

## **7. DRAFT AGREEMENT**

## AGREEMENT

This AGREEMENT is entered into on this the [ ] day of [ ] (Month), 2018 at Kakinada

AMONGST

1. Godavari Urban Development Authority (GUDA) established, having its registered office at D. No. 70-15-7/1, R.R. Nagar, N.F.C.L. Road, Kakinada-533005, East Godavari District, Andhra Pradesh (hereinafter referred to as “GUDA” or “Client” which expression shall, unless repugnant to the context thereof, include its successors and permitted assigns) of the FIRST PART; AND
2. \_\_\_\_\_, a company incorporated under the Companies Act, 1956 / 2013 a sole proprietorship / a partnership firm / a Consortium, having its registered office at.....”, the selected agency for the Operation & Maintenance of Chandrababu Shatabdi Park at Peddapuram (East Godavari dist.) on PPP mode (Hereinafter referred to as “Contractor”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the SECOND PART

Each singly a “Party” and all collectively the “Parties”

WHEREAS:

- A. GUDA intends to Operate & Maintain the Project through private participation on Operate, Maintain, Market, Manage and Transfer (OMMMT) format under PPP mode (the “Project”).
- B. GUDA had invited proposals for the selection of an Agency through the competitive route for the operation and maintenance of the Project on OMT basis from interested applicants by issuing the Request for Proposal (“RFP”) document dated \_\_\_\_\_ 2018 containing inter-alia the minimum qualification for a bidder and the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project.
- C. On evaluation of the submitted proposals, GUDA accepted the proposal of the Consortium / Company / LLP / Partnership firm and issued Letter of Award (“LOA”) dated \_\_\_\_\_ to the Consortium / Company / LLP / Partnership firm specifying inter-alia the obligation of the Parties for implementing the Project.
- D. Following the issuance of LoA, the Selected Agency in accordance with the terms and conditions as specified in the RFP, as being the pre-condition to the execution of this Contract, has made the following Arrangements / payments:
  - i) Submitted Irrevocable and unconditional bank guarantee from Nationalized Bank ----- BG No. ----- Dated ----- in favor of ‘GUDA’ for Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) an amount equivalent to 5% of the Proposal / Bid value (In the format as mentioned in Schedule B) with a validity of 365 days from the date of signing the contract and renewed every year at least 15 days prior to the date of expiry of the same.
  - ii) Procured all the applicable permits including required licenses.

- E. Where, the Selected Agency has undertaken to ensure that it shall duly discharge its obligations under this Contract and implement the Project as detailed herein the TOR / Scope of the RFP and agrees to undertake and comply with the terms and conditions hereof as binding terms.

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, THE SUFFICIENCY AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND BY BOTH THE PARTIES.

**NOW THIS CONTRACT WITNESSETH AS FOLLOWS:**

# 1. Definitions and Interpretation

## 1.1. Definitions

The words and expressions defined in this Agreement shall, unless repugnant to the context or meaning thereof, 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;

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

**“Affected Party”** shall have the meaning set forth in Clause 14.1;

**“Agreement”** means this agreement, the schedules hereto and any amendments / supplements thereto made in accordance with the provisions contained in this Agreement;

**“Agreement Date”** means the date of execution of this Agreement;

**“Management Fee”** shall have the meaning set forth in Clause 4.1.1.

**“Applicable Laws”** means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made there under, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

**“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Contractor under Applicable Laws during the subsistence of this Agreement;

**“Approvals”** means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of GUDA, Concerned Municipality and any other regulatory authority, as may be applicable.

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

**“Bank Guarantee”** means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favor of GUDA and furnished by the Contractor to GUDA for guaranteeing the due performance of the obligations of the Contractor under this Agreement. Here Bank means any Indian Nationalized Bank or any Indian Scheduled Commercial Bank and payable at Kakinada.

**“Bid / Proposal”** means the documents in their entirety comprised in the bid submitted by the Contractor in response to the RFP in accordance with the provisions thereof;

**“Bid Documents”** means the RFP and the Agreement including its schedules;

**“Business Day”** means a day on which banks are generally open for business in the town of Peddapuram, East Godavari dist. in India;

**“Clearance”** means, as on the date of execution of this Agreement, any consents, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project;

**“Components”** shall mean the already constructed existing components in operation and also the proposed project components (which may be established in due course of contract other than already constructed) as mentioned in RFP within Project subject to the approval of Client, from which Contractor shall render services to Users to generate revenue in the Project. The details of the Project & Facilities are as shown in the Schedule A;

**“Competent Authority”** means any agency, authority, department, ministry, public or statutory Person of the Peddapuram Municipality or Government of Andhra Pradesh, 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 Contractor under or pursuant to this Concession;

**“Conditions Precedent”** shall have the meaning set forth in Clause 5.1;

**“Damages”** shall have the meaning set forth in Sub-clause (t) of Clause 1.2;

**“Dispute”** shall have the meaning set forth in Clause 18.1.1;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 18;

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

**“Escrow Agreement”** shall have the meaning set forth in Clause 13.1.2; **“Escrow Bank”** shall have the meaning set forth in Clause 13.1.1; **“Escrow Default”** shall have the meaning set forth in Schedule-E;

**“Financial Commitment”** means the legally binding undertaking of the Contractor to mobilize the financial requirements of the project, for ensuring the completion of the project;

**“Financial Year”** shall mean the year commencing from the 1st April of any calendar year and ending on 31st March of the next calendar year.

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning set forth in as per Article 12;

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

**“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced Contractor engaged in the same type of undertaking as envisaged under this Agreement

and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**“Government Instrumentality”** means any department, division or sub-division of the Government of Andhra Pradesh or the Government of India and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of Andhra Pradesh or the Government of India, as the case may be, and having jurisdiction over all or any part of Peddapuram or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

**“Gross Revenue”** of the Project for any year shall mean the total amount of revenue derived by any Party from the operation of project components, including the total amount of revenue derived by the Contractor within the provisions of this Agreement; as certified by the Statutory Auditor, including but not limited to proceeds from sale of food and beverages, proceeds from advertisements, proceeds from organization of events and parties, proceeds from lease / rent from the component(s) establishment, proceeds from monetization of land as approved in the Up gradation Plan by GUDA and proceeds from any other service or facility provided by the Contractor to the users of the said Project, which are availed / realized by the Contractor from an outside party/ies at a consideration by way of User Fee (if applicable) but shall exclude and be arrived at after deducting the following:-

- All statutory applicable taxes such as GST, Entertainment tax, and the like by whatever name called now or in future which the Contractor has agreed to pay or is bound to pay;
- Discounts provided to users of the Project Facility in the course of its business;
- Interests earned on monies placed on fixed deposits in the name of Project or otherwise;
- Charges, if any, or any other amounts collected for and on behalf of the employees and paid / payable to them; as also recoveries made from the employees towards cost of meals provided to them.

**“KPI(s)”** means the minimum parameters and standards (Performance standards) to be achieved by the Contractor during the contract period in entirety as given in Schedule C;

**“Lenders”** shall mean the banks, financial institutions, Credit agencies that extend or agree to extend a credit facility to the Contractor in relation to the Project;

**“License”** shall have the meaning set forth in Clause 10.1.2;

**“O&M Contract Execution Date”** shall have the meaning set forth in Clause 11.3 and the effective date on which the GUDA and the Contractor meets the CPs (whichever is later) as per Article 5 of this Agreement.

**“Operation Period”** shall mean the period commencing from O&M Contract Execution Date till the end of the Agreement Period or till termination, in case of premature termination;

**“Operator”** shall mean the person / entity who wish to setup / run a component / project facility for the purpose of providing the needs / entertainment / information to the users by paying the lease rental to the contractor in return as determined by the contractor subject to the approval of GUDA.

**“Contractor’s Equipment”** means all machinery, apparatus and other things required for the operationalization, maintenance and management of the Project and the remedying of any defects;

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

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

**“Project”** shall mean Operate, Maintain, Market, Manage and Transfer the Project Facility, in accordance with the provisions of this Agreement till the end of the Agreement Period.

**“Project Facility”** shall mean the components as detailed out in Schedule-A, and including all the amenities and facilities, any other civil structure / building including the movement areas, all external and internal services, drainage facilities, sign boards, HVAC works, electrical works for lighting of and telephone and communication equipment etc. that is constructed by the GUDA and has been described in Schedule A and in respect of which rights shall be granted by the GUDA to the Contractor as per the terms and conditions set forth in this Agreement. Also if the Contractor constructs any additional building or structure during the currency of the Agreement Period subject to the due written approval from GUDA, the same shall be considered a part of the Project Facility.

**“Project Monitoring Board” or “PMB”** shall have the meaning set forth in Clause 11.5

**“Right of Way”** means the right to enter into the Project premises and operate & maintain the Project in accordance with the provisions of this Agreement;

**“Rs.” or “Rupees”** refers to the lawful currency of the Republic of India;

**“SBI Base Rate”** shall mean the base rate as fixed by State Bank of India on 1st April of the respective financial year in which such rate is considered for calculation purposes.

**“Standards of Reasonable and Prudent Contractor”** means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions including the conditions as contemplated by the Bid Documents.

**"Statutory Auditors"** means a reputable firm of chartered accountants acting as the statutory auditors of the Contractor under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 12.2;

**“Taxation” or “Tax”** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating to it;

**“Third Party Agreements”** means all Agreements entered into between the Contractor and third Persons,

including, but not limited to other Agreements with Contractor and vendors of any goods or services to the Contractor.

**“Termination”** means the expiry of the Agreement Period or termination of this Agreement;

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

## **1.2 Interpretation**

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

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re- enacted;
- (c) references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns subject to the provisions of this Agreement;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) references to “Operation & Maintenance (O&M)” include, unless the context otherwise requires, operate & maintain the project from “O&M Contract Execution Date” as per the scope of work as defined under Article 2, and shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (j) references to any date, period or Milestone shall mean and include such date, period or Milestone as may be extended pursuant to this Agreement;
- (k) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (o) references to the “winding-up”, “merger”, amalgamation”, “takeover”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
- (p) any reference, at any time, to any Agreement, deed, instrument, license or document of any description shall be construed as reference to that Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the GUDA hereunder or pursuant hereto in any manner whatsoever;
- (q) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (r) 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;
- (s) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (t) 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**”).
- (u) any reference to Build shall mean Construct and vice-versa unless the context otherwise requires

1.2.2. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Contractor to the GUDA and/or the agency or person appointed by the GUDA shall be provided free of cost and in two copies, and if the GUDA and/or the person appointed by the GUDA is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

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

### **1.3. Measurements and Arithmetic Conventions**

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

### **1.4. Priority of Agreements and Errors/Discrepancies**

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

- (a) this Agreement;
- (b) Addendum / Corrigendum if any to the RFP Document
- (c) RFP Document
- (d) all other agreements and documents forming part hereof;

i.e., the agreement at (a) above shall prevail over the agreements and documents at (b), (c) and (d) above and (b) shall prevail over all documents in (c) and (d) above.

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

## **2. Scope of the Project**

### **2.1. Scope of the Project**

- 2.1.1. The Contractor shall operate, maintain, market and manage the Project. The Project shall be handed over to the GUDA at the end of the Agreement Period or upon the premature termination of this Agreement for any reason.
- 2.1.2. While executing the Project, the Contractor shall adhere to KPIs set forth in Schedule C of this agreement, statutory requirements, and any other norms as applicable from time to time.
- 2.1.3. The Contractor shall operate, maintain, market, manage and transfer the Project throughout the Agreement Period in accordance with the applicable regulations of concerned authorities, as the case may be and the provisions of this Agreement and the Schedules hereof.
- 2.1.4. The Contractor shall make Project Facility operational by operating them or by entering into Third Party Agreements with private entities for operations as per the Clause 3.4.
- 2.1.5. The Contractor shall perform and fulfil all other obligations of the Contractor as mentioned in the ToR of the RFP 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 Contractor under this Agreement.
- 2.1.6. The Contractor shall be responsible for all the clearances as may be required for the operations of the project.

### **3. Concession**

#### **3.1. Grant of Concession**

- 3.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, the GUDA hereby grants to the Contractor and the Contractor hereby accepts the Concession for a period of Five (5) years commencing from the O&M Contract execution date i.e., Effective Date, including the exclusive right, authority and authorization during the subsistence of this Agreement, including extension thereof, to operate, market, maintain and manage the Project and enjoy its commercial benefits for the Agreement Period.
- 3.1.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Contractor, the exclusive right and authority to enjoy and undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:
- (a) To operate, maintain and regulate the use by Third Parties of the Project;
  - (b) To have access to the Project Facility for the purpose of and to the extent conferred by the provisions of this Agreement;
  - (c) To have access to plan, upgrade, renovate, market, maintain and operate the proposed Project with the associated facilities and services with approval of GUDA during the Agreement Period in accordance with the provisions of this Agreement. Any construction or development made by the Contractor on the specified area in respect of the Project shall be deemed to be the property of the GUDA and Authority on its part, as part of this Agreement, provides to the Contractor, an exclusive license to operate and maintain the Project during the currency of this Agreement as per the terms and conditions contained herein.
  - (d) Exclusive right and authority, during the Agreement Period, to carry out the specified activities in relation to the Project;
  - (e) To demand, levy, collect, enforce, retain and appropriate revenue such as User Fee, Lease Rental, Advertisement revenues and additional charges from users of the Project Facility as determined by Contractor and approved by GUDA for the entire contract period starting from the Effective Date. The revenue so collected from the Project shall be routed through the Escrow Account;
  - (f) To manage and operate all or any part of the Project without any limitation or restriction other than those expressly set out in this Agreement;
  - (g) To fulfil its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Contractor of its obligations as set out in this Agreement; and

- (h) To exercise such other rights as GUDA may determine as being necessary or desirable for the purposes incidental and necessary for upgrading, managing, operating, marketing and maintaining the Project.
- 3.1.3. The Contractor shall not be entitled to allow the use of the Project Facility/ies by any other person or for any purpose other than to operate and maintain the Project Facility as specified in Clause 11.4.
- 3.1.4. Notwithstanding anything to the contrary contained herein, revenue accruing from the Project shall be routed through Escrow account. Addition / Installation of any new components / proposed components / facility(ies) in the Project shall be done only after obtaining prior written approval of the GUDA.
- 3.1.5. Contractor has to take necessary approvals / clearances from the Competent Authority for activities to be undertaken in the Project and GUDA is in no way liable for the same. Responsibility of taking all necessary approvals of any construction, demolition and reconstruction lies with the Contractor or the operator. Nevertheless GUDA without any binding obligation shall provide any assistance upon written request from the Contractor.
- 3.1.6. Nothing contained herein, including the act of granting permission to operate the Project at the designated location shall vest or create any proprietary interest in the Project, its facilities or any part thereof including any permanent fixtures, fittings, etc., installed in the structure of the Project Facility in favor of the Contractor or any other person claiming through or under the Contractor. The Contractor shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Project, its Facility(ies) in any manner. The Contractor acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.
- 3.1.7. It is hereby made clear that in the event of Termination, the Agreement Period shall mean and be limited to the period commencing from the Effective Date and ending with the Termination.

### **3.2. Sole Purpose of the Contractor**

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

### **3.3. Actions in Support of the Contractor**

- 3.3.1. GUDA shall recognize and undertake not to, in any manner, violate or cause breach of the terms and conditions of this Agreement and the Schedules hereof.
- 3.3.2. GUDA undertakes not to terminate or repudiate this Agreement prior to the expiry of the Agreement Period otherwise than in accordance with the provisions of this Agreement.
- 3.3.3. GUDA shall provide assistance and recommendations to the Competent Authorities, including GoI,

in support of the Contractor's applications for Clearances / permissions that may be needed from time to time for the implementation of the Project; provided that the Contractor has made the requisite applications and is in compliance with the necessary conditions for the grant of such Clearances.

### **3.4. Licensing the Use of the Project Facility or any Part Thereof**

- 3.4.1. The Contractor shall have the right to sub-license existing components in the Project or part thereof, provided however, that it shall be obligatory upon the Contractor to provide copies of all such sub-license deeds entered into from time to time with Third Parties to the GUDA, with incorporated clauses, in all such sub-license deeds with such respective Third Parties, that (i) the period of the sub-license shall be for 11 (eleven) months or lesser and pursuant to its expiry, can be renewed, at the discretion of Contractor; and (ii) in case of Termination of this Agreement (by efflux of time or pre-mature), all the sub-license(s) shall be terminated and the Facility shall be transferred back to the GUDA.
- 3.4.2. In case of violation of any of the provisions of this Agreement, all licenses provided to the Third Party shall be cancelled with immediate effect and the Third Party will be barred from entering into any future Third Party Agreements with the Contractor.
- 3.4.3. The Contractor shall ensure to get the format of sub-license deed approved by the GUDA and also, submit the signed sub-license deeds to the GUDA for information. The Contractor may execute sub-license deeds effective from the Effective Date. The sub-licensee/s shall pay the license fees under the sub-license deeds directly to the Contractor.

## 4. Consideration of the Contract

### 4.1. Annual Management Fee

4.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, rules and regulations and the Applicable Permits, the Contractor shall pay to GUDA an Annual Management Fee (the “**Annual Management Fee**”). The Annual Management Fee shall be Percentage incremental of the floor price for Slab-I & Slab II as per the public quote for the first year in accordance with the terms and conditions of clause 4.9 of the RFP.

4.1.2. The Percentage (incremental) as quoted by the Co

4.1.3. Annual Management Fee shall become payable from the date of signing of Agreement till the end of the Agreement Period. Contractor shall make quarterly payments of Annual Management Fee to Authority at the beginning of every quarter, not later than 10 days after the commencement of the quarter. All taxes, levies and charges as applicable and payable by the GUDA to GoAP or GoI with respect to the collection of the Annual Management Fee shall have to be paid by the Contractor along with and in addition to the payment of Annual Management Fee. For avoidance of doubt, it is clarified that GUDA shall be entitled to receive Annual Management Fee as well as all applicable taxes from Contractor, whether payable by GUDA or Contractor.

4.1.4. For the purpose of calculation of Annual Concession Management Fee, the following calculation will be made:

S.No	Year	Slab & Floor Price	Fee Terms
1	1-2	Slab – I: Floor Price of – INR One Lakh per Year	<b>Year 1:</b> Percentage incremental of the floor price for Slab-I as per the public quote for the first year. <b>Year 2:</b> Same as Year 1
2	3-5	Slab – II: Floor Price of – INR Two Lakh per Year	<b>Year 3:</b> Percentage incremental of the floor price for Slab-II as per the public quote for the first year. <b>Year 4:</b> Same as Year 3 <b>Year 5:</b> Same as Year 3

### Illustration:

Suppose the bidder quote–**10%**for the first year. Then the calculation shall be as follows: **10%-assumption.**

- Year1:INR1L+10%(1L)=INR 1.10L
- Year2:INR1.10L
- Year3:INR2L+10%(2L)=INR 2.20L
- Year4:INR2.20L
- Year5:INR2.20L

## **4.2. Deleted**

## **4.3. Verification of Realizable Fee**

- 4.3.1. GUDA may, in order to satisfy itself that the Contractor is reporting its Gross Revenue honestly and faithfully, depute its representatives to the offices of the Contractor, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Gross Revenues.

## **4.4. Other Provisions**

- 4.4.1. Subject to and in accordance with the provisions of this Agreement, the Consideration hereby given by Contractor, the Contractor shall be entitled to operate the Project subject to:
- (a) performing and fulfilling all of the Contractor's obligations under and in accordance with this Agreement;
  - (b) bearing and paying all costs, expenses and utility charges in connection with or incidental to the performance of the obligations of the Contractor under this Agreement; and
  - (c) at the end of the Agreement Period, the entire up gradation and installation put up by the Contractor till that date in the Project Facility as part of the scope of work shall be handed over, without taking any consideration, to the GUDA.
- 4.4.2. In consideration of the mutual covenants and other good and valuable consideration expressed herein, the Contractor hereby agrees to pay the Consideration and agrees to operate the Project as per the scope of work given in Clause 2 adhering to KPI's as mentioned in schedule C and minimum specifications mentioned in the schedule G and to perform/discharge all of its obligations in accordance with the provisions hereof.
- 4.4.3. The Consideration to be paid by Contractor to the GUDA as per this Clause 4 shall be paid along with additional payment of all taxes, levies and charges that would be required to be paid by GUDA for the project.

## **5. Conditions Precedent to the Agreement**

### **5.1. Conditions Precedent**

5.1.1. The respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 5.1 (the “**Conditions Precedent**”).

### **5.2. Conditions Precedent of GUDA**

5.2.1. The Contractor may, upon signing of the Agreement, by notice require the GUDA to satisfy the Conditions Precedent set forth in this Clause 5.2 within a period of 30 (thirty) days from the Agreement Date, and the obligations of the GUDA hereunder shall be deemed to have been performed when the GUDA shall have provided to for the Contractor the Right of Way to the Project Facility, as demarcated under Schedule A, in accordance with the provisions of Clause 10.1;

### **5.3. Conditions Precedent of Contractor**

5.3.1. The Conditions Precedent required to be satisfied by the Contractor prior to the Effective Date shall be deemed to have been fulfilled when the Contractor shall have:

- (a) executed and procured execution of the Escrow Agreement within Sixty (60) days from the date of execution of this O&M Contract;
- (b) Made applications at its cost and procured all necessary / mandatory clearances, permits, etc., which are required for commencing the construction and execution of the Project, so that all such conditional and/or unconditional clearances, permits, etc., are on full force and effect, throughout the Agreement Period;
- (c) delivered to the GUDA a legal opinion from the legal counsel of the Contractor with respect to the authority of the Contractor to enter into this Agreement and the enforceability of the provisions thereof.

### **5.4. Obligations to satisfy Condition Precedents**

5.4.1. Upon satisfaction of the Conditions Precedent by each Party, the other Party shall forthwith issue a Certificate of Compliance with Conditions Precedent (the “**Certificate of Compliance**”).

5.4.2. After the issue of Certificate of Compliance by both Parties, the GUDA shall issue the Notice to Commence to the Contractor and the obligations of the Parties under this Agreement shall commence from Effective Date.

### **5.5. Non-Fulfillment of the Conditions Precedent**

5.5.1. In the event of the Agreement not coming into effect on account of the GUDA not fulfilling the Conditions Precedent then the Earnest Money Deposit, the Performance Security shall be returned to the Contractor.

5.5.2. In the event of the Agreement not coming into effect on account of the Contractor not fulfilling the Conditions Precedent then the Earnest Money Deposit, the Performance Security shall be

terminated by GUDA.

- 5.5.3. Notwithstanding anything contained in this clause, the Parties may mutually decide to extend the time period for the fulfilment of the Conditions Precedent.

## **6. Obligations of the Contractor**

### **6.1. Obligations of the Contractor**

- 6.1.1. Subject to and on the terms and conditions of this Agreement, the Contractor shall at its cost and expense procure finance for and undertake the Project scope of work as mentioned in Article 2 and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2. The Contractor shall comply with all Applicable Laws in the performance of its obligations under this Agreement.
- 6.1.3. Without prejudice to Clauses 6.1.1 and 6.1.2 above, the Contractor shall discharge its obligations as per the Development Control Rules, and the principles of good industry practice and as a reasonable and prudent person, statutory requirements, laws of the land and any other norms, which are applicable from time to time.
- 6.1.4. The Contractor shall get prior approval of the GUDA in case of there is any change in the facilities defined under the Project during the Agreement Period.
- 6.1.5. The Contractor shall get approval from the GUDA prior to the finalization of the components. Unless the same negatively affect public sensitivities, the GUDA shall not unreasonably withhold approval of the inclusion of such component(s) proposed by the Contractor.
- 6.1.6. Without prejudice to Clauses 6.1.1 and 6.1.2 above the Contractor shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of, its obligations elsewhere set out in this Agreement, the following:
- (a) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be required for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into development and operations of the Project;
  - (c) not to damage any other infrastructure or any other utility developed by GUDA or any other utilities developed and maintained by any other authority or person and in case of any such damage to undertake the repair and also to pay for any losses that is incurred by GUDA or any authority or any other person, as the case may be.
  - (d) not make any changes in the structure, facade of the Project while undertaking renovation and

up gradation Works.

- (e) ensure and procure that the Contractor shall comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
- (f) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) not to create any rights or third party rights on the Site and also to ensure that GUDA is not adversely affected in any way;
- (h) shall make payment towards the GUDA as per provisions of this Agreement;
- (i) provide all assistance to the PMB as it may require for the performance of its duties and services;
- (j) ensure that no goods are stored that are not permitted by law including those of hazardous, explosive, flammable or combustible in nature that may cause risk by fire, explosion or goods/ material which on account of their weight or nature may cause damage to the premises. The Contractor shall be liable or responsible for destruction or damage to the premises;
- (k) Any payment for the usage of utilities like electricity, water etc., for the purpose of O&M of project shall have to be borne by the Contractor and will not claim any reimbursement from the GUDA;
- (l) ensure only commercial gas cylinders are used for the operations at the Project Facility;
- (m) Ensure that no ambush marketing of any sort takes place in the Project Facility;
- (n) procure at its own costs, expenses and risk all services necessary for the up gradation and operations of the Project including without limitation electricity, water, materials and labor;
- (o) ensure that all the furniture, fixtures, equipment etc., to be made part of the Project Facility shall be of highest standards and acceptable to the GUDA;
- (p) ensure that all the furniture, if provided by the GUDA, shall be maintained in a proper manner and after every year, if any furniture is found in depleted condition then the same shall be replaced by the Contractor at his own cost. PMB at any time, even before completion of a year, may instruct the Contractor to replace / repair the furniture or any other moveable or immoveable assets;
- (q) shall bear the cost / expenditure to be incurred on account of O&M of the Project during the entire Agreement Period;
- (r) shall have the right to locate electronic hoardings and advertisement boards, as per the applicable laws after prior approval from GUDA, in the Project Facility and generate maximum revenue from it; The Contractor will have to follow the color scheme and design for various hoardings/ display boards as approved by GUDA.

- (s) provide a security and watch and ward service at the Facility to maintain the safety and security of the life and property and make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies;
- (t) be responsible for all liabilities arising out of operation, maintenance & management of the Project. The Contractor shall plan, organize and execute the Works so that there is least disruption to the movement on adjoining roads and minimal inconvenience to the neighboring facilities. The GUDA shall assist the Contractor in all respects with reference to such works, but the assistance or denial thereof shall not release the Contractor from its obligations;
- (u) to ensure that no structural damages/ changes are caused to the existing Project building(s) and other permanent structures at the Project Facility as a result of Contractor's activities, etc.; However, the Contractor shall be entitled to carry out necessary repairs and / or renovations to the existing structure in the licensed premises with prior written approval of the GUDA, at its own costs and expenditures without having any claim against the GUDA
- (v) shall have the option to advertise the Project in newspapers or through any other mode of communication at own cost;
- (w) shall prepare and evolve, not later than 10 (ten) days prior to the Scheduled Operations Date, a draft Operation and Maintenance Manual (“**O&M Manual**”) providing the detailed plan for regular and preventive maintenance of the Project. The Contractor shall at its cost, provide within 10 (ten) days of its finalization, submit the draft of the O&M Manual to the GUDA for its review. The O&M Manual will become final only after it has received the final approval of the GUDA. Within a period of 15 (fifteen) days from the date of receipt of the O&M Manual, the GUDA shall revert to the Contractor with its comments and suggestions (if any) on the O&M Manual, which shall be implemented and the O&M Manual shall be re- submitted for approval of the GUDA. The Operation and Maintenance Manual shall include all the activities required for regular and periodic maintenance of the Facility during the Operations Period, so that Project Facility is maintained at all times in a manner that it complies with the provisions of the Agreement in sound, durable and functional condition. The Operation and Maintenance Manual of the Facility shall also include service level specifications, performance standards for maintenance, service level indicators, their response/ repair time, frequency of monitoring and the key performance indicators; and
- (x) hand over the Project Facilities on the date of termination of Concession to the GUDA, in accordance with the provisions thereof.

## **6.2. Obligations relating to Other Agreements**

- 6.2.1. It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Contractor from its obligations or liability hereunder.
- 6.2.2. The Contractor may undertake operation of Project by itself or through one or more sub-contractors / operators possessing requisite technical, financial and managerial

expertise/capability; but in either case, the Contractor shall remain solely responsible to meet the scope of work as mentioned under Clause 2.1.

- 6.2.3. The Contractor shall submit to GUDA the drafts of all Third Party Agreements or any amendments or replacements thereto for its review and comments, and GUDA shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Contractor within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Third Party Agreement or amendment thereto, the Contractor shall submit to GUDA a true copy thereof, duly attested by a Director of the Contractor, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of GUDA to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by GUDA. No review and/ or observation of GUDA and/ or its failure to review and/ or convey its observations on any document shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall GUDA be liable for the same in any manner whatsoever.

### **6.3. Obligations relating to Change in Ownership**

- 6.3.1. The Contractor shall not undertake or permit any Change in Ownership, except with the prior written approval of the GUDA as per the provisions of this Clause 6.

### **6.4. Obligations relating to Accounts**

- 6.4.1. In order to collect payment / User Fee from the users, the Contractor shall make sure that all the systems installed in the Project Facility, including but not limited to the computer systems relating to accounts, billings, etc., are functioning in a proper manner and are transmitting true and correct data of revenue and expenditure, on real time basis;
- 6.4.2. deleted
- 6.4.3. All proceeds, collections arising out of any sales and / or services such as sale of over-the-counter items, including but not limited to food and beverages, to the users of components, shall be deposited in the Escrow account as mentioned in Clause 13.2;
- 6.4.4. The Contractor shall install, operate & maintain and link up its computer system relating to accounts (i.e. billings, costs, expenses, realizations, revenue, expenditure, etc.) wherever is applicable with round-the- clock connections to the computer network(s) of GUDA / its related entities for the purpose of efficient and transparent regulation of information such as ascertaining true and correct accounts statements relating to the Project Facility etc.;

### **6.5. Obligations relating to Environmental Measures**

- 6.5.1. The Contractor shall take all reasonable steps to protect the environment (both on and off the Project Facility) and to limit damage and nuisance to people and property.
- 6.5.2. The Contractor shall be liable for and shall indemnify, protect, defend and hold harmless the GUDA, the GUDA'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 Contractor to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable;

## **6.6. Obligations relating to Clearance of Facility**

- 6.6.1. During the execution of the Works, the Contractor shall keep the Project Facility free from all unnecessary obstruction, and shall store Contractor's / Sub-Contractor's / Operator's Equipment or surplus materials in a manner that causes least inconvenience or dispose of such Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Facility any wreckage or rubbish no longer required.
- 6.6.2. Within 15 (fifteen) days of the issue of the Renovation / Erection Completion Certificate, the Contractor shall clear away and remove, from the Project Facility, all surplus materials, rubbish and other debris and keep the Project Facility and surroundings in a clean and safe condition, to the satisfaction of GUDA.
- 6.6.3. Within 30 (thirty) days of the expiry of the Agreement Period, the Contractor shall clear away and remove, from the Project Facility the Contractor's Equipment, surplus material, wreckage, rubbish, etc. The Contractor shall leave such areas in a clean and safe condition to the satisfaction of GUDA. Provided that if the Contractor fails to remove, at the end of the 30 day period, any remaining Contractor's Equipment, surplus material, wreckage, rubbish, etc., the GUDA may sell or otherwise dispose of such items. The GUDA shall be entitled to retain, from the proceeds of such a sale, or from any other amounts due to the Contractor, a sum sufficient to meet the costs incurred in connection with such sale or disposal. If the amounts due from the Contractor are insufficient to meet the GUDA's costs, the outstanding balance shall be recoverable from the Contractor by the GUDA.

## **6.7. Safety and Security**

- 6.7.1. The Contractor shall comply with all safety regulations applicable, access arrangements and operations on the Facility. The Contractor shall be responsible in the operation of machinery and any other work, to take all precautions to ensure safety of the staff, laborers and public.
- 6.7.2. The Contractor shall be responsible at its cost, for procurement, transport, receiving, unloading and safekeeping of all Materials, Contractor's Equipment and other things required for the Works. Unless otherwise stated in this Agreement:
  - i. The Contractor shall be responsible for keeping unauthorized persons off the Facility and preventing encroachment on the Facility during Agreement Period.
  - ii. Authorized Persons shall be limited to the employees of the Contractor and persons authorized by the GUDA.
- 6.7.3. In the event of an accident the Contractor shall, by most expeditious means, inform the concerned Civil and Police Authorities, and also the GUDA. The Contractor's responsibilities with regard to the Project shall in no way be diminished by informing the above officials and it shall take expeditious action for

the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Contractor shall preserve the Project Facility of such accident intact, until completion of all legal formalities. The Contractor shall then arrange for the expeditious removal of the wreckage or debris, and for cleaning the Project Facility. If any portion of the Project Facility suffers any damage, the Contractor shall, with the consent of GUDA, arrange for the repair and rectification thereof.

- 6.7.4. The Contractor shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices).
- 6.7.5. Any communication to the news media made by the Contractor shall provide only enough information to satisfy public concern, and the Contractor shall make no admissions nor accept any liability in such communications.
- 6.7.6. The Contractor shall indemnify, defend and hold harmless the GUDA, during the term of this Agreement, from and against all liabilities, damages, actions, proceedings, and claims of any nature whatsoever, as suffered by the Contractor due to such accidents.

## **6.8. Insurance Requirement**

The Contractor shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- a) builder's all risk insurance;
- b) loss, damage or destruction of the Project Facilities at replacement value;
- c) comprehensive third party liability insurance including injury or death to the persons who may enter the Project Site ;
- d) workmen's compensation insurance; and
- e) any other insurance that may be necessary to protect the Contractor, its employees and its assets and the GUDA, its employees and agents engaged in or connected to the Project and the Project Site including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d).

## **7. Obligations of the GUDA**

### **7.1. Obligations of the GUDA**

- 7.1.1. The GUDA shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 7.1.2. The GUDA agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide all reasonable support and assistance to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
  - (b) upon written request from the Contractor, assist the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water at rates and on terms no less favorable to the Contractor than those generally available to commercial customers receiving substantially equivalent services;
  - (c) extend the assistance of its good offices on a reasonable effort basis to assist the Contractor in the provision of electricity and water;
  - (d) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
  - (e) support, cooperate with and facilitate the Contractor in the implementation of the Project.

## **8. Representations and Warranties**

### **8.1 Representations and Warranties of the Contractor**

The Contractor represents and warrants to the GUDA that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association / Rules or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (k) the existing Lead Consortium Members hold not less than 51% (fifty – one percent) of its issued and paid up Equity and together with the existing consortium member hold not less than 100% as on the date of this Agreement and the respective holding of each Consortium Member conforms to the representation made by the Consortium and accepted by the GUDA as part of the Bid and that no member of the Consortium shall hold less than 26% (twenty six per cent) of such as per the provisions of Article 6.3;
- (l) no order has been made and no resolution has been passed for the winding up of the Contractor or for a provisional liquidator to be appointed in respect of the Contractor and no petition has been presented and no meeting has been convened for the purpose of winding up the Contractor. No receiver has been appointed in respect of the Contractor or all or any of its assets. The Contractor is not insolvent or unable to pay its debts as they fall due.
- (m) no representation or warranty by it contained herein or in any other document furnished by it to the GUDA or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (n) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the GUDA in connection therewith.; and
- (o) it shall not novate the Agreement and any rights and obligation arising therefrom to any party without any written approval from the GUDA

## **82 Representations and Warranties of the GUDA**

The GUDA represents and warrants to the Contractor that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary action under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Contractor's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) all information provided by it in the Tender Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;

- (h) it has good and valid right for up gradation and operation of the Project, and has power and authority to give license of the rights to the Contractor; and
- (i) upon the Contractor completing the Project as per this Agreement, and performing the covenants herein, it shall not at any time during the period of Concession, interfere with peaceful enjoyment of the Project Facility by the Contractor, except in accordance with the provisions of this Agreement.

### **83. Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

## **9. Performance Security**

### **9.1. Performance Security**

The Contractor shall submit to the GUDA a Performance Security of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only), which shall be equivalent to Annual Concession Fee (as quoted by the Successful Bidder in its Financial Proposal dated \_\_\_\_\_), in the form of a Bank Guarantee in favor of Godavari Urban Development Authority, payable at Kakinada; the Bank Guarantee shall be prepared and submitted as per the format given in Schedule B of this Agreement.

The Performance Security shall be maintained by the Contractor during the entire period up until the end of the Agreement Period. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne and paid by the Contractor.

### **9.2. Appropriation of Performance Security**

- 9.2.1. Upon occurrence of a Contractor Default during the subsistence of the Performance Security, the GUDA shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke and appropriate the relevant amounts from the Performance Security as Damages for such Contractor Default. Upon such invocation and appropriation from the Performance Security, the Contractor shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the GUDA shall be entitled to terminate this Agreement in accordance with Article 15.

### **9.3. Release of Performance Security**

100% (one hundred percent) of the Performance Security in the form of bank guarantee shall be released to the Contractor by 1 (one) month after end of Agreement Period or by 1 (one) month after date of Termination whichever is earlier. In any case, GUDA shall be entitled to recover any amounts due or receivable from the Contractor under this Agreement, before the Performance Security be duly discharged and released to the Contractor.

## **10. Access to the Project**

### **10.1. Access**

- 10.1.1. GUDA hereby grants to the Contractor access to the Project for carrying out any investigations and tests that the Contractor may deem necessary during the Agreement Period, it being expressly agreed and understood that the GUDA shall have no liability whatsoever in respect of investigations and tests carried out or work undertaken by the Contractor on or about the Project Facility pursuant hereto in the event of Termination or otherwise.
- 10.1.2. In consideration of the Annual Management Fee, this Agreement and the covenants and warranties on the part of the Contractor herein contained, the GUDA, in accordance with the terms and conditions set forth herein, hereby grants to the Contractor, commencing from the Effective Date, leave and license rights in respect of all the existing structure (along with any buildings, constructions or immovable assets, if any, thereon) comprising the premises of Project Facility which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "as is where is" basis, to operate and maintain the said Licensed Premises (the "**License**"), together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Agreement Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.1.3. It is expressly agreed that the rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by GUDA to terminate the rights, upon the Termination of this Agreement for any reason whatsoever.
- 10.1.4. It is expressly agreed that mining rights do not form part of the rights granted to the Contractor under this Agreement and the Contractor hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals on or under the area where cable have been laid. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

### **10.2. Others**

#### **10.2.1. Shared Access**

The Contractor shall enjoy access to the Project Facility throughout the Agreement Period for carrying out its obligations under this Agreement. However, such access shall not be exclusive and shall be shared with the GUDA, which is in lawful possession of the Licensed Premises. The Contractor shall be the sole authority for regulating access to the Project Facility. However, access to the Project Facility shall be available, at all times during the Agreement Period, to GUDA or a person appointed by the GUDA for the purpose of inspection, viewing and exercising the rights of the GUDA as set forth in this Agreement.

#### **10.2.2. Special/temporary right of way**

The Contractor shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Project Facility. The Contractor shall obtain at its cost such facilities on or outside the Project Facility as may be required by it for the purposes of Renovation and the performance of its obligations under this Agreement.

### **10.2.3. Display of GUDA logo**

Notwithstanding any statement to the contrary contained herein, GUDA reserves the right to prominently display GUDA logo in the Project area as deemed appropriate by the Authority. The cost of installation, operation and maintenance of such logo/sign shall be borne by the Contractor for the entire Agreement Period.

### **10.2.4. Parking**

Users of Project Facility(ies) shall be allowed to use the parking space available in project. The parking shall be on a chargeable basis and will be collected and enjoyed by Contractor or any other operator as appointed for the task by Contractor. The price for the parking of vehicles shall be determined by the contractor subject to the approval of GUDA.

## **11. Project Implementation**

### **11.1. Obligations prior to the commencement of any work**

Prior to commencement of any work, the Contractor shall:

- (a) Submit the O&M Plan including details of renovation work, marketing plan, etc., (the “**Up gradation Plan**”) to the GUDA for approval within 30 (thirty) days of Effective Date. Any delay in submission of Up gradation Plan, beyond the above mentioned period, shall entail a penalty of 0.1% of Performance Security per day. The Up gradation Plan shall include the details of activities and components proposed in the Project. If GUDA objects to the activities / components proposed in the Project area, Contractor shall be liable to change the same as proposed and suggest different activity, which shall again be subject to approval of GUDA. The Up gradation Plan shall also include advertising plan in the Project Facility by the Contractor, in terms of number of such points of advertisement, medium of advertisement (such as boards, posters etc.), specifications, dimensions etc. GUDA shall have the right to seek amendments in the advertising plan which shall have to be accepted by Contractor.
- (b) appoint its representative duly authorized to deal with the GUDA in respect of all matters under or arising out of or relating to this Agreement;
- (c) Undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of any work under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) Procure all such approvals/consents/permits as necessary as per applicable laws, including structural design approval from GUDA

**11.2 Deleted**

### **11.3 O&M Contract Execution date**

11.3.1. The date on which this agreement is entered between the Selected Agency and GUDA for the execution of the subject project for the performance of the given scope by the contractor and fulfillment of Conditions Precedent by both parties (Whichever is later) in accordance with Article 5 shall be deemed as the O&M Contract Execution Date (the “**O&M Contract Execution Date**”). The Contractor shall start operations of the Project from such Date.

### **11.4 Project Operation**

11.4.1. Contractor shall operate and maintain the Project Facility during the Agreement Period and adhere to Operation and Maintenance Requirements as mentioned in Schedule G. If GUDA / PMB finds Contractor failing to meet any Operation and Maintenance Requirements as stated in Schedule G, then GUDA / PMB shall give a notice to Contractor stating the fault (the “**Fault**”) and grant 5 (five) days to rectify the same. If GUDA/ PMB finds the Fault has not been rectified within the time period specified, then GUDA shall have the right to rectify the Fault and recover the expenses for the same from Contractor. In such case, GUDA shall have the right to en-cash Performance Security to the extent of expenses incurred in rectification of the fault.

11.4.2. Contractor shall be required to apply for and obtain clearances as applicable for holding any event in the Project Facility, including but not limited to permissions from local bodies, police, traffic, fire etc.

11.4.3. Repair and maintenance of any kind in the Project Facility shall be the responsibility of Contractor. However, Contractor shall be required to take prior approval of GUDA before undertaking any major maintenance in the Project Facility, including but not limited to painting and whitewashing.

11.4.4. Contractor shall maintain the items mentioned under Schedule H in operational state. Any repair, maintenance and replacement of items will be the responsibility of Contractor. Contractor shall have to take prior approval of GUDA before making any replacements of items stated in Schedule A to this Agreement.

11.4.5. Contractor shall keep the premises clean and shall ensure proper disposal of any garbage generated in the Project.

11.4.6. deleted

11.4.7. Contractor shall not damage the existing structures of Project and Contractor shall have to take written approval from GUDA before carrying out temporary or permanent construction activity in the Project Facility. It shall be the responsibility of Contractor that the greenery of the project is not destroyed due to any activities carried out in Project area.

11.4.8. The Contractor recognizes and acknowledges the fact that the Project is intended to provide a public facility and the Contractor shall have no right to prevent, impede or obstruct any bona fide Users from using the Project Facility, save for regulating such usage under the terms of this Agreement. Under exceptional circumstances, if the Contractor apprehends any detriment to the

Facility, it shall seek instructions from the GUDA, whose decision in this regard shall be final.

11.4.9. The opening and closing hours of the Project and its Facility(ies) shall have to comply with the rules and regulations of Peddapuram Municipality. The Project Facility(ies) shall not be allowed to be open after all the operations in Project have been closed for the day.

11.4.10. Usage of sound system will be allowed after prior consent of GUDA. Usage of sound system would not be permitted after 10.00 pm any day and the applicable rules of the Peddapuram Municipality with regards to the permissible sound level shall be applicable.

11.4.11. The activities as mentioned in Schedule D shall be strictly prohibited in the Project Facility.

## **11.5. Project Monitoring Board**

### **11.5.1. Constitution**

11.5.1.1. GUDA shall ensure that a Project Maintenance Board, comprising of three members as nominated by GUDA and two persons nominated by the Contractor is established one month prior to Scheduled O&M Contract Execution Date. The Contractor shall be obligated to depute its authorized representative to such board by the stipulated date.

11.5.1.2. **Secretary**, GUDA shall be chairman of the PMB.

11.5.1.3. The PMB shall, to the extent possible, act by consensus, failing which it will act by majority vote. The PMB shall determine the procedure to be followed for its meetings and carrying out its functions.

### **11.5.1. Tenure**

11.5.1.1. The tenure of PMB shall commence from the date of constitution thereof and shall continue until the end of the Agreement Period/this Agreement by efflux of time or prior termination.

### **11.5.2. Roles and Responsibilities**

11.5.2.1. PMB will ensure smooth implementation of the Project by undertaking the following roles and responsibilities:

- i) Oversee and monitor the progress of the Project in accordance with the provisions of this Agreement and call for explanation in case of deviation, if any;
- ii) Shall prescribe additional standards as and when required and decided upon. In addition to this, the PMB shall ensure that the Contractor is adhering to the minimum standards prescribed in the Agreement and the related Schedules;
- iii) Review the curing of defects and defaults in the operation and maintenance of the Project/Project Facility;

- iv) Use best endeavors to assist in resolving, without being liable in any manner, operational issues and disputes between the Contractor and the users of the Project Facility;
- v) Review the safety and security of the operations and maintenance activities relating to the Project;
- vi) Take appropriate action in accordance with the provisions of this Agreement, in case of Faults, defects in operation, fraud investigated or grievances received against the Contractor;
- vii) Monitor the redressal of complaints and grievances of users of the Project Facility; and
- i) Appoint competent person / firm as Expert (the “**Expert**”), from time to time to investigate any defects in the Project Facility and to assist PMB in monitoring the operation and maintenance of the Project by the Contractor.

11.5.3. PMB shall meet at least once every quarter in a year or earlier as required.

11.5.4. Contractor shall extend full co-operation to PMB in performing its functions.

11.5.5. Any failure on the part of the PMB in respect of its functioning shall not (1) amount to any consent or approval of the activities of the Contractor; and (2) release or discharge the Contractor of its obligation to carry out the maintenance of the Project Facility.

11.5.6. If at any time during performance of the Agreement, the Contractor's employees are found to be guilty of misbehavior/misconduct with any number of the public visiting Premises or GUDA's authorized representative, or to be incompetent or negligent in performing his/their duties or if in the opinion of the GUDA, it is undesirable for such persons to be employed by the Contractor in the work at Premises, the Contractor, if so directed by GUDA or his authorized representative shall forthwith remove such persons(s) from the work of GUDA immediately.

## **11.6. Electricity and Water**

11.6.1. Existing arrangements of power supply at the Facility shall be continued to the Contractor. Contractor shall install a sub-meter(s) for monitoring electricity consumption in Project Facility.

11.6.2. Contractor shall be required to pay to the concerned departments, the cost for the units consumed in Project Facility(ies). The cost per unit of electricity shall be the applicable and prevalent rate per unit as prevailing and updated from time to time. Contractor shall ensure timely payment of electricity, water and other bills. In the event of default committed by the Contractor in making payment of any such taxes the GUDA will be entitled to impose a penal interest on the delayed payment as per Clause 21.3, besides right to terminate / revoke the Agreement.

11.6.3. Contractor shall be provided three phase electricity connection with \_\_\_\_\_ Ampere current. Contractor shall be allowed to use silent generators to meet any additional requirement of electricity in the Project beyond what is provided by GUDA.

11.6.4. Contractor is required to make own arrangements of water for Project wherever required and feel necessary.

11.6.5. Contractor shall have the option to procure additional water facility from the local municipality, further to the extent already been supplied. Contractor shall install a sub-meter for monitoring water consumption in Project Facility(ies). In the event of default committed by the Contractor in making payment of any such taxes the GUDA will be entitled to impose a penal interest on the delayed payment as per Clause 21.3., besides right to terminate / revoke the Agreement.

## **11.7. Quarterly Statement of Gross Revenue**

11.7.1. During the Operation Period, Contractor shall furnish to GUDA, within 7 (seven) days of completion of each quarter, a statement of Gross Revenue received substantially in the form set forth in Schedule F (the "**Quarterly Statement of Gross Revenue**").

## **11.8. Deleted**

## **12. Accounts and Audit**

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

12.1.2. The Contractor shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to GUDA its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

12.1.3. On or before the thirty-first day of May each Year, the Contractor shall provide to GUDA, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) Gross Revenue with itemwise break-up (b) such other information as GUDA may reasonably require.

### **12.2. Appointment of auditors**

12.2.1.1. The Contractor shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors. All fees and expenses of the Statutory Auditors shall be borne by the Contractor. The Contractor may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to GUDA.

12.2.1.2. Notwithstanding anything to the contrary contained in this Agreement, GUDA shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

### **12.3. Certification of claims by Statutory Auditors**

Any claim or document provided by the Contractor to GUDA in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Quarterly Gross Revenue Statements under Clause 11.7.

### **12.4. Dispute resolution**

In the event of there being any difference between the findings of the Additional Auditors or the Statutory Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by GUDA by recourse to the Dispute Resolution Procedure.

### **12.5. Books and Records**

The Contractor shall, at its cost:

- i. Maintain and submit on a monthly basis, the record of days of operation for each Booth, during that month;
- ii. Prepare and maintain, on generally accepted Indian accounting principles, proper, accurate and complete books and records and accounts of all transactions related to the Project;
- iii. Retain and store on the premises for the Agreement Period all records relating to the Project, which shall be the property of the GUDA;
- iv. Provide support to the GUDA to meet all the data requirements of all Competent Authority/ies.

## **13. Escrow Account**

### **13.1. Escrow Account**

13.1.1. The Contractor shall, prior to the Effective Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

13.1.2. The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Contractor, GUDA, the Escrow Bank and the Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule E.

### **13.2. Deposits into Escrow Account**

The Contractor shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from any source, including the Lenders and the GUDA;
- (b) all funds received by the Contractor from its share-holders, in any manner or form pertaining to the project;
- (c) all User Fee levied and collected by the Contractor;
- (d) all Gross Revenue generated from the Project Facility by Contractor;
- (e) all Gross Revenue generated by licensees of components from the Project Facility;
- (f) any other revenues from or in respect of the Project; and
- (g) all proceeds received pursuant to any insurance claims.

Provided that the Lenders may make direct disbursements to the EPC contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

### **13.3. Withdrawals during Agreement Period**

13.3.1. The Contractor shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Contractor;
- (b) all payments relating to O&M of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

- (c) O&M Expenses and other costs and expenses incurred by GUDA in accordance with the provisions of this Agreement, and certified by GUDA as due and payable to it;
- (d) Annual Management Fee due and payable to GUDA;
- (e) monthly proportionate provision of Debt Service due in an Accounting Year;
- (f) all payments and Damages certified by GUDA as due and payable to it by the Concessionaire;
- (g) any reserve requirements set forth in the Financing Agreements; and
- (h) balance, if any, in accordance with the instructions of the Contractor.

13.3.2. The Contractor shall not in any manner modify the order of payment specified in Clause 13.3.1, except with the prior written approval of GUDA.

#### **13.4. Withdrawals upon Termination**

13.4.1. Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Contractor;
- (b) outstanding Annual Management Fee;
- (c) all payments and Damages certified by GUDA as due and payable to it by the Contractor, including Revenue Share;
- (d) outstanding Debt Service;
- (e) incurred or accrued O&M Expenses;
- (f) any other payments required to be made under this Agreement; and
- (g) balance, if any, in accordance with the instructions of the Contractor:

Provided that no appropriations shall be made under Sub-clause (g) of this Clause 13.4 until a Vesting Certificate has been issued by GUDA under the provisions of Article 16.

13.4.2. The provisions of this Article 13 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 13.4.1 have been discharged.

## 14. Force Majeure

### 14.1. Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of events, as defined in Clause 14.2, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event

- (i) is beyond the reasonable control of the Affected Party;
- (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and
- (iii) has Material Adverse Effect on the Affected Party.

### 14.2. Force Majeure Events

A Force Majeure Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Facility);
- (b) strikes or boycotts (other than those involving the Contractor, contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting services to the Project Facility for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (c) any failure or delay of a contractor but only to the extent caused by another Force Majeure Event and which does not result in any offsetting compensation being payable to the Contractor by or on behalf of such contractor;
- (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the GUDA;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (g) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (h) compulsory acquisition in national interest or expropriation of any Project Facility or rights of the Contractor or of the contractors;
- (i) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Contractor or any of the contractors to perform their respective obligations under this Agreement and the Third Party Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit; or
- (j) any event or circumstances of a nature analogous to any of the foregoing;

### **143. Duty to Report Force Majeure Event**

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

- (a) the nature and extent of each Force Majeure Event with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim. The Affected Party shall not be entitled to any relief under the Agreement for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

### **144. Effect of Force Majeure Event**

Upon the occurrence of any Force Majeure Event the Agreement Period shall be extended by a period equal in length to the duration of the Force Majeure Event.

**145. Allocation of Costs Arising out of Force Majeure**

Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof. Neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

**146. Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 13, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

**147. Termination Payment for Force Majeure Event**

In case of Termination for Force Majeure Event, the provisions of Clause 15.3 and 15.4 shall be applicable. However, the Performance Security shall be returned to Contractor.

**148. 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 mentioned in Article 18; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

## 15. Termination

### 15.1. Termination for Contractor Default

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor 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 15 (fifteen) days, the Contractor shall be deemed to be in default of this Agreement (a “**Contractor Default**”), unless the default has occurred solely as a result of any breach of this Agreement by GUDA or due to Force Majeure event. The defaults referred to herein shall include:

- (a) the Performance Security has been partially or fully invoked and appropriated by the GUDA as per the Agreement and the Contractor fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) the Contractor does not make payment to the GUDA and remains in default for a period of more than 15 (fifteen) days from the due date of payment;
- (c) the Contractor does not complete the renovation before the Schedule Commercial Operations Date and continues to be in default for 30 (thirty) days;
- (d) the Contractor commits any particular/ similar Fault for four times, in the Project Facility, at any time during the currency of the Agreement Period;
- (e) the Contractor abandons or manifests intention to abandon the Project without prior written consent of the GUDA;
- (f) the Contractor has failed to make any payment towards damages to any user or any utility within the period specified in this Agreement;
- (g) the Contractor repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (h) Change in management control of the Contractor company/ society/ partnership which according to the GUDA may have Material Adverse Effect towards the completion of the Project;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within the Cure Period stated in Escrow Agreement;
- (j) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets at any time before the Scheduled Commercial Operations Date;
- (k) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the GUDA, a Material Adverse Effect;

- (l) a resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by Court;
- (m) the Contractor has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (n) the Contractor commits a material default in complying with any other provision of this Agreement.;
- (o) the Contractor novates and /or assigns the agreement to any third party without any prior approval from the GUDA;
- (p) the Agreement Period of 10 (ten) years has ended.

## **152. Procedure to issue Termination Notice**

Without prejudice to any other rights or remedies which the GUDA may have under this Agreement, upon occurrence of a Contractor Default, the GUDA shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the GUDA shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

## **153. Effect of Termination**

Upon Termination as per Clause 15.1, the Contractor hereby acknowledges that no Termination Payment shall be due or payable by the GUDA. Contractor acknowledges that within 10 (ten) days of termination, the Contractor shall vacate the Project Facility. Contractor acknowledges that once the agreement is terminated the Contractor shall cease to have access to the Project Facility. No liability with respect to the assets shall devolve on GUDA. The maximum liability of GUDA under this Clause shall be limited to the amount received as Annual Concession Fee by GUDA from Contractor in last six months before such Termination. No extra costs/ payments shall be claimed by the Contractor.

## **154. Other Rights and Obligations of the GUDA**

Upon Termination for any reason whatsoever, the GUDA shall:

- (a) be deemed to have cancelled the Contractor's access to the Project Facility and taken sole possession and control of the Project Facility and any renovation made in the Project Facility till the date of termination;
- (b) take possession and control of all materials, stores, implements and renovation on or about the Project;

- (c) be entitled to restrain the Contractor and any person claiming through or under the Contractor from entering upon the Project Facility or any part of the Project; and
- (d) Invoke the Performance Security as part Damages, except when the Termination is due to Force Majeure Event. In case termination is done by GUDA not because of the default of the Contractor, then in such condition the GUDA will pay for all the financial losses incurred by the Contractor and the quantum of the financial losses will be decided by the Arbitrator as per Clause 18.3.
- (e) GUDA shall have at all times right to reject any third party which has been proposed in relation to the novation of this agreement

## **16. Divestment of Rights and Interest**

### **16.1. Divestment Requirements**

Upon Termination, the Contractor shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of all the Project Assets and the Project Facilities, free and clear of all Encumbrances, except as provided under Clause 4.4.1 of this Agreement;
- (c) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights and interest of the Contractor in the Project Facilities absolutely unto the Authority or its nominee; and
- (d) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights and interest of the Contractor in the Project Facilities, free from all Encumbrances, absolutely unto the Authority or to its nominee.

### **16.2. Vesting Certificate**

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

### **16.3. Divestment costs etc.**

16.3.1. The Contractor shall bear and pay all costs incidental to divestment of all of the rights and interest of the

Contractor in the Project Facilities in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Contractor in connection with such divestment shall be borne by the Authority.

16.3.2. In the event of any dispute relating to matters covered by and under this Article 16, the Dispute Resolution Procedure shall apply.

16.3.3. In the event that any of the Divestment Requirements set forth in Clause 16.1 are not fulfilled by the Contractor within 15 (fifteen) days from the end of the Agreement Period, the Contractor shall be required to pay to the GUDA, a penalty equivalent to the multiple of the "Penal Interest Rate" applicable on the date of Termination for each day of delay in the fulfilment of the Divestment Requirements beyond the 15 (fifteen) days specified herein.

For the purpose of this Agreement, Penal Interest Rate shall mean the rate of interest that is two times the rate of interest on the 10-year Government of India Security as on the date of Termination.

## **17. Liability and Indemnity**

### **17.1. General indemnity**

The Contractor will indemnify, defend, save and hold harmless the GUDA and its officers, employees, agents and consultants against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Contractor of any of its obligations under this Agreement or any related Agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the GUDA indemnified persons.

### **17.2. Liability of GUDA**

The GUDA will indemnify, defend, save and hold harmless the Contractor against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of:

- (a) defect in title and/or the rights of the GUDA in the Project Facility given on Concession to the Contractor; and/or
- (b) breach by the GUDA of any of its obligations under this Agreement or any related Agreement, which materially and adversely affect the performance by the Contractor of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related Agreement and/or breach of its statutory duty on the part of the Contractor, its subsidiaries, affiliates, contractors, employees or agents and the same shall be the liability of the Contractor.

Provided that the liability of GUDA in any case or in any manner whatsoever, with respect to this Clause 17.2, shall be limited to the sum of Annual Concession Fee received by GUDA in six months before identification or occurrence of such event.

### **17.3. Indemnity by the Contractor**

Without limiting the generality of Clause 17.1, the Contractor shall fully indemnify, hold harmless and defend the GUDA from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Contractor's contractors, suppliers and representatives; or
- (c) Non-payment of amounts due as a result of materials or services furnished to the Contractor or any of its contractors which are payable by the Contractor or any of its contractors.
- (d) Breach by the Contractor of any of the obligations under this Agreement.

#### **17.4. No consequential claims**

Notwithstanding anything to the contrary contained in this Clause 16, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

#### **17.5. Survival on Termination**

The provisions of this Article 17 shall survive Termination.

### **18. Dispute Resolution**

#### **18.1. Dispute resolution**

18.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 18.2.

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

#### **18.2. Conciliation**

18.2.1. In the event of any Dispute between the Parties, either Party may call upon the Vice Chairman of the GUDA to mediate and assist the Parties in arriving at an amicable settlement thereof. If the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 18.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 18.3.

#### **18.3. Arbitration**

18.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 18.2, shall be decided

by reference to Arbitral Tribunal appointed in accordance with Clause 18.3.2. Arbitration shall be held in accordance with the provisions of Arbitration and Conciliation Act, 1996. The venue of arbitration shall be Kakinada, and the language of arbitration proceedings shall be English.

- 18.3.2. The Arbitral Tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator, and the third arbitrator shall be appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996.
- 18.3.3. The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 18 shall be final and binding on the Parties as from the date it is made, and the Contractor and the GUDA agree and undertake to carry out such Award without delay.
- 18.3.4. The Contractor and the GUDA agree that an Award may be enforced against the Contractor and/or the GUDA, as the case may be, and their respective assets wherever situated.
- 18.3.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

## **19. Assignment and Charges**

### **19.1. Restrictions on assignment and charges**

- 19.1.1. The Contractor shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of GUDA.
- 19.1.2. The Contractor shall not assign in favor of any person any right or benefit that has not been provided to the Contractor by the Authority.
- 19.1.3. The Contractor shall not create nor permit to subsist any Encumbrance in the Project Facility. It is further clarified that any assignment or license on the Project Facility and Project Facilities, given to the Contractor, shall expire upon termination of this Agreement.
- 19.1.4. Restraint set forth in Sub-articles 19.1.1 and 19.1.3 above, shall not apply to:
- (a) Liens / encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Contractor;
  - (b) Pledges / hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favor of the Lenders and working capital providers for the Project; or
  - (c) Assignment of Contractor's rights and benefits under this Agreement and other Project related agreements to or in favor of the Lenders, which shall include step in rights, as security for financial assistance provided by them.

Notwithstanding anything contained in Article 19 the rights of the Contractor shall not be contrary or in derogation to the provisions relating to Divestment Requirements contained in Clause 16.1.

## **20. Disclaimer**

### **20.1. Disclaimer**

- 20.1.1. The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Tender Notice, Scope of the services to be provided, the Project Facility, Specifications and Standards set for providing quality of services, local conditions, possible demand and all information provided by the GUDA, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 8.2, the GUDA makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Contractor confirms that it shall have no claim whatsoever against the GUDA in this regard.
- 20.1.2. The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 20.1.1 above and hereby acknowledges and agrees that the GUDA shall not be liable for the same in any manner whatsoever to the Contractor or any person claiming through or under this Agreement.

## **21. Miscellaneous**

### **21.1. 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 Andhra Pradesh shall have jurisdiction over matters arising out of or relating to this Agreement.

### **21.2. Waiver of Immunity**

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

### **21.3. Delayed Payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay penalty for the period of delay calculated at a rate equal to SBI Base

Rate + 2% (two percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

## **21.4. Waiver**

21.4.1. Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

21.4.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## **21.5. Liability for Inspection of Documents**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or inspection by the GUDA of any document submitted by the Contractor nor any observation or inspection of any document or operations conducted at the Project Facility hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the GUDA shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub clause (a) above.

## **21.6. Exclusion of Implied Warranties etc.**

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

## **21.7. Survival**

21.7.1. Termination shall:

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

21.7.2. All obligations surviving Termination shall only survive for a period of 5 (five) years following the date of such Termination.

## **21.8. Entire Agreement**

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

## **21.9. Severability**

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

## **21.10. No Lease**

This Agreement shall not be interpreted or construed to confer lease-hold rights on the Contractor by the GUDA. It is therefore expressly clarified that this Agreement constitutes a legal license given by the GUDA to the Contractor for the sole purpose of the fulfilment of the Contractor's obligations as set forth in this Agreement.

## **21.11. No partnership**

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

## **21.12. Third Parties**

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

## **21.13. Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their lawful successors, as per the provisions of this Agreement.

## **21.14. Notices**

Unless otherwise stated, all notices, approvals, instructions and other communications for the purposes of this Agreement shall be given in writing and may be given by facsimile, by personal delivery or by sending

the same by prepaid registered mail addressed to the Party concerned at its address stated in the title of this Agreement or the fax numbers set out below and/or any other address subsequently notified to the other Parties for the purposes of this clause 21.14 and shall be deemed to be effective (in the case of registered mail) 10 calendar days after posting, (in the case of facsimile) two Business Days after receipt of a transmission report confirming dispatch or (in the case of personal delivery) at the time of delivery.

<p><b>If to GUDA</b>  Address:  The Vice Chairman,  Godavari Urban Development Authority (GUDA),  D. No. 70-15-7/1, R.R. Nagar, N.F.C.L. Road,  Kakinada-533005  East Godavari District, Andhra Pradesh.</p> <p>Email: gudakkd@gmail.com</p>	<p><b>If to Contractor</b>  <b>Address:</b>    <b>E-Mail:</b></p>
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### 21.15. Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the English language.

### 21.16. Counterparts

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

### 21.17. Validity

This Agreement shall be valid for the entire Agreement Period

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED

THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE

<p><b>SIGNED, SEALED AND DELIVERED FOR AND ON BEHALF OF GUDA</b></p> <p>Authorised Signatory</p> <p>Name: Mr. Prakash Gaur</p> <p>Designation: Chief Executive Officer, GUDA</p>	<p><b>SIGNED, SEALED AND DELIVERED FOR AND ON BEHALF OF _____(Contractor)</b></p> <p>Authorised Signatory</p> <p>Name:</p> <p>Designation:</p>
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## **SCHEDULES TO THE AGREEMENT**

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## **SCHEDULE A**

### **DETAILS OF THE PROJECT FACILITY**

**Location:** The Selected Agency shall Operate & Maintain the project with in the land parcel situated at in Peddapuram. The extent of the parcel (Park) is about 4.2 Acres

The Project consists of the components as indicated in the figure as well as listed below:

#### **Project Facilities**

##### **Light poles**

<b>1.</b>	Single pole and single light	50
<b>2.</b>	Single pole and double light	25
<b>3.</b>	Single pole and 4 lights	6
<b>4.</b>	Foxing light (Pylon-4, Elephant-2, water fall -4, Bridge down -3, dinosaur -1, animal statues)	14

##### **Animal Sculptures**

<b>1.</b>	Giraffe	1
<b>2.</b>	Chimpanzee	2
<b>3.</b>	Tigers	2
<b>4.</b>	Chitas	2
<b>5.</b>	Deers	2
<b>6.</b>	Elephant	2
<b>7.</b>	Ducks	4

<b>8</b>	Crocodiles	2
<b>9</b>	Dinosaurs	1

### Tables

<b>1.</b>	Tables two legs	20
<b>2.</b>	Tables three legs	10

### Play equipment's

<b>1.</b>	Single sitting Teeter-Totters	1
<b>2.</b>	Double sitting Teeter-Totters	1
<b>3.</b>	Exercise chain link	2
<b>4.</b>	Metallic swing (small)	2
	Metallic swing (big)	1
<b>5</b>	Metal Slides	1
<b>6</b>	Moon rocket	1
<b>7</b>	Giraffe	1
<b>8</b>	Eb down leg pressures	2
<b>9</b>	Marry gold round	1

### Train and supporting equipment

<b>1.</b>	Train Engine	1
<b>2.</b>	Bogies	3
<b>3.</b>	Base cement road and track (Total track length 303 mts)	1

### Open Air Theater

<b>1.</b>	(A) Water pole down shed for functions.	
<b>2.</b>	Watchmen & Electrical shed – fans	2
<b>3.</b>	Ample player	1
<b>4.</b>	MIC receiver	1
<b>5</b>	Wooden Cupboard	1
<b>5</b>	Iron chairs	3
<b>6</b>	Plastic chairs	2
<b>7</b>	Table	1
<b>8</b>	7.5 HP Motor starters	5
<b>9</b>	15 HP Starter	1
<b>10</b>	Panel board	1
<b>11</b>	Meters	2
<b>12</b>	Phase cutout board	2
<b>13</b>	Relay box	1
<b>14</b>	Lights	3
<b>15</b>	Battery	1

## Other park equipment

<b>1.</b>	Water plant shed	1
<b>2.</b>	Railway station shed- CCs equipment (Cameras- Station -3, Canteen -4, Water pole-1)	8
<b>3.</b>	Monitor	1
<b>4.</b>	Mouse	1
<b>5</b>	Lights	4
<b>5</b>	Fans	3
<b>6</b>	Lights (Canteen shed)	8
<b>7</b>	Fans (Canteen shed)	4
<b>8</b>	Water cooler shed	
<b>9</b>	Gents Urinals	3
<b>10</b>	Washing basin	1
<b>11</b>	Latrine commode	2
<b>12</b>	Lights	5
<b>13</b>	Syntex tank	1
<b>14</b>	Blue cylinders	2
<b>15</b>	Motors (1+1) Big & Small	2
<b>16</b>	Steel drum	1
<b>17</b>	Coolers	2
<b>18</b>	Round Dais	1
<b>19</b>	Moon rocket	1
<b>20</b>	Water pole and bridge	1
<b>21</b>	Toy dustbins	24
<b>22</b>	Dabba Dust Bins	20
<b>23</b>	Speakers	10

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## SCHEDULE B

*Format for*

### PERFORMANCE GUARANTEE

(For “SELECTION OF OPERATIONS & MAINTENANCE (O&M) AGENCY OF CHANDRABABU SHATABDI PARK AT PEDDAPURAM (EAST GODAVARI DIST.) ON PPP MODE”)

*(To be issued by a Nationalized Bank (Licensed by RBI) in India)*

THIS DEED OF GUARANTEE executed on this the day of .....2018 at .....by..... (Name of the Bank) having its Head/Registered office at.....and a Branch Office at .....hereinafter referred to as “the Guarantor” which expression shall unless it is repugnant to the subject or context thereof include its successors and assigns;

In favor of

The Vice Chairman, Godavari Urban Development Authority (GUDA), having its Head Office at -----XXXXXX-----, represented by its Managing Director hereinafter called “**CLIENT**” (which expression shall include its successors and assigns); WHEREAS

- A. By the Agreement dated (“the **Agreement**”) entered into between CLIENT and M/s.--  
-----  
- Limited, a company incorporated under the Companies Act, 1956/2013/ a partnership firm/ a sole proprietorship firm having its registered office/ head office/ office or [*a company incorporated under the Companies Act, 2013 having its registered office*] at ..... (Hereinafter called “the **O&M Agency**”), the developer has been granted the authorization to implement the Project for the work of “Operations & Maintenance of Chandrababu Shatabdi Park at Peddapuram (East Godavari dist.) on PPP mode”.
- B. In terms of the clause 4.14 of the RFP – PERFORMANCE SECURITY DEPOSIT, the Selected Bidder is required to furnish to Client, an unconditional and irrevocable bank guarantee for an amount of Rs. ....  
\_\_\_\_\_(Rupees \_\_\_\_\_ only) as a security for due and punctual performance / discharge of its obligation under the Contract Agreement during the Agreement Period. ‘Agreement Period’ for the purpose of this Guarantee shall mean the period from .....to.....
- C. At the request of the [Name of the Bidder], the Guarantee has agreed to provide the guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Agreement during the ‘Agreement Period’.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meanings assigned to them respectively in the Agreement.

2. The Guarantor hereby guarantees the due punctual performance by the Company of all its obligations under the Agreement during the 'Contract Period'.
3. The Guarantor shall, without demur, pay to Client sums not exceeding in aggregate Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) within five (5) days of receipt of a written demand thereof from Client stating that the Company has failed to meet its performance obligations under the Agreement during the 'Contract Period'. The Guarantor shall not go into the veracity of any demand made by Client and shall pay the amounts specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Company/Selected Bidder or any other Person.
4. In order to give effect to this Guarantee Client shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/delayed exercise of any of its rights by Client or any indulgence shown by Client to the Company and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise of any of its rights by Client or any indulgence shown by Client, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until discharged by the Company of all its obligations under the Contract during the Operation & Maintenance Period and by the Guarantor of all its obligations hereunder.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Company/the Guarantor or any absorption, merger or amalgamation of the Company/the Guarantor with any other Person/Body.
7. The Guarantor declares that he has the power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN

SIGNED AND DELIVERED by -----Bank by the hand  
Shri-----

-----it's ..... at its Head Office/..... Branch Office and  
authorized official

\* If Bank is unlikely to issue guarantee for the entire Operations Period in one stretch. Initially the guarantee may be issued for every one year. The developer shall have to keep the guarantee valid throughout the Operations Period by seeking extension from time to time.

\*

## **SCHEDULE C**

### **KEY PERFORMANCE INDICES (KPIS):**

(Refer Clause 2.1 of the Agreement)

- Maintenance of Park in good condition (Such as Lawn Area, Green Plantation, the already constructed components as described in the data sheet, etc.) on as in where basis as handed over by the client.
- To Maintain any upcoming / proposed components also in good condition on as in where basis as handed over by the client.
- Collect the revenues from the sources only as designated and approved by the client.
- Paying the Client the quoted management fee (as quoted in the price bid per year) promptly in equal ratio before the 10<sup>th</sup> day of every month.
- Maintaining the Park litter free in accordance with the SWM rules' 2016.
- Ensure the Project facilities (Existing or Upcoming as proposed) through the concerned Operators shall provide the required firefighting equipment and facilities including fire exits, fire proof doors, etc., conforming to relevant standards and the applicable rules and regulations and also shall provide all the necessary facilities to the entry/exit, seating and movement of physically challenged persons including wheel chairs.
- Compliance to all other statutory conditions.

## **SCHEDULE D**

### **LIST OF PROHIBITED ACTIVITIES**

The following activities shall be strictly prohibited in the Project Facility:

1. Gambling activities
2. Smoking and sale / purchase of tobacco and liquor products
3. Wedding ceremonies
4. Any activity that is unlawful / illegal or deemed unlawful under any Indian Act or legislation
5. Any activity that does not gel with the theme of Project

**SCHEDULE E**

**ESCROW AGREEMENT**

(To be provided to the Contractor)



## SCHEDULE G

### OPERATION & MAINTENANCE REQUIREMENTS

The Contractor shall, adhere to the following standards of operation and maintenance till the end of Agreement Period:

#### **Cleanliness**

- Contractor shall ensure that the Project Facility areas are clean
- Contractor shall arrange for dustbins in Project Facility areas to minimize littering from Users of the Project Facility
- There should be regular sweeping of the Project Facility areas multiple times in a day to ensure cleanliness
- While cleaning the Project Facility, Contractor shall make sure that the dump shall not be thrown in rest of the areas of Project, except any area which is designated by the GUDA for such purpose
- Contractor shall follow adequate waste management and disposal methods for waste generated from Project Facility operations
- Contractor shall follow the following timetable for routine cleaning of the Project Facility:
  - o **Daily Tasks:** Clean lavatories, sweep and wash floors, dust, clean (open) drains, empty dustbins, scrub kitchen tables.
  - o **Weekly Tasks:** Clear cobwebs, clean doors and windows, kitchen walls,
  - o **Monthly Tasks:** Repairs, fumigation, wash curtains, cushion covers, water tanks.
  - o **Annual Tasks:** Whitewash, pest eradication, contract renewals, clean air-conditioning system

#### **Operational Requirements**

- Contractor shall ensure that operation of the Facility does not disturb rest of the activities in the Project area.
- Information signages and display boards shall be visible, legible and functional. These shall be cleaned once in a week. Damaged signages and boards shall be replaced, repaired within seven days of detection.
- Contractor shall not damage, destruct or demolish any structure, area or asset, which is owned by GUDA, inside or outside Project Facility areas without prior instructions and / or approval of GUDA
- **Electric Meter** – Contractor shall check all meters once in a month time to ensure that they are functioning and are showing correct readings
- **Standby Power Supply** – Contractor shall have arrangement of standby power supply by DG sets which should be available 24 hours.

#### **Safety**

- Any fault in the electrical equipment like switches, receptacles, wiring etc. shall be identified, tested and repaired within 24 hours of detection to prevent accidents.