

**Design, Build, Finance, Operate and Transfer of Public Toilet of Pondicherry
Municipality on Public Private Partnership Basis**



CONCESSION AGREEMENT

For

**Design, Build, Finance, Operate and Transfer of Public Toilet of
Pondicherry Municipality on Public Private Partnership Basis.**

**Issued by:
The Commissioner
Pondicherry Municipality
Puducherry
E-Mail: comrpm.pon@nic.in**

**Design, Build, Finance, Operate and Transfer of Public Toilet of Pondicherry
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PART I: PRELIMINARY

Concession Agreement

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

BETWEEN

1. **PONDICHERRY MUNICIPALITY**, represented by the **Commissioner**, under the control of the Government of Puducherry having its principal office at Kamban Kalai Arangam, Lal Bahadur Sasthri Street, Puducherry, 605001, India (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

- 2 {.....}, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Authority has decided to undertake Designing, setting up, of a food court/restaurant/cafeteria, indoor sports activities, Gym, Promotion activities through advertisements etc. Operating and Maintaining the Public Toilet in Pondicherry Municipality through Public-Private Partnership (the “PPP”) on Design, Build, Finance, Operate and Transfer (the “DBFOT”) basis (the **Project**).
- (B) The Authority is accordingly inviting bids by its Request for Qualification cum Request for Proposal No. ----- (the “**Request for Proposal**” **RFP**”) for selection of bidders for construction, operation and maintenance of the above referred Project on DBFOT basis.
- (C) The Authority had prescribed the technical, commercial and financial terms and conditions, in the invited bids of RFP for undertaking the Project.
- (C) After evaluation of the bids received, the Authority had accepted the bid of the {**Concessionaire**} and issued its Letter of Award No. dated (here in after called the “**LOA**”) to the {**Concessionaire**} requiring, *inter alia*, the execution of this Agreement within 15 (Fifteen) days of the date of issue thereof.
- (E) {The selected bidder has since promoted and incorporated the Concessionaire as proprietary firm or partnership firm or Limited Liability Partnership, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.}

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- (F) {By its letter dated, the Concessionaire has also joined in the said request of the selected bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder}.
- (G) The Authority {has agreed to the said request of the selected bidder and the Concessionaire, and} has accordingly agreed to enter into this Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth in RFP and also hereinafter.

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

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Article 1: Definitions and Interpretation

1.1 Definitions

The words and expressions defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1. In this Agreement, unless the context otherwise requires, references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
2. references to laws of UT of Puducherry, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
3. any reference to day shall mean a reference to a calendar day;
4. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from by the Authority shall be valid and effective only if it is in writing under the hand of a duly authorised representative of Authority, as the case may be, in this behalf and not otherwise; the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
5. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
6. time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
 - (i) Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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- (ii) The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- (iii) Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning only.

1.3 Priority of agreements, clauses and schedules

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

- (i) this Agreement; and
- (ii) all other documents forming part hereof or referred to herein;

i.e. the Agreement at(i) above shall prevail over the agreements and documents at (ii) above.

2. Subject to the provisions of Clause 1.3.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
 - (i) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (ii) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (iii) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (iv) between any value written in numerals and that in words, the latter shall prevail.

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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:

- (i) carrying-out detailed investigation of the Project Sites and designing, constructing/procuring the Project Facilities and Associated Infrastructure at Sites. set forth in Schedule – A, Schedule – B and Schedule – C
- (ii) operation and maintenance of the Project Facility and Associated Infrastructure in accordance with the provisions of this Agreement;
- (iii) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement including all terms and conditions of RFP.
- (iv) Pondicherry Municipality intends to develop a Public Toilet **at the North East Corner of Old Port Campus in Puducherry (“Public Toilet”)** through Public Private Partnership (“**PPP**”) mode on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis. Hence the Concessionaire shall carryout all activities and investigations required for the successful and timely completion of the Project.
- (v) The Concessionaire shall Operate and Maintain the **Public Toilet at the North East Corner of Old Port Campus in Puducherry** by utilizing the roof top and remaining permissible area of Open to Sky for Planning, Designing, Engineering, Finance, Construction, Development, for operation of a food court/ restaurant/cafeteria/ indoor sports activities / Gym Promotion activities through advertisements etc. **without collecting user charge for toilet facilities from public in any manner as the toilet facilities shall be provided to the public at free of cost.**

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Article 3: Grant of Concession

3.1 The Concession

1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to

- (i) investigate, study, design, finance, construct, operate and maintain the Project Facilities;
- (ii) collect revenue from commercial utilization of space in the Project Facilities.
- (iii) provide Services to the public.

(the “**Concession**”) for a period of **7 (Seven)** years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

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

- (i) Right of Way, access and licence to the Licensed Premises for the purpose of and to the extent conferred by the provisions of this Agreement;
- (ii) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (iii) manage, operate and maintain the Toilet in accordance with this Agreement
- (iv) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (v) neither assign, transfer or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Facility nor sell, transfer, exchange or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.2 Substitution of the Authority

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

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3.3 Grant of License over the Site

The Authority shall grant the Concessionaire a license over the Project Facilities and Associated Infrastructure along with all necessary rights of way, to enter upon, access the Project Facilities free of all Encumbrances in accordance with Applicable Laws, and Applicable Permits. The license granted to the Concessionaire shall include the exclusive right to:

- (i) design, construct and commission the Project Facilities and Associated Infrastructure;
- (ii) operate and maintain the Project Facilities and Associated Infrastructure during the Concession Period;
- (iii) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Project Facilities and Associated Infrastructure, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
- (iv) use access roads, pathways and utilities at or about the Project Facilities and Associated Infrastructure;
- (v) discharge, store, treat and manage the waste generated by the Project Facilities and Associated Infrastructure;
- (vi) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project Facilities and Associated Infrastructure;
- (vii) Provide Services in accordance to the Service Level Requirements as defined in Schedule C of this Agreement ;
- (viii) On the Date of this Agreement, the Authority and the Concessionaire shall execute a memorandum setting out the right of way;
- (ix) The Concessionaire shall not without the prior written consent or approval of the Authority use the Project Facilities or Associated Infrastructure for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by the Authority.
- (x) **The full ownership and title over the Sites shall vest with the Authority for the entire Concession Period.**
- (xi) Subject to any substitution rights exercised by the Concessionaire, the license granted by the Authority shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.

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3.4 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the Termination of the Agreement.

3.5 Indemnity

1. General indemnity

- (i) The Concessionaire will indemnify, defend and hold the Authority and the other representative of Authority 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.
- (ii) The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- (iii) The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Puducherry and the language of arbitration shall be English.

3.6 MISCELLANEOUS PROVISIONS

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 Puducherry/Chennai shall have jurisdiction over all matters arising out of or relating to this Agreement.

2. Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or

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making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed.

3. Language

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

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Article 4: Conditions Precedent

4.1 Conditions Precedent

1. The Concessionaire may, upon providing the Performance Security to the Authority before signing of this Agreement, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause within a period of 60(sixty) days of the notice, or such longer period not exceeding 90 (ninety) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
 - (i) procured for the Concessionaire the Right of Way to the Licensed Premises.
 - (ii) procured Applicable Permits, if any, relating to environmental protection and conservation; and
 - (iii) arranged for the Concessionaire the Right of Way for construction of Project Facility and Associated Infrastructure.

2. The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
 - (i) provided Performance Security to the Authority;
 - (ii) executed and procured execution of the Escrow Agreement;
 - (iii) executed and procured execution of the Substitution Agreement;

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

4.2 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within a period of 90 (ninety) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.1 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

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4.3 Deemed Termination upon delay

Without prejudice to the provisions of Clauses the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 180 (one hundred eighty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

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Article 5: Obligations of the Concessionaire

5.1 Obligations of the Concessionaire

1. Subject to and on the terms and conditions of this Agreement and RFP the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, installation, operation and maintenance of the Project Facility and Associated Infrastructure and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.2 Obligations relating to Change in Ownership

The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3 Obligations relating to taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Project Facility and Associated Infrastructure.

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Article 6: Obligations of the Authority

6.1 Obligations of the Authority

The Authority shall, at its own cost and expenses undertake, comply with and perform all its obligations set out in this Agreement and RFP.

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Article 7: Representations and Warranties

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

1. it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
2. it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

7.2 Representations of the Authority

The Authority represents to the Concessionaire that:

1. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
2. it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

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Article 8: Bank Account

8.1 Bank Account

The Concessionaire shall prior to the Appointed Date, open and establish a Bank Account with a Bank in accordance with this Agreement read with the Bank Agreement.

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Article 9: Insurance

9.1 Insurance during Concession Period

The Concessionaire at its own cost shall procure and maintain insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire.

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Article 10: Compensation for Breach of Agreement

10.1 Compensation for default by the Concessionaire

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

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Article 11: Suspension of Concessionaire's Rights

11.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive any User Charge, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice; provided that upon written request from the Concessionaire the Authority shall extend the aforesaid period of 90 (ninety) days by a further period not exceeding 60 (sixty) days.

11.2 Revocation of Suspension

1. In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (Ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
2. Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (Ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

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Article 12: Termination

12.1 Termination for Concessionaire Default

Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults that shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement.

12.2 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project Facility for a period of 90 (Ninety) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Project Facility during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project Facility conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained by the Authority or the Performance Guarantee, as the case may be.

12.2 Total Project Cost

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

1. the actual capital cost of the Project upon completion of the Project; and
2. a sum of Rs. ----- (Rupees -----
-----);

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

For and on behalf of Authority

(Name and Designation)

For and on behalf of Concessionaire

(Name and Designation)

Witness1;

Witness2;

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SCHEDULES

Schedule – A: Indicative Locations of Sites for the Project Facility and Associated Infrastructure



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Schedule – B: Service Level Requirements

1. Water supply

The Concessionaire shall ensure availability of adequate water at all times for general cleanliness of the Project Facility and Associated Infrastructure and for the use of public. Further laying of water line, connection and payment of connection and usage charges shall be the responsibility of the concessionaire. In case there is no feasibility of water supply immediately, in that case, the concessionaire has to arrange water at his own cost.

2. Electricity supply

The Concessionaire shall ensure adequate electricity supply for proper lightings inside and outside the Project Facilities and Associated Infrastructure at his own cost.

3. Cleaning of Project Facility and Associated Infrastructure

The Concessionaire shall ensure cleaning of the Project Facility and Associated Infrastructure as per the cleaning schedule provided herewith. Dedicated cleaning staff shall be provided by the Concessionaire for project facility.

4. Operations & Maintenance:

This includes operation of the project facility i.e. regular cleaning of the project facility and its surrounding area, functioning of all the fixtures, deployment of dedicated personnel, supervision and providing of consumables. The maintenance and operation of all necessary infrastructure provided in project facility such as electricity, drainage, sewerage, waste removal, water etc. The Concessionaire shall clean and housekeeping the other areas created in project facility for the other facilities as specified above. **The Concessionaire under any cost should not collect user charges form public.**

5. Associated Infrastructure

- (i) The Concessionaire shall ensure that the service levels for the facilities/components forming a part of the Associated Infrastructure, indicated as per Clause 3.21 of RFP "**Operation and Maintenance**" shall be complied with at all times and the period specified for rectification of any shortcoming is met, failing which a penalty shall be levied on the Concessionaire, by the Authority as per Clause 3.22 of RFP "**Penalties**".
- (ii) The Concessionaire shall raise the structure upon availing permission from the competent authority above the roof top not more than 12 feet from the roof top and other permissible open space.

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Schedule – C: Performance Security

**The Commissioner,
Pondicherry Municipality,
Lal Bahadur Sasthri Street,
Kamban Kalai Arangam,
Puducherry, 605001**

WHEREAS:

1.(the “Concessionaire”) and the Pondicherry Municipality having its principal offices at, at Lal Bahadur Sasthri Street, Kamban Kalai Arangam , Puducherry, 605001, India (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on have entered into a Concession Agreement dated(the “Agreement”) whereby the Authority has agreed to the Concessionaire undertaking (Name of Work) -----

 (“DBFOT”) basis, subject to and in accordance with the provisions of the Concession Agreement between the parties.
2. The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs5,00,000 (Rupees Five Lakhs) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
3. We, through our Branch at (The “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

- (i) The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
- (ii) A letter from the Authority, under the hand of an Officer not below the rank of a Commissioner or equivalent, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall

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be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

- (iii) In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
- (iv) It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
- (v) The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
- (vi) This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
- (vii) Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, before the date of its, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
- (viii) The Performance Security shall remain in force and effect for a period of 3 (three) month from **the Commercial Operation Date or COD** as defined in the Agreement, for the purposes of this Guarantee, and provided the Concessionaire is not in breach of the Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security within 60 days of the request.

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- (ix) The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
- (x) Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
- (xi) This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of Seven years and three months from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND
DELIVERED For and on behalf of the
BANK by:

(Signature)
(Name)
(Designation)
(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.