

REQUEST FOR PROPOSAL

Development, Operation & Maintenance of Smart Public Toilets under PPP Mode in Kanpur City



ISSUED BY THE

KANPUR SMART CITY LIMITED Kanpur

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KANPUR SMART CITY LIMITED

Kanpur Smart City Limited invites Bids through E tendering National Competitive Bidding (NCB) from the Bidders fulfilling the Eligibility Criteria specified hereunder for Development of Smart Public Toilets under PPP Mode.

Bid Information

Sl. No.	Activity	Duration
1.	Online Sale/Download date of Tender documents	From 23/07/2018 onwards
2	Cost of Bidding Document	The bidder shall have to submit <u>Rs.5,000/- (Rupees Five Thousands only)</u> (Non Refundable) through a Demand Draft in favour of 'Chief Executive Officer, Kanpur Smart City Limited' payable at Kanpur.
3.	Pre-bid conference and Venue	30/07/2018 at 4:00 PM Kanpur Nagar Nigam, Motijheel, Kanpur
4.	Last Date for submission of Bid (Online)	20/08/2018 at 4:00 PM
5.	Last Date for submission of Bid (Hardcopy)	21/08/2018 at 3:30 PM at Kanpur Smart City Limited, 3 rd Floor, Kanpur Nagar Nigam Mukhyalaya, Motijheel, Kanpur
6.	Date & time for opening of Technical Bid	21/08/2018 at 4:00 PM
7.	Validity of Bid	180 days from the last date of online submission of bid.
8.	Bid Security (EMD)	Rs. 1,50,000.00 (INR One Lakh Fifty Thousand only) in the form of BG/FDR/TDR from any Scheduled/Nationalised Bank.
9.	Date time and place of opening of Financial Bid	To be informed later.

DISCLAIMER

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

This RFP document is not an Agreement and is not an offer or invitation to any other party. The purpose of this RFP document is to provide the Bidders with information to assist the formulation of their Proposal submission. This RFP document does not purport to contain all the information each Bidder may require. This RFP document may not be appropriate for all persons and it is not possible for KSCL and their employees to consider the investment objectives, financial situation and particular needs of each Bidder. Certain Bidders may have a better knowledge of the proposed Project than others. Each recipient must conduct its own analysis of the information contained in this RFP document or to correct any inaccuracies therein that may appear in this RFP document and is advised to carry out its own investigation into the proposed Project, the legislative and regulatory regimes which applies thereto and by and all matters pertinent to the proposed Project and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement relating to the proposed Project.

KSCL and their employees make no representation or warranty and shall incur no liability under the Law of Contract, Tort, the Principles of Restitution or unjust enrichment or otherwise for any loss, expense or damage, accuracy, reliability or completeness of the RFP document, which may arise from or be incurred or suffered in connection with anything contained in this RFP, any matter deemed to form part of this RFP document, the award of the Project, the information and any other information supplied by or on behalf KSCL or their employees, any consultants or otherwise arising in any way from the selection process for the Project.

KSCL may in its absolute discretion, but without being under any obligation to do so, can amend or supplement the information/clauses/articles in this RFP document. The information that KSCL is in a position to furnish is limited to this RFP and the information available at the contact addresses mentioned herein along with any amendments/ clarifications thereon. This RFP and the information contained herein are confidential and for use only by the person to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient's professional advisor). In the event that the recipient does not continue with the involvement in the project in accordance with RFP the information contained in the RFP shall not be divulged to any other party. The information contained in the RFP must be kept confidential. Mere submission of a responsive Bid/ Proposal does not ensure selection of the bidder as Concessionaire.

1) INVITATION FOR PROPOSAL

Introduction

- 1.1. Kanpur Smart City Limited intends to develop Smart Public Toilets under Public Private Partnership (PPP) mode in Kanpur city.
- 1.2. This Request for Proposal (RFP) document is for the Project Development, Operation, and Maintenance of the Smart Public Toilets in Kanpur through Public Private Partnership mode for lease period of 10 Years (the “Project”).
- 1.3. A “Single Stage-two cover” bidding process has been planned for determining the Successful Bidder. The Bidders would be required to meet the minimum threshold Technical Qualification Conditions and qualify for undertaking the Project as set out in this RFP document. This qualification assessment would be carried out as part of the current bidding and evaluation process. The Financial Proposals of only those Bidders that possess the minimum Technical Qualification Conditions (as laid down in Clause 3.2) and other relevant documents (as per the formats provided in Clause 5) would be opened and evaluated.
- 1.4. The RFP document contains information about the Project, bidding process, Proposal submission, qualification and Financial Proposal requirement.
- 1.5. RFP documents can be downloaded from www.tenderwizard.com/EUP and the website of Kanpur Smart City www.kanpursmartcity.in.
- 1.6. The RFP submissions must be received no later than the date and in the manner specified in the RFP document and KSCL shall not be responsible for any delay in receiving the Proposal and reserves the right to reject and/or accept any or all the Proposals without assigning any reason thereof.

2) PROJECT BACKGROUND

2.1.Introduction

There exists an immense business potential in Kanpur city, due to its developmental attributes, positive growth trends made it industrial city for the people of North India. But its reality defies the common image which the city created. The city is in process of enhancing the basic infrastructure and providing Smart Public Toilets is one areas of improvement.

To address the issues, KSCL has taken initiative, to develop new toilets under PPP framework in its each zone to cater with problems generated due to Open Defecation in the city areas. As a part of this process, the KSCL has identified various locations where open defecation is a common practice. This imperative initiative adopts a participatory approach where the toilets are demanded by communities and with willingness to pay on their usage.

While aiming this, KSCL desires to take up the construction/ installation of Smart Public toilets under PPP model. For this purpose KSCL invites NGO/Trust/Welfare

Foundation/Social Service organization/ Private Developer for development of proposed Smart Public Toilets as mentioned in the RFP document. KSCL may hand over the construction, operation and maintenance rights to the NGO/Trust Foundation/Private developer for proposed locations and the NGO/Trust/Welfare Foundation/Social Service organization/ Private Developer would be given the advertisement rights to display their advertisements and use of commercial space attached with PT or lease out the same to others to realize its investment. Subsequently, the payment (as per Municipal authority guidelines) received from users of smart public toilets may be utilized towards its Operation and Maintenance cost. After the completion of concession period, the utility will be handed over by the Developer to KSCL.

2.2.Instructions for Online Bid Submission

- 2.2.1 Instructions to the Bidders to submit the bids online through the Central Public Procurement Portal for e Procurement at www.tenderwizard.com/EUP
- 2.3.1 Possession of valid Digital Signature Certificate (DSC) and enrolment/registration of the contractors/bidders on the e-Procurement/e-tender portal are prerequisite for e- tendering.
- 2.4.1 Bidder should register for the enrolment in the e-Procurement site using the “Online Bidder Enrolment” option available on the home page. Portal enrolment is generally free of charge. During enrolment/registration, the bidders should provide only valid and true information including valid email id. All the correspondence shall be made directly with the contractors/bidders through email id as registered.
- 2.5.1 Bidder need to login to the site through their user ID/ password chosen during enrolment/registration.
- 2.6.1 Then the Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by SIFY/TCS/nCode/eMudra or any other Certifying Authority recognized by Controller of Certifying Authorities (CCA) India on eToken/SmartCard, should be registered.
- 2.7.1 The registered DSC only should be used by the bidder in the transactions and should ensure safety of the same.
- 2.8.1 Contractor/Bidder may go through the tenders published on the site and Download the tender documents/schedules for the tenders.
- 2.9.1 After Downloading/getting the tender document/schedules, the Bidder should go through them carefully and then submit the documents as required, otherwise bid will be rejected.
- 2.10.1 Any clarifications may be sought online through the tender site, through the contact details or during pre-bid meeting, if any. Bidder should take into account the corrigendum, if any published before submitting the bids online.
- 2.11.1 Bidder may log in to the site through the secured login by the user id/password chosen during enrolment/registration and then by submitting the password of the e-Token/Smartcard to access DSC.
- 2.12.1 Bidder may select the tender in which he/she is interested in by using the search option and then move it to the ‘my tenders’ folder.
- 2.13.1 From my tender folder, he may select the tender to view all the details uploaded there.
- 2.14.1 It shall be deemed that the bidder has read and understood all the terms and conditions

- before submitting the offer. Bidder should go through the tender schedules carefully and upload the documents as asked; otherwise, the incomplete bid shall stand rejected.
- 2.15.1 Bidder should get ready the bid documents to be submitted as indicated in the tender document/schedule in advance and ordinarily it shall be in PDF/xls/rar/jpg/dwf formats. If there is more than one document, all may be clubbed together and provided in the requested format. Bid documents may be scanned with 100 dpi with black and white option. It is advisable that each document to be uploaded through online for the tenders should be less than 2 MB. If any document is more than 2MB, it can be reduced through zip/rar and the same, if permitted may be uploaded. The file size being less than 1 MB the transaction uploading time will be very fast.
- 2.16.1 The Bidders can update well in advance, the documents such as certificates, annual report details etc., under “My Space option” and these can be selected as per tender requirements and then send along with bid documents during bid submission. This will facilitate the bid submission process faster by reducing upload time of bids.
- 2.17.1 Bidder should submit the Tender Fee/ EMD as specified in the tender. The hard copy should be posted/couriered/given in person to the Tender Inviting Authority, within bid submission due date and time as indicated in the tender. Scanned copy of the instrument should be uploaded as part of the offer.
- 2.18.1 While submitting the bids online, the bidder shall read the terms and conditions and may accept the same to proceed further to submit the bid packets.
- 2.19.1 The bidder has to select the payment option as online to pay the Tender FEE/ EMD as applicable and enter details of the instruments.
- 2.20.1 The details of the DD/any other accepted instrument, physically delivered, should tally with the details available in the scanned copy and the data entered during bid submission time, otherwise submitted bid shall not be acceptable or liable for rejection.
- 2.21.1 The bidder has to digitally sign and upload the required bid documents one by one as indicated. The very act of using DSC for Downloading the bids and uploading their offers shall be deemed to be a confirmation that they have duly read, understood and agreed with all clauses of the bid document including General Conditions of Contract (GCC) without any exception.
- 2.22.1 The bidder has to upload the relevant files required as indicated in the cover content.
- 2.23.1 In case of any irrelevant files, the bid may be rejected.
- 2.24.1 If the price bid format is provided in a spread sheet file like BoQ_XXXX.xls, the rates offered should be entered in the allotted space only and uploaded after filling the relevant columns. The Priced-bid/BOQ template shall not be modified/replaced by the bidder; else the bid submitted is liable to be rejected for the tender.
- 2.25.1 The bidders are advised to submit the bids through online e-tendering system to the Tender Inviting Authority well before the bid submission due date and time (as per Server System Clock). The Authority shall not be held responsible for any delay or the difficulties faced during the submission of bids online by the bidders.
- 2.26.1 After the bid submission (i.e. after Clicking “Freeze Bid Submission” in the portal), the acknowledgement number indicated by the system should be printed by the bidder and kept as a record of evidence for online submission of bid for the particular tender and also be used as entry pass to participate in the bid opening.
- 2.27.1 The time settings fixed in the server side and displayed at the top of the tender site, shall remain valid for all actions of requesting, bid submission, bid opening etc., in the e-Tender system. The bidders should follow such time during bid submission.

- 2.28.1 All the data being entered by the bidders would be encrypted using Public Key Infrastructure (PKI) encryption techniques to ensure the secrecy of the data. The data entered is not retrievable by unauthorized persons during the bid submission and until the time of bid opening by any person.
- 2.29.1 Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid openers' public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.
- 2.30.1 The confidentiality of the bids is maintained with the use of Secured Socket Layer (SSL) 128 bit encryption technology. Data storage encryption of sensitive fields is done.
- 2.31.1 The bidder should logout of the tendering system using the normal logout option available at the top right hand corner and not by selecting the (X) exit option in the browser.
- 2.32.1 For any queries regarding e-Tendering process, the bidders may contact at address as provided in the tender document. Also, for any further queries, the bidders are advised to send a mail to – ksclkanpur@gmail.com

2.1.2 Locations for Smart Public Toilet development in Kanpur city:

Locations	Length	Breadth	Area
a) Chunniganj Tiraha	18 metre	3 metre	54 metre square
b) Raina Market near Company Bagh Chauraha	18 metre	3 metre	54 metre square
c) Vegetable Market, Parade (Behind Multilevel Parking)	18 metre	3 metre	54 metre square

2.1.3 Project Structure

The Concessionaire shall have the exclusive right, license to Develop/Install Smart Public Toilet Units (PTUs) and Operation and maintenance during the Concession Period. The Source of revenue to recoup his investments shall be through User Charges as per Municipal authority guidelines and displaying Advertisements at proposed units and use of commercial space for rent or lease. The Concessionaire shall prepare a Project Report with design, specification and pursuant to its approval from KSCL, complete the project development of Smart Public Toilet Units, within the stipulated Implementation Period of 3 (three) months.

The Concessionaire shall be allowed to levy user charges and collect revenues, as generated pursuant to the operation of the Smart Public Toilet Units (PTUs) and its other components etc., as per the provisions laid down in the draft Concession Agreement

2.1.4 End of the Concession Period

At the end of the Concession Period, by efflux of time or premature termination for

any reason whatsoever, all rights given under the Concession Agreement shall cease to have effect and the Smart Public Toilets Units & the entire Project facilities including the assets (i.e. both movable and immovable assets, whether provided by the Concessioneing Authority or brought in by the Concessionaire during the subsistence of the Concession Agreement), thereof shall transfer back to KSCL as per the provisions of the draft Concession Agreement . All the movable and immovable assets attached shall revert to KSCL without any obligation on KSCL to pay or adjust any consideration or other payment to the Concessionaire.

2.2 Scope of Work

The Successful Bidder/ Concessionaire shall be required to Develop/Install, operate and maintain as per the details laid down in the draft Concession Agreement. *The fully functional and operational Project shall be transferred back to KSCL after the expiry of Concession Period/Minimum Lease period or in case of premature termination for any reason whatsoever.*

2.3 Revenue Streams from the operations of Smart Public Toilet Units

The revenue streams from the operations of the PTUs are as follows:

a) Income from Tariff

The Concessionaire shall have the rights to charge usage fee from the Toilet Users as per Municipal authority guidelines. The rate charged for different purposes should be displayed on the Entrance of Smart Public Toilet.

b) Income from Advertisement display

The concessionaire shall have the rights to display commercial advertisement as specified in RFP documents and can also be leased out to third party till the concession period. Due care should be taken as to the display of advertisements should not be objectionable/obscene to the authority or the general public.

c) Commercial Space

Apart from the above, the Concessionaire shall be well within its right to generate revenues from rent or lease of commercial space attached with PT. However, the same shall require approval from the Concessioneing Authority before implementation.

3. GENERAL TERMS AND CONDITIONS FOR EVALUATION

3.1. The evaluation of the Proposals will be completed in 2 Steps

a) Opening of Technical Proposals and Short-Listing

b) Opening of Financial Proposals of technically qualified bidders

3.1.1. The entire bidding process has been explained elaborately in clause 4.8 of this RFP document.

3.1.2. The Successful Bidder shall be issued Letter of Intent (LoI). After issuance of the LoI in writing and acceptance of the same by the Successful Bidder within 7 (seven) days from the date of receipt of Letter of Intent (LoI). The Successful Bidder shall enter into a Concession Agreement (draft enclosed to the RFP document) with KSCL within 45 (Forty Five) days of conveying his acceptance of the LoI or the date as mutually agreed between the Parties to the Agreement.

3.2. Technical Qualification Condition

- 3.2.1. The Bidder can be either a registered Firms or a Registered Company (as per the provisions of Indian Companies Act, 1956/2013). The Bidder applying for the Project can also be a Joint Venture (JV).
- 3.2.2. The Bidder should be legally competent to enter into a contract as per prevailing Laws.
- 3.2.3. Only those Bidders meeting both the following “*Minimum Eligibility Criteria*” and other relevant documents as per *Clause 5 and other provisions of the RFP Document* shall be “Technically Qualified” for the Project.

i. Technical Capability

Experience in Owning/Operation of 3 similar projects for a minimum concession period of Five years each.

Similar project means the construction, Operation & Maintenance of smart public toilet under PPP mode.

ii. Financial Capability

The bidder should have minimum average annual turnover of Rs.100 lakhs (Rupees One Hundred Lakhs) in last three years preceding the proposal due date.

3.3. Proposal submitted by a Joint Venture/Consortium:

- 3.3.1 There can be a maximum of 3 (three) members in a Joint Venture (JV).
- 3.3.2 The Lead Member, independently, shall be required to satisfy the Financial Capability mentioned in Clause 3.2.3 (ii). However, for the Technical Capability, as laid down in Clause 3.2.3(i), the technical capability of the JV members shall be considered.
- 3.3.3 Any material changes in the membership of a Bidder will be rejected by KSCL. Proposals submitted by a JV must provide a written agreement (Joint Venture (JV) Agreement) to be signed by each member in that JV which describes the responsibilities and proposed equity commitments of each member in the JV. One of the JV members would be required to be nominated as Lead Member and the same shall also be mentioned in the Joint Venture (JV) Agreement. The Joint Venture (JV) Agreement shall be as per the format attached in Clause 5(J).
- 3.3.4 The Joint Venture shall, inter alias form a Special Purpose Vehicle (SPV) registered in India for the implementation of the Project. SPV shall be formed within 45 (forty five) days of receipt of Letter of Intent. The SPV would enter into the Concession Agreement and subsequently carry out all the responsibilities of the Successful Bidder and undertake the Project as stipulated in the Concession Agreement. The proposed shareholding of the members of the JV in the SPV must be in compliance with the criteria specified in the RFP document. However, the membership structure of the Bidder shall not be changed by the Bidder without KSCL’s prior written approval. The aggregate equity share holding of the members/ partners of the JV in the issued and paid up equity share capital of the SPV shall not be less than (i) 51% (fifty one per cent) till the issuance of Implementation Completion Certificate and (ii) 26% (twenty six per cent) during the Operation & Maintenance Period thereafter.
- 3.3.5 In addition to the above obligations, the Lead Member of the JV shall maintain a

minimum equity component of at least 26% for the entire Concession Period, in the SPV so formed under this clause.

- 3.3.6 Members of the JV shall be liable jointly and severally for the execution of the Project in accordance with the terms of the Concession Agreement and a statement to this effect shall be included in the Joint Venture (JV) Agreement mentioned under Clause 3.3.3 above, as well as in the Proposal and in the Concession Agreement. KSCL may require such documents / undertakings/ indemnities as it may deem fit from JV members before or at the time of issuance of Letter of Intent/signing of Concession Agreement.
- 3.3.7 Each of the JV members shall be required to furnish a Deed of Guarantee {as per the format laid down in Clause 5(K)}, towards the SPV, including an irrevocable Board Resolution from such JV members, pledging their Financial strength and Technical support and their expertise towards the development of the Project sites.
- 3.3.8 The Lead Member nominated at the time of submission of the Proposal shall continue to be the Lead Member of the SPV. Such Lead Member shall hold authorization in the form of Power of Attorney. The Proposal must designate one or more person(s) to represent the Bidder in its dealings with KSCL. Unless specifically advised to the contrary, KSCL will assume that the person(s) designated is authorized to perform all tasks, including, but not limited to, providing information, responding to inquiries and entering into contractual commitments on behalf of the Company or the JV as the case maybe. Any and all limitations on the authority of the designated person(s) should be detailed in the Proposal.
- 3.3.9 Each member of the JV shall submit a signed letter (on the Company's Letter Head) with the Proposal, which states that the said member:
- a. Has reviewed the entire Proposal.
 - b. is in accord with each key element of the Proposal, including, but not limited to, its technical and price components, description of the member's responsibilities and commitments to the Project, and the designated person(s) who will represent the JV during the negotiation. Any substantive exception or caveat should be addressed in the enclosed letter.
 - c. Has participated in only one proposal for this project.
 - d. Each of the JV Members will be jointly and severally liable to KSCL.
- 3.3.10 All pertinent information that may affect the performance of the responsibilities of any JV member – such as ongoing litigation, financial distress, or any other such matter must be disclosed.

3.4. Proposal submitted by a Single Bidder (i.e. either a Company or a registered Partnership Firm):

- 3.4.1 The Single Bidder may, at its discretion, form a Special Purpose Vehicle (SPV) registered in India for the implementation of the Project. SPV shall be formed within 45 (forty five) days of receipt of Letter of Intent. The SPV would enter into the Concession Agreement and subsequently carry out all the responsibilities of the Successful Bidder and undertake the Project as stipulated in the Concession

Agreement. The Single Bidder shall be required to furnish a Deed of Guarantee {as per the format laid down in Clause 5(I)}, towards the SPV, including an irrevocable Board Resolution from such Successful Single Bidder, pledging their financial strength and Technical support and their expertise towards the development of the Project.

- 3.4.2 The proposed shareholding of the Successful Single Bidder in the SPV must be in compliance with the criteria specified in the RFP document. The aggregate equity share holding of the Successful Single Bidder in the issued and paid up equity share capital of the SPV shall not be less than (i) 51% (fifty one per cent) till the issuance of Implementation Completion Certificate and (ii) 26% (twenty six per cent) during the Operation & Maintenance Period thereafter.
- 3.4.3 The Successful Single Bidder, along with the SPV as formed, shall be liable jointly and severally for the execution of the Project in accordance with the terms of the Concession Agreement and a statement to this effect shall be included in the Concession Agreement. KSCL may require such documents/undertakings/indemnities as it may deem fit from the Successful Single Bidder before or at the time of issuance of Letter of Intent/ signing of Concession Agreement.
- 3.4.4 The Proposal must designate one or more person(s) to represent the Bidder in its dealings with KSCL. Unless specifically advised to the contrary, KSCL shall assume that the person(s) designated is authorized to perform all tasks, including, but not limited to, providing information, responding to inquiries and entering into contractual commitments on behalf of the Successful Single/Individual Bidder as the case maybe. Any and all limitations on the authority of the designated person (s) should be detailed in the Proposal.

3.5. Fee and Deposits to be paid by the Bidder

3.5.1. Bid Security

- i. The proposal shall be accompanied by a bid security of value of Rs. 1.5 lakhs (Rupees One Lakhs Fifty Thousand only) in any one of the following manners:-
 - a) A bank guarantee issued by a Scheduled/Nationalised Bank in favour of Chief Executive Officer, Kanpur Smart City Limited, payable at Kanpur and in the format given in Clause 5(F); or
 - b) FDR/TDR in favour of Chief Executive Officer, Kanpur Smart City Limited, payable at Kanpur.
- ii. The Bid Security shall be valid for a minimum period of 180 days from the Proposal Due date. If required, on request from KSCL, the Bidders would be required to extend the validity of the bid Security on the same terms and conditions.
- iii. The Bid Security of the Successful Bidder shall be returned after the signing of the Concession Agreement upon duly furnishing the Performance Guarantee.
- iv. Any Bid/ Proposal submitted without the Bid Security in the form as specified in the RFP document shall be summarily rejected.
- v. The Bid Security of Bidders whose Proposal is rejected on account of being Non-Responsive or Non-Reasonable in accordance with the RFP document, shall be returned/refunded within a period of sixty (60) days from the date of intimating the

- rejection of the Proposal by KSCL to the Bidder.
- vi. The Bid Security shall be forfeited by KSCL, in the following cases:
- a) If the Bidder withdraws his Bid/ Proposal after Technical Proposal Opening and during the Proposal Validity Period.
 - b) If the Successful Bidder fails within the specified time limit to sign the Concession Agreement.
 - c) If the Successful Bidder fails within the specified time limit to furnish the required Performance Security.

3.5.2. Performance Security

The Successful Bidder/Concessionaire, for due and faithful performance of its obligations under the Concession Agreement, shall be required to provide a performance Security of 10 % of the Contract value in the form of a Bank Guarantee drawn on any Nationalised/Scheduled Bank in India in favour of Chief Executive Officer, KSCL valid for the entire concession period within 45 (forty five) days of receipt of the Letter of Intent from the KSCL.

3.6. Submission of Foreign Documents (as part of the Bid/ Proposal)

If the Bidder is submitting any documents, created or originating from outside the Republic of India, such as work experience certificate(s), financial detail(s), Power Of Attorney(s), Undertaking(s), documentary evidence(s), qualifying document(s), etc. then the Bidder, before any such Foreign Document(s) are sent to India for the purpose of applying towards this Project, shall be required to get each and every page of such Foreign Document(s), duly authenticated/embossed/legalized from the Indian Embassy /Indian High Commission situated in the country from where such Foreign Document(s) were created or are originating from. Such authentication/ embossment/ legalization from the Indian Embassy/Indian High Commission shall also apply to all such document(s) that are in a language other than English, which shall be compulsorily be required to be translated (as the true translated copies of the original) by a duly certified/ authorized /qualified Translator, supported by the affidavit of the said Translator, certifying the correctness of the English translation.

However, in the case of Foreign Document(s) created or originating from Countries that have signed, ratified and have made operational the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, 5 October, 1961 “Hague Legalization for Convention, 1961”, the Bidders may affix an ‘Apostille’ sticker on each and every page of their Foreign Document(s) [including all commercial document(s) duly notarized]. Thereafter, the Bidder shall be compulsorily required to get all such “Apostilled” Foreign Document(s) approved, certified and attested from the Indian Embassy /Indian High Commission in that country where the ‘Foreign Document(s)’ were created or are originated from OR the Ministry of External Affairs, Government of India, New Delhi and the Bidder/s shall follow any other norms/guidelines laid by the Ministry of External Affairs, Government of India, New Delhi.

3.7. Using Net worth and/or Technical Support/ Expertise of Holding/ Parent Company

The Bidders who have used the Net Worth and/ or Technical Support/ Expertise of their

Holding / Parent Company to satisfy the Minimum Eligibility Criteria shall be required to furnish a Deed of Guarantee {as per format attached in Clause 5(H)} from their Holding /Parent Company (including an irrevocable Board Resolution from such Holding/ Parent Company) pledging their Financial strength and Technical support and their expertise towards the development of the Project, apart from authorizing the said Bidder to take part in the Bidding Process. Failure to furnish such irrevocable Deed of Guarantee (accompanied by a Board Resolution) from the Holding/ Parent Company by the Bidder along with their Proposal may entail automatic disqualification of their proposals by KSCL.

3.8. One Bid per Bidder

Each bidder shall submit only one bid for all the Project sites proposed for development of Smart Public Toilets. Violation of this shall lead to disqualification of the bidder along with the JV it is the part of.

3.9. Proposal Preparation and Cost

All Bidders are required to submit a detailed proposal (herein-after referred to as the Proposal or Bid) in accordance with the guidelines set forth in this RFP document.

Bidders should provide information sought herein in the prescribed formats in order to accurately establish and interpret the information provided. The cost of preparation of Proposal and related expenses shall be borne by the Bidders themselves.

3.10. Due Diligence, Inspection and Investigation

The Bidders shall be deemed to have conducted a due diligence exercise with respect to all aspects of the Project, including a detailed survey of the Project and Project sites and information/ data provided by KSCL in the RFP Document, when they submit the Proposal. Interested Bidders are invited to visit and inspect the proposed sites at their own expense. Failure to investigate all the sites, where-upon the Smart Public Toilet Units shall be constructed or subsurface conditions shall not be a valid ground to relieve the Bidder subsequently after its Proposal nor shall it relieve the Bidder from any responsibility for estimating the difficulty or costs of successfully completing the Project.

3.11. Validity of Proposal

- 3.11.1. The Proposal shall remain valid for a period not less than one hundred eighty (180) days from the due date of submission (Proposal Validity Period). KSCL reserves the right to reject any Proposal that does not meet this requirement. Validity of Proposal shall be extended for a specified additional period at the request of KSCL.
- 3.11.2. A Bidder agreeing to the request will not be allowed to modify his Proposal, but would be required to extend the validity of his Proposal Security for the period of extension.
- 3.11.3. The Proposal Validity Period of the Successful Bidder shall be extended till the date of execution of the Concession Agreement.

3.12. Right to Reject Proposals

KSCL reserves the right to reject any/all Proposals including the lowest Proposal or

withdraw the invitation of the proposal at any stage without citing any reason. Nothing contained herein shall confer any right upon a Bidder or create any obligation/liability upon KSCL of any type whatsoever.

3.12.2. Misrepresentation / Fraud / Breach of Terms and Conditions

If it is discovered at any point of time that the bidder has suppressed any fact or given a false statement or has done misrepresentation or fraud or has violated any of the terms of this Bid/ Proposal, the Bid/ Proposal will be cancelled by KSCL. In such an event, the Bidder will not be entitled to any compensation whatsoever, or refund of any other amount paid by him.

3.13. Disputes

Any issue, difference of opinion, or dispute between any Successful Bidder, Bidder/s, the Concessioneering Authority (KSCL) pertaining to any aspect of the present bidding process, shall be settled by Urban Department, Govt. of UP.

4. TENDERING PROCEDURE AND SCHEDULE

4.1. General

4.1.1. The Bidders shall be required to send their queries on the RFP document/ Project to KSCL in writing within the date and time specified in the Factsheet.

4.1.2. Pre-Bid Meeting

- i. The purpose of the Pre-Bid Meeting will be to clarify and discuss issues with respect to the Project, the RFP document or any other related issues.
- ii. The Bidder or his authorized representative is invited to attend a Pre-Bid Meeting, which shall take place at the venue specified in the Factsheet.
- iii. It is preferable to attend the Pre-Bid Meeting. Subsequent to the date of the Pre- Bid Meeting, KSCL may not respond to questions or inquiries from any Bidder who has not attended the Pre-Bid Meeting.
- iv. The Bidders designated representatives are invited to attend the Pre-Bid Meeting at their own cost, to be held on the date and time as specified in Factsheet.

4.2 Amendment of RFP

4.2.1. At any time prior to the Proposal Due Date, KSCL may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP document through the issuance of Corrigendum. This will be uploaded on the website for all the Bidders and shall be binding upon them.

4.2.2. In order to give the Bidders reasonable time to take corrigendum into account for preparation of their proposal, or for any other reason, KSCL may, at its discretion, extend the Proposal Due Date.

4.3 Preparation and submission of Proposal

4.3.2. KSCL, at its sole discretion, retains the right, but is not obliged, to extend the Proposal Due Date by issuing a corrigendum.

4.3.3. Bidders shall furnish the information strictly as per the formats given in Clause 5 of this RFP document without any ambiguity. KSCL shall not be held responsible if the failure of any bidder to provide the information in the prescribed formats results in lack of clarity in interpretation and consequent disqualification.

- 4.3.4. In case of a JV, wherever required, the Proposal must contain such information individually for each member of the JV.
- 4.3.5. In case of a JV, the members shall submit a Joint Venture (JV) Agreement conveying their intent to jointly bid for the Project and in case the Project is awarded to them, to form a 'SPV' that will subsequently carry out all its responsibilities as the 'Concessionaire'. The MOA shall also include the nomination of the Lead Member in the JV and clearly outline the proposed shareholding and responsibilities of each member at each stage.
- 4.3.6. All Proposals/Bids shall be signed by the duly 'Authorised Signatory' of the Bidder. In case of a JV, the Proposal shall be signed by the duly Authorised Signatory of the Lead Member. Bidders shall submit a supporting Power of Attorney authorizing the Signatory of the Proposal to commit the bidder and agreeing to ratify all acts, deeds and things lawfully done by the said attorney. In case of a JV, such Power of Attorney shall be signed by all members of the JV and shall be legally binding on all of them.
- 4.3.7. The Authorised Signatory shall initial the Proposal on each page using blue ink. He shall also initial all the alterations, omissions, additions, or any other amendments made to the Proposal.
- 4.3.8. All witnesses and sureties shall be the persons of status and probity and their full names and addresses shall be stated below their signature. All signatures in the Proposal documents shall be dated.
- 4.3.9. Bidders are required to submit one original set of the Proposal, including the Original RFP document and Addenda/Corrigenda issued to them and clearly marked as "ORIGINAL".
- 4.3.10. Any firm which submits or participates in more than one Proposal for the said Project shall be disqualified and shall also cause the disqualification of all the JVs in which it is a member.

4.4 Language and Currency

- 4.4.1. The Proposal and all related correspondence and documents shall be written in English language. If any supporting document attached to the Bid/ Proposal is in any other language, the same will be supported by an English translation (duly authenticated/ attested from Indian Embassy in respective countries).
- 4.4.2. The currency for the purpose of the Proposal/ Bid shall be Indian National Rupee (INR).

4.5 Bidder's Responsibility

- 4.5.1. It would be deemed that prior to the submission of Proposal; the Bidder has made a complete and careful examination of:
- i. The requirements and other information set forth in this RFP document.
 - ii. The various aspects of the Project including, but not limited to the following:
 - a) The existing facilities and structures (if any), access roads and public utilities in the vicinity of the Project;
 - b) All other matters that might affect the Bidder's performance under the terms of this R

F P document, including all risks, costs, liabilities and contingencies associated with the Project.

4.5.2. Facility Visit

i. The Bidders prior to submitting their Bid/Proposal for the Project, are expected to visit and examine the Project sites and surroundings at his/her own expenses, the land will be offered by KSCL on *“as is where is”* basis and ascertain on their own responsibility information, technical data, traffic data, etc. including actual condition of existing services which may or may not have to be shifted/removed/replaced etc.

ii. It shall be assumed that all these factors were accounted for by the Bidder while quoting his bid. The bidder shall be deemed to have full knowledge of the proposed sites whether he inspects it or not.

4.5.3. KSCL shall not be liable for any mistake or error or neglect by the bidder in respect of the above. Proposals that are not substantively responsive to the requirements of this RFP document will be rejected.

4.6 Modification and Withdrawal of Proposals

4.6.1. No Proposal shall be modified or withdrawn by the Bidder after the Proposal Due Date.

4.6.2. Withdrawal of a Proposal during the interval between Proposal Due Date and expiration of the Proposal Validity Period would result in forfeiture of the Proposal Security.

4.7 Opening of Proposals

4.7.1. The Technical Proposals received shall be opened by the Committee constituted by KSCL in the presence of the Bidders on the specified time and date. The date for opening of Financial Proposals shall be intimated in advance to the technically qualified bidders only.

4.7.2. KSCL reserves the right to reject any Proposal, if

i. It is not signed, sealed and marked as stipulated in Clause 4.3.

ii. The information and documents have not been submitted as requested and in the formats specified in the RFP.

iii. There are inconsistencies between the Proposal and the supporting documents.

iv. It does not mention the Validity Period as set out in Clause 3.11.

v. There are conditions proposed with the Technical and/or Financial Proposals.

vi. It provides the information with material deviations.

4.7.3. A material deviation or reservation is one:

i. which affects in any substantial way, the scope, quality, or performance of the Project, or

ii. which limits in any substantial way, inconsistent with the RFP document, KSCL's rights or the Bidder's obligations, or

- iii. which would affect unfairly the competitive position of other Bidders' presenting substantially responsive bids.
- 4.7.4. No request for modification or withdrawal shall be entertained by KSCL in respect of such Proposals.

4.8 Evaluation of Proposals.

- 4.8.1. Highest Quoting (H1) bidder will be deemed to be the successful bidder and the process to further enter into contract will be initiated with him.
- 4.8.2. KSCL would have the right to review the Proposals and seek clarifications where necessary. The response from the bidder(s) shall only be in writing but no change in the substance of the Proposal would be permitted. It is clarified that bidders are free to make suggestions but are not allowed to submit any conditional bid as specified earlier.
- 4.8.3. The Proposal (Financial and Technical) should be unconditional and any conditionality attached with the Proposal/ Bid may result in the rejection of the Proposal.
- 4.8.4. Financial Proposals of Bidders who do not qualify the technical evaluation shall not be opened and will be returned unopened.
- 4.8.5. All the proposal will be evaluated first on technical parameters as stated above in this RFP. Only those bids who qualify the technical conditions of this RFP will be considered for financial opening. Financial proposal of technically non qualifying bids will not be opened.
- 4.8.6. In stage 2 the financial bid of technically qualified bidders will be opened in the presence of bidders who choose to attend. As per terms of this RFP the financial bid of all the technically qualified bidders will be compared and the bidder who have quoted the maximum revenue that they can share with KSCL per annum will be marked H1 and subsequently H2, H3 etc.
- 4.8.7. H1 bidder will be deemed to be the successful bidder and the process to further enter into contract will be initiated with him.

4.9 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the short-listed Bidders shall not be disclosed to any person not officially concerned with the process. KSCL will treat all information submitted as part of all Proposals in confidence and will insist that all who have access to such material treat it in confidence. KSCL will not divulge any such information unless it is ordered to do so by any Government authority that has the power under law to require its disclosure or due to statutory compliances.

4.10 Acceptance of the Proposal

- 4.10.1. KSCL shall issue Letter of Intent (LoI) to the Successful Bidder for the Project.
- 4.10.2. The Successful Bidder is required to send his acceptance of the LoI within seven (7) days from the date of its receipt.
- 4.10.3. KSCL shall retain the right to withdraw the LoI in the event of the Successful Bidder's failure to accept the LoI within the time limit specified in the above clause.
- 4.10.4. In this event, KSCL shall forfeit the Proposal Security of the Successful Bidder.

4.11 Execution of Concession Agreement

4.11.1. The Successful Bidder/ SPV is required to sign the Concession Agreement within 45 (forty five) days of conveying his acceptance of the LoI in writing or the date as mutually agreed between the Parties to the Concession Agreement. But prior to signing of the Concession Agreement, the Successful Bidder/ Concessionaire must satisfy the following conditions, within a period of 45 (forty five) days from the date of receipt of Letter of Intent:

The Successful Bidder/ Concessionaire has submitted the requisite Performance Security to KSCL.

Formation of a SPV, as per the provisions laid down in Clause 3.3/ 3.4, within 45 (Forty five) days of receipt of Letter of Intent by the Successful Bidder (either a JV or Single Bidder). However, it is being clarified here that it is not mandatory for Single Bidder, if it is a registered Firm, to form a SPV.

KSCL shall not execute the Concession Agreement until these conditions have been satisfied.

4.11.2. If the Successful Bidder delays in submission of required documents, as detailed out herein and the Successful Bidder, in writing, shall ask for extension.

4.11.3. Failure to meet the conditions, as laid down in the RFP within the prescribed time limit (including extension, if any) shall result in a breach and KSCL shall be entitled to cancel the LoI without being liable, in any manner whatsoever, to the Bidder and to appropriate the Proposal Security and any other amount deposited till that time as 'Damages'.

4.11.4. The cost of stamp duty for execution of Concession Agreement, registration charges and any other related Legal Documentation charges and other incidental charges shall be borne by the Successful Bidder.

4.11.5. In case of failure to sign the Concession Agreement within the stipulated time, KSCL shall retain the right to cancel the LoI and forfeit the Successful Bidder's Proposal Security and any other amount deposited till that time without being liable in any manner whatsoever to the Successful Bidder.

4.12 Bid Security of other Bidders

4.12.1. KSCL shall return the Bid Security received from the Bidders who have not qualified in technical round of the evaluation, within 60 (Sixty) days of opening of the Technical Proposal/ Bid. The bid Security shall be returned without payment of any interest.

5. PRESCRIBED FORMATS

A. Letter of Application & Interest

(To be submitted and signed by the Bidder's authorised signatory)

To

The Chief Executive Officer,
Kanpur Smart City Limited,
Motijheel, Kanpur – 208002

Sub: *Development, Operation & Maintenance of Smart Public Toilets under PPP mode.*

Sir,

1. Being duly authorized to represent and act for and on behalf of (Hereinafter referred to as "the applicant"), and having studied and fully understood all the information provided in the RFP document, the undersigned hereby apply as a Bidder for ***"Development, Operation & Maintenance of Smart Public Toilets under PPP mode."*** according to the terms & conditions of the RFP Document issued by KSCL.
2. Our Technical & Financial Proposals are as per the requisite formats along with the Supporting documents, duly filled and signed on each page are enclosed in separate sealed envelopes as specified.
3. The Proposal Security is enclosed in the Envelope 1 marked "Proposal Security Deposit".
4. KSCL and its authorised representatives are hereby authorized to conduct any inquiries / investigation to verify the statements, documents and information submitted in connection with the application and to seek clarification from our banker regarding any financial and technical aspects. This letter of application will also serve as authorization to any individual or authorized representative of any institution referred to the supporting information, to provide such information deemed necessary and requested by yourselves to verify statements and information provided in the application or with regard to the resources, experience and competence of the applicant.
5. KSCL and its authorized representatives may contact the following persons for any further information:
Name of the person (s):
Address:
Phone: Fax:
6. This application is made with full understanding that:
 - a. KSCL reserves the right to reject or accept any Bid/ Proposal, cancel the bidding process, and / or reject all Bids.
 - b. KSCL shall not be liable for any of the above actions and shall be under no obligation to inform the applicant of the same.
7. We, the undersigned declare the statements made and the information provided in the duly completed application forms enclosed, as complete, true and correct in every

detail.

8. We hereby confirm that we have read, understood and accepted all the detailed terms and conditions of this RFP document and Project related Information as required for the Proposal. We have also visited the proposed project sites and surroundings, for the assessment and have made our own due diligence and assessment regarding the project.
9. We agree to keep our Proposal valid for one hundred eighty (180) days from the date of submission of Proposal thereof and not to make any modifications in its terms and conditions not acceptable to the KSCL. Should this Proposal be accepted, we hereby agree to abide by and fulfil all the terms, conditions and provisions of the aforesaid documents.
10. This application is made with the full understanding that the validity of proposal submitted by us will be subject to verification of all information, terms and conditions submitted at the time of bidding and its final acceptance by KSCL. We agree that, without prejudice to any other right or remedy, KSCL shall be at liberty to forfeit the said Proposal Security absolutely.

Authorised signatory:

Date:

Name and seal of Bidder:

Place:

B. General Information on the Bidder

1.

(a)	Name:	_____
(b)	Country of incorporation:	_____
(c)	Address of the corporate headquarters and its branch office(s), if any, in India	_____

2. Details of individual(s) who will serve as the point of contact / communication for KSCL within the Company:

- a. Name:
- b. Designation:
- c. Company:
- d. Address:
- e. Telephone Number:
- f. Fax Number:
- g. E-Mail Address:

3. In case of JV:

a. The information above (1 & 2) should be provided for all the members of the JV.

b. Information regarding role of each member should be provided:

Sl No	Name of the Member in JV	Role (Specify whether Lead Member/Ordinary Member	Proportion of Equity to be held

Signed

(Name of the Authorised Signatory)

For and on behalf of **(Name of the bidder)**

Designation:

Date:

Place:

To be enclosed:

1. Documents certifying Bidder's legal status i.e. Certificate of incorporation /registration.
2. In case of a JV, JV Agreement & Power of Attorney signed by each JV partner, clearly indicating the lead partner.
3. Latest brochures/ organization profiles, etc.

C. Format for Financial Proposal

(To be submitted and signed by the Bidder's authorised signatory)

The Chief Executive Officer,
Kanpur Smart City Limited.
Motijheel, Kanpur – 208002

Sub: “Development, Operation & Maintenance of Smart Public Toilets under PPP mode.”

Sir,

We, duly, hereby submit our Financial Proposal for the captioned project. If the project is awarded to us, we agree to make the following to KSCL as per the terms given in the Request for Proposal (RFP) Document.

Sl. No.	Description	Year	Revenue Share (Rs. in Figure)	Revenue Share (Rs.in Words)
1	Revenue share to KSCL	First Year		
2	Revenue share to KSCL	Second Year		
3	Revenue share to KSCL	Third Year		
4	Revenue share to KSCL	Fourth Year		
5	Revenue share to KSCL	Fifth Year		
6	Revenue share to KSCL	Sixth Year		
7	Revenue share to KSCL	Seventh Year		
8	Revenue share to KSCL	Eighth Year		
9	Revenue share to KSCL	Ninth Year		
10	Revenue share to KSCL	Tenth Year		
Total				

We agree that the above agreed Authorization shall be payable by us in accordance with Article 5.1 of the draft Concession Agreement.

We are making this Proposal after taking into consideration all the terms and conditions stated in the RFP document, and after careful assessment of the site, all risks and contingencies and all other conditions that may affect the financial proposal.

We agree to keep our Proposal valid for 180 (One Hundred and Eighty) days from the due date of submission of this Proposal.

Authorised signatory
Date:
Name and seal of Bidder:
Place:

D. Affidavit

(To be given separately by each JV member, in case of a JV or otherwise by the Bidder on a Stamp Paper of Requisite Value)

I S/o, _____

Resident of _____, the _____ (insert designation) of the _____ (insert name of the single

Bidder/JV Member if a JV), do solemnly affirm and state as under:

1. **That** I am the authorised signatory of(insert name of company /JV member) (hereinafter referred to as “Bidder/JV Member”) and I am duly authorised by the Board of Directors of the Bidder/JV Member to swear and depose this Affidavit on behalf of the bidder/JV member.
2. **That** I have submitted information with respect to our eligibility for the **“Development, Operation & Maintenance of Smart Public Toilets under PPP mode.”** (hereinafter referred to as “Project”) and I further state that all the said information submitted by us is accurate, true and correct and is based on our records available with us.
3. **That** I hereby affirm to furnish any information, which may be requested by KSCL to verify our credentials/information provided by us under this Proposal and as may be deemed necessary by KSCL.
4. **That** if any point of time including the Concession Period, in case KSCL requests any further/additional information regarding our financial and/or technical capabilities, or any other relevant information, I shall promptly and immediately make available such information accurately and correctly to the satisfaction of KSCL.
5. **That**, I/ we fully acknowledge and understand that in case any false or misleading information, as furnished by us in our RFP, is found at a later stage after the signing of the Concession Agreement amongst KSCL and _____ (insert name of Organization / JV), it shall entitle KSCL to terminate the said signed Concession Agreement between the Parties. The costs and risks for such termination shall be entirely borne by us.
6. That all the terms and conditions of the Request for Proposal (RFP) Document has been duly complied with.

VERIFICATION:

I, the above named deponent, do verify that the contents of paragraphs 1 to 6 of this affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed.

_____, on this day of, 2018.

Verified at _____

E. Format for Power of Attorney for Signing of Application

Know all men by these presents, we/ I (name and address of the registered office) do hereby constitute, appoint and authorize Mr./Ms.....(name and residential address) as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Bid/ Proposal for the Project envisaging ***“Development, Operation & Maintenance of Smart Public Toilets under PPP mode.”*** at Kanpur, Uttar Pradesh in the country of India, including signing and submission of all documents and providing information/responses to KSCL, representing us in all matters before KSCL, and generally dealing with KSCL in all matters in connection with our Bid/ Proposal for the said Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall always be deemed to have been done by us.

For: _____

Accepted

(Signature)

(Name, Title and address) of the Attorney

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

F. Format for Bid Security

In consideration of the Kanpur Smart City Limited (hereinafter called “KSCL” which expression shall include any entity which KSCL may designate for the purpose) having agreed, inter alia, to consider the bid of (Hereinafter referred to the “Bidder” which expression shall include their respective successors and assigns) which will be furnished in accordance with the terms of the Request for Proposals for the Project/s (in lieu of the Bidder being required to make a cash deposit, we[name of the Bank and address of the issuing branch], hereinafter called the “Bank” which expression shall include our successors and assigns, as to bind ourselves our successors and assigns do at the instance of the Bidder hereby unconditionally and irrevocably undertake to pay as primary obligator and not as surety only to KSCL without protest or demand and without any proof or condition the sum of Rs. (In words).

1. We, the Bank, do hereby unconditionally and irrevocably undertake to pay forthwith (and in any event within five days) the amounts due and payable under this Guarantee without any delay or demur merely on a written demand from KSCL stating that the amount claimed is due by reason of the occurrence of any of the events referred to in the RfP. Any such demand made on the Bank by KSCL shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, the Bank’s liability under this Guarantee shall be restricted to an amount not exceeding Rs (in words).
2. We, the Bank unconditionally undertake to pay to KSCL any money so demanded under this Guarantee notwithstanding any dispute or disputes raised by the Bidder or any other party including in any suit or proceeding pending before any court or tribunal relating thereto or any instructions or purported instructions by the Bidder or any other party to the Bank not to pay or for any cause to withhold or defer payment to KSCL under this Guarantee. The Bank’s liability under this Guarantee is irrevocable, unconditional, absolute and unequivocal. The payment so made by the Bank under this Guarantee shall be a valid discharge of the bank’s liability for payment hereunder and the Bidder shall have no claim against the Bank for making such payment.
3. We, the Bank further agree that the Guarantee herein contained shall remain in full force and effect upto and until 1700 hours on the date which falls 90 days beyond the Proposal Validity period i.e.(hereinafter called “the End Date”). Unless a demand or claim under this Guarantee is made on the Bank by KSCL in writing on or before the said End Date the Bank shall be discharged from all liability under this Guarantee thereafter.
4. We, the Bank further agree with KSCL shall have the fullest liberty without the Bank’s consent and without affecting in any manner the Bank’s obligation hereunder to vary any of the terms and conditions of the RfP or to extend or postpone the time of performance by the Bidder or any other party from time to time or postpone for any time or from time or postpone for any time or from time to time any of the powers exercisable by KSCL against the Bidder or any of them and to enforce or to forbear from enforcing any of the terms and conditions relating to the RfP and the Bank shall not be relieved from it liability by reason or any forbearance act or omission on the part of KSCL, or any indulgence given by KSCL to the Bidder or any other party or by any such matter or thing whatsoever which under the law relating to securities would, but for this provision, have the effect of so relieving the

Bank.

5. To give full effect to the obligations herein contained, KSCL shall be entitled to act against the Bank as primary obligator in respect of all claims subject of this Guarantee and it shall not be necessary for KSCL to proceed against the Bidder or any other party before proceeding against the Bank under this Guarantee and the Guarantee herein contained shall be enforceable against the bank as principal obligator.
6. This Guarantee will not be discharged or affected in any way by the liquidation or winding up or dissolution or change of constitution or insolvency of any individual member of the Bidder or any other party or any change in the legal constitution or insolvency of the Bidder or any other party or any change in the legal constitution of the Bank or KSCL.
7. We, the bank lastly undertake not to revoke this Guarantee during its currency except with the previous consent of KSCL writing.
Notwithstanding anything contained herein.
 - a. Our liability under the Bank Guarantee shall not exceed (in word).
 - b. The Bank Guarantee shall be valid upto [date].
 - c. Unless acclaimed or a demand in writing is made upon us on or before -----
----- all our liability under this guarantee shall cease.

IN WITNESS WHEREOF THE BANK HAS SET ITS HANDS HERETO ON THE DAY, MONTH AND YEAR MENTIONED HEREUNDER.

Signed and Delivered

On behalf of(Bank name) (Signature) (Date)

By the hand of Mr.

(Name of authorized signatory)

Designation

Note: Authenticated copy of Letter of Authority authorizing the signatory of this guarantee to execute the same to be enclosed herewith.

G. Power of Attorney by Each Member of the JV in Favour of Lead Member

Dated -----

POWER OF ATTORNEY TO WHOMSOEVER IT MAY CONCERN

WHEREAS we have decided to participate in the bidding process for the ***“Development, Operation & Maintenance of Smart Public Toilets under PPP mode.”*** (the “Project”) as member of [name of the JV] independently, we, _____ [name of

authorising company/agency], a _____ incorporated under the laws of

, the registered address of which is _____, to lawfully represent and act on our behalf as the Lead Member of the JV to sign any qualification statement, proposal, conduct negotiations, sign contracts, incur liabilities and receive instructions for us and on our behalf and execute all other necessary matters in connection with the Project. We hereby confirm that we are jointly and severally liable, together with other members of the JV, to the KSCL for all of the obligations of the JV in respect of our qualification statement, technical and financial proposal for the Project, in accordance with the RFP document for the Project issued on ----- and as amended prior to date hereof

We hereby ratify and confirm that all acts done by our said attorney _____ (name of lead member) shall be binding on us as if the same has been done by us personally. We hereby also ratify and confirm that if we are selected as the Successful Bidder, we shall incorporate a Company under The Companies Act, 2013 as per the following shareholding pattern:

Party %Shareholding

IN WITNESS WHEREOF, we have hereunto set our respective hands this _____ day of _____ 2014 in the presence of the following witnesses

Witness1 Witness 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Address: _____

Address: _____

By [the Authorising
Company] _____

[Signature of authorised signing officer]

Signature

Name _____

[Name of authorised signing officer]

Title

[Title of authorised signing officer]

H. Format of Parent / Holding Company Deed of Guarantee

FORMAT OF PARENT / HOLDING COMPANY DEED OF GUARANTEE
(TO BE MADE ON STAMP PAPER OF REQUISITE VALUE AND NOTORISED)

DEED OF GUARANTEE

THIS DEED OF GUARANTEE executed at this day of by M/s_(mention complete name) a company duly organized and existing under the laws of_(insert jurisdiction/country), having its Registered Office at _____ hereinafter called “the Guarantor” which expression shall, unless excluded by repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns.

WHEREAS

- A. Kanpur Smart City Limited, Kanpur(hereinafter called “KSCL” or “Concessioneing Authority”, which expression shall unless excluded by or repugnant to the context thereof, be deemed to include its successor and assigns), invited Bids / proposals for the “Project” – ***“Development, Operation & Maintenance of Smart Public Toilets under PPP mode.”*** by issuing Request For Proposal (“RFP”) document (including its addendums) to the prospective “Bidders” to implement the said Project for and on behalf of the Concessioneing Authority.
- B. M/s (mention compete name), a company duly organized and existing under the laws of India (insert jurisdiction / country), having its Registered Office at_(give complete address) hereinafter called “the Subsidiary”, which expression shall, unless excluded by or repugnant to the subject or context thereof, be
- C. The Guarantor represents that they have gone through and understood the requirement of the above said RFP document (including its addendums) and are capable of and committed to provide technical, financial and such other supports as may be required by the Subsidiary for the successful execution of the same.
- D. The Guarantor is executing this Deed of Guarantee in favour of KSCL, wherein the Guarantor and the Subsidiary shall be jointly and severally liable towards the Project and the Guarantor shall also be pledging / providing technical, financial and such other supports as may be necessary to the Subsidiary for performance of the work relating to the said Project as per the RFP document (including its addendums) and as per the Concession Agreement contained in the RFP document.
- E. Accordingly, at the request of the Subsidiary and in consideration of and as a requirement for KSCL to enter into agreement(s) with the Subsidiary, the Guarantor hereby agrees to give this guarantee and undertakes as follows:
 1. The Guarantor (Parent / Holding Company) unconditionally agrees that in case of non-performance by the Subsidiary of any of its obligations in any respect, the Guarantor shall, immediately on receipt of notice of demand by KSCL, take up the Project without any demur or objection, in continuation and without loss of time and without any cost to KSCL and duly perform the obligations and responsibilities of the Subsidiary to the satisfaction of KSCL. In case the Guarantor also fails to discharge its obligations herein and is not able to complete the Project satisfactorily, KSCL shall have absolute rights for effecting the execution of the Project from any other person at the risks and costs of the Guarantor. The Guarantor also undertakes

to make good any loss that may be caused to KSCL for any non-performance or unsatisfactory performance by the Guarantor or the Subsidiary of any of their obligations.

2. The Guarantor agrees that the Guarantee herein contained shall remain valid and enforceable till the satisfactory execution and completion of the Project (including discharge of the warranty obligations) awarded to the Subsidiary till the completion of the Concession Period (including any extension).
3. The Guarantor shall be jointly with the Subsidiary, as also severally responsible for the satisfactory execution and performance of Project during the currency of the "Concession Agreement" to be entered amongst the Subsidiary and KSCL.
4. The Guarantor represents that this Guarantee has been issued after due observance of the appropriate laws in force in India. The Guarantor hereby undertakes that the Guarantor shall obtain and maintain in full force and effect all the governmental and other approvals, permits and consents that are necessary and do all other acts and things necessary or desirable in connection therewith or for the due performance of the Guarantor's obligations hereunder.
5. The Guarantor also agrees that this Guarantee shall be governed and construed in accordance with the laws in force in India and subject to the exclusive jurisdiction of the courts of Kanpur, Uttar Pradesh, India.
6. The Guarantor hereby declares and represents that this Guarantee has been given without any undue influence or coercion from any person and that the Guarantor has fully understood the implications of the same.
7. The Guarantor represents and confirms that the Guarantor has the legal capacity, power and authority to issue this Guarantee and that giving of this Guarantee and the performance and observations of the obligations hereunder do not contravene any existing law or any judgment.
8. The Guarantor represents and confirms that in pursuance to Para / Point 7, the Guarantor has submitted and provided to KSCL (with this Deed of Guarantee), a valid Board Resolution duly authorizing the Guarantor to pledge / provide technical, financial and such other supports as may be necessary for performance of the work relating to the said Project as per the RFP and Concession Agreement.

For & on behalf of:

(Parent / Holding Company) M/s _____

Witness:

- 1.
- 2.

* Subsidiary shall mean and include, in case of a company or corporation, which is directly or indirectly owned by the Guarantor / Parent / Holding Company, by way of ownership of more than 50% (fifty per cent) of the voting shares of such Subsidiary company. In case of a person (which is not a company or corporation), the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

I. Format of Successful Bidder Guarantee towards SPV

***Format of Successful Bidder Guarantee towards SPV
(if applicable & after LOI)
(To Be Made On Stamp Paper of Requisite Value and Notorised)***

DEED OF GUARANTEE

THIS DEED OF GUARANTEE executed at this _day
of _by _____ (mention complete name) a company duly organized and
existing under the laws of _____ (insert jurisdiction / country), having its Registered Office at
hereinafter called “the Guarantor” or the “Successful Bidder”, which expression shall,
unless excluded by or repugnant to the subject or context thereof, be deemed to include its
successors and permitted assigns.

WHEREAS

- A. Kanpur Smart City Limited (hereinafter called “KSCL” or “Concessioneing Authority”,
which expression shall unless excluded by or repugnant to the context thereof, be
deemed to include its successor and assigns), invited Bids / Proposals for the “Project”
– **“Development, Operation & Maintenance of Smart Public Toilets under PPP
mode.”** by issuing Request For Proposal (“RFP”) document (including its addendums)
to the prospective “Bidders” to implement the said Project for and on behalf of the
Concessioneing Authority.
- B. M/s (mention compete name), a company duly organized and existing under the laws of
India (insert jurisdiction / country), having its Registered Office at (give complete
address) hereinafter called the Special Purpose Vehicle “the SPV”, which expression shall,
unless excluded by or repugnant to the subject or context thereof, be deemed to include
its successor and permitted assigns, *is an Associate of the Guarantor, and has been
formed for the development of the Project with one of the condition that the SPV shall
arrange a guarantee from its Parent / Holding Company, i.e. Guarantor, guaranteeing due
and satisfactory performance of the work covered under the said RFP document
(including its addendums) or any change made in may be deemed appropriate by the
KSCL at any stage.
- C. The Bid / Proposal submitted by the Guarantor was accepted by Kanpur Smart City
Limited, and this Guarantor was declared the “Successful Bidder”. Accordingly, the
Guarantor is executing this Deed of Guarantee towards / in favour of its SPV after
the issuance of Letter of Intent (LOI) dated ----- by KSCL to the Guarantor / Successful
Bidder.

- D. The Guarantor represents that it has gone through and understood the requirement of the above said RFP document (including its addendums) and are capable of and committed to provide technical, financial and such other supports as may be required by the SPV for the successful execution of the same.
- E. The Guarantor is executing this Deed of Guarantee in favour of KSCL, wherein the Guarantor and the Associate shall be jointly and severally liable towards the Project and the Guarantor shall also be pledging / providing technical, financial and such other supports as may be necessary to the Associate for performance of the work relating to the said Project as per the RFP document (including its addendums) and as per the Concession Agreement contained in the RFP document.
- F. Accordingly, at the request of the Associate and in consideration of and as a requirement for KSCL to enter into agreement(s) with the SPV, the Guarantor hereby agrees to give this guarantee and undertakes as follows:
1. The Guarantor (Parent / Holding Company) unconditionally agrees that in case of non-performance by the SPV of any of its obligations in any respect, the Guarantor shall, immediately on receipt of notice of demand by KSCL, take up the Project without any demur or objection, in continuation and without loss of time and without any cost to KSCL and duly perform the obligations and responsibilities of the SPV to the satisfaction of KSCL. In case the Guarantor also fails to discharge its obligations herein and is not able to complete the Project satisfactorily, KSCL shall have absolute rights for effecting the execution of the Project from any other person at the risks and costs of the Guarantor. The Guarantor also undertakes to make good any loss that may be caused to KSCL for any non-performance or unsatisfactory performance by the Guarantor or the SPV of any of their obligations.
 2. The Guarantor agrees that the Guarantee herein contained shall remain valid and enforceable till the satisfactory execution and completion of the Project (including discharge of the warranty obligations) awarded to the SPV till the completion of the Concession Period (including any extension).
 3. The Guarantor shall be jointly with the SPV, as also severally responsible for the satisfactory execution and performance of Project during the currency of the "Concession Agreement" to be entered amongst the SPV, KSCL.
 4. The Guarantor represents that this Guarantee has been issued after due observance of the appropriate laws in force in India. The Guarantor hereby undertakes that the Guarantor shall obtain and maintain in full force and effect all the governmental and other approvals, permits and consents that are necessary and do all other acts and things necessary or desirable in connection therewith or for the due performance of the Guarantor's obligations hereunder.
 5. The Guarantor also agrees that this Guarantee shall be governed and construed in

accordance with the laws in force in India and subject to the exclusive jurisdiction of the courts of only Uttar Pradesh, India

6. The Guarantor hereby declares and represents that this Guarantee has been given without any undue influence or coercion from any person and that the Guarantor has fully understood the implications of the same.
7. The Guarantor represents and confirms that the Guarantor has the legal capacity, power and authority to issue this Guarantee and that giving of this Guarantee and the performance and observations of the obligations hereunder do not contravene any existing law or any judgment.
8. The Guarantor represents and confirms that in pursuance to Para / Point 7, the Guarantor has submitted and provided to KSCL (with this Deed of Guarantee), a valid Board Resolution duly authorizing the Guarantor to pledge / provide technical, financial and such other supports as may be necessary for performance of the work relating to the said Project as per the RFP and Concession Agreement.

For & on behalf of:

(Parent / Holding Company) _____

Witness:

- 1.
- 2.

* Associate shall mean and include, in case of a company or corporation, which is directly or indirectly owned by the Guarantor / Parent / Holding Company, by way of ownership of more than 50% (fifty per cent) of the voting shares of such Subsidiary company. Incase of a person (which is not a company or corporation), the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

J. Draft Joint Venture Agreement

(To Be Made On Stamp Paper of Requisite Value and Notarized)

K. Format of Deed of Guarantee (in case of JV) towards SPV

*Format of Deed of Guarantee (in case of JV) towards SPV (if applicable & after LOI)
(To Be Made on Stamp Paper of Requisite Value and Notorised)*

DRAFT CONCESSION AGREEMENT

DRAFT CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is entered into on this day the _____ day of _____ Month of _____ **AMONGST Kanpur Smart City Limited**, a Company incorporated under Companies Act, 2013 and having its office at _____ represented by the _____ (hereinafter referred to as the “**Concessioneing Authority**” or “**KSCL**” which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **ONE PART**;

AND

M/s _____, a Company incorporated under the Companies Act, 1956/2013 having its office at _____ and represented by the _____ (hereinafter referred to as the “**Concessionaire**” which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes) of the **SECOND PART**.

WHEREAS the Concessioneing Authority has decided to develop smart Public toilets at different places in Kanpur through Public Private Participation (***the Project***). The development of Smart Public Toilets shall permanent structures and is in the ownership of the Concessioneing Authority.

AND WHEREAS with an objective to seek private sector participation in the aforesaid Project, the Concessioneing Authority, undertook the process of selection of a suitable Concessionaire through competitive bidding process, after issuing a Request for Proposal document (RFP) vide _____ dated _____ inviting Bids/ Proposals from prospective Bidders to implement the said Project.

AND WHEREAS the Concessionaire, selected through the transparent competitive bidding process, met the Eligibility Criteria as laid down in the RFP document and quoted the Highest Revenue Sharing (H1) for the right to successfully develop/installation of Smart Public Toilet Units then operating, maintaining the project for the Concession period. After evaluation of the Proposals so received, Chief Executive Officer, Kanpur Smart City Limited on behalf of the Concessioneing Authority, accepted the Proposal of the Concessionaire and issued to the Concessionaire requiring, inter alia, the Letter of Intent vide _____ dated _____ for prompt execution of this Concession Agreement.

AND WHEREAS the Successful Bidder/Concessionaire acknowledges and confirms that it has undertaken a due diligence and audit of all aspects of the Project units including technical & financial viability and legal due diligence and on the basis of its independent satisfaction hereby accepts the Concession and agrees to implement the Project at its own cost and expense in accordance with the terms and conditions of this Concession Agreement.

AND WHEREAS following the issue of the Letter of Intent and (i) submission by the Successful Bidder, Deed of Guarantee(s) towards the Concessionaire; (ii) provision of the Performance Security for an amount of Rs. 6,50,000.00(Rs. Six Lakh Fifty Thousand) only to the Concessioneing Authority

and within 45 (Forty Five) days from the date of receipt of the Letter of Intent by the Concessionaire, the Concessioneing Authority hereby agrees and grants to the Concessionaire this Concession on the mutually agreed terms and conditions for the Concession Period of _____ to (a) Develop & Install the Smart Public Toilet Units and; (b) operate & maintain the Smart Public Toilet Units for the Concession Period and (c) at the end of the Concession Period hand back the Smart Public Toilet Units and all the created Assets (which includes the assets as provided by the Concessioneing Authority and the assets as brought in by the Concessionaire, during the subsistence of this Concession Agreement) in good working conditions.

AND WHEREAS the Concessionaire hereby accepts the Concession granted and undertakes to implement the Project in accordance to the provisions of this Concession Agreement.

NOW THEREFORE, in view of the offer, mutual promises and consideration set out herein, the Concessioneing Authority, and the Concessionaire (each individually a “**Party**” hereto, and collectively the “**Parties**”) hereby agree to be bound by the provisions of this Concession Agreement.

1. ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Concession Agreement, unless repugnant to the context in which these words and expressions appear the words and expressions defined below shall have the meanings assigned to them: -

- 1.1.1. “**Applicable Laws**” means all laws which are applicable to the Project and/or the Concessionaire extending to the State of Uttar Pradesh, having been enacted or brought into force by Government of India or GoUP including regulations and rules made thereunder, and judgements, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this Agreement.
- 1.1.2. “**Associates**” means in relation to either Party and/or Joint Venture (JV) Members, a person who controls, is controlled by, or is under the common control with such Party or Joint Venture (JV) Member. As used in this definition, the expression “control” means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
- 1.1.3. “**Book Value**” shall mean the written down value in the audited books of the Concessionaire of a specific asset or class of asset in accordance with generally accepted accounting principles and applicable accounting standards.
- 1.1.4. “**Clearance**” means, as on the date of execution of this Agreement, any consents, licences, approvals, permits, exemptions, registrations, filings or other authorisations of whatever nature, which is necessary for effective implementation of the Project.
- 1.1.5. “**Commercial Charges**” means the Tariff as decided by the municipal administration to be levied by the Concessioner for toilet users and charges for display of advertisement.
- 1.1.6. “**Concession**” or “**Concession Agreement**” means and includes this signed Concession Agreement (including the Schedules of the Concession Agreement, the “Letter of Intent” issued by KSCL, the written clarification(s), addendums, amendments, etc. to the RFP Document issued subsequently to the Bidders and all other documents/papers attached as annexure/ appendix).
- 1.1.7. “**Concessionaire**” means , an individual or [a Special Purpose Company/Company incorporated, either by the Joint Venture (JV) Members or the Individual Successful Bidder

under the Companies Act, 2013], and includes its successor/successors in business and permitted assigns and substitutes.

- 1.1.8. **“Concessionaire’s Representative”** means the Person appointed by Concessionaire under Article 24.11.
- 1.1.9. **“Concession Period”** is the period of **10 (ten) years** for which this Concession is granted commencing from the Compliance Date.
- 1.1.10. **“Conditions Precedent”** means the conditions set out in Article 4 hereof.
- 1.1.11. **“Competent Authority”** means any agency, authority, department, ministry, public or statutory Person of the Government of Uttar Pradesh or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession Agreement.
- 1.1.12. **“Compliance Date”** means the later of the date of issuance of the Certificate of Compliance to the Concessions Authority or Concessionaire under Article 4.3.
- 1.1.13. **“Concession Agreement Completion Certificate”** means the certificate issued under Article 11, after the termination or efflux of this Concession Agreement.
- 1.1.14. **“Change in Law”** means the occurrence of any of the following events after the Proposal Acceptance Date:
 - a. Enactment of any new Law.
 - b. The repeal in whole or in part (unless re-enactment with the same effect) or modification of any existing Law.
 - c. The commencement of any Law, which has not yet entered into effect.
 - d. The change in interpretation or application of any Law by a Court of Record.
 - e. The imposition or requirement for a new statutory or regulatory approval or modification in the terms and conditions on which a statutory or regulatory approval has already been obtained.
 - f. A fresh imposition of a tax or duty that was not in existence on the Proposal Acceptance Date. It is specially clarified that a change in the rate of a tax or duty etc. shall not be considered a Change in Law for the purpose of this Article if the tax or duty etc. itself was in existence on the Proposal Acceptance Date.
- 1.1.15. **“Cost”** means all expenditure properly incurred (or to be incurred) by the Concessionaire, on the Project, including overheads and similar charges, but does not include profit.
- 1.1.16. **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 days.
- 1.1.17. **“Project Report”** means the project report including the drawings of each and every site, as submitted by the Concessionaire as per Article 4.2 and on the basis of which the Concessionaire shall complete the development/Installation of the Smart Public Toilet.
- 1.1.18. **“Development/Installation”** means the Construction and Installation of Smart Public Toilets, as per the Project Report approved by the KSCL and in accordance with this document & Project report and all other provisions of the Concession Agreement (including the Schedules).
- 1.1.19. **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Concessions Authority or the Municipal Administration to the Concessionaire, and any modification, extension or replacement thereof from time to time in force.
- 1.1.20. **“Encumbrances”** means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security, interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the PTUs, physical encumbrances or encroachments on the PTUs where applicable herein.
- 1.1.21. **“Equity”** means the sum expressed in Indian Rupees representing the equity share capital

of the Concessionaire and shall include the funds advanced by any Joint Venture (JV) Member or by any of the shareholders of the Concessionaire for meeting the equity component of the Total Project Cost.

- 1.1.22. **“Financial Close”** means the date on which the Financing Documents with respect to the Financing Package for the Project have been executed and become effective and the Concessionaire has fulfilled all the conditions needed for draw down of Financing and the Concessionaire has immediate access to such Financing and which shall in any case not be later than 120 days from the date hereof.
- 1.1.23. **“Financial Model”** means the financial model adopted by Senior Lenders setting forth the capital and operating costs of the Project and revenues there from on the basis of which the financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.
- 1.1.24. **“Financial Year”** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.
- 1.1.25. **“Financing Documents”** means the documents executed by the Concessionaire in respect of financing of the Project 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 arrangements, and other documents.
- 1.1.26. **“Financing Package” or “Financing”** means the financing package of the Project furnished by the Concessionaire indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding the Project.
- 1.1.27. **“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 16
- 1.1.28. **“Good Industry Practice”** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced operator engaged in construction and operation of projects akin to the Project. It would include good engineering practices in the design, construction, installation, and project management which would be expected to result in the performance of its obligation by the Concessionaire and in operation and maintenance of the Project in accordance with this Concession Agreement, Applicable Laws, Clearances, reliability, safety, environment protection, economy and efficiency.
- 1.1.29. **“GoUP”** means the Government of the State of Uttar Pradesh, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Uttar Pradesh and its administrators, successors and assigns.
- 1.1.30. **“Smart Public Toilet Units (PTU)”** shall have the meaning as ascribed in RFP and to be developed as per RfP and as *per this Concession Agreement*.
- 1.1.31. **“Independent Auditor/ Valuer”** shall have the meaning as a person appointed by authority

for audit and valuation.

- 1.1.32. **“Implementation Completion Certificate”** means the certificate issued under Article 9.1.
- 1.1.33. **“Implementation Period”** or **“Time for Completion of Implementation”** means the period from the Compliance Date to the date of issue of Implementation Completion Certificate, wherein the development of the Smart Public Toilet Units has been completed and made operational and all other applicable provisions of this Concession Agreement.
- 1.1.34. **“Material Adverse Effect”** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provisions of this Concession Agreement or any of the Project Agreements.
- 1.1.35. **“Operation and Maintenance Period”** is the period commencing from the Operations Date and terminating at the Transfer Date.
- 1.1.36. **“Operations Date”** or **“Date of Issuance of Implementation Completion Certificate”** means the date on which the Concessioneing Authority issues an Implementation Completion Certificate for the Project Units and the Concessionaire commences the commercial operation for the PTUs.
- 1.1.37. **“Party”** means any of the parties to this Concession Agreement.
- 1.1.38. **“Performance Security”** means a Bank Guarantee for an amount of Rs. 6,50,000.00(Rs. Six Lakh Fifty Thousand) only and shall be in the format as set out herein, from a Nationalised/Scheduled Bank approved by the Concessioneing Authority.
- 1.1.39. **“Performance Standards”** means the standards to which the construction, installation& operation, maintenance and management of the Project must adhere and which the Concessionaire undertakes to meet.
- 1.1.40. **“Person”** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
- 1.1.41. **“Project”** means, subject to the provisions of this Concession Agreement, (i) Prepare and submit the Project Development Report of the Construction and Installation of Toilet structures (ii) Completion of the development, as per the Project Development Report and the provisions of the Concession Agreement; (ii) operation and maintenance, as per the terms and conditions of the Concession Agreement and Schedules hereof, (iii) insurance, for the purposes of providing the services on a continuous basis and (iv) transfer of the PTUs and Assets (i.e. both movable and immovable assets, whether provided by the Concessioneing Authority or brought in by the Concessionaire during the subsistence of this Concession Agreement), in good and operational condition, to the Concessioneing Authority at the end of the Concession Period or on prior termination of the Concession Agreement on Concessionaire/Concessioneing Authority Event of Default or otherwise.
- 1.1.42. **“Project Agreements”** means, collectively, this Concession Agreement, the Financing Documents, hire purchase agreements, Development Agreements, Implementation Agreements and Operation & Maintenance Agreements, in each case as amended, supplemented or otherwise modified from time to time.
- 1.1.43. **“Proposal Acceptance Date”** means the date of signing of this Concession Agreement
- 1.1.44. **“Project Insurance”** means the insurance taken out by or on behalf of the Concessionaire pursuant to the provisions of this Concession Agreement.
- 1.1.45. **“Project Revenues”** means all sources of revenues, as specified in Article 22 of the Concession Agreement, accruing to the Concessionaire from the Project.
- 1.1.46. **“RFP”** means the Request for Proposal document issued by KSCL, on behalf of the Concessioneing Authority. The terms **“RFP”** and **“Request for Proposal”** are synonymous

with **"Tender Documents"** and **"Bidding Documents"**.

- 1.1.47. **"Schedules"** mean the Schedules to this Concession Agreement.
 - 1.1.48. **"Senior Lender"** means the financial institutions, funds and banks who have advanced or agreed to advance term Loan to the Concessionaire under any of the Financing Documents for meeting all or part of the Total Project Cost.
 - 1.1.49. **"Statutory Auditors"** means an independent, recognised and reputable firm of the Chartered Accountants duly licensed to practice in India acting as the Independent statutory auditors of the Concessionaire under the provisions of Companies Act, 1956/2013 including any statutory modification or re-enactment or replacement thereof, for the time being in force.
 - 1.1.50. **"Substitute Entity"** means the entity defined in the Substitution Agreement.
 - 1.1.51. **"Substitution Agreement"** means the agreement set out in Schedule-III.
 - 1.1.52. **"Tax"** means any tax, duty, levy, charge whatsoever charged, imposed or levied under Applicable Laws. Here, for this Project, the Concessionaire shall, at its own cost, pay all applicable existing and future taxes/charges/fees/levies including the property tax, house tax, service tax, stamp duty, registration charges and any other charges payable/leviable in respect of the said Project.
 - 1.1.53. **"Tender/Bid/Proposal"** means the Concessionaire's quoted Financial Proposal and detailed Proposal for the Project, including the Concessionaire's Proposal, submitted to the Concessioning Authority and as accepted by the Concessioning Authority.
 - 1.1.54. **"Termination Date"** means the date on which this Concession Agreement terminates by efflux of time or by issuance of a Termination Notice.
 - 1.1.55. **"Termination Notice"** means the communication issued in accordance with this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.
 - 1.1.56. **"Termination Payment"** means the amount payable by the Concessioning Authority to the Concessionaire upon the termination of this Concession Agreement.
 - 1.1.57. **"Third Party"** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement.
 - 1.1.58. **"Total Project Cost"** means the lowest of the following:
 - a. Total Project Cost as set forth in the Financing Documents.
 - b. Actual Capital Cost of the Project upon completion of the Project as certified by Statutory Auditors.
 - c. The Total Cost of Project submitted by Concessionaire as part of its Conditions Precedent.
 - 1.1.59. **"Transfer Date"** means the day immediately following the last day of the Concession Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Concession Agreement.
 - 1.1.60. **"Users"** means Person(s)/tourists using the Smart Public Toilet Units.
 - 1.1.61. **"Variation"** means a modification, improvement or change in the Works, services, and facilities etc. to be carried out by the Concessionaire, such that the cost of implementing the modification, improvement or change can be recovered through a 30-day adjustment of the Concession Period.
 - 1.1.62. **"Works"** means the construction, installation, fitting, completion, testing and commissioning, operation and maintenance and rectifying or/and remedying of defects of/ within the Smart Public Toilet Units as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Concession Agreement.
- 1.2. Principles of Interpretation**
- 1.2.1 In this Concession Agreement, unless the context otherwise requires:
 - 1.2.2 Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder.

- 1.2.3 Reference to laws of Government of Uttar Pradesh, laws of India or Indian Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in State of Uttar Pradesh;
- 1.2.4 The headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- 1.2.5 Terms and words beginning with capital letters and defined in this Agreement including the Schedules;
- 1.2.6 Words importing Person or Parties shall include firms and corporations and any organization having legal capacity to sue and be sued in its name.
- 1.2.7 Words importing the singular shall include the plural and vice-versa where the Concession requires.
- 1.2.8 Any reference to day shall mean a reference to a calendar day;
- 1.2.9 Any reference to month shall mean a reference to a calendar month;
- 1.2.10 The Schedules of 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;
- 1.2.11 Any reference at any time to any agreement, deed, instrument or document of any description shall be construed as reference to that agreement, deed, instrument or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- 1.2.12 References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- 1.2.13 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 hands of duly authorized representative of such party, as the case may be, in this behalf and not otherwise;
- 1.2.14 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 and 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 next business day.
- 1.2.15 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.

1.3. Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations will be done in 2 decimals places, with the third digit of 5 or above rounded up and below 5 belong down except in Fee calculation which shall be rounded off to nearest Rupee Hundred (100).

1.4. Ambiguities within Agreement

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) Between two Articles or more of this Agreement, the provisions of specific Article relevant to the issue under the consideration shall prevail over those in other Articles;
- b) Between the Articles and the Schedules, the Articles shall prevail, save and except as expressly provided in the Articles or the Schedules.
- c) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- d) Between the written description on the Drawing and the specific written dimension, the latter shall prevail; and
- e) Between any value written in numerals and that in words, the later shall prevail.

1.5. 1.5. Priority of Documents

The documents forming this Concession Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Concessioneing Authority shall issue any necessary clarification or instruction to the Concessionaire, and the priority of the documents shall be as follows:

- a) This signed Concession Agreement (including its Schedules), along-with any Addendums issued to the RFP document dated.
- b) Instructions to Bidders (ITB) (Section I of the RFP document dated _attached with this signed Concession Agreement; and
- c) All other documents enclosed/ attached with this signed Concession Agreement

2. 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) Prepare and submit the Project Report including the drawings of the Smart Public toilet Units as per the laid down provisions of the Concession Agreement and Schedules hereof.
- b) Completion of Construction, Installation of PTUs, as per the Project report approved by the KSCL Board/Committee and also, in accordance with the provisions of this Concession Agreement (including the Schedules).
- c) Operation and Maintenance of the Smart Public Toilet Units in accordance with the provisions of this Concession Agreement and the Schedules hereof.
- d) Performance and fulfilment of all other obligations in accordance with the provisions of this Concession Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Concession Agreement and its Schedules thereof.

It is clarified herewith that in addition to the above-stated “Scope of Work”, the Concessionaire shall be required to carry out any incidental works and services as required and to comply with all the provisions of the Concession Agreement, the Schedules to the Concession Agreement and as per the requirements of applicable byelaws/ norms etc., while completing the development of the Project.

3. ARTICLE 3: CONCESSION

3.1 Grant of Concession

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Concession Agreement, the Concessioneing Authority hereby grants the Concession in lieu of the Maximum Revenue Share as quoted in Financial Proposal of RFP document by the concessionaire, commencing from the Compliance Date, including the exclusive right, license, authority and authorization during the subsistence of this Agreement, including extension thereof, to develop, upgrade, operate, maintain, and manage the Project and enjoy its benefits for the Concession Period.

3.1.2 Subject to and in accordance with the terms and conditions set forth in this Concession Agreement, the Concession hereby granted shall entitle the Concessionaire, the exclusive right and authority to undertake the following in accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Permits:

- 3.1.3 To upgrade and implement the Project as per the Scope of Work of the Project more specifically mentioned in Article 2 and the Schedules of this Concession Agreement.
- 3.1.4 To construct, install, finance, operate & maintain the Smart Public Toilet Units and regulate the use of Commercial space by Third Parties of the Project (which should be clearly and unambiguously defined) during the Concession Period;
- 3.1.5 To enjoy complete and uninterrupted access and license to the Project Site for a period that shall be co-terminus with the Concession Agreement. To have access and liberty to construct, install, upgrade, finance, operate and maintain the proposed Project Sites with the associated facilities and services at the project sites during the Concession Period in accordance with the provisions of this Concession Agreement & Schedules thereof. Any development made by the Concessionaire on the specified Project sites/proposed site in respect of the Project shall be deemed to be the property of the Concessioneing Authority and the Concessionaire relinquishes all his rights in such property in favour of Concessioneing Authority after the efflux of the Concession;
- 3.1.6 Exclusive right and authority, during the Concession Period, to carry out the specified activities in relation to the Project.
- 3.1.7 License the use of the Project to determine, demand, levy, collect, enforce, retain and appropriate Commercial Charges and to periodically revise the same in conformance with authority.
- 3.1.8 Manage, operate and execute rights over all or any part of the Assets without any limitation or restriction other than those expressly set out in this Concession Agreement;
- 3.1.9 To fulfil its obligations under this Agreement, undertake activities by itself, without appointing any contractors, sub-contractors etc.;
- 3.1.10 Arrange for all the clearances from the Competent Authority for the furnishing of the Project and the Concessioneing Authority is no way liable for the same. Responsibility of taking all necessary approvals for development lies with the Concessionaire. Nevertheless Concessioneing Authority without any binding obligation may provide any assistance upon written request from the Concessionaire.
- 3.1.11 Shall arrange statutory clearance(s) from the Concessioneing Authority and concerned agencies for removal of existing trees, if any, from the Project sites.
- 3.1.12 Exercise such other rights as the Concessioneing Authority may determine as being necessary or desirable for the purposes incidental and necessary for constructing, installing, financing, implementing, managing, operating, running & maintaining the Project.
- 3.1.13 Bear and pay all expenses, costs and charges incurred in the fulfilment of all the Concessionaire's obligations under this Agreement; and
- 3.1.14 Nothing contained herein, including the act of granting permission to upgrade the Project at the designated area shall vest or create any proprietary interest in the Project or any part thereof including any permanent construction or installation etc. installed in the structure of the Project in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project in any manner. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

3.2 Actions in Support of the Concession

- a) The Concessioneing Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms of this Concession Agreement.
- b) For the purpose of Financing the Project, the Concessionaire shall have the right to mortgage, hypothecate, transfer, assign or otherwise encumber to Lenders its rights and interests under or pursuant to this Concession Agreement, including, without limitation, its rights in and to (i) the Project Agreements and (ii) the cash flows generated, by the Concessionaire, through this Project and to create a security in such rights and interests in favour of the Lenders. However, it is also amply clarified that the Concessionaire shall not be entitled to mortgage any movable and immovable asset, which is a part of the Project.
- c) The Concessioneing Authority undertakes not to terminate or repudiate this Concession Agreement prior to the expiry of the Concession Period otherwise than in accordance with the provisions of this Agreement;
- d) The Concessionaire shall take all necessary approvals/licenses from the Competent Authority.
- e) The Concessioneing Authority shall provide assistance and recommendations to the Competent Authority (ies), including GoI, in support of the Concessionaire's applications for clearances that may be needed from time to time for the implementation of the Project; provided that the Concessionaire has made the requisite applications and is in compliance with the necessary conditions for the grant of such Clearances.

3.3 Concession Period

- 3.3.1 The Concession Period for ***“the Project”*** shall commence from the Compliance Date and shall extend for a period of concession period i.e., 10 (Ten) years from such date (the **“Concession Period”**) and during which the Concessionaire is authorized to develop the Project and to operate & maintain the Project in accordance with the provisions hereof. ***For the avoidance of doubt, the Concession Period shall include the Implementation Period.***

Provided that in the event of early Termination, the period of Agreement shall be limited to the period commencing from the Compliance Date and ending with the Termination Date.

- 3.3.2 It is hereby made clear that:

- a) In the event of the Concession Period being extended by Concessioneing Authority beyond the said period in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period/ aggregate period by which the Concession is so extended, and
- b) In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination.

- 3.3.3 At the end of the Concession Period or sooner termination of this Concession Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the PTUs alongwith all the Assets (whether provided by the Concessioneing Authority to the Concessionaire or as brought in by the Concessionaire during the subsistence of this Concession Agreement), in good and operational condition, shall revert to the Concessioneing Authority without any obligation of Concessioneing Authority to pay or adjust any consideration or other payment to the Concessionaire.

3.4 Implementation Period

- a) The “**Implementation Period**” or “**Time for Completion of Implementation**” shall be a Period of **3 (Three) months** (starting from the Compliance Date), wherein the Concessionaire shall be required to comply with the following obligations:
- i) Take all necessary/ mandatory clearances, permits etc. which are required for commencing the construction, installation of Smart Public Toilet Units, so that all such conditions have been satisfied in full, and all such Clearances, Permits, etc. are in full force and effect.
 - ii) Complete the development of the PTUs, as per the Project Report Plan approved by the KSCL Board/Committee and also, in accordance with the provisions laid down in this Concession Agreement.
 - iii) Procure full insurance cover for the PTUs and provide the necessary information to the KSCL Board/Committee / Concessioneing Authority.
However, it is being clarified here that the Concessionaire should not alter/change any civil structure including utilities of the PTUs as agreed and approved by the KSCL during the Concession Period.
- b) The Concessionaire guarantees that the Time for Completion of Implementation for the Project shall be achieved in accordance with the provisions of this Concession Agreement and not later than the Implementation Period, as specified in Article 3.4 (a), from the Compliance Date.
- c) In the event that implementation completion is not achieved for any reason other than Force Majeure or reasons attributable to the Concessioneing Authority or any Competent Authority, the Concessionaire shall, subject to sub-clause (d) below, pay to the Concessioneing Authority damages for delay beyond the date of Implementation Completion to the extent of 0.1% of the Performance Security per day for every day of delay or part thereof until Implementation Completion is achieved. Provided that nothing contained in this sub-clause (c) shall be deemed or construed to authorize any delay by the Concessionaire in achieving Implementation Completion. In the event that completion does not occur within 90 (ninety) days from the date of implementation completion, the Concessioneing Authority shall be entitled to invoke the Performance Security and to terminate this Concession Agreement for a Concessionaire’s Event of Default in accordance with the provisions of Article 14 hereof. Provided that instead of terminating this Agreement, the Concessioneing Authority at its sole option extend the time for achieving implementation completion on such terms and conditions as it deems fit in its sole discretion.
- d) **Extension of Time**
The Concessionaire may apply for an extension of the Time for Completion of Implementation if it is or shall be delayed either before or after the Time for Completion of Implementation, by any of the following causes:-
- i) Variation;
 - ii) A Force Majeure Event;
 - iii) A cause of delay giving an explicit and express entitlement to extension of time under any Articles in this Concession Agreement, unless the Concessionaire has not complied with such Article;
 - iv) Any delay, impediment or prevention by the Concessioneing Authority;
 - v) Any delay caused by Competent Authorities.

Provided that the Concessionaire shall at all times use its best endeavours to minimise any delay in the performance of its obligations under this Concession Agreement, whatever may be the

cause of such delay.

If the Concessionaire intends to apply for an extension of the Time for Completion of Implementation, the Concessionaire shall give notice to the Concessioneing Authority of such intention as soon as possible and in any case within 28 (twenty eight) days of the start of the event giving rise to any such delay, together with any other notice required by this Concession Agreement and relevant to such cause. Any such notice shall state the extent of the actual and anticipated delay and its anticipated effect on the Time for Completion of Implementation, and shall specify the steps the Concessionaire proposes to take to minimise such delay. The Concessionaire shall keep such records as may be necessary to substantiate any application, at a location acceptable to the Concessioneing Authority and such other records as may reasonably be requested by Concessioneing Authority. The Concessionaire shall provide and permit Concessioneing Authority to inspect all such records.

Within 28 (twenty-eight) days of the first day of such delay (or such other period as may be agreed by Concessioneing Authority), the Concessionaire shall submit full supporting details of its application. Except that, if the Concessionaire cannot submit all relevant details within such period because the cause of delay continued for a period exceeding 7 (seven) days, the Concessionaire shall submit interim details at intervals of not more than 28 (twenty-eight) days (from the first day of such delay) and full and final supporting details of its application within 21 (twenty-one) days of the last day of delay.

Provided that the Concessionaire has complied with this Article, the Concessioneing Authority shall proceed in accordance with Article 13 to determine either prospectively or retrospectively such adjustment as may be due, taking into account all relevant circumstances. The Concessioneing Authority shall notify the Concessionaire accordingly. When determining each extension of time, Concessioneing Authority shall review its previous determinations and may revise, but shall not decrease, the extension, and provided that the extension of time is not a consequence of any negligence, default or breach of Concession Agreement by the Concessionaire or those for whom it is responsible.

However, the Concessionaire shall not be entitled to an extension of the Time for Completion of Implementation, to the extent that the delay in respect of which the extension of time is requested is attributable to any negligence, default or breach of this Concession Agreement by the Concessionaire or those for whom it is responsible, as determined by the Concessioneing Authority or any expert, as appointed by the Concessioneing Authority for this purpose.

4. ARTICLE 4: CONDITIONS PRECEDENT

Subject to the express terms to the contrary, limited aspects of the Implementation Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Concession Agreement shall take effect only upon fulfilment of all the Conditions Precedent set out in Articles 4.1 and 4.2 on or before the expiry of a period of 180 (One Hundred and eighty) days from the Proposal Acceptance Date. However, the Concessioneing Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent of the Concessionaire.

4.1 Conditions Precedent for Concessioneing Authority

The Concessioneing Authority shall have:

- a) Handed over to the Concessionaire the possession of the Proposed sites (the proposed Sites)

along with all Easement related Rights free from Encumbrances.

This Conditions Precedent on the part of the Concessioneing Authority shall be fulfilled at the end, when all other Conditions Precedent of both the Parties are met/fulfilled or waived off as per Article 4.2. However, it is being clarified here that the Concessioneing Authority shall hand over the Proposed sites in “as is where is” basis to the Private Sector Player. The details of the same are available in RFP.

- b) Constituted a KSCL Maintenance Board/Committee, the constitution and function of which is specified in Article 19, within 3 weeks from the Proposal Acceptance Date, for the approval of the Project Report of the PTUs, to be furnished by the Concessionaire;
- c) Through the KSCL Maintenance Board/Committee, got approved or provided comments/ observations (if any) to the Project Report of the PTUs, as envisaged by the Concessionaire, within the Conditions Precedents period from the date of receipt of documents.
- d) Carried out inspection (wherein the representatives of Concessioneing Authority, and Concessionaire shall be mandatorily present) of the PTUs and prepared a detailed report on land to be transferred, by the Concessioneing Authority, to the Concessionaire for the development of the Project. *It is being clarified here that the land shall be checked, verified and signed by all the parties and shall be considered as final. The copies of the same shall be kept by the Concessioneing Authority, and Concessionaire.*
- e) Issued government orders or gazette notifications as necessary for implementing the Project.

4.2 Conditions Precedent for Concessionaire

The Concessionaire shall have:

- a) Submitted the Project Report including drawings of the Smart Public Toilet Units to Concessioneing Authority and KSCL Board/Committee, within a period of 30 (thirty) days from the date of signing of Agreement;
- b) The Project Report submitted by the private sector player should include a technical details alongwith drawings & designs of the various facilities proposed to be used in the project
- c) Incorporated the comments/ observations (if any) on the Project Report of the PTUs, as proposed by the KSCL Maintenance Board/Committee Concessioneing Authority and submitted for approval, within a period of 15 (fifteen) days from the date of receipt of comments/ observations from the KSCL Board/Committee. However, it is clarified here that the Concessionaire shall not start the Implementation until and unless the KSCL Maintenance Board/Committee approves the Project Report of the PTUs again after carrying out necessary comments/ observations (if any), which shall not be unduly delayed;
- d) Submit the Total Project Cost to the Concessioneing Authority for perusal;
- e) Achieved Financial Closure and delivered complete Financial Package to the Concessioneing Authority that Financial Closure has been accomplished.
- f) Provided an undertaking that all of the Representations and Warranties of the Concessionaire set forth in Article 12 are true and correct as on date of this Agreement and as on the Compliance Date and thereafter;
- g) Provided the Concessioneing Authority copies (certified as true copies by an authorised officer of the Concessionaire) of its constitutional documents of the Concessionaire;
- h) Provided the Concessioneing Authority (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorising the execution, delivery and performance of this Agreement by the Concessionaire;
- i) Provided that upon request in writing by the Concessionaire, in consultation with Confirming Authority, may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.3.

4.3 Obligations to satisfy Condition Precedents

- a) Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 60 (sixty) days of Proposal Acceptance Date.
- b) Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a Certificate of Compliance with Conditions Precedent (the "Certificate of Compliance").
- c) The later of the date of issue of Certificate of Compliance to the Concessionaire or the Concessioneing Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Concession Agreement shall commence and whereon the Concessioneing Authority shall issue the Notice to Commence to the Concessionaire. However, it is being clarified here that any work of whatever nature, which the Concessionaire elects to carryout prior to the Proposal Acceptance Date including investigations, surveys etc. shall be entirely at the risk and cost of the Concessionaire. Also, the Concessionaire shall not be permitted to commence the work at any part of proposed sites prior to the issuance of Notice to Commence.
- d) Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

4.4 Non-fulfilment of Conditions Precedent

- a) In the event that any of the Conditions Precedents relating to the Concessionaire have not been fulfilled within 60 (Sixty) days of the signing of this Agreement and also, the Concessioneing 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 Concessioneing Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.
- b) In the event that the Concessionaire has fulfilled its Conditions Precedent and Concessioneing Authority has not procured fulfilment of any or all of the Condition Precedents set forth in Article 4.1 within the period specified in respect thereof, the Concessioneing Authority shall not be liable to pay any damages to the Concessionaire. Accordingly, the condition Precedent period will be mutually extended. The Concessioneing Authority shall be liable to return, to the Concessionaire, the Performance Security submitted before the signing of the Concession Agreement if the mutually extended time is over and agreement is terminated.
- c) In the event the Concessioneing Authority has terminated this Agreement under Article 4.4 (a) due to non-fulfilment of Conditions Precedent by the Concessionaire, the Concessioneing Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees. In addition to this, the Concessioneing Authority shall forfeit the Performance Security submitted before the signing of the Concession Agreement, by the Concessionaire.
- d) Instead of terminating this Agreement as provided in paragraph (a) above or as the case may be, the Parties may extend the time for fulfilling the Conditions Precedent by mutual agreement.

5. ARTICLE 5: COMMERCIAL CONSIDERATION

5.1 Minimum Concession Period

- a) The Minimum Concession Period (MCP) shall be the fixed years that the Concessionaire

would have authority on PTUs for a period of 10(ten) years.

- b) The Concessioner shall have to maintain all the record of tariff collection and Advertisement display collection of PTUs and the same will be shared with the Concessioneing Authority on half yearly basis.
- c) After Minimum Concession Period (MCP) the Concessioneing Authority may extend the contract by levying the certain criteria.

5.2. Performance Security

- a) The Concessionaire shall ensure that for the entire Concession Period, it will maintain a Performance Security of Rs. 6,50,000.00(Rs. Six Lakh Fifty Thousand) only and in the format as specified herein.
- b) The Performance Security shall be from a Nationalised/Scheduled bank in favour of Chief Executive Officer, Kanpur Smart City Limited, payable at Kanpur.
- c) Upon occurrence of a Concessionaire Event of Default, the Concessioneing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level the Performance Security and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Concessioneing Authority a fresh Performance Security as aforesaid, failing which the Concessioneing Authority shall be entitled to terminate this Agreement.

6. ARTICLE 6: OBLIGATIONS OF THE CONCESSIONING AUTHORITY DURING IMPLEMENTATION PERIOD

6.1 General Obligations

It shall be the Concessioneing Authority's obligation to ensure that the following are made available or executed by the Concessioneing Authority:

- a) All litigation involving the PTUs/Project, prior to the date of issue of Notice to Commence and wherein the actions have been filed against the Concessioneing Authority, the same shall be contested and conducted solely by the Concessioneing Authority. The Concessionaire shall be in no way held responsible or liable as a reason thereof. The Concessioneing Authority shall indemnify the Concessionaire and shall hold it free of any claim or consequent cost that may arise as a result of any such litigation.
- b) Any liability arising out of in providing the Proposed Sites free of Encumbrances shall be borne solely by the Concessioneing Authority.
- c) The Concessioneing Authority shall bear and be responsible for all costs, expense or charges incurred in making available the Project Site in accordance with Article 4.1, including any compensation required to be paid for acquisition of such Project site. Further, the Concessioneing Authority shall hold Concessionaire harmless from all costs, expenses or charges incurred in relocating, rehabilitating or resettling Persons in connection with making available the possession of the PTU development free from all Encumbrances to the Concessionaire.
- d) The Concessioneing Authority shall ensure that from the date of the Notice to Commence and till the completion of the Concession Period, the Concessionaire has access to the Project site for the purpose of carrying out the Concessionaire's obligations under this Concession

Agreement.

- e) The Concessioneing Authority shall have the right to appoint an expert, in any relevant field, at any time during the subsistence of this Concession Agreement. The expert, as appointed by the Concessioneing Authority, shall be responsible to check, verify and authenticate the development carried out by the Concessionaire.

7. ARTICLE 7: OBLIGATIONS OF THE CONCESSIONAIRE DURING IMPLEMENTATION PERIOD

7.1 General Obligations

- a) The Concessionaire shall observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Concession Agreement, the following:
 - i. Obtain any and all permits, necessary approvals, clearances and sanctions from the Competent Authority (ies), as and when they may be required, for the Concessionaire and its employees to perform their obligations under this Concession Agreement;
 - ii. Comply and observe at all times with all Applicable Permits, approvals and applicable laws, norms/standards in the performance of its obligations under this Agreement;
 - iii. Submit, 5 (five) copies each (soft/ hard) of Project Report of the PTUs, all internal and external estate services/facilities etc. of the entire Project to the Concessioneing Authority;
 - iv. Carry out the Works strictly in accordance with the Project Report approved by the KSCL Maintenance Board/Committee, provisions of this Concession Agreement and the Schedules of this Concession Agreement, and all works not mentioned in this Concession Agreement but which may be inferred to be necessary for safe, reliable and efficient implementation and operation of the Project;
 - v. Undertake to achieve completion no later than **3 (Three) months** from the Compliance Date, *provided* that the Concessionaire shall not be in breach of this Article 7.1(a)(iv), if any non-fulfilment or the delay in fulfilment of its obligation are caused by (i) the occurrence of an event of Force Majeure or (ii) a Concessioneing Authority Event of Default or any other act or omission of the Concessioneing Authority in contravention of its obligations under this Concession;
 - vi. Be responsible from the date of issue of “Notice to Commence” for all liabilities arising out of furnishing, implementation, operation and maintenance of the Project. The Concessionaire shall plan, organise and execute the works so that there is least disruption to the movement on adjoining roads and minimal inconvenience to the neighbouring residents. The Concessioneing Authority shall assist the Concessionaire in all respects with reference to such works, but the assistance or denial thereof shall not release the Concessionaire from its obligations.
 - vii. To be responsible for safety, soundness and durability of the Project, including other services forming part thereof and their compliance with the local bye- laws.
 - viii. To ensure that no damages is caused to the all existing roads, drainages etc. through activities or any of its agents, contractors etc.
 - ix. To install full safety measures at proposed site while development and after development.
 - x. The Construction shall not obstruct traffic, pedestrian movement, and should not cause bottleneck in the area.
 - xi. To ensure that the PTUs construction should not create unsecure/unhygienic public spaces in or around it causing safety concern.
 - xii. To provide all assistance to the expert/Independent Auditor/Arbitrator as it may require

- for the performance of their duties and services.
- xiii. To duly supervise, monitor and control the activities of its sub- contractors/labours employees and agents under their respective Project Agreements as may be necessary.
- xiv. To effect and maintain, or cause to be effected and maintained, at its own expense, insurance policies as may be required to be maintained by the Senior Lenders, under Applicable Laws and/ or such insurances that are necessary or desirable in accordance with Good Industry Practice.
- xv. To take all reasonable precautions for the prevention of accidents on or about the PTUs and provide all reasonable assistance and emergency medical aid to accident victims.
- xvi. To ensure the proof checking process whenever the concessionaire completes his schedule of events as per approved Project Report
- xvii. Labour: The Concessionaire shall make its own arrangements for the engagement of all its staff and labour, local or otherwise, The Concessionaire shall be solely responsible for the liability, cost, and responsibility for all the laws relating to labour employed by Concessionaire and for their conditions under this Article. However, it is being clarified here that the Concessionaire shall be under no obligation to recruit any or part of the staff and labour from amongst persons in the service of the Concessioneing Authority.
- xviii. Shall be solely and primarily responsible to Concessioneing Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives or any person acting under or for and on behalf of the Concessionaire as fully as if they were the acts or defaults of the Concessionaire.
- xix. Shall be liable for and shall indemnify, protect, defend and hold harmless Concessioneing Authority, Concessioneing Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under this Concession Agreement and to comply with the provisions of Applicable Laws and Applicable Permits.
- xx. The Concessionaire shall acknowledge and recognize that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly.

7.2 Minimum Equity requirements

- a) The aggregate shareholding of the Joint Venture (JV) Members {in case of Joint Venture (JV)} or Associate/s (in case of Individual Bidder) in the issued and paid up equity share capital of the Concessionaire (here the term "Concessionaire" connotes not only the special purpose vehicle as formed by the Joint Venture (JV) Members or the Single Bidder) shall be not less than:
 - i. 51% till the issuance of Implementation Completion Certificate and
 - ii. 26% during the Operation and Maintenance Period till the Transfer Date/issuance of Concession Agreement Completion Certificate.
- b) In addition to the above obligations, the Lead Member of the Joint Venture (JV) shall maintain a minimum equity component of 26% in the stipulated issued and paid up equity share capital of the Concessionaire as specified under Article 7.2(a)(i) and Article 7.2(a)(ii) respectively.
- c) At no stage shall any change in the Equity Components/ shareholding patterns be made by the Joint Venture (JV) Members or by any of the Associates without obtaining prior approval from Concessioneing Authority and on an application made for the purpose, Concessioneing Authority may permit the change of Equity Components/shareholding patterns, provided Concessioneing Authority is satisfied that the proposed changes shall be in the interest of the

implementation of the Project in future and would not be detrimental to any of the rights or interests of the Concessioneing Authority. However, no such change in the Equity Components/shareholding pattern shall be permitted by Concessioneing Authority, which would make the Joint Venture (JV) Members or Associates or the Concessioneaire non-compliant with Articles 7.2(a) and 7.2(b) above.

- d) In case any such change in composition of Joint Venture (JV) has been agreed upon, the modified Joint Venture (JV) would be required to submit a revised Memorandum of Understanding to the Concessioneing Authority.

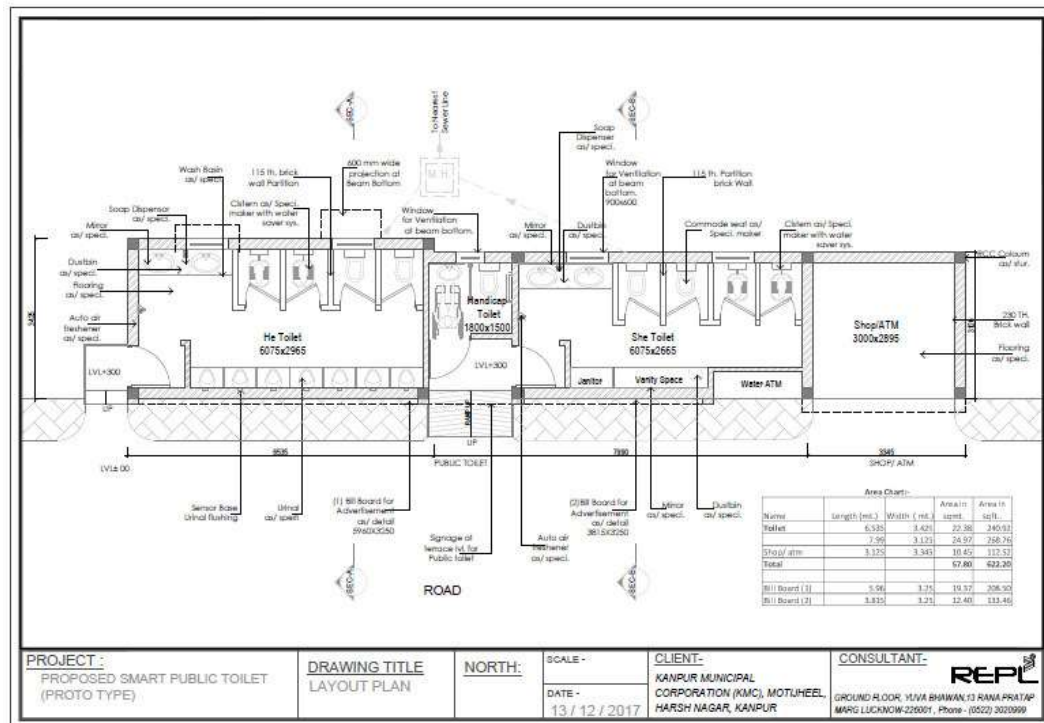
7.3 OBLIGATIONS OF PARTIES

Each Party shall:

- Comply with and perform its respective obligations under this Concession Agreement and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party;
- Agree to notation and modification of the Concession Agreement upon appointment of the Substitute Entity by Senior Lender in accordance with the Substitution Agreement that will be executed amongst the Senior Lenders, the Concessioneaire, the Concessioneing Authority;
- Carry out their respective obligations during the Implementation Period and Operation & Maintenance Period.

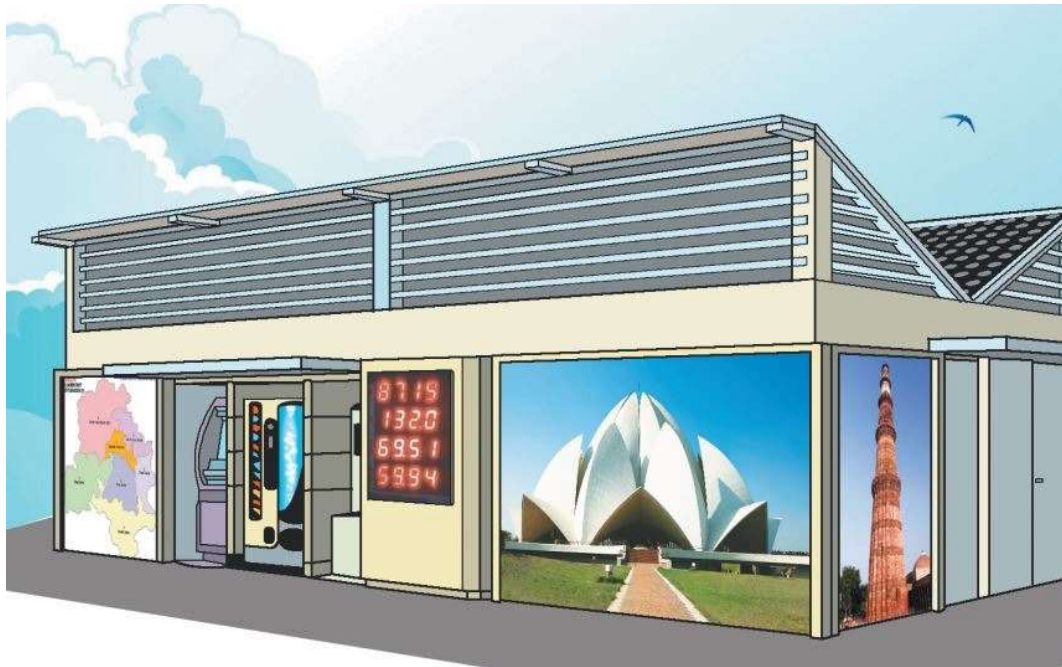
8. ARTICLE 8: PROTOTYPE DRAWINGS

LAYOUT PLAN OF SMART PUBLIC TOILET



CONCEPTUAL VIEW OF SMART PUBLIC TOILET ALONG WITH WATER ATM

& BANK ATM



9. ARTICLE 9: COMPLETION OF IMPLEMENTATION

9.1 Implementation Completion Certificate

- a. The Implementation work in this Concession Agreement shall not be considered to be completed until the Implementation Completion Certificate, stating that the Concessionaire has completed its implementation obligations as laid down under this Concession Agreement, has been signed by the Concessions Authority.
- b. The Implementation Completion Certificate shall be given by the Concessions Authority within 20 (twenty) days after:
 - i. The Concessionaire has provided the Project Report for the works carried out,
 - ii. The Concessionaire has provided a detailed inventory w.r.t the assets brought in by him during the Implementation Period;
 - iii. The Concessionaire has completed and tested all the works, as specified by the KSCL Board/Committee, Concessions Authority, external expert appointed by the Concessions Authority;
 - iv. The Works are in conformity with the provisions laid down in the Concession Agreement and its Schedules.
- c. The Concessions Authority would be required to issue the “Implementation Completion Certificate” after the Implementation has been completed in all respect and is ready to use. However, the required documents as stated in Article 9.1 (b) shall be submitted by the Concessionaire.
- d. In pursuance to the issue of the Implementation Completion Certificate, the Concessionaire shall comply with all the obligations, wherein mentioned in the Concession Agreement, required to be met before and after the issuance of the Implementation Completion Certificate.

9.2 Implementation Completion Certificate not a Cessation of Liability

The issuance of the Implementation Completion Certificate under this Article shall not in any way:

- i. Alter the liabilities of the Concessionaire;

- ii. Constitute a waiver of unfulfilled obligations;
- iii. Bar remedy and rectification of defects; and
- iv. Constitute an acceptance of the Works.

But it shall be a milestone for reckoning the commencement of operations of the Project.

9.3 Rectification

If the Concessionaire is obliged to carry out adjustments, repairs, replacements or modifications after completion of Implementation to maintain the Works, etc. the Concessioning Authority shall permit the Concessionaire to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations, then such request shall only be granted if the Concessionaire's request is reasonable under all the circumstances, having regard to the Concessioning Authority's obligations to keep the operation of the Project open during all hours of the day.

10. OPERATIONS AND MAINTENANCE PERIOD

10.1 Commencement and Duration

The Operation and Maintenance Period of the Project shall commence from the date of issuance of Implementation Completion Certificate and terminate at the Transfer Date.

10.2 Obligations of the Concessionaire during Operations and Maintenance Period

This includes operation of the PTUs i.e. regular cleaning of the PTUs and its surrounding area, functioning of user amenities, provisions of dedicated personnel, supervision and availability of basic infrastructure requirements such as electricity, proper drainage, sewage, waste removal, would form part of operations. More specifically it includes the following:

- a) The Concessionaire shall be responsible, at his own cost, for all the maintenance and repairs of the PTUs, the related assets and its components. The Concessionaire shall also carry out rectification of any defects during the Implementation of any component of the PTUs or during the Operations and Maintenance Period.
- b) **Water supply:** The Concessionaire shall ensure availability at all times of adequate water for general cleanliness of the PTUs and for the use of public visiting these public conveniences. The supply shall be arranged by concessionaire. KSCL may provide all assistance in getting various clearances from Govt. Agencies. Laying of water line/connection/payment of usage charges shall be the responsibility of the concessionaire.
- c) **Electricity supply:** The Concessionaire shall ensure adequate electricity supply for proper lightings inside the PTUs. The supply shall be arranged and paid for by the concessionaire. KSCL may provide all assistance in getting various clearances from Govt. agencies. Laying of electric cables/connection/payment of usage charges shall be the responsibility of the concessionaire.
- d) **Sewage Connections:** The Concessionaire shall arrange the Sewage connection for PTU's and lay line at his own cost for connection. KSCL may however provide all assistance in getting necessary permissions from the authorities.
- e) **Landscaping:** The concessionaire shall put plants in and around each PTU's where space is available as per the approval of the KSCL and maintain the same in good condition at all times.
- f) **Cleaning of PTUs & Information Panels:** The Concessionaire shall ensure cleaning of the PTUs and the Information panels as per the cleaning schedule provided herein. A dedicated

cleaning staff shall be provided by the Concessionaire for each site. Also, the Concessionaire will ensure that quick cleaning is carried out by the attendant of the public convenience after each use. Concessionaire shall ensure that the toilet is properly cleaned regularly and maintained in hygienic conditions. The consumables required for cleaning & operation of toilets shall be ensured at all times.

- g) **Waste Disposal:** The Concessionaire shall install litterbins as specified near the PTUs and transfer of the collected waste shall be the responsibility of the Concessionaire to the existing solid waste collection system in the city. The waste (including menstrual waste) collected in the toilets or within 10 meters around it shall be regularly removed and disposed in proper manner as per MSW Rules.
- h) **Safety & Security:** The safety and security of the PTUs rests with the Concessionaire. Concessionaire shall ensure maintenance of lighting arrangements to ensure proper illumination of all the toilet areas as well as various signboards. Concessionaire shall deploy staff so that minimum 1 personnel is available during operational hours for each toilet who shall be responsible for user-charge collection, security & safety of toilet, maintenance of basic sanitary condition inside & around the toilet, regular removal of waste, maintenance of suggestion booklet, reporting of problems, if any, Clearing of choking (if any) etc. It is suggested that a female attendant is available during the working hours so as to look after the female section of PTU. The personnel deployed shall be in proper uniform and should be trained by the concessionaire regarding his duties as well as for dealing with public.
- i) **Maintenance:** It will include routine and periodic maintenance works in the PTUs but shall not be limited to the following: Civil, electrical and mechanical works for the PTUs, equipment maintenance and servicing. Any unserviceable fittings or fixtures shall be replaced by the concessionaire within 24 hours.
- j) **Suggestion Booklet:** Maintain a suggestion and complaints book in each of the facilities and the copy of the same should be submitted to Concession Authority every month.
- k) **Recycling facility:** Concessionaire shall ensure proper working and maintenance of water/solid waste recycling facility so that it is operational at all times.
- l) **Display of Information:** Each toilet on the outside shall clearly display the information as prescribed. These signage shall be properly maintained to ensure clear visibility and proper aesthetics. In the inside, information as prescribed shall be properly maintained. In case of any damage to information panels, the concessionaire shall immediately (within 3 days) repair/replace them. The Concessionaire shall not display any objectionable materials.
- m) **Servicing of equipment:** Equipment such as fire-fighting equipment, Inverters, water recycling plant etc. installed in the toilets shall be regularly serviced as per the technical schedules and kept in proper operational condition.
- n) **Operational Hours:** All toilets shall be kept open and operational between 05:00 AM to 11:00 pm every day.(In conformance with Municipal Authority)
- o) **Charges:** Concessionaire may charge as per the rates prescribed by the Concessioneing authority/municipal administration for usage of Toilet/Urinal Service shall be provided free of cost.
- p) **Concessionaire to keep the site clean:** When the annual repairs and maintenance of works are carried out the splashes and droppings from white washing, colour washing, painting etc.,

on walls, floor, windows, etc. shall be removed and the surface cleaned simultaneously with the completion of these items of work in the individual rooms, quarters or premises etc. where the work is done without waiting for the actual completion of all the other items of work in the contract.

11. ARTICLE 11: Concession Agreement Completion Certificate

- a. Within 90 (ninety) days of the end of the Concession Period, the Concessioneing Authority shall issue the “Concession Agreement Completion Certificate”, which concludes the Concessionaire's liability under this Concession Agreement. This certificate shall be issued after the Concessionaire submits to Concessioneing Authority, a request for issue of such certificate. The form shall be as approved by Concessioneing Authority, and shall include a detailed condition survey of the PTUs including the Assets.
- b. On the expiry of the Concession Period, the Concessionaire shall prepare a detailed inventory of the Assets (including all movable and immovable assets, whether provided by the Concessioneing Authority or brought in by the Concessionaire) present within the PTUs. The detailed inventory shall be submitted to the Concessioneing Authority before 45(forty five) days of the expiry of the Concession Period.
- b. The Performance Security furnished by the Concessionaire shall be released only after the issuance of the Concession Agreement Completion Certificate.

12. ARTICLE 12: Representations and Warranties

12.1 Representations and Warranties of the Concessioneing Authority

The Concessioneing Authority represents and warrants to the Concessionaire that:

- i. The Concessioneing Authority has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- ii. The Concessioneing Authority have taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement;
- iii. This Concession Agreement constitutes a legal, valid and binding obligation enforceable against the Concessioneing Authority in accordance with the terms hereof;
- iv. The Concessioneing Authority is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Concession Agreement;
- v. All information provided by the Concessioneing Authority in the RFP document in connection with the Project is to the best of its knowledge and true and accurate in all material respects; and
- vi. The Concessioneing Authority has the financial standing and capacity to perform its obligations under the Concession Agreement.

12.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioneing Authority that:

- i. It is duly organised, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii. It has full power and authority to execute, deliver and perform its obligations under this Concession and to carry out the transactions contemplated hereby;
- iii. It has taken all necessary corporate and other action under Applicable Laws and its

constitutional documents to authorise the execution, delivery and performance of this Concession Agreement.

- iv. It has the financial standing and capacity to undertake the Project;
- v. This Concession Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- vi. It is subject to civil and commercial laws of India with respect to this Concession Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii. All the information furnished in the Concessionaire's Bid/Proposal is, and shall be true and correct as on the Proposal Acceptance Date & throughout the Concession Period/ subsistence of the Concession Agreement and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of the Financial Years after the Proposal Acceptance Date furnished to the Concessioneing Authority shall give true and fair view of the affairs of the Concessionaire. If in case any false or misleading information, as furnished by the Concessionaire (as a Bidder) in its Bid/Proposal, is found at a later stage after the signing of the Concession Agreement, it shall entitle Concessioneing Authority to terminate the said signed Concession Agreement between the Parties. The costs and risks for such termination shall be entirely borne by the Concessionaire.
- viii. It shall furnish a copy of the audited accounts of the Concessionaire within 180 (one hundred and eighty) days of the close of each Financial Year after the Proposal Acceptance Date and any material change subsequent to the date of such accounts shall be notified to the Concessioneing Authority by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- ix. The execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- x. The Concessionaire has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Concession Agreement;
- xi. The Concessionaire has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Concession Agreement;
- xii. The aggregate equity share holding of the Joint Venture (JV) Members and their Associates (in case of a Joint Venture (JV)) or equity share holding of the Associates (in case of individual bidder) in the issued and paid up equity share capital of the Concessionaire are in accordance with the requirements stipulated in Article 7.2;
- xiii. Each Joint Venture (JV) Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Concession and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;
- xiv. All rights and interests of the Concessionaire in the Project shall pass to and vest in the Concessioneing Authority on the Transfer Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Concessionaire or the

Concessioneing Authority and that none of Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Concession Agreement;

- xv. No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Concessioneing Authority, or to any Competent Authority in relation to clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- xvi. The Concessionaire warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of commission or otherwise for securing the Concession or entering into of this Concession Agreement or for influencing or attempting to influence any officer or employee of the Concessioneing Authority.

12.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by the Concessionaire ceases to be true or stands changed, it shall promptly notify Concessioneing Authority of the same.

13. ARTICLE 13: VARIATIONS

- a. The Concession Period shall not be adjusted for changes in the cost of labour, materials or other matters. The Concession Period shall only be adjusted as expressly and explicitly stated in the Articles to this Concession Agreement and there shall be no other implied adjustments for any other reasons whatsoever.
- b. Subject to the Change in Law, the Concessionaire shall pay all applicable taxes, duties, levies, as per the Applicable Laws.
- c. If the Concessionaire suffers (or will suffer) delays or incurs (or will incur) additional costs or loss in revenue resulting from such Changes in Law, made after the Proposal Acceptance Date, the Concessionaire shall give notice to the Concessioneing Authority. After receipt of such notice Concessioneing Authority shall proceed in accordance with Article 13 to agree or determine any adjustment to the Concession Period to which the Concessionaire is entitled, and shall notify the Concessionaire accordingly. The Concession Period shall be adjusted taking into account any increase or decrease in the costs resulting from Changes in Law specifically in relation to the Project, made after the Proposal Acceptance Date.
- d. The guiding principle in the operation of this Article shall be so as to place the Concessionaire in subsequently the same legal, commercial and financial position as it was prior to such Change in Law.

14. ARTICLE 14: TERMINATION FOR DEFAULT

14.1 The Concessioneing Authority Events of Default

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

- a. The Concessioneing Authority is in breach of its obligations under this Concession

Agreement, which has a Material Adverse Effect upon the Concessionaire or the Project and this breach is not cured within a Cure Period of 90 days from the date of Default Notice.

- b. The Concessioneing Authority is in breach of any representation or warranty made under this Agreement or it repudiates this Concession Agreement.
- c. GoUP or any Competent Authority have by an act of commission or omission created circumstance that has a Material Adverse Effect on the Concessionaire, and the Concessioneing Authority has failed to compensate the Concessionaire for the same.

14.2 Termination by Concessionaire

Without prejudice to any right or remedy, which the Concessionaire may have under this Agreement, upon occurrence of a Concessioneing Authority Event of Default, the Concessionaire shall be entitled to issue a Termination Notice to the Concessioneing Authority. The Termination Notice shall grant the Concessioneing Authority a further period of 30 (thirty) days (the "Termination Period") to make a representation, and if, during the Termination Period the Concessioneing Authority takes suitable steps to remedy the situation, the Concessionaire shall be entitled to withdraw the Termination Notice. If the Termination Notice is not withdrawn within the Termination Period, this Concession Agreement will automatically terminate on the expiry of the Termination Period.

14.3 Concessionaire Event of Default

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

- i. The Concessionaire is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Concessioneing Authority or the Project.
- ii. The Concessionaire is in breach of any representation or warranty made under this Agreement or it repudiates this Concession Agreement.
- iii. The Concessionaire fails to meet the progressive milestone as provided in this Concession Agreement.
- iv. The Concessionaire abandons the Project or any of its material obligations as provided under this Agreement.
- v. The Concessionaire fails to maintain Performance Security under the agreement or any replenishment or furnishing of fresh Performance Security in the event of partial appropriation by the Concessioneing Authority.
- vi. The Concessionaire does not comply with its Minimum Equity requirements under Article 7.2.
- vii. The Concessionaire fails to achieve Financial Close within the stipulated time period of 180 (one hundred and eighty) days from the Proposal Acceptance Date, unless expressly extended by the Concessioneing Authority.
- viii. A Senior Lender recalls its LoI under the Financing Documents on the ground that the Concessionaire has defaulted on its obligations to the Senior Lender under the Financing Documents.
- ix. Any transfer pursuant to law of either (a) the rights and/or obligations of the

Concessionaire under this Concession Agreements and/ or (b) all or material part of the assets or undertaking of the Concessionaire; except (i) to the extent permitted by this Concession Agreement or (ii) where any such transfer, in the reasonable opinion of the Concessions Authority, does not affect the ability of the Concessionaire to perform its obligations under this Concession Agreement.

- x. In the event a resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- xi. The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- xii. Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by court, except if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and Project Agreements, and provided that:
 - a) The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under the this Agreement and Project Agreements;
 - b) The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Concessionaire as on the Compliance Date;
 - c) And all the Project Agreements remain in full force and effect;
- xiii. The Concessionaire assigns this Concession Agreement or any of its rights or obligations under the Concession Agreement, where such assignment is not in accordance with the terms and conditions of the Concession Agreement.

14.4 Termination by Concessions Authority.

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

- a) The Concessions Authority shall be entitled to issue a Termination Notice to the Concessionaire. The Termination Notice shall grant the Concessionaire thirty (30) days (the "Termination Period") to make a representation, and if, during the Termination Period the Concessionaire takes suitable steps to remedy the default/ situation, the Concessions Authority shall be entitled to withdraw the Termination Notice.
- b) If the Termination Notice is not withdrawn within the Termination Period, the Concessions Authority shall send a copy of the Termination Notice to the Senior Lender, thereby granting the Senior Lender a 30 (thirty) day "Suspension Period" in accordance with the terms of the Substitution Agreement. During the Suspension Period, the Senior Lender may exercise its Step-In Rights in accordance the Substitution Agreement such that the Senior Lender may nominate an 'Additional Obligor'. In the Step-In Period, the Senior

Lender may procure that the default stated in the Termination Notice is cured, and upon the curing of the default, the Concessioneing Authority shall withdraw its Termination Notice and grant permission to the Concessionaire to resume its work under the Concession Agreement.

- c) The Suspension Period may be extended up to a maximum of 180 (One hundred and eighty) days at the request of the Senior Lender.
- d) During the Suspension Period the Senior Lender may request the Concessioneing Authority to replace the Concessionaire with a “Substitute” named by the Senior Lender, who shall be a Person capable of discharging the roles and responsibilities of the Concessionaire under the Concession. Upon receipt of such a request the rights and obligations of the Concessionaire under the Concession Agreement shall be assigned to the substitute, who shall step into the shoes of the Concessionaire from the date of the assignment.
- e) If, upon receipt of a copy of the Termination Notice, the Senior Lender fails to exercise its rights under this Article 21.4 and procure that either:-
 - i. The Concessionaire Event of Default is cured within the Suspension Period, or
 - ii. The Concession is assigned under Article 14.4 (d) to a Substitute Entity capable of discharging the roles and responsibilities of the Concessionaire. The Concessioneing Authority shall be entitled to terminate this Concession Agreement without any liability to the Concessionaire or the Senior Lender, save and except as provided in Article 15 hereof.

15. ARTICLE 15: CONSEQUENCES OF TERMINATION

15.1 Termination Payment for Termination by Concessionaire

- a) Upon Termination by the Concessionaire on account of the Concessioneing Authority Event of Default under Articles 14.1 and 14.2, the Concessionaire shall be entitled to the refund of the Performance Security and receive from the Concessioneing Authority by the way of Termination Payment a sum equal to the **slump sale basis** of the Project brought in by the Concessionaire during the subsistence of this Concessionaire Agreement, as determined by the Independent Auditor/ Valuer .The Concessioneing Authority shall have the discretionary right to get the same verified by the Independent Auditor. In addition to this, the Performance Security shall be refunded back to the Concessionaire. The Concessionaire shall also pay any balance (outstanding) up-to-date, payable by the Concessionaire to the Concessioneing Authority.
- b) All payments due to the Concessionaire as calculated under Article 15.1a shall be made within 30 (thirty) days of termination of the Concession Agreement.

15.2 Termination Payment for Termination by Concessioneing Authority

- a) Upon Termination by the Concessioneing Authority on account of the Concessionaire Event of Default, during the Operations & Maintenance Period, in accordance with the provisions of Articles 14.3 & 14.4, the Concessionaire shall peacefully hand over the possession of site with the facility in working condition and the Performance Security shall be forfeited by the Concessioneing Authority.
- b) However, if the Termination by the Concessioneing Authority on account of the Concessionaire Event of Default is during the Implementation Period then the Concessionaire shall not be entitled for any Termination Payments. However, the Performance Security shall be forfeited

by the Concessioneing Authority.

15.3 Other rights and obligations upon Termination

a) Upon Termination of this Agreement, the Concessioneing Authority shall:-

- i. Take possession and control of the Project forthwith;
- ii. Take possession and control of the Assets
- iii. Require the Concessionaire to comply with the provisions relating to the Transfer of Project under Article 23; and

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

- i. Hand over the works to the Concessioneing Authority in accordance with the provisions laid down under Article 23.
- ii. Provide all relevant data, Project Report and drawings, records and information accedes to all reasonable requests from the Concessioneing Authority in connection with taking over the Project.
- iii. Cease all further Works, except for such essential Works as may be necessary and as instructed by Concessioneing Authority, for the purpose of making safe, protecting or continuing operations on the Project.
- iv. Repatriate all its staff and labour from the PTUs except for such essential equipment,
- v. Co- operate with the Concessioneing Authority and the Substitute Entity nominated by the Senior Lenders and comply with all reasonable requests thereof, including the execution of any documents and other actions, provided the Concessioneing Authority bears any reasonable Costs incurred by the Concessionaire relating thereto.

16. ARTICLE 16: FORCE MAJEURE

16.1 Force Majeure Event

In this Concession Agreement, "Force Majeure" means an event occurrence in India of any or all of the Non-Political Force Majeure Event, Indirect Political Force Majeure Event and Political Force Majeure Event described in Articles 16.2, 16.3 and 16.4 respectively hereinafter which prevents the party claiming Force Majeure (the "Affected Party") from performing its obligations under this Concession Agreement and which act or event:-

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

16.2 Non-Political Force Majeure Events

For the purposes of Article 16.1, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- i. Acts of God or events beyond the reasonable control of the Affected Party which could

- not reasonably have been expected to occur, extreme adverse weather or environmental conditions, lightning, earthquakes, heavy rains, cyclones, tempest, whirlwind, landslides, storms, floods, volcanic eruptions or fire;
- ii. Radioactive contamination or ionising radiation;
 - iii. Strikes or boycotts (other than those involving the Concessionaire, Contractors, or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 16.3;
 - iv. Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for the reason other than failure of the Concessionaire to comply with any Applicable Law or Clearances or on account of breach thereof, or of any contract, or enforcement of this Concession Agreement or exercise of any of its rights under this Concession Agreement by the Concessioneing Authority; or
 - v. Any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Concessionaire will ensure that it has insured itself against such risks.

16.3 Indirect Political Force Majeure Event

For the purposes of Article 16.1, Indirect Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Concessioneing Authority, GoUP, GoI or any other Competent Authority:

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

16.4 Political Force Majeure Event

For the purposes of Article 16.1, Political Force Majeure Event shall mean one or more of the following acts or events by or on account of the Concessioneing Authority, GoUP, GoI or any other Competent Authority:

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

provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such consents or permits.

16.5 Exceptions Applicable to the Concessionaire

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

- i. Delay in performance by the Concessionaire, Subcontractor(s), agents and employees of the Concessionaire; or
- ii. Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project.

16.6 Exceptions Applicable to the Concessioneing Authority

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

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

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

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

- i. There shall be no Termination except as provided in Article 16.10.
- ii. The Compliance Date shall be extended by the period of which such Force Majeure event shall subsist and
- iii. The Parties shall bear their respective costs arising out of such Force Majeure Event.

16.8 Effect of Force Majeure after Compliance Date

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

- i. There shall be no Termination of this Concession Agreement except as provided in Article 16.10.
- ii. Where the Force Majeure Event occurs before the issue of Implementation Completion Certificate or Provisional Certificate, the dates set forth in the Design Documents and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- iii. Where the Force Majeure Event occurs after the issuance of Implementation Completion Certificate , the Concessionaire shall make all reasonable efforts to collect Project Revenues, but if he is unable to collect Project Revenues during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which collection of Fees remains suspended on account thereof and
- iv. All cost arising out or concerning such Force Majeure Event shall be borne in

accordance with provisions of Article 16.9

16.9 Allocation of costs during the subsistence of Force Majeure

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

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

16.10 Termination Notice

If the Force Majeure Event subsists for a period of 270 (two hundred seventy) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion terminate this Concession Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever, save and except as per the provisions of in Article 16.11.

16.11 Termination Payments for Force Majeure Events

Upon Termination of this Concession Agreement pursuant to Article 16.10, Termination Payment to the Concessionaire shall be made in accordance with the following:

- i. If the Termination is on account of Non Political Event, the Concessionaire shall be entitled to receive and appropriate, from the Concessioneing Authority by way of Termination Payment, the proceeds of any amounts under insurance policies. Performance Security, if subsisting, shall be released.
- ii. If the Termination of this Concession is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive, from the Concessioneing Authority, a sum equal to 100% of the Book Value (net of depreciation) of the assets brought in by the Concessionaire during the subsistence of this Concession Agreement, as per Audited Annual Financial Statements. The Concessioneing Authority shall have the discretionary right to get the same verified by the Independent Auditor.
- iii. If the Termination of this Concession is on account of a Political Event, the Concessionaire shall be entitled to receive Book Value of the assets brought in by the Concessionaire during the subsistence of this Concessionaire Agreement, as per Audited Annual Financial Statements and refund of Performance Security. The Concessioneing Authority shall have the discretionary right to get the same

verified by the Independent Auditor.

16.12 Termination Payments

The Termination Payments pursuant to the Article 16.11 shall become due and payable to the Concessionaire by the Concessioneing Authority upon actual or constructive transfer of the Assets by the Concessionaire to the Concessioneing Authority free from all Encumbrances, charges and liens whatsoever, unless expressly directed by the Concessioneing Authority otherwise

16.13 Mode of Payments

Payments of compensation and costs by the Concessioneing Authority pursuant to this Article 16 shall constitute valid discharge of the Concessioneing Authority's obligations for Termination Payments hereunder.

16.14 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 as under Article

17, provided however that the burden of proof as to the occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on the account of such Force Majeure Event.

16.15 Liability for other losses, damages etc.

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

16.16 Duty to Report

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- i. The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew or ought reasonably to have known of its occurrence and the probable Material Adverse Effect that the Force Majeure Event is likely to have occurred on the performance of its obligations under this Concession Agreement.
- ii. Any notice pursuant to this Article 16.16 shall include full particulars of:
 - a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 16 with evidence in support thereof;
 - b) The estimated duration and effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Concession Agreement;
 - c) The measure which the Affected Party is taking or proposes to take to alleviate the impact of such Force Majeure Event; and
 - d) Any other information relevant to the Affected Party's Claim.
- iii. For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly)

written reports containing information as required by this Article 16.16, and such other information as the other Party may reasonably request the Affected Party to provide.

16.17 Excuse from performance of obligations

If the Affected Party is wholly or partially unable to perform its obligations under this Concession Agreement because of 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 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 Concession, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

17. ARTICLE 17: DISPUTE RESOLUTION

17.1 Dispute Resolution

Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever regarding the validity, interpretation, implementation or the rights and obligations arising out of, or in relation to, or howsoever arising under or in relation to this Concession Agreement between the Parties and so notified by either Party to the other Party (the “**Dispute**”) shall be subject to the dispute resolution procedure set out hereinafter.

17.2 Direct discussion between the Parties

The Parties agree that any Dispute that may arise between them shall be first submitted for direct discussion between the Parties. For this purpose, the notice of Dispute (the “**Notice of Dispute**”) sent by one Party to the other Party under Article 17.1 shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for conduct of the negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute and the amount claimed. In the direct discussion proceedings, each Party shall be represented by officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order for the discussion to be meaningful. At the discussion proceedings, the Party that has given the Notice of Dispute shall present an offer of a settlement, which may form that starting point of discussions between the two Parties during the discussion proceedings.

17.3 17.3. Adjudication by Authority

In the event that the parties are unable to resolve the Dispute through Direct Discussion under Article 17.2, the Parties shall submit the Dispute for adjudication by the appropriate authority designated by the government for PPP.

17.4 17.4. Performance during Dispute

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Clause. The provisions for dispute settlement shall be binding upon the successors, assigns and any trustee or receiver of either the Concessioneing Authority or the Concessionaire

18. ARTICLE 18: LEFT BLANK

19. ARTICLE 19: KSCL MAINTENANCE BOARD/COMMITTEE

19.1 Appointment

- a) Within 10 (ten) days from the Proposal Acceptance Date, the Concessioneing Authority shall constitute a Maintenance Board/committee. The Maintenance Board shall consist of representatives of the following and any other member duly nominated by the Concessioneing Authority:
 - i. Chief Engineer;
 - ii. Chief Medical Officer of Health
 - iii. Executive Engineer of concern Zone;
 - iv. Public Health Officer of concern zone;
 - v. 1 member of the Concessionaire.
- b) Additional Commissioner of KNN shall act as Chairman of the Maintenance Board/Committee and Chief Medical Officer shall act of as the Convener Wherever possible, the Maintenance Board/Committee shall act by consensus. If consensus is not reached, it shall take vote, and if there is a tie in such vote, the representative of the Concessioneing Authority shall have the casting vote.

19.2 Powers and Duties

- a) The KSCL Maintenance Board/Committee shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper construction, installation of the Project, including, (without limitation):
 - i. During the Implementation P e r i o d , the Maintenance Board/Committee shall, at all reasonable times and upon reasonable notice, have access to the PTUs for the purpose of discharging its duties under this Concession Agreement.
 - ii. The KSCL Maintenance Board/Committee shall undertake inspections, at such times as it deems appropriate, to determine the progress during the Implementation Period and the extent of compliance with provisions stipulated in this Concession Agreement and notify the Concessioneing Authority, and the Concessionaire of any deviations there from within 7 (seven) days of such inspections.
 - iii. Compliance to the O & M Manual
 - iv. Review the Concessionaires periodic reports;
 - v. Approve the material to be used to be made part of PTUs;
 - vi. Review and verify the implementation of Variations;
 - vii. Approve any improvements or modifications (that are not Variations) proposed by any of the members of the KSCL Maintenance Board/Committee;
 - viii. Review Performance Security requirements;
 - ix. Any other matter which it deem necessary for the implementation, operation or maintenance of the Project;
 - x. Review and take actions on matters arising out of the Complaints Register.
 - xi. Impose penalties on the Concessionaire as stipulated in Article 15.2 (b).
- b) The Maintenance Board/committee shall have the power to appoint Expert or Specialist Person in any area required, for a review of the constructions, operation, and maintenance and planning of the Project. Such persons shall act as an "Expert", whose expert professional opinion, once confirmed by the Maintenance Board/Committee shall be binding on the Parties and the Maintenance Board.

- c) Without limitation to the generality of the foregoing Articles the Maintenance Board/Committee shall have the power to appoint a Valuer as an Expert to undertake and determine the adjustment of Concession Period.
- d) The Concessionaire and the Concessioneing Authority shall extend full co-operation to the Maintenance Board/committee and to any Expert appointed by the Maintenance Board/committee. All the expenses of the Maintenance Board shall be borne by the Concessioneing Authority.
- e) The Maintenance Board/committee shall meet at least once every quarter of the calendar year at such time & venue as may be indicated by the Convenor and notified to all the members of the Maintenance Board well before the date of the meeting.

20. ARTICLE 20: FINANCING AND LENDER'S RIGHTS

- a) The Concessioneing Authority hereby agrees that it shall enter into a Substitution Agreement as given Schedule III with the Senior Lender and the Concessionaire thereby shall grant the Senior Lender certain rights in the event of 'Termination by the Concessioneing Authority' as set out in Article 14.4. The Concessioneing Authority further confirms to the Concessionaire that it can represent to the Senior Lenders that the Concessioneing Authority has agreed to be bound by the terms and conditions specified therein.

21. ARTICLE 21: TAXATION AND CONFIDENTIALITY

21.1 Local Taxation

- a) The Concession Agreement shall include all charges towards import licence, toll, customs duties, import duties, business taxes, etc., that may be levied in accordance with the Applicable Laws as on the Proposal Acceptance Date in India on the Concessionaire's Equipment, Machinery and Materials (whether permanent, temporary or consumable) acquired for the purpose of this Concession Agreement and on the services to be performed under this Concession Agreement. Nothing in this Concession Agreement shall relieve the Concessionaire from its responsibility to pay any tax that may be levied in India on profits made by it in respect of this Concession Agreement.
- b) Under the provisions of the Indian Income Tax Act, the Concessioneing Authority is required to deduct tax at source at the rates prevailing in case any payments are envisaged under this Concession Agreement.

21.2 Income Taxes on Staff

The Concessionaire's staff, Person and labour will be liable to pay personal income taxes in India in respect of their salaries and wages as chargeable under the laws and regulations for the time being in force, and the Concessionaire shall make such deductions in respect of such taxes as required by law.

21.3 Confidentiality

Neither of the Parties shall, at any time, before the expiry or termination of this Concession Agreement, without the consent of the other Party, divulge or suffer or permit its officers, employees, or agents to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them to properly to carry out their duties), any information relating to the negotiations concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party or any proprietary

information of the other Party.

21.4 Exceptions to Confidentiality

The restrictions imposed by Article 21.3 shall not apply to the disclosure of any information:

- a) Which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtained with no more than reasonable diligence from sources other than the Parties.
- b) Which is required by law to be disclosed to any Person who is authorised by law to receive the same.
- c) Which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in,
- d) To a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a Party.
- e) To any consultants, banks, financiers or advisers to the disclosing Party, or
- f) In accordance with this Concession Agreement.

22. ARTICLE 22: PROJECT REVENUES

22.1 Levy and Appropriation of Commercial Charges

- a) The Concessionaire shall levy, collect, appropriate Commercial Charges from the Users for the period after the Operations Date in accordance with the provisions of this Agreement.
- b) On and from the Operations Date and until the last date of the Concession Period, the Concessionaire or its Subcontractors shall levy, collect, and appropriate Project Revenues/ Commercial Charges, as set out in Article 22.2, as per Authority approval.
- c) The Concessioning Authority expressly recognises that the right of the Concessionaire or its Subcontractors to levy, demand, collect, retain, and to appropriate Project Revenues/ Commercial Charges in accordance (i) with the terms of this Concession Agreement and (ii) to exercise all rights and remedies available under Law and under this Concession Agreement for the recovery of Project Revenues/ Commercial Charges.

22.2 Types of Project Revenue

- a. **Income from Users charge**
The Concessionaire shall be allowed to collect user charge for the users of PTUs
- b. **Income from Display of Advertisements**
The Advertisement revenue shall be the source of revenue mechanism for the Concessioner. The concessioner shall lease out the Advertisement Boards to the advertisers as per the specifications in the agreement. Advertisements should not be objectionable.
- c. **c. Income from Rent/Lease of commercial space**
The Rent/Lease income shall also be the source of revenue mechanism for the Concessioner. The concessioner shall Rent/lease out the Commercial space to the establishment/individual as per the specifications in the agreement. The space may not be leased out for any anti-social or illegal purposes.
- d. **Miscellaneous**
Apart from the above, the Concessionaire shall be well within its right to generate

revenues for other activities however the details of the same shall be forwarded to the Concessioneing Authority for approval.

23. ARTICLE 23: TRANSFER OF PROJECT

- a) On the Transfer Date, the Concessionaire shall, transfer and assign to the Concessioneing Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date of all the Concessionaire's right, title and interest in and to the Works/ movable and immovable assets. The Concessionaire shall also deliver to the Concessioneing Authority or its nominated agency on such date such project reports, manuals, plans, design drawings, reports, accounts and other information as may reasonably be required by the Concessioneing Authority or its nominated agency to enable it to continue the operation of the Project either directly or by its nominated agency. The personnel of the Concessionaire shall continue to be the employees of the Concessionaire and the transfer of all the movable & immovable assets shall not in any manner affect their status as employees of the Concessionaire and they shall have no claim to any type of employment or compensation from the Concessioneing Authority or its nominated agency.
- b) The Concessionaire shall to the extent possible assign to the Concessioneing Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies. The Concessionaire shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Concessionaire has approved such assignment under the terms and conditions of the relevant contract.
- c) The Concessionaire shall, to the extent possible at the time of transfer, assign to the Concessioneing Authority or its nominated agency all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Concessionaire and subsisting at the time of transfer except any contracts with employees.
- d) Six months prior to the Transfer Date, the Concessioneing Authority shall be entitled to appoint any Consulting Engineer to assess the condition of the Project. Such Consulting Engineer shall be entitled to have free access to inspect the Project, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the Project.
- e) Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project, unless such loss or damage is due to an act or omission of the Concessioneing Authority in contravention of its obligations under this Concession Agreement.
- f) The Concessionaire shall provide fair and just compensation to its employees as required under the Laws or under this Concession Agreement, and shall indemnify the Concessioneing Authority against any claims from any such employees for their loss of office, redundancy, loss of employment or otherwise. The Concessioneing Authority shall accept absolutely no liability on account of any matter pertaining to the Concessionaire's employees, staff, labour etc.

- g) The Concessioneing Authority shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the Transfer of the Project to it by the Concessionaire
- h) On the Transfer Date, the Concessionaire shall hand over the PTUs and other movable & Immovable assets to the Concessioneing Authority or its nominated agency at zero cost.
- i) From the Transfer Date, the obligations and the rights of the Concessionaire under this Concession Agreement shall terminate vis-à-vis the Concessioneing Authority and the Concessioneing Authority or its nominated agency shall take over the Project and the operation and maintenance and any other rights or obligations arising out of this Concession Agreement which either expressly or implicitly survive termination of this Concession Agreement; provided, however, that the Concessionaire may continue with any other business operations arising other than in connection with this Concession Agreement and; provided further that the Concessionaire shall no longer act in its capacity as Concessionaire in relation or pursuant to this Concession Agreement.
- j) On completion of the transfer by the Concessionaire to the Concessioneing Authority, the Concessioneing Authority shall issue a 'Concession Agreement Completion Certificate' to the Concessionaire. The Concession Agreement Completion Certificate will have the effect of constituting evidence of transfer of all rights, titles and interests in the Project by the Concessionaire, and their vesting in the Concessioneing Authority hereto.

24. ARTICLE 24: MISCELLANEOUS PROVISIONS

24.1 Governing Law and Jurisdiction

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

24.2 Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provisions of or obligations under this Concession Agreement:

- a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Concession Agreement.
- b) Shall not be effective unless it is in writing and executed by a duly authorised representative of the Party ; and shall not affect the validity or enforceability of this Concession Agreement in any manner. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Concession Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

24.3 Exclusion of implied warranties

This Concession Agreement expressly excludes any warranty, condition or any 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.

24.4 Severability

If for any reason whatever any provision of this Concession Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other legal and valid 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 upon one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Concession or otherwise.

24.5 Entire Agreement

This Concession Agreement and the Schedules together constitute a complete and exclusive statement of the terms and conditions 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.

24.6 Custody of Documents

The Design Documents shall be in the custody and care of the Concessionaire. Unless stated otherwise in this Concession Agreement, the Concessionaire shall provide four copies for the use of the Concessions Authority.

24.7 Copyright

The Concessionaire, as beneficial owner, hereby transfers to the Concessions Authority copyright and registered design and all other intellectual property rights subsisting in or accruing to the Concessionaire, in relation to the Design Documents made or to be made by or on behalf of the Concessionaire, during the Concession Period for which such copyright subsists in such works. The Concessions Authority hereby grants to the Concessionaire non-exclusive royalty-free licence to use such documents and drawings solely for the purpose of complying with its obligations under this Concession Agreement.

24.8 Use of the Concessions Authority's Documents

Copyright in the Technical Requirements and other documents issued by the Concessions Authority to the Concessionaire shall (as between the Parties) remain the property of the Concessions Authority. The Concessionaire may, at its cost, copy, use and communicate any such documents for the purposes of this Concession Agreement. They shall not, without the Concessions Authority's consent, be used, copied or communicated to a Third Party by the Concessionaire, except as necessary for the purposes of this Concession Agreement.

24.9 Compliance with Laws and Directives

a) The Concessionaire shall, in all matters arising in the performance of this Concession Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Central or State law or directive or any regulation of any legally constituted public authority having jurisdiction over the Works. The Concessionaire shall obtain all permits, licences or approvals required for any part of the Works in reasonable time, taking into account the delivery time for the Plant and Machinery and Materials and required for completion of the Works. The Concessions Authority and the Concessionaire shall comply with all the laws as applicable.

- b) In the performance of this Concession Agreement, the Concessionaire shall ascertain and comply with all relevant laws and directives. The Concessioneing Authority will provide such reasonable assistance as may be requested by the Concessionaire in ascertaining the nature and extent of such relevant Indian laws and directives.
- c) The Concessionaire shall indemnify the Concessioneing Authority, the Concessioneing Authority's officers, employees and agents against all governmental penalties and fines payable to a Competent Authority, together with any reasonable legal expenses incurred in connection therewith, to the extent arising out of any failure of the Concessionaire or its employees to comply with any law or directive applicable to the Implementation, start-up, operation and maintenance activities conducted at the PTUs, during the performance of the works.
- d) If the Concessionaire or the Concessioneing Authority finds any divergence between any law or directive and the Technical Requirements, it shall give to the other Party a written notice specifying the divergence and proceed in accordance with Article 14.

24.10 Joint and Several Liability

If the Concessionaire is a joint venture of two or more Persons, all such Persons shall be jointly and severally liable to the Concessioneing Authority for the fulfilment of the terms of this Concession Agreement. Such Persons shall designate one of them to act as "Lead Member" with authority to bind the joint venture and each of its members. The composition or the constitution of the joint venture shall not be altered without prior approval of the Concessioneing Authority and as per the specific provisions in this regard provided in this Concession Agreement.

24.11 Notifications

- a) Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, typewritten or printed communication, including the agreed systems of electronic transmission.
- b) All certificates, notices or written orders between the Parties shall either be delivered by hand against written acknowledgement of receipt, or be sent by registered acknowledgement due pre-paid post or courier or one of the agreed systems of electronic transmission. In the event of any dispute, unless such acknowledgement of receipt is provided, the communication shall be treated as not given.
- c) In the case of the Concessionaire, all communication shall be marked for the attention of the person and to the address provided below, or to such other person or address as may be intimated to the Concessioneing Authority by the Concessionaire from time to time.
Name of Concessionaire's Representative:
Address for communication:
- d) In the case of the Concessioneing Authority, all communication shall be addressed to the Chief Executive Officer, Kanpur Smart City Limited

24.12 Language

The language of this Concession Agreement is the English language. All correspondence,

drawings, designs, design data, Tests reports, certificates, specifications and information shall be in the English language. All other written and printed matter required for Implementation, operation and maintenance shall be executed in the English language. Instructions and notices to the public and staff and all other signs and information notices shall be in English & Hindi

24.13 Counterparts

This Concession may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Concession Agreement.

IN WITNESS whereof the Parties have executed and delivered this Concession Agreement as of the date first above written.

SIGNED SEALED AND DELIVERED

For and on behalf of

(Concessioneing Authority) by:

(Signature)

(Name)

(Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of Concessionaire

(Concessionaire) by:

(Signature)

(Name)

(Designation)

In the presence of:

i. (Signature)

(Name)

(Designation)

ii. (Signature)

(Name)

(Designation)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the _____ day _____ of 2018.

AMONGST

2. **KANPUR SMART CITY LIMITED** (hereinafter referred to as the “Concessioneing Authority” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
3. [Limited], a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at _____, (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
4. [NAME AND PARTICULARS OF Lenders’ Representative] and having its registered office at

_____, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- a) The Concessioneing Authority has entered into a Concession Agreement dated with the Concessionaire (the “Concession Agreement”) under PPP format (called Project), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- b) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- c) Senior Lenders have requested the Concessioneing Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- d) In order to enable implementation of the Project including its constructions, Installation financing, operation and maintenance, the Concessioneing Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

- a) “**Agreement**” means this Substitution agreement and any amendment thereto made in accordance with the provisions contained in this Agreement
- b) “**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;
- c) “**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Concessioneing Authority for assignment/transfer of the Concession as provided in this Agreement;
- d) “**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and
- e) “**Parties**” Means the parties to this agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- 1.2.1** References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2** References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3** The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4** The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

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

3.2 Substitution upon occurrence of Defaults:

3.3 Substitution upon occurrence of Concessionaire Default

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

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

3.4 Procedure for substitution

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

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

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

Concessioneing Authority to:

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

3.4.4 If the Concessioneing Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessioneing Authority, the Nominated Company shall be deemed to have been accepted. The Concessioneing Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Concessioneing Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 **Selection to be binding**

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

4. **PROJECT AGREEMENTS**

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

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

5. **TERMINATION OF CONCESSION AGREEMENT**

5.1 **Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Concessioneing Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessioneing Authority shall undertake Termination under and in accordance with the provisions of Article 22 and 23 of the Concession Agreement.

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

In the event that no Nominated Company acceptable to the Concessioneing Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and

eighty) days or any extension thereof as set forth in Clause 3.3.2, the Concessioneing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

The Concessioneing Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

7. INDEMNITY

7.1 General Indemnity

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

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

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

7.2 Notice and contest of claims

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

the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Dispute resolution

Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to the appropriate authority as designated by Government for PPP projects and in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the decision hereunder shall not be final and binding until an appeal against such decision has been decided by Courts at Kanpur, or no such appeal has been preferred within the time specified in the Applicable Law.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Concessioning Authority unconditionally and irrevocably:

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

9.3 Priority of Agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof

- or of other provisions of or obligations under this Agreement;
 - b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - c) shall not affect the validity or enforceability of this Agreement in any manner
- 9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.
- 9.6 No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.
- 9.7 Survival**
 - 9.7.1 Termination of this Agreement:
 - a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
 - b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.
 - 9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.
- 9.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.
- 9.9 Successors and assigns**

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

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.
- 9.11 Language**

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

9.12 Authorised representatives

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

9.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONING AUTHORITY OF:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

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

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

i. (Signature)

(Name)

(Designation)

ii. (Signature)

(Name)

(Designation)