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**CONCESSION AGREEMENT(CA) FOR
CONSTRUCTION, OPERATION AND
MAINTENANCE OF SMART BUS-Q-
SHELTERS AT 20 LOCATIONS IN AGRA
ON BUILT, OPERATE AND TRANSFER
(BOT) BASIS WITH ADVERTISING
RIGHTS UNDER PPP MODE**

December 2022

For Frank Advertisers
Proprietor

AGRA SMART CITY LIMITED


OFFICE OF NAGAR NIGAM

AGRA, UTTAR PRADESH - 282002


R. K. Singh
Nodal Officer
Agra Smart City Limited


K.K. JHA
G. M. (Project)
Agra Smart City Ltd.


Addl. C.E.O.
Agra Smart City Limited


Chief Executive Officer
Agra Smart City Limited

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Signature
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**CA FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS
AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH
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WHEREAS,


- A. BQS project is initiated as a part of the duties and responsibilities of ASCL. ASCL with an objective of providing BQS services including O&M of the shelters and subsequently invited proposals, through a competitive bid process from eligible parties for implementing the Project. In response thereto, ASCL received proposals from several parties including the Concessionaire for implementing the Project.
- B. Pursuant thereto, after evaluating the aforesaid proposals, ASCL accepted the proposal submitted by the Concessionaire and issued Letter of Acceptance No. (1074/ASCL/2022-23) Dated 25th October 2022 to the Concessionaire requesting the Concessionaire to execute the Concession Agreement, which the Concessionaire has acknowledged by its Letter dated 14.11.2022
- C. The Parties hereto are required to enter into the Concession Agreement, being these presents, to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

For Frank Advertisers

Proprietor


K.K. JHA
G. M. (Project)
Agra Smart City Ltd.


R. K. Singh
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Chief Executive Officer
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ARTICLE 1 - DEFINITIONS AND INTERPRETATIONS

1.1 DEFINITIONS

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

"Additional Cost" shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law.

"Affected Party" shall mean the Party claiming to be affected by a Force Majeure.

"Agra" or **"Agra Municipal Limits"** means the whole urban area falling within the jurisdiction of the ASCL as per the Government of Uttar Pradesh and its notifications from time to time

"Agreement" shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

"Applicable Law" shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire.

"Applicable Permits" shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement.

"Appointed Date" shall mean the date of this Agreement.

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

"Assured Number of Bus Shelter sites" shall mean the assured number of sites.

"Authorization" means any approval, consent, exemption, filling, license, authorization, permit, registration or waiver, and any renewal or variation of any of them howsoever described, necessary to fulfill obligations of the Concessionaire under this Agreement.

"Authorized Representative" means, in respect of a Party, any person designated (whether by same or as the holder of a specified position or office) as such by such Party by notice in writing given to the other Party including, in the case of a person designated by name, a specimen signature of that person certified by the Party issuing the notice;

"Book Value" means the value of the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged on the basis of straight line method and amortized equally over the Operations Period, duly verified and certified by an independent auditor in accordance with IGAAP.

"Change in Law" shall have the meaning ascribed thereto in Clause 7.6.

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“COD” or “Commercial Operations Date” shall mean the date on which the Project Engineer/ Officer Authorised by CEO, ASCL, Agra has issued the Provisional Completion Certificate or the Completion Certificate for the structures, in accordance with the provisions of this Agreement.

“Completion Certificate” shall mean the certificate issued by Project Engineer certifying, that:

- i. The Concessionaire has constructed the BQS Facility in accordance with the Construction Requirements; and
- ii. The Concessionaire has obtained all approvals necessary for commercial operations of the Project Facility.

“Concession” shall have the meaning ascribed thereto in relevant Clause this Agreement.

“Concession Period” shall have the meaning ascribed thereto in Clauses of this CA.

“Concessions Authority” shall mean Agra Smart City Limited (ASCL)

“Concessionaire’s Equipment” means all machinery, equipment, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, but does not include Plant, Materials, or other things intended to form or forming part of the Project.

“Consortium”¹ shall mean the consortium consisting of (i) and (ii) formed/acting pursuant to the Memorandum of Understanding dated entered into by them, for the purpose of submitting their proposal for undertaking the Project through M/s _____, a special purpose company formed and incorporated by them in India.

“Construction Documents” means all approved plans, manuals, drawings (including as built drawings), calculations, computer software (programs), samples, patterns and models prepared and used for construction of Project Facility.

“Construction Period” shall mean the duration of construction of Project Facilities commencing from the Appointed Date to the date of issue of Completion Certificate.

“Construction Works” shall mean all works and things required to be undertaken by the Concessionaire in accordance with the Construction Requirements.

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

“Cure Period” shall have the meaning ascribed thereto in Clause 8.2(a)(iii) of this Agreement.

“Drawings” shall mean all of the drawings including working drawings for the Project Facility, designs, calculations and documents pertaining to the Project in accordance with the Construction and O&M Requirements and shall also include the Drawings as approved.

In case the successful bidder is a Consortium

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“**Emergency**” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project.

“**Encumbrance**” shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facility .

“**Environmental Laws**” means all Laws pertaining to the protection of natural resources, the environment, the health and safety of the public, according to Environment (Protection) Act, 1986, The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974 and any other central, state or local law, regulation, rule, ordinance or order from government:

- i. the existence, cleanup and/or remedy of contamination on real property;
- ii. the emission or discharge of hazardous substances into the environment;
- iii. the control of hazardous substances; or
- iv. the use, generation, transport, treatment, storage, disposal, removal or recovery of hazardous substances, including building materials;

“**Financing Documents**” shall mean collectively the documents evidencing Lender’s commitment to finance the Project.

“**Financial Year**” shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

“**Force Majeure**” or “**Force Majeure Event**” shall mean an act, event, condition or occurrence as specified in Article 7.

“**Good Industry Practice**” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

“**Government Agency**” shall mean Government of India, any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Site or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“**Lenders**” shall mean financial institutions, banks, funds and trustees for bond holders or debenture holders, who provide funds to the Concessionaire for financing the cost of construction of the Project Facility or any part thereof.

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"Materials" means things of all kinds (other than Plant) to be provided and incorporated in the Permanent Works by the Concessionaire, including the supply-only items (if any) which are to be supplied by the Concessionaire as specified in the Agreement.

"Material Adverse Effect" shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

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

"O&M Requirements" shall mean the requirements as to operation and maintenance of the Project Facilities.

"Operations Period" shall mean the period commencing from COD and ending at the expiry of the Concession /Termination.

"Parties" shall mean the parties to this Agreement and

"Party" shall mean either of them, as the context may admit or require.

"Performance Security" shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with relevant Clause.

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

"Plant" means machinery and apparatus intended to form or forming part of the Permanent Works, including the supply-only items (if any) which are to be supplied by the Concessionaire as specified in the Agreement.

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

"Project" shall mean design, financing, construction, operation and maintenance of Project at Project Site/ BQS in accordance with the provisions of this Agreement.

"Project Agreements" shall mean collectively this Agreement, O&M Contract, and any other material contract (other than Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

"Project Assets" shall mean the Project Structure/ fixtures/ equipments used during the Concession Period for the Project.

"Project Equipments" shall mean all the equipments related to BQS including litter bins, containers or any other required for proper/ attractive/ useful shelter for the Project in accordance with provisions of this Agreement



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“Project Engineer/ designated officer” shall mean a reputed ASCL official/ officials

“Royalty Fee/Concession Fee” shall mean the amounts payable by the Concessionaire to ASCL in accordance with agreement and as quoted by the Bidder in its Financial Proposal.

“Royalty Fee Rate” shall mean the amount payable by the Concessionaire to ASCL per BQS wise.

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

“SPCD” or “Scheduled Project Completion Date” shall mean the date 6 months from the Appointed Date.

“SBI PLR” shall mean prime lending rate of State Bank of India.

“Tax” shall mean and includes all taxes, fees, cesses, duties, levies that may be payable by the Concessionaire under Applicable Law.

“Temporary Works” means all temporary works of every kind (other than Concessionaire’s Equipment) required for the execution and completion of the Works and the remedying of any defects.

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

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

“Termination Notice” shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

For Frank Advertisers
Proprietor
“Tests” shall mean the tests to be carried out in accordance with the Construction Requirements or the O&M Requirements and if not expressly specified in either of the said requirements, as instructed by the Project Engineer, in accordance with this Agreement.

Interpretation

In this Agreement, unless the context otherwise requires,

- R. K. Singh
Nodal Officer
Agra Smart City Limited
- any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
 - references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
 - the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);

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- d. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words "include" and "including" are to be construed without limitation;
- f. any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- g. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST).
- i. 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;
- j. references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- k. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or by Project Engineer shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or Project Engineer in this behalf and not otherwise;
- l. references to "Construction" includes investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto
- m. the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the "Damages")

For Frank Advertisers

Proprietor


G. M. (Project)
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Chief Executive Officer
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ARTICLE 2 - CONCESSION

2.1 GRANT OF CONCESSION

Subject to and in accordance with the terms and covenants set forth in this Agreement, the Concessioneing Authority hereby grants and authorizes the Concessionaire to design, engineer, procure, finance and construct the Smart Bus-Q-shelter Facility, to operate and maintain the Project Facility and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement, (the "Concession").

2.2 CONCESSION PERIOD

The Concession hereby granted is for a period of 15 (Fifteen) years from the Appointed Date inclusive of the Construction Period. (hereinafter referred to as the "Concession Period") Provided, in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

2.3 ACCEPTANCE OF CONCESSION

In consideration of ASCL agreeing to permit the Concessionaire to receive User Charges, and any other amounts, and the rights, privileges and benefits conferred upon by the Concessioneing Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform/dischage all of its obligations in accordance with the provisions hereof.

For Frank Advertisers
[Signature]
Proprietor

[Signature]
K.K. JHA
G. M. (Project)
Agra Smart City Ltd.

[Signature]
R.K. Singh
Nodal Officer
Agra Smart City Limited

[Signature]
Addl. C.E.O.
Agra Smart City Limited

[Signature]
Chief Executive Officer
Agra Smart City Limited



ARTICLE 3 - PROJECT SITE

3.1 HANDOVER OF PROJECT SITE

- a. ASCL shall, within of 15 (fifteen) days from the Appointed Date, handover to the Concessionaire, vacant and peaceful physical possession of the Project Sites for bus shelters for the purpose of the Construction, operation & maintenance of Smart Bus shelters
- b. Upon the Project Site being handed over pursuant to the preceding Clause (a), the Concessionaire shall, subject to the provisions of Article 4, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 RIGHTS, TITLE AND USE OF THE PROJECT SITE

- a. The Concessionaire shall have the right to the use of Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.
- b. The Project Sites including the Project Facility developed thereon belongs to ASCL and shall continue to be the property of ASCL.
- c. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site, save and except as set forth and permitted under this Agreement.
- d. The Concessionaire shall not without the prior written approval of ASCL use the Project Facility for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- e. The Concessionaire shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes as ASCL may specify. Provided that such access or use shall not result in a Material Adverse Effect and that ASCL shall, in the event of any physical damage to the Project Site/ Bus shelter Facility/ on account thereof, ensure that the Project Site/ Project Facility is promptly restored at its cost and expenses. Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.
- f. The Concessionaire shall be at liberty to:
 - i. demolish the existing structures within the Project Site subject to adherence to Project Requirements, Applicable Laws and Applicable Permits, and
 - ii. use, sell or dispose in accordance with Applicable Laws and Applicable Permits, the material obtained as a result of demolition under clause(i) above.

3.3 PEACEFUL POSSESSION

ASCL, as Concessioneing Authority, hereby warrants that:

- a. The Project Site together with the necessary right of way:
 - i. has been acquired through the due process of law

- ii. belongs to and is vested in ASCL and that ASCL has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any

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compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.

- b. The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site or part thereof until expiry of the Concession Period/ completion of Handback Requirements. In the event, the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, ASCL shall, if called upon by the Concessionaire, defend such claims and proceedings.

3.4 APPLICABLE PERMITS

The Concessionaire shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project.

For Frank Advertisers
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ARTICLE 4 - CONCESSIONAIRE'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

4.1 PERFORMANCE SECURITY

- a. The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to ASCL, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to ASCL, ("Performance Security") for a sum of Rs. 5,00,000/- (Rupees five Lakhs only). Till such time the Concessionaire provides to Concessioneing Authority the Performance Security pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Security, if in the form of a bank guarantee shall be valid for an initial period of 36 (thirty six) months and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 36 (thirty six) months. It is clarified that the Concessionaire shall be liable to restore the Performance Security to the full amount in case of part encashment of the same by the Concessioneing Authority. This shall be done within 30 (thirty) Days of any such part encashment. Failure of the Concessionaire to provide a valid Performance Security and/or restore and maintain the Performance Security in accordance with this clause shall entitle the Concessioneing Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.
- b. The Performance Security shall be kept valid for throughout the Concession Period from the Appointed Date. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to ASCL's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

4.2 FINANCING ARRANGEMENT

The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

4.3 DRAWINGS

a. Preparation of Drawings

- i. The Concessionaire may, subject to the Construction Requirements, adopt with or without modifications the Drawings made available by ASCL or adopt its own Drawings. Provided that, the Concessionaire shall in any event be solely responsible for the adequacy of the Drawings.
- ii. If the Concessionaire proposes any modifications to the Drawings made available by ASCL or submits alternate Drawings or Drawings in respect of any item for which no Drawings are made available by ASCL, the same shall be subject to review by the Project Engineer as hereinafter provided in Clause (b) below.

b. Review of Drawings

- i. The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the Drawings to the Project Engineer and ASCL.

- ii. By forwarding the Drawings to the Project Engineer and ASCL pursuant to the preceding sub-clause (i), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Construction Requirements.
- iii. Within 15 days of receipt of the Drawings, the Project Engineer shall review the same taking into account, inter alia, comments of ASCL, if any, thereon, and convey its comments/ observations to the Concessionaire on the conformity of Drawings with Construction Requirements. If the comments/ observations of the Project Engineer indicate that the Drawings are not in conformity with the Construction Requirements, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Project Engineer for further review. The Project Engineer shall give its observations and comments, if any, within 15 days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalising the Drawings.
- iv. The Concessionaire shall be responsible for delays in meeting the Construction Requirements caused by reason of any Drawings not being in conformity with the Construction Requirements, and shall not be entitled to seek any relief in that regard from ASCL.
- v. The Concessionaire shall in consultation with the Project Engineer/ Authorised officer finalise an Implementation Schedule for the Project in accordance with the Construction Requirements.
- vi. Within 30 days of issue of the Completion Certificate or Provisional Completion Certificate, as the case may be, the Concessionaire shall furnish to ASCL three copies of "as built" Drawings of the Construction Works which have been completed as on COD, in a manner as set out in Construction Requirements.

4.4 PROJECT IMPLEMENTATION

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- a. Unless otherwise permitted by ASCL, no Construction Works shall begin until the Project Engineer approves it.
 - b. The Concessionaire shall within 10 (ten) days from the Appointed Date submit to the ASCL/ Project Engineer the Implementation Plan for execution of the Construction Works and shall adhere to the same.
 - c. The Concessionaire shall submit such documents and reports as are reasonably required by the ASCL/ Project Engineer for issue of the Completion Certificate.
 - d. The Concessionaire shall get the Drawings approved by competent authority and as per Applicable Laws.
 - e. The Concessionaire shall make his own arrangements for adequate and timely supply of electricity, water and other utilities required for execution of the Construction Works and ASCL shall be in no way responsible for the same.
 - f. During Construction Period, the Concessionaire shall be responsible for keeping unauthorized persons off Project Site, and authorized persons shall be limited to the employees of the Concessionaire, employees of his subcontractor and persons authorized by ASCL or Project Engineer.
 - g. The Concessionaire shall adhere to Construction Requirements; achieve COD on or before the SPCD. Provided that, on the written request by the Concessionaire for extension of time, ASCL may consider such a request. However, such extension shall in no case exceed six
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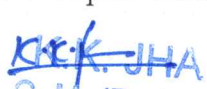
- months from SPCD. In the event Concessionaire is not able to achieve COD within such extended period, it shall be deemed a Concessionaire Event of Default under Clause 8.1(a).
- h. The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements.
- i. The Concessionaire shall, before commencement of Construction Works; have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Project Engineer/ ASCL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- i. provide and maintain a reasonably furnished site office accommodation for the Project Engineer, at the Project Site.
- j. For the purposes of determining that Construction Works are being undertaken in accordance with the Construction/ Fabrication Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the ASCL/ Project Engineer and such Tests shall be carried out under the supervision of the Project Engineer. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- k. If the Tests are successful and the BQS Facility can be safely and reliably opened for operation, the ASCL/ Project Engineer shall issue the Completion Certificate within 7 days of the completion of such Tests.


Provided that, notwithstanding that certain works or things forming part of Construction Works are not complete, if following Tests the Project Engineer determines that the Project Facility can be safely and reliably opened for operations, the Project Engineer may issue Provisional Completion Certificate to the Concessionaire. The Provisional Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Project Engineer and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within such time as may be determined by the Project Engineer, but not exceeding 60 days from the date of issue of the Provisional Completion Certificate. Upon satisfactory completion of all Punch List items, the Project Engineer, shall promptly and in any case within 7 days thereof, issue the Completion Certificate.

- l. If the Concessionaire fails to complete the Punch List items within the said period of 60 days, ASCL may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. In such an event, the Concessionaire shall reimburse to ASCL, one and half times of the cost incurred by ASCL in completing the Punch List items, (as certified by the Project Engineer), within 7 days from the date of receipt of a claim in respect thereof from ASCL. The Project Engineer may issue Project Facility Completion Certificate only upon such reimbursement being made by the Concessionaire to ASCL.
- m. The ASCL/ Project Engineer, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction/ Fabrication Requirements.

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Nodal Officer
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- n. The Construction/ Fabrication Works shall be deemed to be complete and ready for commercial operations only when the Provisional Completion Certificate or the Completion Certificate is issued by the Project Engineer in accordance with the provisions hereof.

Provided if COD is delayed beyond 90 days of the SPCD, ASCL shall, subject to the provisions of Article 8, be entitled to terminate this Agreement and to appropriate the Performance Security.

4.5 OPERATION AND MAINTENANCE

- a. The Concessionaire shall operate and maintain the BQS Facility in accordance with the O&M Requirements.
- b. The Concessionaire may undertake operations and maintenance of the Project Facility by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.
- c. The Concessionaire shall, during the Operations Period :
- shall have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project Facility, to deal with the Project Engineer/ ASCL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - shall, for the purposes of determining that the BS/ Project Facility is being maintained in accordance with the O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the ASCL/ Project Engineer and such Tests shall be carried out under the supervision of the Project Engineer. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- d. In the event the Concessionaire has failed to operate and maintain the Project Facility in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Project Engineer/ASCL ("Notice to Remedy"), ASCL may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facility at the risk and cost of the Concessionaire. The Concessionaire shall reimburse one and half times the costs incurred by ASCL on account of such repair and maintenance within fifteen (15) days of receipt of ASCL's claim therefor.
- e. The Concessionaire shall be deemed to be in material breach of O&M Requirements, if ASCL, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire,
- the maintenance of the Project Facility or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
 - there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facility or any part thereof is not safe for operations;

For avoidance of doubt, persistent breach shall mean:

- I. any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the ASCL;

- II. recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the ASCL requiring the Concessionaire to remedy a breach, and
- III. repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

Upon occurrence of Material Breach of O&M Requirements, ASCL shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement, be entitled to terminate this Agreement.

- f. No demolition/ removal of structure shall be allowed during the last five (5) years of the Concession Period, unless specifically approved by ASCL.

4.6 INSURANCE

a. Construction Period

The Concessionaire shall at its cost and expense, purchase and maintain by due reinstatement or otherwise, during the Concession Period all insurances in respect of the Project Facility in accordance with the Good Industry Practice.

b. Operations Period

The Concessionaire shall at its cost and expense, purchase and maintain by reinstatement or otherwise, for the Operations Period, insurance against :

- i. loss, damage or destruction of the Project Facility, at replacement value;
- ii. the Concessionaire's general liability arising out of the Concession;
- iii. liability to third parties;
- iv. any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

c. Evidence of Insurance

The Concessionaire shall maintain a register of entry in order of premium paid towards the Project Facility and proof of payments made shall be submitted to ASCL whenever requested for.

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d. Validity of Insurance

The Concessionaire shall, from time to time, promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period. The insurance policy shall not be cancelled or terminated unless 60 days' clear notice of cancellation is provided to ASCL in writing. If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, ASCL may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by ASCL thereof shall be reimbursed by the Concessionaire to ASCL together with interest thereon at 5% (five) percent over SBI PLR from the date the respective sums were incurred by ASCL, within 7 (seven) days from the receipt of claim in respect thereof made by ASCL.

K.K.F.
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G. M. (Project)
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Addl. C.E.O.
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Chief Executive Officer
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e. **Application of Insurance Proceeds**

Subject to the provisions of the Financing Documents, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Concessionaire. The Concessionaire shall carry out such repair, renovation, restoration or reinstatement to the extent possible in such manner that the Project Facility after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

f. **Un-insurable Risks**

If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/reinstated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

4.7 ENVIRONMENTAL COMPLIANCE

The Concessionaire shall, ensure that all aspects of the Project Facility during the Concession Period and processes employed in the construction, operation and maintenance conform to the laws pertaining to environment, health and safety aspects. Rules, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances from the competent authority or any other similarly empowered Government Agency and for this purpose shall carry out the necessary studies and implement appropriate management plans in respect of the Project Facility.

4.8 PROJECT VEHICLES / EQUIPMENTS

4.8.1 Concessionaire shall procure the Equipments in accordance with the specification. The Concessionaire shall operate and maintain all the BQS structure and Project Equipments in accordance with the O&M Plan and Good Industry Practice throughout the Concession Period.

4.8.2 The ASCL/Project Engineer shall certify that all the facilities and Equipments purchased by the Concessionaire are as per the specifications provided in this Agreement.

4.8.3 In case the ASCL/ Project Engineer certifies that any BQS or Project Equipments procured are not as per the specifications provided in this Agreement the same shall be intimated to ASCL within 15 days from the date of issue of Certificate.

4.8.4 In case the BQS Project or Project Equipments are not meeting the specifications as per this Agreement, ASCL shall send a notice to the Concessionaire to replace those Project Vehicles or Project Equipments.

4.8.5 In case the Concessionaire does not replace those facilities or Project Equipments, ASCL may at its sole discretion replace the Project facilities or Project Equipments not meeting the specifications as per this Agreement and the Concessionaire shall reimburse to ASCL the cost incurred by ASCL to replace the Project facilities or Project Equipments.

4.8.6 Procurement Committee

4.8.6.1 A Procurement Committee shall be formed to monitor the procurement of Project Assets. The Procurement Committee shall include The Chief Executive Officer, ASCL and Finance Officer and Executive Engineer as its members.

4.9 THE CONCESSIONAIRE SHALL:

- a. Collect revenue for Advertisement with Municipal Limit with Good Industry Practices
- b. Collect revenue for any extra facility.
- c. The Concessionaire shall not be allowed to collect and or receive fees/ charges from outside the Agra Municipal Limits without the prior permission from ASCL.
- d. Operate and maintain all Project Assets, Project Structure and Project facilities as per O&M Plan and Good Industry Practices
- e. Employ human resources for forming its obligations under this agreement
- f. Encourage proper use of BQS through awareness campaigns and training programmes or other such activities as deemed fit. The cost for such activities shall be borne by the Concessionaire;

4.10 TRAINING

4.10.1 In the event of Termination or expiry of the Agreement, the Concessionaire shall make best efforts to provide or cause to be provided such training to the employees of ASCL as may be required for ASCL to continue to operate and maintain the Project Facilities after the Termination / expiry.

4.11 MANAGEMENT INFORMATION SYSTEM

4.11.1 The Concessionaire shall establish a Management Information System (MIS) and install appropriate software to maintain records of the Project operations.

4.12 SHAREHOLDING² Proprietor

4.12.1 DELETED

4.13 INDEMNITY BY CONCESSIONAIRE

The Concessionaire shall indemnify and hold harmless ASCL, the Project Engineer and their employees from and against all claims, damages, losses and expenses arising out of or resulting from Concessionaire's negligence or breach in execution of the Construction Works and any activity incidental thereto.

4.14 GENERAL OBLIGATIONS

The Concessionaire shall at its own cost and expense:

investigate, study, design, construct, operate and maintain the BS/ Project Facility in accordance with the provisions hereof;

² Only where the Concessionaire forms a Special Purpose Vehicle for the implementation of the Project

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- b. obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- c. comply with Applicable Law governing the operations of the Project Facility, as the case may be, at all times during the Concession Period;
- d. ensure and procure that each Project Agreement contains provisions that would entitle ASCL or a nominee of ASCL to step into the same at ASCL's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement ;
- e. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project ;
- f. appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;
- g. make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies ASCL against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall ASCL be treated as employer in this regard;
- h. make its own arrangements for construction materials and observe and fulfil other requirements under the Applicable Law and Applicable Permits;
- i. be responsible for all the health, security, environment and safety aspects of the BS/ Project Site/Project Facility, as the case may be, at all times during the Concession Period;
- j. ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- k. upon receipt of a request thereof, afford access to the Project Facility to the authorised representatives of ASCL for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facility and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.
- l. pay all taxes, duties and outgoings, including utility charges relating to the Project Facility, as applicable throughout the Concession Period.
- m. make its own arrangements for the engagement of the employees and labour engaged for execution of the Construction Work.
- n. keep on the Project Office two complete sets of this Agreement, Construction Documents, approvals given by the ASCL/ Project Engineer and any other communication given or issued under provisions hereof for inspection, verification and use by the ASCL/ Project Engineer or any authority authorized by law to inspect the same or any of them.
- o. provide and maintain all necessary accommodation and welfare facilities for its staff and labour. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structure forming a part of the Construction Works.
- p. take precautions to ensure the health and safety of its staff and labour.
- q. employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the Construction Works. The Project Engineer may require the Concessionaire to

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remove any person employed on the Project Site or Construction Works, who in the opinion of the Project Engineer:

- i. persists in any misconduct,
 - ii. is incompetent or negligent in the performance of his duties,
 - iii. fails to conform with any provisions of the Agreement, or
 - iv. persists in any conduct which is prejudicial to safety, health, or the protection of the environment. The Concessionaire shall in such cases appoint suitable replacement/s.
- r. take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labour and to preserve peace and protection of persons and property in the neighbourhood of the Construction Works against such conduct.

4.15 NO BREACH OF OBLIGATIONS

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a. Force Majeure Event, subject to Clause 7.3;
- b. ASCL Event of Default;
- c. Compliance with the instructions of the Project Engineer/ ASCL or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

4.16 ACCESS AND ASSURED AVAILABILITY OF THE PROJECT FACILITIES


The Concessionaire shall, at all times during the Concession Period, allow access to and usage of BS/ Project Facilities to ASCL / Person nominated by ASCL.

4.17 EXPENSES TOWARDS STATUTORY DEPOSITS AND CHARGES


The Concessionaire shall pay/ reimburse to ASCL, service charges towards connection of utilities to the Project Facility in the Project Site, other taxes such as property tax, water tax and sewerage charges for the Project Site.

4.18 ERECTION OF SIGN BOARD

- a. The concessionaire shall always during the Concession Period erect and maintain signboard - "This property belongs to the ASCL, Government of Uttar Pradesh and has been handed over to (name of the Concessionaire) for build, operate and transfer from (Insert the in Appointed Date) to (Insert the Expiry Date)".
- b. The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period.


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ARTICLE 5 - ASCL'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, ASCL shall have the following obligations:

5.1 SPECIFIC OBLIGATIONS

- a. ASCL shall handover the possession of the Project Site to the Concessionaire in accordance with the Agreement;
- b. Prior to handover of the Project Site to the Concessionaire, ASCL shall help in removing all encroachments from the Project Site;
- c. ASCL shall provide reasonable administrative support to the concessionaire per the provisions of the Agreement.
- d. ASCL shall grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from ASCL under this Agreement, in connection with implementation of the Project and the performance of its obligations.
- e. Provided where authorization for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/ utilities is required, the same shall be provided by ASCL, within 15 days from receipt of request from the Concessionaire to make available such authorization.

5.2 GENERAL OBLIGATIONS

ASCL shall:

- a. upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities;
- b. assist the Concessionaire in obtaining police assistance, upon payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/ Project Facility and implementing this Agreement in accordance with the provisions hereof;
- c. observe and comply with all its obligations set forth in this Agreement.

5.3 MONITORING AND ASSESSMENT

- a. ASCL, in consultation with Government of Uttar Pradesh, shall set up a program monitoring mechanism including an Expert Committee comprising of domain experts from government, ASCL, public to periodically monitor the project deliverables.
- b. The expert committee would be chaired by a representative, not below the rank of Mayor, from the ASCL, Government of Uttar Pradesh
- c. The other members of the expert committee would be as under:
 - i. Representative of ASCL not below the rank of Up Nagar Adhikari
 - ii. Executive Engineer
- d. The expert committee shall submit its report to the government regarding the achievement of projects deliverables - low, moderate, satisfactory, excellent etc with specific


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- recommendation(s) on continuance/discontinuance/restructuring of the project. The findings of the expert committee would be considered to be final and binding.
- e. If the project deliverables are found to be moderate or low, the expert committee would direct ASCL to plan corrective action(s) with the concessionaire and implement the same to achieve desired outputs within sixty (60) days.
 - f. The expert committee shall evaluate project deliverables on a three month basis based on visit to the facility, review of auditor's reports, reports provided by concessionaire, information received from general public including project stakeholders etc.
 - g. The Expert Committee shall monitor the performance of the Concessionaire based on the service level benchmarks indicated in the guidelines issued by Ministry of Urban Development, Government of India or any amendments from time to time. ASCL shall facilitate the expert committee in information gathering, conducting facility visit, meetings, interviews etc. -

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Chief Executive Officer
Agra Smart City Limited

ARTICLE 6 - ROYALTY FEES/CONCESSION FEES

Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement.

6.1 PAYMENT TO ASCL

- 6.1.1 All payments to ASCL shall be made by way of demand draft in favour of The Chief Executive Officer, Agra Smart City Limited payable at Agra.
- 6.1.2 The first of such instalment shall be payable by us on 121st day from the date of signing of the Concession Agreement between the Concessionaire and ASCL.
- 6.1.3 The Concession fee quoted by the Concessionaire which is Rs.10, 21,000 (rupees ten lakhs twenty one thousand) shall be escalated by 5% per year on cumulative basis and such escalated amount shall be payable for subsequent years.
- 6.1.4 The Concessionaire shall have to pay the total concession fee for the respective year by seventh day of the commencement of the year.
- 6.1.5 The Concession Fee shall be paid for the Concession Period of 15 Years.

6.2 ADVERTISEMENT / HOARDING CHARGES

- 6.2.1 The Concessionaire shall have the right to permit/ allow and charge for advertisement/ hoarding in the BQS/ Project Facility as per Applicable Laws, provided no such activity shall affect the safe and smooth flow of traffic operations.

6.3 CHANGE OF SCOPE

ASCL may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition/ deletion to the works and services in the Project Facility which are beyond the scope of the Project as contemplated by this Agreement ("Change of Scope").

Any increase in Agra Municipal Limits as notified by Government of Uttar Pradesh after signing of this Agreement shall be considered as Change of Scope.

6.3.1 Procedure for Change of Scope

- a. ASCL shall whenever it desires provision of addition/ deletion of items of work and services referred to in Clause 6.3 above, issue to the Concessionaire a notice of change of scope (the "Change of Scope Notice").
- b. Upon receipt of such Change of Scope Notice, the Concessionaire shall within 15 days provide to ASCL and the Project Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following :
- the impact, if any, which the Change of Scope is likely to have on the SPCD if the work is required to be carried out before COD, and
 - the cost to the Concessionaire of complying with such Change of Scope Notice (including, without limitation, material and labour cost information furnished in accordance with the current schedule of rates applicable to the works assigned by ASCL

to its contractors, including the premium on such rates), the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof including a detailed breakdown by work classifications.

Provided, however, that the cost of providing such information shall be reimbursed to the Concessionaire by ASCL to the extent such costs are certified to be reasonable by the Project Engineer.

c. If ASCL desires, after receipt of information set forth in sub-clause (b) to proceed with the Change of Scope, it shall convey the desired option (with or without modification) to the Concessionaire by issuing a Change of Scope Order within 30 days from the date of recommendation made by Project Engineer and thereupon the Parties shall make good faith efforts to mutually agree upon the costs and time for implementing of the same. Upon reaching an agreement relating to such costs and time, ASCL shall issue a written confirmation of the Change of Scope and thereupon the Concessionaire shall proceed with performance of such order. In the event, the Parties are unable to agree, ASCL may, by issuing a confirmation in writing of such Change of Scope Order, require the Concessionaire to proceed with the performance of the Change in Scope Order pending resolution of such dispute.

6.3.2 A Change of Scope Order will be effective and binding upon issuance of a confirmation of such Change of Scope Order by ASCL.

Notwithstanding a dispute regarding cost and time for implementation of such Change of Scope Order, the Concessionaire shall proceed with the performance of such Change of Scope Order promptly following ASCL's confirmation pursuant to Clause 6.3.1(c). Pending resolution of such dispute, ASCL shall pay to the Concessionaire, if the Change of Scope Order involves increase in bill of quantities an amount equal to the costs that are certified by the Project Engineer.

6.3.3 All claims by the Concessionaire pursuant to this Clause 6.3 shall be supported by such documentation as is reasonably sufficient for ASCL/ Project Engineer to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

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ARTICLE 7 - FORCE MAJEURE AND CHANGE IN LAW

7.1 FORCE MAJEURE EVENT

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event:

- a. earthquake, flood, inundation and landslide
- b. storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- c. fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- d. acts of terrorism;
- e. strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- f. action of a Government Agency having Material Adverse Effect including but not limited to
 - i. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facility or any part thereof or of the Concessionaire's or the Contractor's rights in Contractor's rights under any of the Project Agreements.
 - ii. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
 - iii. any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
- g. early determination of this Agreement by ASCL for reasons of national emergency, national security or the national interest.
- h. any failure or delay of a Contractor caused by any of the events mentioned in (f) and (g) above, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.
- i. war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionizing, radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub-clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.

7.2 OBLIGATIONS OF THE PARTIES

- a. As soon as practicable and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the

Project Engineer and the other Party of the same setting out, inter alia, the following in reasonable detail:

- i. the nature and extent of the Force Majeure Event;
 - ii. the estimated duration of the Force Majeure Event;
 - iii. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - iv. the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - v. any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- b. As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Clause 7.2 (a), the Parties along with the Project Engineer, and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility in order to:
- i. assess the impact of the underlying Force Majeure Event,
 - ii. to determine the likely duration of Force Majeure Event and,
 - iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- c. The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the Parties may reasonably require.

7.3 PERFORMANCE OF OBLIGATIONS

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

- a. due notice of the Force Majeure Event has been given as required by the preceding Clause 7.2;
- b. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event and to restore the Project Facility, in accordance with the Good Industry practice and its relative obligations under this Agreement;
- d. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Engineer written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- e. the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;

- f. any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

7.4 TERMINATION DUE TO FORCE MAJEURE EVENT

a. Termination

- i. If a Force Majeure Event, is an event described under Clauses 7.1(a) to 7.1(e) and 7.1(i), continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- ii. If the Force Majeure Event is an event described in 7.1 (f), 7.1 (g) or 7.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement. Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 7.1 (f), 7.1 (g) or 7.1 (h) subsists or is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement. Provided further, ASCL may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clauses 7.1(f), 7.1(g) or 7.1(h).

b. Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding clause 7.4(a) (i) or (a) (ii), it shall issue Termination Notice setting out ;

- i. in sufficient detail the underlying Force Majeure Event;
- ii. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- iii. the estimated Termination Payment including the details of computation thereof and;
- iv. any other relevant information.

c. Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- i. the Termination Payment, if any, payable by ASCL in accordance with the following clause is paid to the Concessionaire on the Termination Date and
- ii. the Project Facility are handed back to ASCL by the Concessionaire on the Termination Date free from all Encumbrance.

d. Termination Payment

Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by ASCL in accordance with the following:

- i. If Termination is due to a Force Majeure Event, described under Clauses 7.1(a) to 7.1(e), no Termination Payment shall be made by ASCL to the Concessionaire but, the

- Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies.
- ii. If Termination is due to the occurrence of any event described under Clauses 7.1(f) or 7.1(g) or 7.1(h), ASCL shall not pay any amount to the Concessionaire. Provided that the Concessionaire shall pay any amount due to and recoverable by ASCL from the Concessionaire as on the Termination Date.
 - iii. If Termination is due to the occurrence of any event described under Clause 7.1(i), ASCL shall not pay any amount to the Concessionaire. Provided that the Concessionaire shall pay any amount due to and recoverable by ASCL from the Concessionaire as on the Termination Date.

7.5 LIABILITY FOR OTHER LOSSES, DAMAGES ETC.

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to 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.

7.6 CHANGE IN LAW

- a. Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
 - i. the enactment of any new Indian law;
 - ii. the repeal, modification or re-enactment of any existing Indian law;
 - iii. a change in the interpretation or application of any Indian law by a court of record. Provided that Change in Law shall not include:
 - I. any provision or statute which is already in place as of the Appointed Date,
 - II. any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
 - III. any change in the rates of the Central Taxes.
- b. Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Concessionaire is obliged to incur additional costs, ASCL shall subsequently reimburse to the Concessionaire 100% (hundred percent) of such Additional Costs, provided such additional cost is not less than INR 5,00,000 (Rupees Five Lakhs).
- c. Upon occurrence of a Change in Law, the Concessionaire may, notify ASCL of the following:
 - i. the nature and the impact of Change in Law on the Project
 - ii. in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
 - iii. the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.

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Proprietor

K. K. Singh
Nodal Officer

Agra Smart City Limited

K.K.L.
K.K. JHA
G. M. (Project)
Agra Smart City Ltd.

[Handwritten signature]
Addl. C.E.O.
Agra Smart City Limited

[Handwritten signature]
Chief Executive Officer
Agra Smart City Limited



ARTICLE 8 - EVENTS OF DEFAULT AND TERMINATION

8.1 EVENTS OF DEFAULT

Event of Default shall mean either Concessionaire Event of Default or ASCL Event of Default or both as the context may admit or require.

a. Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in Clause 4.15:

- i. The Concessionaire has failed to adhere to the Construction Requirements and such failure, in the reasonable estimation of the Project Engineer, is likely to delay achievement of COD beyond 90 days of the SPCD;
- ii. The Concessionaire has failed to achieve COD within 90 days of the SPCD for any reason whatsoever;
- iii. At any time during the Concession Period, the Concessionaire fails to adhere to the Construction Requirements or O&M Requirements and has failed to remedy the same within 60 days;
- iv. The Concessionaire has failed to make the Royalty Payment due to ASCL and more than 30 days have elapsed since such payment became due;
- v. The Concessionaire has failed to make any payments due to ASCL and more than 120 days have elapsed since such payment became due;
- vi. The Concessionaire has collected user charges in excess of the rates agreed between the Concessionaire and ASCL.
- vii. The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days ;
- viii. Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- ix. A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up/ dissolution of the Concessionaire;
- x. Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of ASCL, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- xi. A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- xii. The Concessionaire has abandoned the Project/BQS Facility ;
- xiii. The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xiv. The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days

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Nodal Officer

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- xv. The Concessionaire has failed to perform/ discharge its obligations under Clause 4.14 of this Agreement for a continuous period of 24 hours.
- xvi. The Consortium formed for the purpose of the Project is changed by the Concessionaire without the consent of ASCL.

b. ASCL Event of Default

Any of the following events shall constitute an event of default by ASCL ("ASCL Event of Default"), when not caused by a Concessionaire Event of Default or a Force Majeure Event:

- i. ASCL has failed to provide land at the Site to the Concessionaire as per the provisions of Clause 3;
- ii. ASCL is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 days of receipt of notice thereof issued by the Concessionaire;
- iii. ASCL having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within 30 days from the date of written notice thereof given by the Concessionaire
- iv. ASCL has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- v. Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/this Agreement becomes inoperable or takeover by any government agency of the Project/Project Facilities or any part thereof, thereby causing Material Adverse Effect.
- vi. Any representation made or warranties given by the ASCL under this Agreement has been found to be false or misleading.

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8.2 TERMINATION DUE TO EVENT OF DEFAULT

a. Termination for Concessionaire Event of Default

- i. Without prejudice to any other right or remedy which ASCL may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, ASCL shall subject to the provisions of the Lender's Step-in Rights as per Clause 8.5, be entitled to terminate this Agreement in the manner as set out under Clause 8.2(a)(ii) and Clause 8.2(a)(iii). Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Clause 8.1(a)(xi), ASCL may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Clause 8.2(c).
- ii. If ASCL decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 days of receipt of the Preliminary Notice, the Concessionaire shall submit to ASCL in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, ASCL shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- iii. If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 days ("Cure Period") to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to

R. K. Singh
Nodal Officer
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remedy/ cure the underlying Event of Default within such further period allowed, ASCL shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate Performance Security, if subsisting.

b. Termination for ASCL Event of Default

- i. Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of ASCL Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Concessionaire decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to ASCL. Within 30 days of receipt of Preliminary Notice, ASCL shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "ASCL Proposal to Rectify"). In case of non submission of ASCL Proposal to Rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If ASCL Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor, ASCL shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however ASCL fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

c. Termination Notice

If a Party having become entitled to do so decide to terminate this Agreement pursuant to the preceding sub clause (a) or (b), it shall issue Termination Notice setting out:

- i. in sufficient detail the underlying Event of Default;
- ii. the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- iii. the estimated termination payment including the details of computation thereof; and,
- iv. any other relevant information.

d. Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- i. until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility,
- ii. the termination payment, if any, payable by ASCL in accordance with the following Clause (f) is paid to the Concessionaire on the Termination Date and
- iii. the Project Facility is handed back to ASCL by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to ASCL.

e. Withdrawal of Termination Notice



K.K. JHA
G. M. (Project)
Agra Smart City Ltd.

Addl. C.E.O.
Agra Smart City Limited

Chief Executive Officer
Agra Smart City Limited

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

f. Termination Payments on account of ASCL Event of Default

Upon Termination of this Agreement on account of ASCL Event of Default, the Concessionaire shall be entitled to withdraw the Performance Security, if subsisting, and receive from ASCL, termination payment as per following:

- i. If the Termination is prior to achievement of COD then the Termination Payment from ASCL shall be equal to the amount, as estimated by the Project Engineer, which has already been spent by the Concessionaire for construction/Upgradation of Project Facilities and has not been paid for by ASCL as per the Project Milestone based disbursement schedule.
- ii. If the Termination is after achievement of COD then the Termination Payment from ASCL shall be equal to Royal Fee Rate/Concession Fee payable by the Concessionaire to ASCL for next 3 (three) months.

g. Termination Payments on account of Concessionaire Event of Default

Upon Termination of this Agreement on account of Concessionaire Event of Default, Concessionaire shall not be entitled to receive any Termination Payment from ASCL. Upon Termination of this Agreement on account of Concessionaire Event of Default, ASCL shall be entitled to forfeit the Performance Security.

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RIGHTS OF ASCL ON TERMINATION

- a. Upon Termination of this Agreement for any reason whatsoever, ASCL shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:
 - i. enter upon and take possession and control of the Project Site / Project Facility forthwith;
 - ii. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Site /Project Facility;
- b. Notwithstanding anything contained in this Agreement, ASCL shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or reemployment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facility by the Concessionaire to ASCL shall be free from any such obligation.

8.4 ACCRUED RIGHTS OF PARTIES

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this

Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

8.5 LENDERS' STEP-IN RIGHTS

- a. Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that :
- i. upon the Lenders recalling and demanding the debt outstanding under the Financing Documents (following an event of default under the Financing Documents), or
 - ii. upon a Termination Notice being issued by ASCL, the Lenders shall, without prejudice to any other remedy available to them, have the option to propose to ASCL the substitution of the Concessionaire by another suitable company ("Proposed Concessionaire"). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Concessionaire and the terms and conditions of the substitution.
- b. Upon receipt of the Lender's proposal pursuant to the preceding sub clause (a), ASCL shall, at its discretion, have the right to accept substitution of the Concessionaire on such terms and conditions as it may deem fit. Provided that any such substitution shall :
- i. be on terms and conditions of the Concession which are not less favourable to ASCL than those prevailing at the time of substitution, and
 - ii. be for the remaining period of Concession only.
- c. In the event of substitution as aforesaid, all the rights, privileges and the benefits of the Concessionaire shall be deemed to have been transferred to and vested in the Proposed Concessionaire and ASCL and the Proposed Concessionaire shall take such steps and enter into such documents as may be necessary to give effect to the substitution.
- d. Upon the substitution of the Concessionaire becoming effective as aforesaid, the Concessionaire shall hand back to ASCL or upon instruction of ASCL to the Proposed Concessionaire and for the purpose of giving effect to this provision, ASCL shall have all such rights as are provided in Clause 8.3.

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Proprietor

K.K. JHA
G. M. (Project)
Agra Smart City Ltd.

R. K. Singh
Nodal Officer
Agra Smart City Limited

Addl. C.E.O.
Agra Smart City Limited



Chief Executive Officer
Agra Smart City Limited

ARTICLE 9 - HANDBACK REQUIREMENTS

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9.1 OWNERSHIP

Without prejudice and subject to the Concession, the ownership of the Project Site, and the Project Facility, including all improvements made therein by the Concessionaire, shall at all times remain that of ASCL.

9.2 OBLIGATIONS OF PARTIES

a. Concessionaire's Obligations

- i. The Concessionaire shall on the date of expiry of the Concession Period, hand back vacant and peaceful possession of the Project Site and Project Facility to ASCL free of cost and in good operable condition.
- ii. At least 12 months before the expected expiry of the Concession Period a joint inspection of the Project Site and Project Facility shall be undertaken by ASCL, Concessionaire and Project Engineer. ASCL and Project Engineer shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs ("Project Facility Handback Requirements"), if any, to be carried out so as to conform to the Construction Requirements and O&M Requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least 3 months prior to the expected expiry of the Concession Period and ensure that the Project Facility continues to meet such requirements until the same are handed back to ASCL.
- iii. ASCL/ Project Engineer shall, within 15 days of the joint inspection undertaken under preceding clause prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to ASCL along with the Project Facility.
- iv. The Concessionaire hereby acknowledges ASCL's rights specified in Clause 8.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.
- v. At least 24 months prior to the expiry of the Concession Period, the Concessionaire shall, for due performance of its obligations relating to handback of the Project Facility, submit to ASCL a bank guarantee ("Handback Guarantee"), from a bank acceptable to ASCL. The Handback Guarantee shall be kept valid for a period of 30 months.

b. ASCL's Obligations

ASCL shall, subject to ASCL's right to deduct amounts towards :

- i. carrying out works/jobs listed under Clause 9.2(a)(ii), which have not been carried out by the Concessionaire,
- ii. purchase of items, which have not been handed back to ASCL along with the Project Facility in terms of Clause 9.2(a)(iii), and
- iii. any outstanding dues, which may have accrued in respect of the Project Facility during the Concession Period, duly discharge and release to the Concessionaire the Handback Guarantee within 3 months from the expiry of the Concession Period.



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G. M. (Project)
Agra Smart City Ltd.

Addl. C.E.O.
Agra Smart City Limited

Chief Executive Officer
Agra Smart City Limited

ARTICLE 10

DISPUTE RESOLUTION

10.1 AMICABLE RESOLUTION

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-clause (b) below.
- b. Either Party may require such Dispute to be referred to the Chief Executive Officer, ASCL and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 10.2 below.

10.2 ARBITRATION

- a. Procedure

Subject to the provisions of Clause 10.1, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

- b. Place of Arbitration

The place of arbitration shall ordinarily be Agra but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

- c. English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

- d. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

- e. Performance during Arbitration

Pending the submission of and/or decision on a dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.


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G. M. (Project)

Agra Smart City Ltd.




Addl. C.E.O.

Agra Smart City Limited


Chief Executive Officer
Agra Smart City Limited

ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

11.1 REPRESENTATIONS AND WARRANTIES OF THE CONCESSIONAIRE

The Concessionaire represents and warrants to ASCL that:

- a. it is duly organised, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g. there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the ASCL of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h. 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 Agency which may result in Material Adverse Effect;
- i. it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j. subject to receipt by the Concessionaire from ASCL of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Site/Project Facility shall pass to and vest in ASCL on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or ASCL;
- k. no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to ASCL or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- l. no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.
- m. Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and

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Proprietor

Nodal Officer
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**CA FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS
AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH
ADVERTISING RIGHTS UNDER PPP MODE**

the information provided by ASCL, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder. The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that ASCL shall not be liable for the same in any manner whatsoever to the Concessionaire.

11.2 REPRESENTATIONS AND WARRANTIES OF ASCL

ASCL represents and warrants to the Concessionaire that:

- a. ASCL has full power and authority to grant the Concession;
- b. ASCL has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- c. This Agreement constitutes ASCL's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d. There are no suits or other legal proceedings pending or threatened against in respect of the Project, Project Site or Project Facility.

11.3 OBLIGATION TO NOTIFY CHANGE

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

For Frank Advertisers
Proprietor

K.K. JHA
G. M. (Project)
Agra Smart City Ltd.

R. K. Singh
Nodal Officer
Agra Smart City Limited

Addl. C.E.O.
Agra Smart City Limited

Chief Executive Officer
Agra Smart City Limited

ARTICLE 12 - MISCELLANEOUS

12.1 ASSIGNMENT AND CHARGES

- a. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of ASCL.
- b. The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site/Project Facility, except with prior consent in writing of ASCL, which consent ASCL shall be entitled to decline without assigning any reason whatsoever.
- c. Restraint set forth in sub-articles (a) and (b) above shall not apply to:
 - i. liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - ii. Pledges/hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
 - iii. assignment of Concessionaire's rights and benefits under this Agreement and other Project Agreements to or in favour of the Lenders as security for financial assistance provided by them.

12.2 INTEREST AND RIGHT OF SET OFF

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 15% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off. Provided the stipulation regarding interest for delayed payments contained in this Clause shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

For Frank Advertisers

[Signature]

Proprietor

12.2.1 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Agra shall have jurisdiction over all matters arising out of or relating to this Agreement.

12.2.2 Waiver

- a. 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:
 - i. 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;
 - ii. shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
- shall not affect the validity or enforceability of this Agreement in any manner.

R. K. Singh

Nodal Officer

Agra Smart City Limited

- b. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

Agra
SMART CITY LIMITED

K.K. CHA
G. M. (Project)

Addl. CEO

Agra Smart City Limited

[Signature]

Chief Executive Officer
Agra Smart City Limited

12.3 SURVIVAL

Termination of this Agreement:

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

12.4 AMENDMENTS

This Agreement constitute a complete and exclusive understanding 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 agreed to by both the Parties hereto and evidenced in writing.

12.5 NOTICES

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to ASCL: The Chief Executive Officer, ASCL Nagar Nigam, Agra – 282002, Uttar Pradesh
Fax No :

If to the Concessionaire: Amresh Nath, Proprietor M/s Frank Advertisers, 29/120, Sanjay Palace, Agra-282002, Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

12.6 SEVERABILITY

If for any reason whatsoever 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 shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

12.7 NO PARTNERSHIP

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

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12.8 LANGUAGE

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

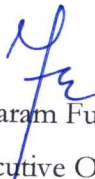
12.9 EXCLUSION OF IMPLIED WARRANTIES ETC.

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

12.10 COUNTERPARTS


This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement. IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN. SIGNED SEALED AND DELIVERED

For and on behalf of ASCL by:


Nikhil Tikaram Funde
Chief Executive Officer
Agra Smart City Limited.

Chief Executive Officer
Agra Smart City Limited

For and on behalf of CONCESSIONAIRE by:


For Frank Advertisers
Amresh Nath
Proprietor, Proprietor
M/s Frank Advertisers


G. M. (Project)
Agra Smart City Ltd.

In the presence of:

1.

2.


R. K. Singh
Nodal Officer
Agra Smart City Limited


Addl. C.E.O.
Agra Smart City Limited