may be, the Parties may extend the time for fulfilling the Conditions Precedent by mutual agreement.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1. Obligations of the Concessionaire

- 5.1.1. Subject to and on the terms and conditions of the Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in the Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required in this regard) in the performance of its obligations under the Agreement.
- 5.1.3. Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4. The Concessionaire is solely responsible for all associated expenses like power charges, and other statutory dues such as Sales Tax, Income Tax, VAT, GST, Service Tax, Excise duties, payment to Employees' Benefit Funds, etc., arising out of the Agreement and the Authority shall not be liable for the same under any circumstances.
- 5.1.5. No labor below the age of eighteen years and who is not an Indian National shall be employed on the work by the Concessionaire.
- 5.1.6. The Project has to be known, promoted, displayed and advertised in the name of Greater Warangal Municipal Corporation (GWMC). The Authority will provide the design, the specifications and the promotional slogan & Logo at a later date.
- 5.1.7. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a) perform and fulfil its obligations under the Financing Agreements;
 - b) the liability of any damage or loss in case of a death or injury to any personnel engaged in the Project shall be the sole responsibility of the Concessionaire and the Authority shall not, in any manner be a party to or responsible for such damages or losses.
 - c) ensure and procure that its contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under the Agreement.
 - d) make or cause to be made, necessary applications to the relevant Authorities with such particulars and details, as may be required for renewing of Applicable Permits and such other licenses that are required to be maintained during the Concession Period at their cost and keep in force and effect such Applicable Permits in conformity with the Applicable Laws.
 - e) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of the Agreement.
 - f) to organize wide publicity for Public Toilets & the benefits of the same through different marketing techniques and shall have social marketing strategy in place for maximum coverage of the community.

- g) to comply with the provisions of the Minimum Wages Act 1948, Workmen's Compensation Act 1923, Contract Labor (Regulation and Abolition) Act 1970 and Central Rules 1971, Payment of Wages Act 1936, Employer's Liability Act 1938 as applicable and any other Act or enactment relating thereto and the rules and regulations issued there under from time to time. Failure to do so shall amount to breach of the contract and the Authority may at its discretion can effect Termination of the Agreement. The Concessionaire shall also be liable for any pecuniary liability arising on account of violation by him of the provisions of the Act; and
- h) transfer the Project at the end of the Concession Period or upon Termination of the Agreement, in accordance with the provisions thereof.

5.2. Obligations relating to Change in Ownership

- 5.2.1. The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 5.2.2. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that during the Concession Period the Concessionaire cannot sell its management control to any other party; or create any third party right over the Agreement without the consent of the Authority.

5.3. Employment of trained personnel

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

5.4. Sole purpose of the Concessionaire

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

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

- 6.1.1. The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
 - a) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

- b) shall support, cooperate and facilitate with the Concessionaire in procuring Applicable Permits and Approvals and their renewals, if any, from various Government Authorities and in getting connections for water, electricity and such other utilities.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement; and
- f) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

7.2. Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement; and
- b) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire;

ARTICLE 8: DISCLAIMER**8.1. Disclaimer**

- 8.1.1. The Concessionaire acknowledges that prior to the execution of the Agreement, the Concessionaire has carefully examined and made an independent evaluation of the Scope of the Project, Specifications and Standards, the Site conditions, the potential for income generation on Public Toilets in the identified locality(ies) and such other information as provided in the RFP document or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of risks, challenges and hazards as are likely to arise or may be faced by it during the course of performance of its obligations. the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2. The Concessionaire acknowledges and hereby accepts the risks of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the selected bidder and its Associates or any person claiming through or under any of them.
- 8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in the RFP document shall not vitiate the Agreement, or render it voidable.
- 8.1.4. Except as otherwise provided in the Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9: PERFORMANCE SECURITY**9.1. Performance Security**

- 9.1.1. The Concessionaire shall for the performance of its obligations during the Project Execution Period and also during the O & M period, provide the Authority no later than 21 days from the date of signing of Agreement, an irrevocable and unconditional guarantee from a Bank acceptable to the Authority for Rs.25,000 (Rupees Twenty thousand only) [if more than one package is awarded to a Selected Bidder, the Performance Security shall go up proportionately] and in the form set forth in Schedule IV. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2. Notwithstanding anything contrary contained in the Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 21 days from the date of signing of the Agreement, the Authority may

encash the Bid Security and appropriate the proceeds thereof as Damages, and there upon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of the Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the , and the Agreement shall be deemed to have been terminated by mutual agreement of the parties.

9.2. Appropriation of Performance Security

Upon occurrence of a Default either during Project execution or during the O & M period, or failure to meet any conditions precedent, the Authority shall without prejudice to its other rights and remedies in the Agreement or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish in case of partial appropriation, to its original level the Performance Security and in case of appropriation of entire Performance Security provide a fresh Performance Security as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 25.

9.3. Release of Performance Security

The reduced Performance Security shall remain in force till the 1st (first) anniversary of the date of commercial operation of the Project; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the applicable Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10: ACCESS TO SITE

10.1. Licence & Access to the Site

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

10.1.2. It is expressly agreed that the Licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the

Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub licensees, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of the Agreement.

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

10.1.4. It is expressly agreed that:

- i. geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement any archaeological discoveries shall belong to and vest in the Authority or the concerned Government instrumentality and the Concessionaire shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof; and
- ii. mining rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

10.2. Site to be free from Encumbrances

Subject to the provisions of Clause 10.1, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that the easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.3. Protection of Site from encroachments

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

10.4. Access to the Authority

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

ARTICLE 11: CONSTRUCTION OF THE PROJECT FACILITIES**11.1. Obligations prior to commencement of construction**

Prior to commencement of Construction Works, the Concessionaire shall:

- a) submit to the Authority and its representative if any, its detailed design & drawings, construction methodology, the procurement, engineering and the construction time schedule for completion of the Project for approval;
- b) appoint its representative duly authorized to deal with the Authority in respect of all matters or arising out of or relating to this Agreement; and
- c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits.

11.2. Design & Drawings

In respect of the Concessionaire's obligations relating to the design and Drawings of the Project, the following shall apply:

- a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Authority for review;
- b) By submitting the Drawings for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Specifications and Standards;
- c) Within 14 (fourteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards;
- d) No review and/or observation of the Authority or his representative, and/or its failure to review and/or convey observations on any drawings / design shall relieve the Concessionaire of its obligations and liabilities under the Agreement in any manner nor shall the Authority or his representative be liable for the same in any manner;

- e) Any change in the basic design and structure of the Public Toilet is subject to approval of the same by the Authority. The Authority shall permit the changes if it is satisfied that the changes are going to benefit the Project; and
- f) Within 30 (thirty) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and its representative if any, a complete set of as-built Drawings, in 2 (two) hard copies and in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Public Toilet and setback lines, if any, of the buildings and structures forming part of Project Facilities.

11.3. Project Execution

11.3.1. On or after the Appointed Date, the Concessionaire shall undertake Project execution in conformity with the Standards and Specifications as set forth in Schedule II. The 90th (Ninetieth) day from the appointed Date shall be the Scheduled Project Completion Date and the Concessionaire shall agree and undertake to complete the Project on or before the Scheduled Project Completion Date;

11.3.2. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 21 days from the date set forth for such milestone as submitted by it, unless such failure has occurred due to Force Majeure, it shall pay a sum calculated at the rate of 0.5% of the amount of Performance Security for delay of each day until such Milestone is achieved. For avoidance of doubt, it is agreed that recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under the Agreement, including the right of Termination thereof; and

11.3.3. In the event the Project is not completed within 60 days from the Scheduled Project Completion Date, unless the delay is due to Force Majeure, the Authority shall be entitled to terminate the Agreement.

11.4. Commissioning

11.4.1. The Concessionaire shall be responsible for satisfying the Authority as to the correctness of the electrical and mechanical connections between all equipment in the supply.

ARTICLE 12: MONITORING OF CONSTRUCTION

12.1. Monthly progress reports

During the Project execution, the Concessionaire shall furnish monthly progress reports to the Authority or his representative on the progress of execution works, and shall also give such other relevant information as may be required by the Authority or his representative.

All the works specified or which may be required to be done in order to perform and complete the Project shall be executed as per the approved quality of the respective kinds in accordance with the particulars contained

therein and implied by the Specifications & Standards and as represented by the drawings.

12.2. Inspection

During the Construction Period, the Engineer-in-charge or his representative shall inspect the Project at least once in a month and make a report of such inspection the defects or deficiencies, if any, with particular reference to the Scope of Work and Specifications & Standards. It shall send a report within 7 days of such inspection to the Concessionaire and upon receipt thereof, the Concessionaire shall rectify and remedy the defects and the deficiencies, if any, stated in the Inspection Report. However, such inspections or the submission of Inspection Report by Engineer-in-Charge or his representative shall not relieve or absolve the Concessionaire of its obligations and liabilities, as per the provisions of the Agreement, in any manner whatsoever.

12.3. Tests

The Concessionaire shall have to carry out tests on materials and workmanship in approved materials testing laboratories or as prescribed by the Authority at its own cost to prove that the materials etc., under test conform to the relevant I.S. Standards or as specified in the specifications.

All equipment covered under the Project shall be subjected to inspection / testing by Engineer-in-charge or his representative on completion & commissioning. Cost of inspection shall be borne by the Concessionaire.

12.4. Delays during construction

If the Concessionaire does not achieve any of the Project Milestones or the Engineer-in-charge of the Authority shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Engineer-in-charge in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

ARTICLE 13: COMPLETION CERTIFICATE

13.1. Tests

13.1.1. At least 15 (fifteen) days prior to the likely completion of the Project, the Concessionaire shall notify Engineer-in-Charge on likely completion and its intent to subject the works to Tests. The Tests shall be conducted in presence of Concessionaire's representative to witness the Tests. The Concessionaire to provide such assistance as The Authority's Engineer-in-Charge or his representative may require for conducting the Tests.

13.1.2. The result of the Tests shall be reviewed to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined during the course of any Test that the performance of the

system or any part thereof does not meet the Specifications and Standards, the Authority has the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of all Tests, the Concessionaire shall be provided with all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Concessionaire may have to carry out additional Tests, if required, in accordance with Good Engineering Practice, for determining the compliance of the Project with Specifications and Standards.

13.2. Issue of Completion Certificate

Upon completion of Construction Works and successful Test results, Engineer-in-Charge of the Authority shall issue to the Concessionaire a certificate (the "Completion Certificate").

The certificate of completion as issued by the Engineer-in-Charge shall be the conclusive proof of completion of work.

13.3. Rescheduling of Tests

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

ARTICLE 14: ENTRY INTO COMMERCIAL OPERATIONS

14.1. Commercial Operation Date

The Project shall be deemed to be complete when the Completion Certificate is issued under the provisions of the Agreement, and accordingly the Commercial Operation Date (COD) of the Project shall be the date on which such Completion Certificate is issued. The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of the Agreement.

14.2. Damages for delay

If the COD does not occur prior to the 30th (thirtieth) day after the Scheduled Project Completion Date, unless the delay is due to Force Majeure, the Concessionaire shall pay Damages to the Authority at the rate of 1 % of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 15: OPERATION AND MAINTENANCE**15.1. O&M obligations of the Concessionaire**

15.1.1. In respect of the Concessionaire's obligations with respect to the Operations and Maintenance of the Project as set forth in this Agreement, the following shall apply:

- a) The Concessionaire shall in consultation with the Authority evolve a repair and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Project Assets in conformity with the Specifications and Standards of this document (Schedule III), Safety Requirements and Good Industry Practice. The Maintenance Manual has to be submitted to the Authority at least 30 days before Scheduled Project Completion Date. The Manual shall be revised and updated once in every three years. The Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance and routine maintenance that may be necessary, including replacement thereof, such that Project assets overall condition confirms to Good Industry Practice.
- b) The Maintenance Manual shall spell out in detail the standards, schedules, procedures, type, periodicity and other details of the operation and maintenance activities to be carried out for the Project during the Operation Period so as to fulfil the O&M Requirements; and
- c) No review and/or observation of the Engineer-in-Charge and/or its failure to review and/or convey its observations on the O&M Plan shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Engineer-in-Charge or the Authority be liable for the same in any manner.

15.2. Operation Obligations

15.2.1. The Concessionaire has to maintain a training manual and a copy of the same to be submitted to the Authority for their review and observations, if any. The manual should cover all aspects of the operation of the plant, trouble shooting, first level maintenance, taking back- up of readings, maintenance of required records, etc.

15.2.2. Provide monthly MIS of income generation details to the Authority.

15.2.3. The Concessionaire to have uptime of service of 18 hours in a day except during Force Majeure Events; the operating hours being 5 AM to 11 PM.

15.2.4. Comply with Safety Requirements as set forth in the Agreement.

15.3. Maintenance Obligations

15.3.1. Undertake routine maintenance including prompt repairs and to carry out periodic preventive maintenance.

15.3.2. To maintain sufficient stock of the consumables required for smooth and efficient operations.

15.3.3. In the event that the Concessionaire fails to repair or rectify any defect or deficiency in maintenance requirements within the period specified therein, it shall be deemed to be in breach of the Agreement and the Authority shall be entitled to recover Damages, to be calculated at 1% of the cost of such repair or rectification as estimated by the Authority for each day of delay until the breach is cured.

15.3.4. Recovery of such Damages shall be without prejudice to the rights of the Authority under the Agreement, including the right of Termination thereof. The Damages shall not be recovered if the breach (ies) are on account of Force Majeure.

15.4. Overriding powers of the Authority

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

ARTICLE 16: SAFETY REQUIREMENTS

16.1. Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety provisions for providing safety to the Users especially the women.

ARTICLE 17: MONITORING OF OPERATION AND MAINTENANCE

17.1. Monthly status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Engineer-in-Charge a monthly report stating in reasonable detail the condition of the Project Assets including its compliance or otherwise with the O&M Requirements, Maintenance Manual and Safety Requirements, and shall promptly give such other relevant information as may be required by the Engineer-in-Charge.

17.2. Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of Fee (the "Monthly Fee Statement").

ARTICLE 18: FINANCIAL CLOSE**18.1. Financial close**

18.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve financial close within 90(ninety) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 60(sixty) days ,subject to payment of Damages to the Authority in a sum calculated at the rate of 0.25%(zero point two five percent) of the performance security for each day of delay, or for a further period not exceeding 60 (sixty) days, subject to payment to Damages specified in Clause 4.2, provided that the Damages specified herein shall be payable every month in advance; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.1 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.2.

18.1.2. The concessionaire shall upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2(two) days prior to Financial Close, 3(three) true copies of the Financial Package, duly attested by a Director of the Concessionaire.

18.2. Termination due to failure to achieve Financial Close

18.2.1. In the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 18.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have being waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have being terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have by mutual consent, determined the Appointed Date to precede the Financial close, the provision of this Clause 18.2.1 shall not apply.

18.2.2. Upon Termination under Clause 18.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1, it shall, upon Termination return the Bid Security forthwith along with the Damages due and payable under clause 4.1. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 19: CONCESSION FEE

19.1. In consideration of the grant of Concession, the Concessionaire shall pay to the Authority a Concession Fee of Rs.1 (rupees one) per annum.

ARTICLE 20: USER FEE**20.1. Collection and appropriation of User Fee**

20.1.1. On and from the COD till the Transfer Date, the Concessionaire shall have the right to demand, collect and appropriate Fee from the Users subject to and in accordance with this Agreement.

20.1.2. The base Fees for availing the services are as under:

- I. Usage for Urinals – Rs.1/- per usage;
- II. Usage for Toilets – Rs.2/- per usage; and
- III. Usage for Bath Rooms – Rs.5/- per usage

20.1.3. The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Public Toilet(s) and the Concessionaire shall not place any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

20.2. Revision of User Fee

20.2.1. The Parties hereto acknowledge and agree that the Fee shall be revised every 3 years on 1st of April.

The base Fees shall be revised by an increase of 50% of the earlier Applicable Fee. However, the revision shall be rounded off to the nearest rupee. As an example, and for the sake of illustration, the Urinals Fee at the end of 3 (three) years shall be revised to Rs.2/-.

20.3. Display of User Fee

20.3.1. The Fees has to be prominently displayed at a conspicuous place at the Public Toilets.

20.3.2. The Concessionaire shall not revise, display or collect any amounts in excess of the Fee payable as per the provisions of this Agreement. In the event any excess amounts are collected by or on behalf of the Concessionaire, the Authority can issue a notice to the Concessionaire for refund of such excess amounts to the Authority along with Damages equal to 25% thereof.

20.4. Verification of User Fee

20.4.1. The Authority may, in order to satisfy itself that the Concessionaire is reporting its User Fee honestly and faithfully, depute its representatives to the offices of the Concessionaire, and undertake such other measures and

actions as it may deem necessary, to ascertain the actual User Fee collected.

ARTICLE 21: INSURANCE

21.1. Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements, the Applicable Laws and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the "Insurance Cover"). The Concessionaire shall procure that in each insurance policy, the Authority shall be a coinsured.

21.2. Application of insurance proceeds

The proceeds from all insurance claims, except life and injury: shall be paid to the Concessionaire and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 22: ACCOUNTS AND AUDIT

22.1. Audited accounts

22.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including all User Fees and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts. the Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified.

ARTICLE 23: FORCE MAJEURE

23.1. Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India which affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due

diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

23.2. Force Majeure Event

It shall mean one or more of the following acts or events:

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) any event or circumstances of a nature analogous to any of the foregoing.

23.3. Duty to report Force Majeure Event

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

- a) the 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;
- b) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- c) Any other information relevant to the Affected Party's claim.

23.4. Dispute resolution

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

23.5. Excuse from performance of obligations

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

- a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or

occurrence of such Force Majeure Event and to cure the same with due diligence; and

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

ARTICLE 24: COMPENSATION FOR BREACH OF AGREEMENT

24.1. Compensation for default by the Concessionaire

In the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 24.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement.

24.2. Extension of Concession Period

In the event that a material default or breach of this Agreement causes delay in achieving COD or leads to suspension of or reduction in collection of User Fee, as the case may be, the Authority shall extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of User Fee remained suspended on account thereof, as the case may be.

ARTICLE 25: TERMINATION

25.1. Termination for Concessionaire Default

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

- a) the Performance Security has been encashed and appropriated by the Authority in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- b) the Concessionaire abandons or manifests intention to abandon the construction of the Project without the prior written consent of the Authority for a continuous period of 30 days and such default is not rectified within thirty (30) days from the receipt of first notice from the Authority in this regard, or

- c) the Concessionaire, for reasons solely attributable to an act or omission of itself, abandons or relinquishes the services to the Users to such an extent that there is significant widespread danger to the health of the public in the Service Area and in such a manner as to reasonably justify the Authority in holding that the Concessionaire's conduct is inconsistent with its intention or ability to carry out the terms and conditions of the Contract.
 - d) Project Completion Date does not occur within the period specified in Clause 11.3.3;
 - e) the Concessionaire is in breach of the O&M Requirements and Performance Benchmarks;
 - f) the Concessionaire has failed to make any payment to the Authority which is due and payable within the period specified in this Agreement;
 - g) the Concessionaire creates any Encumbrance in breach of this Agreement;
 - h) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
 - i) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
 - j) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- 25.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause.

25.2. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- a) be deemed to have taken possession and control of the Project forthwith;
- b) take possession and control of all materials, stores, implements and equipment on or about the Site;
- c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project; and

- d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 26.1.

ARTICLE 26: DIVESTMENT OF RIGHTS AND INTEREST

26.1. Divestment Requirements

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

- a) notify to the Authority forthwith the location and particulars of all Project Assets;
- b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances;
- c) cure all Project Assets of all defects and deficiencies so that the Project is compliant with the O&M Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- d) deliver and transfer relevant records, reports and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

26.2. Inspection and cure

Not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days before the effective date of such Termination, the Engineer-in-

Charge shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the 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 Article 27 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 26.

26.3. Vesting Certificate

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

26.4. Divestment costs etc.

26.4.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project 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.

26.4.2. In the event of any dispute relating to matters covered by and under this Article 26, the Dispute Resolution Procedure shall apply.

ARTICLE 27: ASSIGNMENT AND CHARGES

27.1. Restrictions on assignment and charges

27.1.1. Subject to Clauses 27.2, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

27.2. Substitution Agreement

27.2.1. The Senior Lenders, may exercise the right to substitute the Concessionaire in accordance with the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authority and the Lenders.

27.2.2. Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 60 (sixty) days to the Concessionaire for curing such breach.

27.3. Assignment by the Authority

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

ARTICLE 28: LIABILITY AND INDEMNITY

28.1. General indemnity

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

28.2. Indemnity by the Concessionaire

28.2.1. Without limiting the generality of Clause 28.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or

- c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

28.3. No consequential claims

Notwithstanding anything to the contrary contained in this Article 28, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

28.4. Survival on Termination

The provisions of this Article 28 shall survive Termination.

ARTICLE 29: RIGHTS AND TITLE OVER THE SITE

29.1. Licensee rights

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

29.2. Access rights of the Authority and others

- 36.2.1. The Concessionaire shall allow free access to the Site at all times for the authorised representatives and the Engineer-in-Charge, and for the persons duly authorised by the Authority to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

29.3. Property taxes

The Concessionaire shall not be liable to pay any property taxes for the Site. However, the Concessionaire shall be required to pay, at its own cost, all applicable existing and future taxes/ charges/ fees/ levies including service tax, stamp duty, registration charges and any other charges payable/ leviable in respect of the said Project.

29.4. Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided 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.

ARTICLE 30: DISPUTE RESOLUTION

30.1. Dispute resolution

30.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 30.2.

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

30.2. Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Commissioner, Greater Warangal Municipal Corporation for amicable settlement, and upon such reference, the said persons shall meet to discuss and to amicably resolve the Dispute.

ARTICLE 31: REDRESSAL OF PUBLIC GRIEVANCES

31.1. Redressal of complaints

31.1.1. The Concessionaire shall attend to User complaints promptly and reasonable action has to be taken for redressal of each of the complaints. It shall have to maintain a register wherein all the complaints are noted and the action taken on the same, time taken for closing of the complaint and such other information that the Authority may advise the Concessionaire to incorporate in the register.

31.1.2. Within seven days of the close of each month, the Concessionaire shall have to send the Authority the complaint file in electronic form (at the authorized email address). Upon perusal of the complaint file, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance.

ARTICLE 32: MISCELLANEOUS

32.1. Governing law and jurisdiction

The Agreement shall be governed by the laws of India, including but not limited to laws of Government of Telangana and Greater Warangal Municipal Corporation extant rules and regulations in force and as amended from time to time; and the Courts in Warangal/Hyderabad shall have exclusive jurisdiction in all matters under the Agreement.

32.2. Depreciation

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

32.3. 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.

32.4. Survival

32.4.1. Termination shall:

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

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

32.5. Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

32.6. Severability

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

agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

32.7. No partnership

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

32.8. Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

32.9. Successors and Assigns

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

32.10. 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.

32.11. Counterparts

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

ARTICLE 33: DEFINITIONS

33.1. Definitions

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

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty first day of March of the next calendar year;

“Affected Party” shall have the meaning set forth in Clause 23.1

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

“Applicable Laws” means all laws brought into force and effect by Warangal State Government or the Government of India (GOI) including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this RFP document and the exercise, performance and discharge of respective rights and obligations of the parties hereunder, as may be in force and effect during the subsistence of this RFP document and the subsequent contract to be signed by the successful bidder with Warangal Jal Board at the end of bidding process;

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under applicable laws in connection with the construction, operations and maintenance of the Project during the subsistence of the Concession Agreement;

“Appointed Date” means the date on which each and every Conditions Precedent has been either satisfied or waived by mutual consent by the Parties, as the case may be and shall be deemed to be the date of commencement of Concession Period;

“The Authority Representative” means such person or persons as may be authorized in writing by the Authority to act on its behalf under the Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under the Agreement;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

"Bid" means the documents in their entirety comprised in the bid submitted by the Concessionaire in response to the Tender Notice in accordance with the provisions thereof;

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the selected bidder, together with its Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter, provide that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of the selected bidder to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership;

“COD” or “Commercial Operations Date” shall have the meaning set forth in Clause 14.1;

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

“Completion Certificate” shall have the meaning set forth in Clause 13.2;

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

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

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

"Concessionaire Default" shall have the meaning set forth in Clause 25.1.1;

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

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

“Contractor” means the person or persons, as the case may be, with whom the Concessionaire has entered into a contract for engineering, supply, construction, operation and/or maintenance of the Project, water testing or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“Cure Period” means the period specified in the Agreement for curing any breach or default of any provision of the 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 as specified in such notice;
- b) not relieve any Party from liability to pay Damages or compensation under the provisions of the Agreement; and
- c) not in any way be extended by any period of Suspension under this Agreement provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

“DBFOT” or “Design, Build, Finance, Operate & Transfer” shall have the meaning set forth in Recital (B);

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

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

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

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 30;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 26.1;

“Drawings” means maps, drawings, plans, tracings or prints thereof, calculations and technical information of a like nature provided by the Concessionaire and as approved by the Engineer-in-Charge of the Authority, and approved modifications if any and shall include ‘as built’ drawings of the Project.

"Bid Security" means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. ***** crore (Rupees ***** crore), in accordance with the Tender Notice, and which is to remain in force until substituted by the Performance Security;

“Encumbrances” means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost and funds advanced by any shareholder of the Company for meeting such equity component;

“Fee” or “User Fee” means the charge levied on and payable by the Users drawing the drinking water from any of the water dispensing units in accordance with the Agreement;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

"Financing Agreements" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 23.1;

“GOI” or “Government” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator encouraged 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 the Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government” means the Government of Telangana;

“Government Instrumentality” means any department, division, or sub-division of the State Government or the Government and includes any commission, board, authority, agency or Warangal Municipal Corporation and other local authority 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 the Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 28;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 28;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Clause 21, and includes all insurances required to be taken out by the Concessionaire under Clause 21.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“LOA” or “Letter of Award” means the letter of award referred to in Recital (E);

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

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

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

"Nominated Company" means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“O & M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fee in accordance with the provisions of the Agreement;

“O & M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O & M including a) cost of salaries and other compensation to employees, b) cost of materials, supplies, utilities and other services, c) premia for insurance, d) all taxes, duties, cess and fees due and payable for O & M, e) all repairs, replacement, reconstruction, reinstatement, improvement and maintenance costs, f) payments required to be made under any contract in connection with or incidental to O & M, and g) all other expenditure required to be incurred under the Agreement, Applicable Laws or Applicable Permits;

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

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

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

“Project” means the design, construct & commission, operation and maintenance of Public Toilets in accordance with the provisions of the Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Assets” means all physical and other assets relating to and forming part of the Site including a) rights over the Site in the form of license; b) tangible assets such as civil works and equipment; c) all rights of the Concessionaire under the Project Agreement; d) financial assets, such as receivables, security deposits, etc.; e) insurance proceeds; and f) Applicable Permits and authorizations relating to or in respect of the Project, but does not include any additional facilities;

“Project Completion Date” means the date on which the Completion Certificate is issued under the provisions of Article 13;

“Project Milestones” means the milestones as submitted by the Concessionaire and as approved by the Authority;

“Rs. or “Rupees” means the lawful currency of the Republic of India;

“Request for Proposals” or “RFP” shall have the meaning set forth in Recital (B);

"Safety Requirements" shall have the meaning set forth in Clause 16.1.1;

“Scheduled Project Completion Date” shall have the meaning as set forth in Clause 12.2.C.

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

"Senior Lenders" means the financial institutions, banks, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold parri passu charge on the assets, rights, title and interests of the Concessionaire;

“Site” shall have the meaning set forth in Clause 10.1;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project as set forth in Schedule II, and any modifications thereof or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by the Authority ;

“State” means the State of Telangana and “State Government” means the government of that State of Telangana;

“Substitution Agreement” shall have the meaning set forth in Clause 27.2;

“Taxes” means any Indian taxes including excise duties, custom duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

"Tender Notice" shall have the meaning set forth in Recital 'C;

“Termination” means the expiry or termination of this Agreement and the Concession hereunder;

“Termination Notice” means the written communication issued in accordance with this Agreement by one Party to the other Party terminating the Agreement;

“Tests” means the tests to determine the completion of the Project in accordance with the provisions of the Agreement;

“Transfer Date” means the date on which the Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“User” means a person who uses the Public Toilet(s) on payment of Fee or in accordance with the provisions of this document and Applicable Laws;

“Vesting Certificate” shall have the meaning set forth in Clause 26.3;

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

SIGNED, SEALED AND

SIGNED, SEALED AND

DELIVERED

DELIVERED

For and on behalf of
THE AUTHORITY OF [***] by:

For and on behalf of
CONCESSIONAIRE by:

(Signature)

(Signature)

(Name)
(Designation)

(Name)
(Designation)

In the presence of:

- 1. _____
- 2. _____