

VIJAYAWADA MUNICIPAL CORPORATION (VMC)

CORRIGENDUM

Rc.CE-108252/2018

Dt. 04.04.2018

The amendment for the RFP invited, vide this office Rc.CE-108252/2018, Dt.22-03-2018 was issued for the following

Sl. No.	Description	For	Read
1	Bid document fee	Rs. 20,000 /-	Rs.10,000/-
2	Annual Turnover	Rs. 1,00,00,000/-	Rs.15,00,000/-

All the remaining terms/conditions remain un-altered.

**Sd/-
COMMISSIONER**

Request for Proposal

For

Design, Build, Finance, Operation,
Maintenance, Management and
Transfer of Food Court at
Sambamurthy Road in Vijayawada

VIJAYAWADA MUNICIPAL
CORPORATION

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CONTENTS OF RFP DOCUMENTS

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1	SECTION I (INSTRUCTIONS TO BIDDERS)	10-78
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CONTENTS OF THE SECTION I

I. This Section I of the RFP documents comprises the Disclaimer set forth here in below, the contents as listed below, and will additionally include any Addenda issued by VMC.

Invitation for Bids	
Section 1	Introduction
Section 2	Instructions to Bidders
Section 3	Evaluation of Bids
Section 4	Fraud and Corrupt Practices
Section 5	Pre-Bid Conference
Section 6	Miscellaneous

Appendices

- I. Letter comprising the Bid
- II. Financial Proposal
- III. Bank Guarantee for Bid Security IV.
- Power of Attorney for signing of Bid
- V. Power of Attorney for Lead Member of Consortium
- VI. Guidelines of the Department of Disinvestment VII.
- Joint Bidding Agreement for Consortium

II. The draft Agreement provided by the in Section II as part of the Bid Documents shall be deemed to be part of this RFP.

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DISCLAIMER

The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the VMC or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the VMC to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their technical and financial offers pursuant to this RFP (the “**Bid**” or “**Proposal**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by the VMC in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the VMC, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The VMC accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The VMC, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Bid Stage.

The VMC also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The VMC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the VMC is bound to select a Bidder or to appoint the Successful Bidder or Operator, as the case may be, for the Project and the VMC reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the VMC or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the VMC shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

SECTION I – INFORMATION TO BIDDERS

VIJAYAWADA MUNICIPAL CORPORATION**1. INTRODUCTION****1.1. BACKGROUND**

- 1.1.1. VMC intends to offer Design, Built, Finance, Operation, Maintenance, Management and Transfer of Food Court in Sambamurthy Road through Public Private Partnership (PPP) on Design, Built, Finance, Operation, Maintenance, Management and Transfer (DBFOMMT) basis (the “**Project**”). Food Court and Shops comprise of food stalls.
- 1.1.2. The Successful Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate itself as such prior to execution of the Agreement (the “Operator”), shall be responsible for Design, Built, Finance, Operation, Maintenance, Management and Transfer of the Project under and in accordance with the provisions of the agreement (the “Agreement”) to be entered into between the Successful Bidder and the VMC in the form provided by the VMC as part of the Bidding Documents pursuant hereto.
- 1.1.3. The **scope of work** will broadly include Design, Built, Finance, Operation, Maintenance, Management and Transfer of food court shops during the Agreement Period of 1 year as specified in Article 3.1.1 of the draft Agreement.
- 1.1.4. The draft Agreement sets forth the detailed terms and conditions for grant of the Concession to the Operator, including the scope of Operators services and obligations (the “**Concession**”).

- 1.1.5. The statements and explanations contained in this RFP are intended to provide understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Operator set forth in the draft Agreement or the VMC's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or modify the RFP and draft agreement prior to Bid Due Date. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by VMC.
- 1.1.6. The VMC shall receive Bids pursuant to the RFP in accordance with the terms set forth in the RFP and other documents provided by the VMC pursuant to RFP (collectively the "**Bidding Documents**"), as modified, altered, amended and clarified from time to time by the VMC by posting/ uploading the same on its website, and all Bids shall be prepared and submitted in accordance with such terms.
- 1.1.7. The RFP document has been made available on the website <http://www.ourvmc.org>; the document purchase fee (the "**Document Fee**") of Rs. 20,000 (Rupees Twenty thousand only) shall be paid to VMC through demand draft drawn on a scheduled nationalised bank in favour of "The Commissioner, Vijayawada Municipal Corporation" payable in a Bank at Vijayawada, in a manner, prescribed in the RFP document.

1.2. BRIEF DESCRIPTION OF BIDDING PROCESS

- 1.2.1. The VMC has adopted single stage two step process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. All Bidders shall submit their Technical Proposal and Financial Proposal against this RFP in a single stage ("the **Bidder**"). The first step of the process involves qualification of interested parties / Consortia on the basis of the Technical Proposal submitted by the Bidders in accordance with the provisions of RFP. At the end of the first step, the VMC shall shortlist pre-qualified Bidders. In the second step of the process, Financial Proposal of only these shortlisted pre-qualified Bidders shall be opened and evaluated for identification of the Successful Bidder.

GOI has issued guidelines (see Appendix-VI of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The VMC shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").
- 1.2.3. The Bidding Documents include the draft Agreement for the Project. The aforesaid documents and any addenda issued subsequent to this RFP Document, or modified RFP documents but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.4. A Bidder is required to deposit, along with its Bid, a Bid Security equivalent to Rs. 1 lakh (Rupees One lakh only) refundable not later than 60 days from the Bid Due Date or from the date of execution of agreement with the Successful Bidder, whichever is later, except in the case of the highest Bidder. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the VMC, and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and which may be extended as may be mutually agreed between the VMC and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.5. Generally the highest rate quoted Bidder shall be the Successful Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3.8 of the RFP, be invited to match the Bid submitted by the highest Bidder in case such highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the BID of the highest Bidder, the VMC may, in its discretion, invite fresh BIDs from all Bidders or annul the Bidding Process, as the case may be.
- 1.2.6. Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective BIDs for award of the Concession including implementation of the Project.
- 1.2.7. Bids are invited for the Project on the basis of the highest Annual Concession Fee (the "**Annual Concession Fee**") to be paid by the Bidder during the period of Concession. The Agreement Period is pre-determined, as indicated in the draft Agreement. The Annual Concession Fee shall constitute the criteria for evaluation of BIDs. Subject to this RFP the Project will be awarded to the Bidder quoting the highest Annual Concession fee.
- 1.2.8. The Operator will be entitled to levy and charge an appropriate User Charges from users of the Project, as prescribed in the RFP document.
- 1.2.9. Further, other details of the process and the terms thereof are spelt out in this RFP.
- 1.2.10. Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the o/o Chief Engineer, VMC. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: RFP for Design, Built, Finance, Operation, Maintenance, Management and Transfer of Food Court in Sambamurthy Road of Vijayawada".

1.3. SCHEDULE OF BIDDING PROCESS

The VMC shall endeavor to adhere to the following schedule:

Event Description	Date
Issue of RFP Notice on website http://www.ourvmc.org	14.04.2018
Pre-Bid meeting	No Pre Bid due to 2 nd call
Last date for receiving queries	N.A
VMC response to queries latest by	N.A
Bid Due Date	18.04.2018 upto 15.00 hours
Opening of Technical Proposals	On Bid Due Date at 17:00 hours or thereafter
Opening of Financial Proposals	To be intimated
Letter of Award (LOA)	Within 21 working days of Bid Due Date
Validity of Bids	120 days of Bid Due Date
Submission of Performance Security	Within 3 weeks from the date of receipt of LOA
Signing of Agreement	Within 45 working days of date of LOA

2. INSTRUCTIONS TO BIDDERS

A.GENERAL

2.1. ELIGIBILITY OF BIDDERS

2.1.1. Bids are invited from single or group of entities; for determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), joining together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) A Bidder may be a natural person, private entity, partnership firm, company or society or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium,. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.2 below.
- (c) Where the Bidder is a single entity or a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”), to execute the Agreement and implement the Project.

2.1.2. Where the Bidder is a single entity or a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”), to execute the Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 2 (two);

- (b) subject to the provisions of clause (a) above, the Proposal should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 51% (fifty one per cent) of the paid up and subscribed equity of the SPV till a period of 2 (two) years from the Operations Date and 26% (twenty six percent) during the remaining Agreement Period . The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-V, signed by all the other members of the Consortium;
- (d) All other members of the Consortium shall legally and beneficially hold not less than 26 % (twenty six percent) of the paid up & subscribed equity share capital of the Operator till a period of 2 (two) years from the Commercial Operations Date.
- (e) the Proposal should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (f) an individual Bidder cannot at the same time be member of a Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for qualification;

the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;

- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-VII (the “**Jt. Bidding Agreement**”), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Proposal, shall, *inter alia*:
 - i. convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Agreement and subsequently perform all the obligations of the Operator in terms of the Agreement, in case the concession to undertake the Project is awarded to

the Consortium;

- ii. clearly outline the proposed roles and responsibilities, if any, of each member;
 - iii. commit the minimum equity stake to be held by each member;
 - iv. commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe for 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the Operations Date, hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV;
 - v. members of the Consortium undertake that they shall collectively hold at least 100% (hundred per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the Operations Date; and
 - vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Operator in relation to the Project in accordance with the Agreement and the statement to this effect shall also be included in the Jt. Bidding Agreement and the Agreement; and
- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Concessioning Authority.

2.1.3. **Technical Qualification:** To be eligible for pre-qualification and short-listing, the Bidders shall have to satisfy the following conditions of eligibility:

- (a) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall have, for past three years preceding the Bid Due Date:

- i) Minimum average Annual Turnover of Rs 1 crore (Rupees) in Eligible Projects, i.e., in business of maintenance of Food stalls in Shopping Malls, Mobile food stands and their management of any reputed brands.

(b) **Financial Capacity:** The Bidder shall have a minimum average Annual Turnover (the “**Financial Capacity**”) of Rs. 1 crore (Rupees) from the activities mentioned in Clause 2.1.3 (a) (i) in the last three financial years preceding the Bid Due Date.

- 2.1.4. In computing the Technical Capacity and Financial Capacity of the Bidder; the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

- 2.1.5. The Bidders shall enclose with its letter comprising the bid, as per the format at Appendix-I, complete with its Annexes, the following:

Certificate(s) from its statutory auditors stating the Eligible Projects and the annual turnover from the Eligible Projects during the past 3 (three) years (for FY 2015-16, FY 2016-17, FY 2017-18) in respect of the projects specified in paragraph 2.1.3 (a) (i) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client. For the purpose of this RFP, Turnover shall mean the income received from goods and services in respect of activities specified in Clause 2.1.3 (a) during the accounting period. Other income, including but not limited to interest income, income from sale of assets, shall not be included in the definition of Annual Turnover;

2.2. GENERAL TERMS OF BIDDING

- 2.2.1. A Bidder is eligible to submit only one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.2.2. Notwithstanding anything to the contrary contained in the RFP, the detailed terms specified in the draft Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement.
- 2.2.3. The Financial Proposal should be furnished in the format at Appendix – II, clearly indicating the bid amount in both figures and words, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.2.4. The Financial Proposal shall be the Annual Concession Fee (exclusive of service tax or any other tax as applicable thereon, which shall be paid extra by the Operator) to be quoted by the Bidder. Annual Concession Fee shall be payable by the Operator to the VMC, as the case may be, as per the terms and conditions of the RFP and the provisions of the Agreement.

The Operator shall pay service tax and / or any other tax as applicable over and above the quoted Annual Concession Fee to the VMC. All duties and taxes in consequence of its obligations under this Agreement, including customs and excise duties, advertisement tax, VAT, any cess, levy, duty, tax or charge etc shall be directly borne by the Operator.

- 2.2.5. The Bidder shall deposit a Bid Security equivalent to Rs. 1 lakh (Rupees One lakh only) in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand draft or in the form of a Bank Guarantee, acceptable to the VMC, as per format at Appendix – III.

- 2.2.6. The validity period of the Bank Guarantee or Demand Draft, as the case may be, shall not be less than 120 days from the Bid Due Date, which shall be extended by the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not later than 60 days from the Bid Due Date or from the Date of signing of agreement with the Successful Bidder, whichever is later, except in the case of the highest Bidder.
- 2.2.7. The Bidder should submit a Power of Attorney as per the format at Appendix – IV, authorizing the signatory of the Bid to commit the Bidder.
- 2.2.8. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix – V.
- 2.2.9. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.2.10. The Proposal and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.2.11. The Bidding Documents including the RFP and all attached documents are and shall remain the property of the VMC and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The VMC will not return any Bid or any information provided along therewith.
- 2.2.12. A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the VMC shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the VMC for, inter alia, the time, cost and effort of the VMC, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy that may be available to the VMC hereunder or

otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:

- (i) such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 1 % of its paid up and subscribed capital; or
- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Bid of either or each of the other Bidder; or
- (vi) such Bidder has participated as a consultant to the VMC in the preparation of any documents, design or technical specifications of the Project.

2.2.13. A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the VMC in relation to the Project is engaged by the Bidder in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Agreement. In the event any such adviser is engaged by the Successful Bidder or Operator, as the case may be, after issue of the LOA or execution of the Agreement, then notwithstanding anything to the contrary contained herein or in the LOA or the Agreement and without prejudice to any other right or remedy of the VMC, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the VMC may have thereunder or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without the

VMC being liable in any manner whatsoever to the Successful Bidder or Operator for the same.

2.2.14. The RFP is not transferable.

2.2.15. Any award of Concession pursuant to the RFP shall be subject to the terms of Bidding Documents.

2.2.16. A bidder shall not be eligible for bidding hereunder if the Bidder, its Associate was, during a period of 2 (two) months preceding the Bid Due Date, either by itself or as member of a consortium:

- (i) pre-qualified and short-listed by the VMC for the Bid Stage comprising RFP in related to 8 (eight) or more projects of the VMC; or
- (ii) declared by the VMC as the Successful bidder for undertaking 4 (four) or more projects of the VMC; or
- (iii) unable to achieve financial close, for 2 (two) or more projects of the VMC, within the period specified in the respective Agreements entered into with the VMC:

2.2.17. Provided that in the event the bidder, its Member or Associate, as the case may be, shall have, within one week of receiving a notice of the pre-qualification and short-listing for the Bid Stage of any such project, withdrawn from bid process thereof and notified the VMC of the same, the project so notified shall be excluded from the preview of this clause 2.2.16.

2.2.18. Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal, either individually or as member of a Consortium.

2.2.19. A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the

Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder, Consortium Member or Associate.

2.2.20. While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Bid, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of the VMC from national security and public interest perspective. The decision of the VMC in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the VMC shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the VMC of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.3. CHANGE IN COMPOSITION OF THE CONSORTIUM

- 2.3.1. Change in the composition of a Consortium will not be permitted by the Concessioneering Authority during the Bidding process except as stated in clause 2.3.1.
- 2.3.2. Notwithstanding anything to the contrary contained in Clause 2.1, a Bidder may, within 15 (fifteen) days after the Bid Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.4. CHANGE IN OWNERSHIP

- 2.4.1. By submitting the Bid, the Bidder acknowledges and undertakes that the Lead Member shall continue to hold minimum 51% of the equity and each of the other Consortium Members shall continue to hold at least 26% of the equity of the Operator until the second anniversary of the Operations Date is achieved under and in accordance with the provisions of the Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Agreement, be deemed to be a breach of the Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.4.1 shall apply only when the Bidder is a Consortium.
- 2.4.2. By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity is being taken into consideration for the purposes of evaluation of eligibility conditions under and in accordance with the RFP, the Bidder shall inform the VMC forthwith along with all relevant particulars about the same and the VMC may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Successful Bidder, as the case may be. In the event such change in control occurs after signing of the Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed to be a breach thereof, and the Agreement shall be liable to be terminated without the VMC being liable in any manner whatsoever to the Operator. In such an event, notwithstanding anything to the contrary contained in the Agreement, the VMC shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the VMC for, inter alia, time, cost and effort of the VMC, without prejudice to any other right or remedy that may be available to the VMC hereunder or otherwise.

2.5. COST OF BIDDING

- 2.5.1. The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The VMC shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.6. SITE VISIT AND VERIFICATION OF INFORMATION

- 2.6.1. Bidders are advised to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, applicable laws and regulations, and any other matter considered relevant by them.

- 2.6.2. It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the VMC;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the VMC relating to any of the matters referred to in Clause 2.6.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.6.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of

profits etc. from the VMC, or a ground for termination of the Agreement; and

(f) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.3. The VMC shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the VMC.

2.7. RIGHT TO ACCEPT AND TO REJECT ANY OR ALL BIDS

2.7.1. Notwithstanding anything contained in the RFP, the VMC reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation whatsoever for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.7.2. The VMC reserves the right to reject any Bid and appropriate the Bid Security if:

(b) at any time, a material misrepresentation is made or uncovered, or

(c) the Bidder does not provide, within the time specified by the VMC, the supplemental information sought by the VMC for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the highest Bidder gets disqualified / rejected, then the VMC reserves the right to:

(i) invite the remaining Bidders to submit Bids in accordance with this RFP; or

(ii) take any such measure as may be deemed fit in the sole discretion of the VMC, including annulment of the Bidding Process.

2.7.3. In case it is found during the evaluation or at any time before signing of the Agreement or

after its execution and during the period of subsistence thereof, including the Concession thereby granted by the VMC, that one or more of the pre-qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LOA or entering into of the Agreement, and if the Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the VMC to the Bidder, without the VMC being liable in any manner whatsoever to the Bidder or Operator, as the case may be. In such an event, the VMC shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as compensation and damages payable to the VMC for, inter alia, time, cost and effort of the VMC, without prejudice to any other right or remedy that may be available to the VMC.

- 2.7.4. The VMC reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure of the VMC to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the VMC thereunder.

B. DOCUMENTS

2.8. CONTENTS OF THE RFP

- 2.8.1. This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Bids	
Section 1	Introduction
Section 2	Instructions to Bidders
Section 3	Evaluation of Bids
Section 4	Fraud and Corrupt Practices
Section 5	Pre-Bid Conference
Section 6	Miscellaneous

Appendices

- I. Letter comprising the Bid
- II. Financial Proposal
- III. Bank Guarantee for Bid Security IV.
- Power of Attorney for signing of Bid
- V. Power of Attorney for Lead Member of Consortium
- VI. Guidelines of the Department of Disinvestment VII.
- Joint Bidding Agreement for Consortium

- 2.8.2. The draft Agreement to be provided by the VMC as part of the Bid Documents shall be deemed to be part of this RFP.

2.9. CLARIFICATIONS

- 2.9.1. Bidders requiring any clarification on the RFP may notify the VMC in writing or by fax and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The VMC shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be uploaded in the website <http://www.ourvmc.org> without identifying the source of queries.
- 2.9.2. The VMC shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the VMC reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring the VMC to respond to any question or to provide any clarification.
- 2.9.3. The VMC may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the VMC shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by VMC or its employees or representatives shall not in any way or manner be binding on the VMC

2.10. AMENDMENT MODIFICATION OF RFP

- 2.10.1. At any time prior to the deadline for submission of Bids, the VMC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.10.2. Any Addendum/Modification thus issued will be uploaded in the website www.ourvmc.org
- 2.10.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the VMC may, at its own discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.11. LANGUAGE

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Proposal may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail

2.12. FORMAT AND SIGNING OF BID

- 2.12.1. The Bidder shall provide all the information sought under this RFP. The VMC will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.12.2. The Bid shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initiated. All the alterations, omissions, additions or any other amendments made to the Bid shall be initiated by the person(s) signing the Bid. The Bid shall contain page numbers and shall be hard bound.

2.13. SEALING AND MARKING OF BIDS

2.13.1. The documents of Technical Proposal shall be placed in a separate envelope and marked as prescribed hereunder -

“Envelope 1: Technical Proposal”

- a) Document fee Rs. 20,000/- in the form of crossed Bank Draft payable to The Commissioner, VMC
- b) Bid Security in the prescribed format (Appendix – III);
- c) Power of Attorney for signing of Bid in the prescribed format (Appendix – IV);
- d) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – V);
- e) Certified copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-VII;
- f) Certified copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- g) Certified copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding three years; and
- h) A copy of the Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (c) hereinabove.
- i) Letter comprising the Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents

2.13.2. The Bidder shall submit the Financial Proposal (the **“BID”**) in the format specified at Appendix-II, and seal it in an envelope and mark the envelope as **“Envelope 2: Financial Proposal”**.

2.13.3. All the envelopes specified above shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification:

“Bid for Design, Built, Finance, Operation, Maintenance, Management and Transfer of Food Stalls in Sambamurthy Road in Vijayawada”

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.13.4. Each of the envelopes shall be addressed to:

Chief Engineer, Vijayawada Municipal Corporation, Canal road, Vijayawada	Email – ourvmc@yahoo.com
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If the envelopes are not sealed and marked as instructed above, the VMC assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

2.13.5. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.14. BID DUE DATE

2.14.1. Bids should be submitted before 1500 hours IST on the Bid Due Date at the address provided herein in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person in charge of the Receipt-Dispatch section of VMC.

2.14.2. The VMC may, in its sole discretion, extend the Bid Due Date by issuing an Addendum only in its website <http://www.ourvmc.org>

2.15. LATE BIDS

2.15.1. Bids received by the VMC after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.16. CONTENTS OF THE BID

2.16.1. The BID shall be furnished in the format at Appendix – II and shall consist of Annual Concession Fee to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the

Annual Concession Fee offered by him, to undertake the Project in accordance with this RFP and the provisions of the Agreement.

- 2.16.2. The Project will be awarded to the Bidder quoting the highest Annual Concession Fee.
- 2.16.3. The opening of BIDS and acceptance thereof shall be substantially in accordance with this RFP.
- 2.16.4. The proposed Agreement shall be deemed to be part of the Bid.

2.17. MODIFICATIONS/ SUBSTITUTION/ WITHDRAWAL OF BIDS

- 2.17.1. The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the VMC prior to Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.17.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered, with the envelopes being additionally marked “**MODIFICATION**”, “**SUBSTITUTION**” or “**WITHDRAWAL**”, as appropriate.
- 2.17.3. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the VMC, shall be disregarded.

2.18. REJECTION OF BIDS

- 2.18.1. The VMC reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory on the part of the VMC to accept any Bid or to give any reasons for their decision.
- 2.18.2. The VMC reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.19. VALIDITY OF BIDS

- 2.19.1. The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the VMC.

2.20. CONFIDENTIALITY

- 2.20.1. All of the information relating to the examination, clarification, evaluation and recommendation for the Bidders is confidential and shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the VMC in relation to, or matters arising out of, or concerning the Bidding Process. The VMC will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The VMC may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the VMC.

2.21. CORRESPONDENCE WITH THE BIDDER

- 2.21.1. The VMC shall not entertain any correspondence from any Bidder in relation to acceptance or rejection of any Bid.

D. BID SECURITY

2.22. BID SECURITY

- ~~2.22.1.~~ The Bidder shall furnish as part of its Bid, a Bid Security in the form of a bank guarantee issued by a nationalized bank, or a Scheduled Bank in India in favour of the VMC in the format at Appendix – III (the “**Bank Guarantee**”) and having a validity period of not less than 180 days from the Bid Due Date, as may be extended by the Bidder from time to time.

- 2.22.2. Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the VMC and payable at Vijayawada (the “**Demand Draft**”). The VMC shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.22.3. Any Bid not accompanied by the Bid Security shall be rejected by the VMC as non-responsive.
- 2.22.4. Save as provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the VMC, without any interest, as promptly as possible on acceptance of the Bid of the Successful Bidder or when the Bidding process is cancelled by the VMC. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the VMC give the name and address of the person in whose favour the said demand draft shall be drawn by the VMC for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.22.5. The Successful Bidder’s Bid Security will be returned, without any interest, upon the Bidder signing the Agreement and furnishing the Performance Security in accordance with the provisions thereof.
- 2.22.6. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the VMC shall be entitled to forfeit and appropriate the Bid Security as compensation / damages to the VMC in any of the events specified herein below.
- 2.22.7. The Bid Security shall be forfeited and appropriated by the VMC as compensation and damages payable to the VMC for, inter alia, time, cost and effort of the VMC without prejudice to any other right or remedy that may be available to the VMC hereunder or otherwise, under the following conditions:
- a) If a Bidder submits a non-responsive Bid;
 - b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice,

undesirable practice or restrictive practice as specified in Clause 4 of this RFP;

- c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
- d) In the case of Successful Bidder, if it fails within the specified time limit -
 - i) to sign the Agreement and/or
 - ii) to furnish the Performance Security within the a period of 3 weeks from the date of receipt of Notice of Award

3. EVALUATION OF BIDS

3.1. OPENING AND EVALUATION OF BIDS

- 3.1.1. The VMC shall open the Technical Proposals at 1600 hours on the Bid Due Date, at the Office of VMC and in the presence of the Bidders who choose to attend.
- 3.1.2. The VMC shall open Financial Proposals of only those Bidders who meet the eligibility criteria specified in this RFP at such date and time as intimated by the VMC.
- 3.1.3. The VMC will subsequently examine and evaluate the Bids in accordance with the provisions set out in this RFP.
- 3.1.4. If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the VMC may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Bidder.
- 3.1.5. In the event that an Bidder claims credit for an Eligible Project, and such claim is determined by the VMC as incorrect or erroneous, the VMC shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Bidder, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the VMC reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.
- 3.1.6. To facilitate evaluation of Bids, the VMC may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2. EVALUATION OF TECHNICAL PROPOSAL

- 3.2.1. The Bidder's competence and capability shall be evaluated on the basis of by the following parameters:

- a) Technical Capacity; and
- b) Financial Capacity

3.3. TECHNICAL CAPACITY FOR PURPOSES OF EVALUATION

- 3.3.1. Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.3.3, 3.3.4 and 3.3.5 (the "**Eligible Projects**"):

Eligible Projects shall mean business of maintenance of Food Stalls in Shopping Malls of reputed brands, Mobile food stands, and their management for the items as mentioned in the scope of work.

- 3.3.2. VMC reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the VMC in respect of such Bid.
- 3.3.3. Double counting for a particular project shall not be permitted in any form.
- 3.3.4. The entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty six percent) equity during the entire year for which Eligible Experience is being claimed
- 3.3.5. The entity claiming experience shall, during the last 3 (three) financial years preceding the Bid Due Date, have collected and appropriated the revenues from the project.
- 3.3.6. A Bidder's experience shall be measured and stated in terms of a score (the "**Experience Score**"). The Experience Score for an Eligible Project in a given category would be the eligible payments and/or receipts specified in Clause 2.1.3 (a).

3.4. TESTS OF RESPONSIVENESS

3.4.1. Prior to evaluation of Bids, the Concessioneering Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- (a) Technical Proposal is received as specified in Clause 2.13.1
- (b) Financial Proposal is received as per the format at Appendix – II;
- (c) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14;
- (d) it is signed, sealed, hard bound and marked as stipulated in Clauses 2.12 and 2.13;
- (e) it is accompanied by the Bid Security as specified in Clause 2.2.5;
- (f) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.2.7 and 2.2.8, as the case may be;
- (g) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
- (h) it does not contain any condition or qualification; and
- (i) it is not non-responsive in terms hereof.

3.5. DETAILS OF EXPERIENCE

3.5.1. The Bidder should furnish the details of Eligible Experience for the last 3 years financial years immediately preceding the Bid Due Date.

3.5.2. The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.

3.5.3. The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

3.6. FINANCIAL INFORMATION FOR PURPOSES OF EVALUATION

3.6.1. The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.

- 3.6.2. In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.
- 3.6.3. The Bidder must establish the average minimum Turnover specified in Clause 2.1.3 (b), and provide details as per format at Annex-III of Appendix-I
- 3.6.4. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.
- 3.6.5. the entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty six percent) equity during the entire year for which Eligible Experience is being claimed

3.7. SHORTLISTING OF BIDDERS

The bidders will be shortlisted based on the evaluation

S.No	Evaluation item	Score
1.	Completed / Ongoing work experience in Food Stalls maintainace in huge public gathering places (as a sole bidder or in Joint Venture/Consortium). Ex: Shopping Malls, Cinema Theatres, Bus Stands and Railway stations. (Any reputed brands) <ul style="list-style-type: none"> Experience in management of Food stalls, minimum 3 years For every one additional year after 3 years, 	40 Marks 20 Marks +10 (Not exceeding 40)
2	Annual turnover for last 3 Financial years <ul style="list-style-type: none"> Up to 1 crore – 10 marks > 1crore - 20 marks 	20 Marks
3	Presentation	10 Marks
4	Any technical or attractive activity presented by the bidder	10 Marks
5	Total Score for Technical evaluation	80 Marks
6	Financial evaluation	20 Marks

- 3.7.1. In the first step of evaluation, Technical Proposals of Bidders adjudged responsive in terms of Clause 4.3 shall be considered for Technical evaluation per Clause 2.1 and 3.3 of this RFP. The Bidders qualifying as per the conditions shall be shortlisted as pre-qualified Bidders and shall be considered for the next step of evaluation.
- 3.7.2. The credentials of eligible Bidders shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the “Aggregate Experience Score ” of a particular Bidder. In case of a Consortium, the Aggregate Experience Score of each of its Members, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium.
- 3.7.3. The Bidders shall then be ranked on the basis of their respective Aggregate Experience Scores and short-listed for submission of Bids. The Authority expects to short-list upto 6 (six) pre-qualified Bidders for opening of Financial Proposals. The Authority, however, reserves the right to increase the number of shortlisted pre-qualified Bidders by adding additional Bidder.
- 3.7.4. In second step of evaluation, Financial Proposals of only those Bidders who have passed the first step shall be opened in presence of the nominees of the Bidders, who choose to attend the same.

3.8. SELECTION OF BIDDER

- 3.8.1. The Bidder quoting the highest Annual Concession Fee offered to the VMC shall be declared as the Successful Bidder (the “**Successful Bidder**”)
- 3.8.2. In the event that two or more Bidders quote the same amount of Annual Concession Fee (the “**Tie Bidders**”), the VMC shall identify the Successful Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.8.3. In the event that the highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the VMC may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the BID of the aforesaid highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the highest Bidder, it shall be the Successful Bidder. If two or more Bidders match the said highest Bidder in the second round of bidding, then the Bidder whose BID was higher as compared to other Bidder(s) in the first round of bidding shall be the Successful Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said highest Bidder in the second round of bidding, the said third highest bidder shall be the Successful Bidder.
- 3.8.4. In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Clause 3.8.3, the VMC may, in its discretion, invite fresh BIDs (the “**third round of bidding**”) from all Bidders except highest Bidder of the first round of bidding, or annual the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh

BIDs, they shall be eligible for submission of fresh BIDs provided, however, that in such third round of bidding only such BIDs shall be eligible for consideration which are higher than the BID of the second highest Bidder in the first round of bidding.

3.8.5. After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the VMC to the Successful Bidder and the Successful Bidder shall, within 14 (fourteen) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Successful Bidder is not received by the stipulated date, the VMC may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the VMC on account of failure of the Successful Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

3.8.6. After acknowledgement of the LOA as aforesaid by the Successful Bidder, it shall execute the Agreement within the period prescribed period in Clause 1.3. The Successful Bidder shall not be entitled to seek any deviation in the Agreement. Prior to signing of Agreement, the Successful Bidder / Operator must satisfy the following conditions:

- (i) Successful Bidder / Operator has submitted the Performance Security to VMC;
- (ii) Formation of SPV as per the provisions of RFP and Agreement; and
- (iii) Successful Bidder / Operator has submitted the first instalment of Annual Concession Fee as per Clause 4.1.2 of Agreement to VMC.

VMC shall not execute the Agreement until the above mentioned conditions are satisfied.

3.9. CONTACTS DURING BID EVALUATION

3.9.1. Bids shall be deemed to be under consideration immediately after they are opened and until such time the VMC makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain from contacting by any means, the VMC and/ or their employees/ representatives on matters related to the Bids under consideration.

4. FRAUD AND CORRUPT PRACTICES

- 4.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the VMC shall reject a Bid, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Operator, as the case may be, if it determines that the Bidder or Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the VMC shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the VMC towards, inter alia, time, cost and effort of the VMC, without prejudice to any other right or remedy that may be available to the VMC hereunder or otherwise.
- 4.2. Without prejudice to the rights of the VMC under Clause 5.1 hereinabove and the rights and remedies which the VMC may have under the LOA or the Agreement, if a Bidder or Operator, as the case may be, is found by the VMC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder or Operator shall not be eligible to participate in any tender or RFP issued by the VMC during a period of 2 (two) years from the date such Bidder or Operator, as the case may be, is found by the VMC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3. For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person

connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the VMC who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the VMC, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the VMC in relation to any matter concerning the Project;

- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the VMC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-BID CONFERENCE

- 5.1. Pre-Bid conference of the Bidders shall be convened on 02.04.2018 at 11.30 hours in VMC Conference Room, Vijayawada Municipal Corporation, Canal road, Vijayawada. A maximum of three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2. During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the VMC. The VMC shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the applicable laws or other laws of India for the time being in the force and the Courts at Vijayawada shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The VMC, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/ or evidence submitted to the VMC by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the VMC, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

APPENDIX I**LETTER COMPRISING THE BID***(Refer Clause 2.13.1)*

Dated:

To,

Chief Engineer,
Vijayawada Municipal Corporation,
Canal road, Vijayawada

**Sub: Proposal for Project -Design, Built, Finance, Operation, Maintenance,
Management and Transfer of Food Stalls in Sambamurthy Road in Vijayawada**

Dear Sir,

With reference to ~~you~~ the RFP document dated¹, I/we, having examined the RFP document and understood its contents, hereby submit my/our Proposal for the aforesaid project. The Proposal is unconditional and unqualified.

2. I/ We acknowledge that the VMC will be relying on the information provided in the Proposal and the documents accompanying such Proposal of the Bidders, and we certify that all information provided in the Proposal and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the construction, operation, maintenance and management of the aforesaid Project.
4. I/ We shall make available to the VMC any additional information it may find necessary or require to supplement or authenticate the Proposal statement.

¹ All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder

5. I/ We acknowledge the right of the VMC to reject our Proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:
- (a) I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the VMC.
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.12 and 2.2.13 of the RFP document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the VMC or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Proposal that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.7 of the RFP document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Technical Capacity and Financial Capacity criteria and meet all the requirements as specified in the

RFP document and are qualified to submit a Bid.

- 10.I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for qualification.
- 11.I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- 12.I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
- 13.I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
- 14.I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFP at Appendix-VI thereof.
- 15.I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP; we shall intimate the VMC of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of proposal and the power of attorney for Lead Member of consortium, as per format provided at Appendix IV and V respectively of the RFP, are also enclosed.
- 17.I/ We understand that the Successful Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to

execution of the Agreement.

18.I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the VMC in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

19.I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

20. We agree and undertake to be jointly and severally liable for all the obligations of the Operator under the Agreement till occurrence of Financial Close in accordance with the Agreement.

In witness thereof, I/ we submit this proposal under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Bidder/ Lead Member

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

² Omit if the Bidder is not a Consortium

ANNEX-I
DETAILS OF BIDDER

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project]:
3. Details of individual(s) who will serve as the point of contact/ communication for the VMC:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1 .2(g) should be attached to the Proposal.
 - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* { Refer Clause 2 .1 .2 (d)	Percentage of equity in the Consortium { Refer Clauses 2 .1 .2 (a), (c) & (g)
1.			
2.			
3.			
4.			

* The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annex-IV.

6. The following information shall also be provided for each Bidder / Member of the Consortium:

Name of Bidder/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Proposal.		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non- performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

RFP no. _____ Dated _____ 50

³ All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder

ANNEX-II**TECHNICAL CAPACITY OF THE BIDDER***(Refer to Clauses 2.1.3(a), 3.3 of the RFP)*

Project Code**	Date of Eligible Project	Experience				Experience Score ^{&}
		(Equivalent Rs. lakhs)				
		Annual Turnover from Project from activities specified in Clause 2.1.3				
FY _____	FY _____	FY _____	Average Annual Turnover			
a						
b						
c						
d						
Aggregate Experience Score:						

@ Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.4 and/ or by a project company eligible under Clause 3.3. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 3.6.2.

A Bidder should use separate rows to demonstrate own projects and projects of Consortium Members, clearly indicating in each row name of the entity whose experience is being claimed. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the

Bidder with such Associate, in terms of Clause 2.1.4, shall be provided.

** Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, OMM means Operation & Maintenance Member, OM means Other Member.*

***Refer Annex-IV of this Appendix-I. Add more rows if necessary.*

For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 65 (sixty five) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

& Divide the amount in the Experience column by one lakh

ANNEX-III
FINANCIAL CAPACITY OF THE BIDDER

(Refer to Clauses 2.1.3 (b) and 3.6 of the RFP)

(In Rs. lakhs)

Bidder Name	Annual Turnover from activities specified in Clause				
	Year	Year	Year	Year	Year
	1 (3)	2 (4)	3 (5)	4 (6)	5 (7)
Single entity Bidder					
Consortium Member 1					
Consortium Member 2					
TOTAL					

Name & address of Bidder's Bankers:

A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

For Member Code, see instruction 4 at Annex-IV of this Appendix-I.

The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.1.4.

For conversion of other currencies into rupees, see note below Annex-II of

Appendix-I.

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Annual Turnover shall mean the income received from goods and services in respect of activities specified in Clause 2.1.3 (a) during the accounting period. Other income, including but not limited to interest income, income from sale of assets, shall not be included in the definition of Annual Turnover.
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 3.6.2.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.2(g) of the RFP document.
6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
6. The Bidder shall provide an Auditor's Certificate specifying the turnover of the Bidder from the activities specified in Clause 2.1.3 (a) of RFP.

ANNEX-IV
DETAILS OF ELIGIBLE PROJECTS
(Refer to Clauses 2.1.3 (a), 3.3 of the RFP)

Project Code:**Member Code:**

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title of the project		
Category Food Stalls in Shopping Malls, Mobile food courts etc.,		
Turnover from activities specified in Clause 2.1.3(a): FY 2011-12 FY 2010-11 FY 2009-10		
Entity for which the project is being operated		
Location		
Details of Eligible Project		
Date of commencement of contract		
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	5	

Instructions:

- Bidders are expected to provide information in respect of each Eligible Projects in this Annex.
The projects cited must comply with the eligibility criteria specified in Clause 3.3 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Proposal. Bidders should also refer to the Instructions below.

2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.
5. Certificate from the Bidder’s statutory auditor must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.

Certificate from the Statutory Auditor regarding Eligible Projects
<p>Based on its books of accounts and other published information authenticated by it, this is to certify that (name of the Bidder/Member/Associate) is/ was an equity shareholder in (title of the project company) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of the project company from (date) to (date) The project, namely,, located at is being operated and maintained by (name of the Bidder/Member/Associate) since (date) till date.</p> <p>We further certify that (name of the Bidder/Member/Associate) had Annual Turnover, in respect of activities specified in Clause 2.1.3 (a) of RFP, from the project in past three financial years, as given below in an year-wise format:</p> <p style="margin-left: 40px;">Year.....: Rs</p> <p style="margin-left: 40px;">Year.....: Rs</p> <p style="margin-left: 40px;">Year.....: Rs</p> <p>Name of the audit firm:</p> <p>Seal of the audit firm: (Signature, name and designation of the authorised signatory)</p> <p>Date:</p>

6. Bidders are required to produce client certificates, invoices, order letter, completion certificates etc. to substantiate the experience demonstrated.

Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

7. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.4, the Bidder should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (*name of the Associate*) is held, directly or indirectly, by (*name of Bidder*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.4 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{*Describe the share-holding of the Bidder in the Associate*}

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).

In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.

ANNEX-V
STATEMENT OF LEGAL CAPACITY
(To be forwarded on the letterhead of the Bidder)

Ref. Date:

To,
Chief Engineer,
Vijayawada Municipal Corporation.
Canal road, Vijayawada

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the proposal) satisfy the terms and conditions laid out in the RFP document.

We have agreed that (insert member's name) will act as the Lead Member of our consortium.*

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,
(Signature, name and designation of the authorised signatory) For and on
behalf of.....

**Please strike out whichever is not applicable.*

APPENDIX – II
FINANCIAL PROPOSAL
(Refer Clauses 2.2.3 and 2.16.1)

Dated: _____

To

Chief Engineer,
Vijayawada Municipal Corporation.
Canal road, Vijayawada

Sub: BID for Design, Built, Finance, Operation, Maintenance, Management and Transfer of Food Stalls in Sambamurthy Road in Vijayawada

Dear Sir,

With reference to your RFP document dated *****, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our BID for the aforesaid Project. The BID is unconditional and unqualified.

2. All information provided in the Bid and in the Appendices is true and correct.
3. We acknowledge that our Consortium/ proposed Consortium shall be short-listed on the basis of Technical Capacity and Financial Capacity of us and our Associates.
4. [I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and qualification under and in accordance with the RFP, I/We shall inform the VMC forthwith along with all relevant particulars and the VMC may, in its sole discretion, disqualify our Consortium or withdraw the Notice of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without the VMC being liable to us in any manner whatsoever.]

5. In the event of my/ our being declared as the Successful Bidder, I/We agree to enter into a Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the VMC or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Concession.
7. The Annual Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Bid.
8. I/We offer a Bid Security of Rs.1,00,000 (one lakh Rupees only) to the VMC _____ in accordance with the RFP Document.
9. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
10. I/We agree and understand that the BID is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened.
- 11. I/We hereby submit our BID and offer an Annual Concession Fee in the form of Rs ____ (in words) of VMC for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.**
12. The Annual Concession Fee shall be increased, after every 1 year, at the rate of 10% (ten percent), over the previous Annual Concession Fee.
13. I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
14. I/We agree and undertake to abide by all the terms and conditions of the RFP document.

In witness thereof, I/we submit this BID under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

APPENDIX – III
BANK GUARANTEE FOR BID SECURITY
(Refer Clauses 1.2.4)

B.G. No.

Dated:

1. In consideration of you, CE, Vijayawada Municipal Corporation Corporation, having its office at *****, (hereinafter referred to as the “VMC”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of

_____ [a Company registered under provision of the Companies Act, 1956] and having its registered office at _ [and acting on behalf of its Consortium] (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Project – Design, Built, Finance, Operation, Maintenance, Management and Transfer of Food Stalls in Sambamurthy Road in Vijayawada (hereinafter referred to as “the **Project**”) pursuant to the RFP Document dated ***** issued in respect of the Project and other related documents

(hereinafter collectively referred to as “Bidding Documents”), we [Name of the Bank] having our registered office at ____ _ and one of its branches at _A.P., _____ (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.2.5 read with Clause 2.2.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the VMC an amount of Rs. 1,00,000 (Rupees ***** only) at the branch in _____, A.P., as bid security (hereinafter referred to as the “**Bid Security**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the VMC stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained

in the Bidding Documents shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the VMC is disputed by the Bidder or not merely on the first demand from the VMC stating that the amount claimed is due to the VMC by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. 1,00,000 (Rupees one lakh rupees only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 120 (one hundred and twenty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the VMC and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the VMC shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the VMC that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the VMC and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other VMC.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the VMC shall be entitled to treat the Bank as the principal debtor. The VMC shall have the fullest liberty without

affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the VMC, and the Bank shall not be released from its liability under these presents by any exercise by the VMC of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the VMC or any indulgence by the VMC to the said Bidder or by any change in the constitution of the VMC or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the VMC to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the VMC may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the VMC in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the

obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. This Bank Guarantee no. _____, dated _____ shall be operative at A.P and if invoked, be encashable at the _____ [name of the bank and its branch], branch code no.: _____

Signed and Delivered by _ _____ Bank

By the hand of Mr./Ms _____, its _____ and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX – IV
POWER OF ATTORNEY FOR SIGNING OF BID
(Refer Clause 2.2.7)

Know all men by these presents, We, _____ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of _____ and presently residing at _____, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of _____], as

our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the Project – Design, Built, Finance, Operation, Maintenance, Management and Transfer of Food Court in Sambamurthy Road in Vijayawada proposed or being developed by the Vijayawada Municipal Corporation (the “VMC”) including but not limited to signing and submission of all proposals, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the VMC, representing us in all matters before the VMC, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the VMC in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Agreement with the VMC.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, _____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF _____, 20**.

For_

(Signature)

(Name, Title and Address)

Witnesses:

1.

2.

Accepted

[Notarised]

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*

APPENDIX – V
POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM
(Refer Clause 2.2.8)

Whereas the Vijayawada Municipal Corporation Corporation (“the VMC”) has invited bids from eligible parties for the Project – Design, Built, Finance, Operation, Maintenance, Management and Transfer of Food Stalls in Sambamurthy Road in Vijayawada (“the Project”).

Whereas, _____, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and VMC to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, __ having our registered office at _____ and M/s. ____, having our registered office at _ _____ [the respective names and addresses of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s _____, having its registered office at ____, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project and subsistence of the Agreement, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all bids and other documents and writings, participate in bidders” and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and

generally to represent the Consortium in all its dealings with the VMC, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Agreement is entered into with the VMC.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

AND hereby also ratify and confirm that if we are selected as the Successful Bidder, then the Lead Member of the Consortium shall sign the Agreement and all the Consortium members shall be jointly and severally liable towards the Project, throughout the Agreement Period.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED
THIS POWER OF ATTORNEY ON THIS DAY OF 20**.

For _____ _

(Name & Title)

For _____ _

(Name & Title)

Witness:

1.

2.

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the*

charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

- *For a Power of Attorney executed and to be issued overseas, the document will also have legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*

APPENDIX VII
JOINT BIDDING AGREEMENT

(Refer Clause 2.13.1)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. { Limited, a company incorporated under the Companies Act, 1956 } and having its registered office at (hereinafter referred to as the **“First Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. { Limited, a company incorporated under the Companies Act, 1956 } and having its registered office at (hereinafter referred to as the **“Second Part”** which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST and SECOND PART are collectively referred to as the **“Parties”** and each is individually referred to as a **“Party”**

WHEREAS,

- (A) VIJAYAWADA MUNICIPAL CORPORATION, a
_____ constituted by Government of Andhra Pradesh under _____,
represented by its Municipal Commissioner and having its offices at
_____ (hereinafter referred to as the **“VMC”** which expression shall,
unless repugnant to the context or meaning thereof, include its
administrators, successors and assigns) has invited proposals (the
Proposals) by its Request for Proposal No. dated(the

“**RFP**”) for qualification and short-listing of bidders for Design, Built, Finance, Operation, Maintenance, Management and Transfer of Project – Food Stalls in Sambamurthy Road in Vijayawada (the “**Project**”).

- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Proposal.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act 1956 for entering into an Agreement with the VMC and for performing all its obligations as the Operator in terms of the Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Effective Date under the Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical / Financial Member of the Consortium;}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Agreement, throughout the Agreement Period.

6. Shareholding in the SPV

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the Operations Date, be held by the Parties of the First, and Second Part whose experience and turnover have been reckoned for the purposes of qualification of Bidders for the Project in terms of the RFP.
- 6.3 The Parties undertake that they shall collectively hold at least 100% (one hundred per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the Operations Date.
- 6.4 The Parties undertake that they shall comply with all equity lock-in

requirements set forth in the Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a)
- (b)

Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- (i) require any consent or approval not already obtained;
- (ii) violate any Applicable Law presently in effect and having applicability to it;
- (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
- (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or

mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by the Concessioning Authority to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Concessioning Authority.

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

SIGNED, SEALED AND DELIVERED
and on behalf of

LEAD MEMBER by:

SIGNED, SEALED AND DELIVERED For

SECOND PART

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

(Address)

(Address)

In the presence of:

1.

2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

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SECTION – II: DRAFT AGREEMENT

AGREEMENT

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

AMONGST

1. Vijayawada Municipal Corporation established, having its registered office at _____, Vijayawada (hereinafter referred to as “**VMC**” or “**Authority**” which expression shall unless repugnant to the subject or the context include its successors) of One Part; AND
2. _____, a company incorporated under the Companies Act, 1956 / a society registered under the Societies Registration Act 1860 / a partnership firm with registered partnership deed, and having its registered office at _____ (hereinafter referred to as the „**Operator**“ which expression shall unless repugnant to the subject or the context include its successors) of the Other Part.

WHEREAS:

- A. VMC intends to Design, Built, Finance, Operation, Maintenance, Management and Transfer the Food Stalls in Sambamurthy Road in Vijayawada through private participation on Design, Built, Finance, Operation, Maintenance, Management and Transfer (DBFOMMT) format („the Project“).
- B. VMC had invited proposals for the selection of a Operator through the competitive route for the operation of the Project on DBFOMMT basis from bidders, _____ including the Consortium comprising of _____ (the “**Successful Bidder**”) as the Lead Member/company by issuing the Request for Proposal (“**RFP**”) document dated _____ 2018 containing inter-alia the minimum qualification for a bidder and the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project.
- C. On evaluation of the submitted proposals, VMC accepted the proposal of the Consortium/company/ society/ partnership firm and issued Letter of Award (“**LOA**”) dated _____ to the Consortium/company/ society/ partnership firm specifying interalia the obligation of the Parties. to create a Special Purpose Vehicle for implementing the Project. Pursuant to the issuance of LOI vide letter no. _____ dated _____, the Consortium has incorporated and constituted _____ as the Special Purpose Vehicle created for the sole purpose of implementation the Project which is the Operator.
- D. By its letter dated _____, the Operator has also joined in the said request of the Successful Bidder to the VMC to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Operator has further represented to the effect that it has been promoted by the Successful Bidder for the purpose hereof.

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, THE SUFFICIENCY AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND THE AUTHORITY AND THE OPERATOR (HEREINAFTER REFERRED TO AS “**PARTIES**” AND INDIVIDUALLY AS “**PARTY**”) HEREBY AGREE AND THIS AGREEMENT WITNESSTH AS FOLLOWS:

1. Definitions and Interpretation

1.1. Definitions

The words and expressions defined in this Agreement shall, unless repugnant to the context or meaning thereof, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;

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

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

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

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

“Annual Concession Fee” shall have the meaning set forth in Clause 4.1.1.

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

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

“Approvals” means all approvals, permissions, authorisations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Municipal Corporation and Development Authority, and any other regulatory authority, as may be applicable.

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

“Bank Guarantee” means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favour of VMC and furnished by the Operator to VMC for guaranteeing the due performance of the obligations of the Operator under this Agreement. Here Bank means any Indian Nationalized Bank or any Indian Scheduled Commercial Bank whose net worth is not less than Rs.3000 million as on 31st March 2012.

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

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

“Booth” shall mean a counter, stall or shop within Project Facility from which Operator shall render services to Users to generate revenue in the Project.

“Business Day” means a day on which banks are generally open for business in the city of Vijayawada in India;

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

“Competent Authority” means any agency, authority, department, ministry, public or statutory Person of the Government of Andhra Pradesh or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Facility or the performance of all or any of the services or obligations of the Operator under or pursuant to this Concession;

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

“Commercial Operations Date” shall have the meaning set forth in Clause 11.3.

“Construction Completion Certificate” means the certificate to be issued by VMC to the Operator upon the completion of the construction of the Project Facility to the satisfaction of VMC and as set forth in this Agreement.

“Construction Period” means the period from Effective Date till the Commercial Operations Date as per provisions of Article **Error! Reference source not found.**, after which commercial operations must start;

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

“Developmental Standard(s)” means the minimum parameters and standards to be achieved by the Operator in the construction, development and operations of the Project in accordance with internationally sound engineering practices, National Building Code and Applicable Law and / or as determined by the relevant Governmental Authority;

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

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

“Drawings” means all of the drawings, calculations and documents pertaining to the Project and shall include „as built“ drawings of the Project;

“Effective Date” means the date on which possession to the Project Facility is provided to the Operator, as a licensee, with leave and license rights in respect of the Project Facility as per Article 5 of this Agreement.

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

"Escrow Agreement" shall have the meaning set forth in Clause 13.1.2;

"Escrow Bank" shall have the meaning set forth in Clause 13.1.1;

"Escrow Default" shall have the meaning set forth in Schedule-E;

"Financial Commitment" means the legally binding undertaking of the Operator to mobilize the financial requirements of the project, for ensuring the completion of the project;

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

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

"GOI" means the Government of India;

"Good Industry Practice" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

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

"Gross Revenue" of the Project for any year shall mean the total amount of revenue derived by any Party from the operation of Booths, including the total amount of revenue derived by the Operator within the provisions of this Agreement; as certified by the Statutory Auditors of the Operator including proceeds from sale of food and beverages, proceeds from advertisements, proceeds from organisation of events and parties, proceeds from sale of products and proceeds from rendering of services sold from Shops as approved in the Upgradation Plan by VMC and proceeds from any other service or facility provided by the Operator to the users of the said Project, which are availed / realized by the Operator from an outside party/ies at a consideration by way of User Fee BUT shall exclude and be arrived at after deducting the following:-

- all statutory applicable taxes such as luxury tax, sales tax, entertainment tax, expenditure tax and the like by whatever name called now or in future which the Operator has agreed to pay or is bound to pay;
- discounts provided to users of the Project Facility in the course of its business;
- profit on sale of assets / investments and other assets of capital nature (including Interests earned, if any);
- Interests earned on monies placed on fixed deposits in the name of Project or otherwise;

- charges, if any, or any other amounts collected for and on behalf of the employees and paid / payable to them; as also recoveries made from the employees towards cost of meals provided to them.

“Sambamurthy Road” shall mean the premises within which Project Facility is located;

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

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

“Operation Period” shall mean the period commencing from COD till the end of the Agreement Period or till termination, in case of premature termination;

“Operator’s Equipment” means all machinery, apparatus and other things required for the operationalisation, maintenance and management of the Facility and the remedying of any defects;

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

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

“Performance Standards” means the standards to which the construction, maintenance and operation of the Project must adhere, and which the Operator undertakes to meet;

“Project” shall mean Design, Built, Finance, Operation, Maintenance, Management and Transfer the Project Facility, in accordance with the provisions of this Agreement till the end of the Agreement Period.

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

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

“Proposal Acceptance Date” means the date of the signing of this Agreement;

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

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

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

“Security Interest” means any existing or future mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law.

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

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

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Operator under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 12.2;

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

“Third Party Agreements” means all Agreements entered into between the Operator and third Persons, including, but not limited to other Agreements with Operator and vendors of any goods or services to the Operator.

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

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

“User Fee” means all charges, costs, fees, tariff, rentals and other amounts by whatever name called, payable to Operator by the users or any other Person, etc. pursuant to this Agreement, in lieu of sale of items, consumables etc and for the purpose of rendering of services by the Operator and utilisation of the Project Facility of the Project by such users, or other Persons, at any time and from time to time in relation to the Project;

“Works” means the design, construction, upgradation, completion, testing and commissioning, operation and maintenance and rectifying or/and remedying of defects of the Buildings, services, Facility as the

context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Agreement;

1.2. Interpretation

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

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

- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (o) references to the “winding-up”, “merger”, amalgamation”, “takeover”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
- (p) any reference, at any time, to any Agreement, deed, instrument, license or document of any description shall be construed as reference to that Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the VMC hereunder or pursuant hereto in any manner whatsoever;
- (q) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (r) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (s) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (t) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”).
- (u) any reference to Build shall mean Construct and vice-versa unless the context otherwise requires
- (v) any reference to Operate/Operations shall mean Operate and Operations & Maintenance unless the context otherwise requires

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

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

1.3. Measurements and Arithmetic Conventions

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

1.4. Priority of Agreements and Errors/Discrepancies

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

- (a) this Agreement;
- (b) RFP Document
- (c) all other agreements and documents forming part hereof;

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

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

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

2. Scope of the Project

2.1. Scope of the Project

- 2.1.1. The Operator shall construct, maintain and manage the Food Stalls. The Project Assets shall be handed over to the VMC at the end of the Agreement Period or upon the premature termination of this Agreement for any reason.
- 2.1.2. While undertaking construction of the Project, the Operator shall adhere to standards and specifications set forth in Schedule C of this agreement, statutory requirements, and any other norms as applicable from time to time.
- 2.1.3. The Operator shall construct, operate, maintain, manage and transfer the Project Facility throughout the Agreement Period in accordance with the applicable regulations of concerned authorities, as the case may be and the provisions of this Agreement and the Schedules hereof.
- 2.1.4. The Operator shall make Project Facility operational by operating them or by entering into Third Party Agreements with private entities for operations as per the Clause 3.4.
- 2.1.5. The Operator shall perform and fulfil all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.
- 2.1.6. The operator is responsible for everyday cleaning of gathering area.
- 2.1.7. The operator should develop Food Court consists of stalls with minimum of 5 of the following reputed brands or its equivalent.
 - a) Frankie's b) Ice cream kiosks – Ibaco, Cream stone, Scoops etc., c) Chic-king, Burger King
 - d) Dosa Corner e) Juices & Cool drinks f) Sweet Corn & Popcorn stall.
- 2.1.8. The Food Court Consists of Stalls shall be Movable and should be operated at Night time.

3. Concession

3.1. Grant of Concession

- 3.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, the VMC hereby grants to the Operator and the Operator hereby accepts the Concession for a period of 1 year and extendable upto two years commencing from the Effective Date, including the exclusive right, authority and authorisation during the subsistence of this Agreement, including extension thereof, to plan, operate, allocate, market, maintain and manage the Project Facilities and enjoy its commercial benefits for the Agreement Period.
- 3.1.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Operator, the exclusive right and authority to enjoy and undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:
- (a) To construct, maintain and regulate the use by Third Parties of the Project Facility;
 - (b) To have access to the Project Facility for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (c) To have access and liberty to plan, construct, upgrade, market, maintain and operate the proposed Project Facility with the associated facilities and services during the Agreement Period in accordance with the provisions of this Agreement. Any construction or development made by the Operator on the specified area in respect of the Project Facility shall be deemed to be the property of the VMC and Authority on its part, as part of this Agreement, provides to the Operator, an exclusive license to operate and maintain the Project Facility during the currency of this Agreement as per the terms and conditions contained herein.
 - (d) Exclusive right and authority, during the Agreement Period, to carry out the specified activities in relation to the Facility;
 - (e) To determine, demand, levy, collect, enforce, retain and appropriate revenue such as User Fee and additional charges from users of the Project Facility each year starting from the Effective Date. The User Fee with respect to the services provided in Project Facility shall be determined at the sole discretion of the Operator;
 - (f) To manage and operate all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Agreement;
 - (g) To fulfil its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Operator of its obligations as set out in this Agreement; and

- (h) To exercise such other rights as VMC may determine as being necessary or desirable for the purposes incidental and necessary for constructing, managing, operating and maintaining the Project.
- 3.1.3. The Operator shall not be entitled to allow the use of the Project Facility/ies by any other person or for any purpose other than to operate and maintain the Project Facility as specified in Clause 11.4.
- 3.1.4. Notwithstanding anything to the contrary contained herein, revenue accruing on account of installation of mobile/telecom tower(s) on the Project Facilities shall be shared equally between the Operator and VMC. Installation of any such tower/facility in the Project Facility shall be done only after obtaining prior written approval of the VMC.
- 3.1.5. Operator has to take necessary approvals / clearances from the Competent Authority for activities to be undertaken in the Project Facilities and VMC is in no way liable for the same. Responsibility of taking all necessary approvals of any construction, demolition and reconstruction lies with the Operator. Nevertheless VMC without any binding obligation shall provide any assistance upon written request from the Operator.
- 3.1.6. Nothing contained herein, including the act of granting permission to operate the Project Facility at the designated location shall vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixtures, fittings, etc. installed in the structure of the Project Facility in favour of the Operator or any other person claiming through or under the Operator. The Operator shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Project Facility in any manner. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.
- 3.1.7. It is hereby made clear that in the event of Termination, the Agreement Period shall mean and be limited to the period commencing from the Effective Date and ending with the Termination.
- 3.1.8. The operator must be in a position to remove the structure in the site area whenever if required or as instructed by the executive authority if necessary.

3.2. Sole Purpose of the Operator

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

3.3. Actions in Support of the Operator

- 3.3.1. VMC shall recognize and undertake not to, in any manner, violate or cause breach of the terms and conditions of this Agreement and the Schedules hereof.
- 3.3.2. VMC undertakes not to terminate or repudiate this Agreement prior to the expiry of the Agreement Period otherwise than in accordance with the provisions of this Agreement.
- 3.3.3. VMC shall provide assistance and recommendations to the Competent Authorities, including GoI, in support of the Operator's applications for Clearances / permissions that may be needed

from time to time for the implementation of the Project; provided that the Operator has made the requisite applications and is in compliance with the necessary conditions for the grant of such Clearances.

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

- 3.4.1. The Operator shall have the right to sub-license Booths in the Project Facility or part thereof, provided however, that it shall be obligatory upon the Operator to provide copies of all such sub-license deeds entered into from time to time with Third Parties to the VMC, with incorporated clauses, in all such sub-license deeds with such respective Third Parties, that (i) the period of the sub-license shall be for 11 (eleven) months or lesser and pursuant to its expiry, can be renewed, at the discretion of Operator; and (ii) in case of Termination of this Agreement (by efflux of time or pre-mature), all the sub-license(s) shall be terminated and the Facility shall be transferred back to the VMC.
- 3.4.2. At any point of time, not more than _____ Booths shall be leased out to a single Third Party. In case of violation of this provision, all licenses provided to the Third Party shall be cancelled with immediate effect and the Third Party will be barred from entering into any future Third Party Agreements with the Operator.
- 3.4.3. The Operator shall ensure to get the format of sub-license deed approved by the VMC and also, submit the signed sub-license deeds to the VMC for information. The Operator may execute sub-license deeds effective from the Operations Date. The sub-licensee/s shall pay the license fees under the sub-license deeds directly to the Operator.

4. Consideration of the Contract

4.1. Annual Concession Fee

- 4.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, rules and regulations and the Applicable Permits, the Operator shall pay to VMC an annual amount Rs _____ (Rupees _____) as Annual Concession Fee (the “**Annual Concession Fee**”). The Annual Concession Fee shall be increased by 10% of the previous value, at the end of every one year from the date of signing of Agreement.
- 4.1.2. Annual Concession Fee shall become payable from the date of signing of Agreement till the end of the Agreement Period. Operator shall make quarterly payments of Annual Concession Fee to Authority at the beginning of every quarter, not later than 10 days after the commencement of the quarter. The first instalment of Annual Concession Fee shall be made prior to signing of Agreement. All taxes, levies and charges as applicable and payable by the VMC with respect to the collection of the Annual Concession Fee shall have to be paid by the Operator alongwith and in addition to the payment of Annual Concession Fee. For avoidance of doubt, it is clarified that VMC shall be entitled to receive Annual Concession Fee as well as all applicable taxes from Operator, whether payable by VMC or Operator.
- 4.1.3. For the purpose of calculation of Annual Concession Fee, the following calculation will be made:

Annual Concession Fee per Booth per month = Annual Concession Fee

22 X 12

During the Construction Period, the payable amount of Annual Concession Fee shall be calculated by multiplying Annual Concession Fee per Booth per month with number of months for which each Booth operates.

For illustration purposes:

If,

Annual Concession Fee = Rs 24 lakh

Annual Concession Fee per Booth per month = Rs 9,091

10 booths in Food Court and Shops were operational for 3 months during Construction Period, 10 more booths were operational for 4.5 months during Construction Period and the remaining 3 booths were operational for full 6 months during Construction Period, then the Annual Concession Fee payable during Construction Period by Operator shall be:

Annual Concession Fee during Construction Period =

= Rs 9091 X [(10 X 3) + (10 X 4.5) + (3 X 6)]

= Rs 8,45,463

- 4.1.4. It is to be noted that Operator shall be required to submit total payable Annual Concession Fee as per the schedule and if Annual Concession Fee during Construction Period is less than the deposited amount, then the surplus amount deposited as Annual Concession Fee shall be adjusted with the Annual Concession Fee payable by Operator for the next period or quarter.
- 4.1.5. In case if the Operator requires additional area other than shown in Schedule A as part of Project Facility, Operator shall have the right to request VMC to provide the same. VMC shall have the option to approve or not approve such request. In case VMC decides to grant such additional area, Operator shall be liable to pay additional Annual Concession Fee on prorata basis for the additional area along with the specified Annual Concession Fee, for the remaining duration of Agreement Period.

4.2. Verification of Realisable Fee

- 4.2.1. VMC may, in order to satisfy itself that the Operator is reporting its Gross Revenue honestly and faithfully, depute its representatives to the offices of the Operator, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Gross Revenues.
- 4.2.2. If the verification of Gross Revenues pursuant to this Clause 4.3 demonstrates that the actual Gross Revenue is more than the amount reported by the Operator, the Parties hereto agree the difference between actual Gross Revenue and that reported by the Operator shall be multiplied by 180 (one hundred and eighty) and the product so arrived at shall be paid as Damages by the Operator to VMC.

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4.3. Other Provisions

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

5. Conditions Precedent to the Agreement

5.1. Conditions Precedent

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

5.2. Conditions Precedent of VMC

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

5.3. Conditions Precedent of Operator

- 5.3.1. The Conditions Precedent required to be satisfied by the Operator prior to the Effective Date shall be deemed to have been fulfilled when the Operator shall have:
- (a) executed and procured execution of the Escrow Agreement;
 - (b) Made applications at its cost and procured all necessary / mandatory clearances, permits, etc., which are required for commencing the construction and execution of the Project, so that all such conditional and/or unconditional clearances, permits, etc., are on full force and effect, throughout the Agreement Period;
 - (c) delivered to the VMC a legal opinion from the legal counsel of the Operator with respect to the authority of the Operator to enter into this Agreement and the enforceability of the provisions thereof.

5.4. Obligations to satisfy Condition Precedents

- 5.4.1. Upon satisfaction of the Conditions Precedent by each Party, the other Party shall forthwith issue a Certificate of Compliance with Conditions Precedent (the “**Certificate of Compliance**”).
- 5.4.2. After the issue of Certificate of Compliance by both Parties, the VMC shall issue the Notice to Commence to the Operator and the obligations of the Parties under this Agreement shall commence from Effective Date.

5.5. Non-Fulfillment of the Conditions Precedent

- 5.5.1. In the event of the Agreement not coming into effect on account of the VMC not fulfilling the Conditions Precedent then the Earnest Money Deposit, the Performance Security and the Annual Concession Fee shall be returned to the Operator.

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

6. Obligations of the Operator

6.1. Obligations of the Operator

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

- (f) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) not to create any rights or third party rights on the Site and also to ensure that VMC are not adversely affected in any way;
- (h) shall make payment towards the VMC as per provisions of this Agreement;
- (i) provide all assistance to the PMB as it may require for the performance of its duties and services;
- (j) ensure that no goods are stored that are not permitted by law including those of hazardous, explosive, flammable or combustible in nature that may cause risk by fire, explosion or goods/ material which on account of their weight or nature may cause damage to the premises. The Operator shall be liable or responsible for destruction or damage to the premises;
- (k) set up gas bank for cooking purposes. The VMC will only give NOC for such connections wherever required. Any payment of this account shall have to be borne by the Operator and will not claim any reimbursement from the VMC. Gas bank is the responsibility of the party and any clearance required from civic bodies, fire department etc. would be the responsibility of the Operator;
- (l) ensure only commercial gas cylinders are used for the operations at the Project Facility;
- (m) Ensure that no ambush marketing of any sort takes place in the Project Facility;
- (n) procure at its own costs, expenses and risk all services necessary for the construction and operations of the Project including without limitation electricity, water, materials and labour;
- (o) shall pay applicable one-third of the property tax paid by VMC for the Sambamurthy Road throughout the Agreement Period;
- (p) ensure that all the furniture, fixtures, equipments etc, to be made part of the Project Facility shall be of highest standards and acceptable to the VMC;
- (q) ensure that all the furniture, if provided by the VMC, shall be maintained in a proper manner and after every year, if any furniture is found in depleted condition then the same shall be replaced by the Operator at his own cost. PMB at any time, even before completion of a year, may instruct the Operator to replace / repair the furniture or any other moveable or immoveable assets;
- (r) shall bear the cost/ expenditure to be incurred on the commercial operation of the Facility during the entire Agreement Period;
- (s) shall have the right to locate electronic hoardings and advertisement boards, as per the applicable laws after prior approval from VMC, in the Project Facility and generate maximum revenue from it; The Operator will have to follow the colour scheme and design for various hoardings/ display boards as approved by VMC.

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

6.2. Obligations relating to Other Agreements

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

the Operator shall remain solely responsible to meet the scope of work as mentioned under Clause 2.1.

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

6.3. Obligations relating to Change in Ownership of SPV

- 6.3.1. The Operator shall not undertake or permit any Change in Ownership, except with the prior written approval of the VMC as per the provisions of this Clause 6. No change in the equity stake of the Consortium Members in the Operator (the SPV) shall be allowed till second anniversary of Commercial Operations Date. Moreover, the Lead Consortium Member shall continue to hold 51% (fifty one percent) equity stake in the Consortium till second anniversary of Commercial Operations Date. The Lead Consortium Member shall be allowed to dilute the equity stake after Commercial Operations Date with the approval of the VMC such that the stake of the Lead Consortium Member in the SPV shall not fall below 26% at any time till the end of Agreement Period.
- 6.3.2. Each Consortium Member shall hold a minimum stake of 26% (twenty six percent) in the equity of the SPV. None of the Consortium Member shall be allowed to dilute its stake in the SPV till second anniversary of Commercial Operations Date.
- 6.3.3. Lead Consortium Member shall hold a minimum stake of 51% (fifty one percent) in the equity of the SPV. Lead Consortium Member shall not be allowed to dilute its equity stake to a level below 51% (fifty one percent) till second anniversary of Commercial Operations Date. The Lead Consortium Member shall be allowed to dilute the equity stake after Commercial Operations Date with the approval of the VMC such that the equity stake of the Lead Consortium Member in the SPV shall not fall below 26% (twenty six percent) at any time till the end of Agreement Period. This Clause shall also apply for the single entity bidder who has formed an SPV for undertaking the Project.

6.4. Obligations relating to Accounts

- 6.4.1. In order to collect payment / User Fee from the users, the Operator shall make sure that all the electronic systems installed in the Project Facility, including but not limited to the computer

systems relating to accounts, billings, etc are functioning in a proper manner and are transmitting true and correct data of revenue and expenditure, on real time basis;

- 6.4.2. In addition to Clause 6.4.1, the Operator shall follow a centralised and computerised prepaid system of collection of payment / User Fee, arising out of sale of over-the-counter items, including but not limited to food and beverages, to the users of Booths, with the help of smart cards or any other similar tool used for computerised prepaid billing. For further clarity, a user who wishes to buy items or avail services in the Project Facility, shall instead of making payments at Booths, pay at a centralised payment collection centre, where user shall be provided with a smart card. The smart card shall empower the user to buy items or avail services of a specified value in the Project Facility. User shall then use the value in smart card to buy items or avail services in one or more Booth(s) in the Project Facility. If there is any unused value left in the smart card, the user shall have the option to go back to centralised payment collection centre and get the balance value reimbursed. The billing computers at centralised payment collection centre shall be real time connected with the computers of VMC.
- 6.4.3. All proceeds, collections arising out of any sales and / or services such as sale of over-the-counter items, including but not limited to food and beverages, to the users of Booths, shall be deposited in the Escrow account as mentioned in Clause 13.2;
- 6.4.4. The Operator shall install, operate & maintain and link up its computer system relating to accounts (i.e. billings, costs, expenses, realizations, revenue, expenditure, etc.) with round-the-clock connections to the computer network(s) of VMC / its related entities for the purpose of efficient and transparent regulation of information such as ascertaining true and correct accounts statements relating to the Project Facility etc.;

6.5. Obligations relating to Environmental Measures

- 6.5.1. The Operator shall take all reasonable steps to protect the environment (both on and off the Project Facility) and to limit damage and nuisance to people and property.
- 6.5.2. The Operator shall be liable for and shall indemnify, protect, defend and hold harmless the VMC, the VMC's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the failure of the Operator to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable;

6.6. Obligations relating to Clearance of Facility

- 6.6.1. During the execution of the Works, the Operator shall keep the Project Facility free from all unnecessary obstruction, and shall store Operator's Equipment or surplus materials in a manner that causes least inconvenience or dispose of such Operator's Equipment or surplus materials. The Operator shall clear away and remove from the Facility any wreckage or rubbish no longer required.
- 6.6.2. Within 15 (fifteen) days of the issue of the Construction Completion Certificate, the Operator shall clear away and remove, from the Project Facility, all surplus materials, rubbish and other debris

and keep the Project Facility and surroundings in a clean and safe condition, to the satisfaction of VMC.

- 6.6.3. Within 30 (thirty) days of the expiry of the Agreement Period, the Operator shall clear away and remove, from the Project Facility the Operator's Equipment, surplus material, wreckage, rubbish, etc. The Operator shall leave such areas in a clean and safe condition to the satisfaction of VMC. Provided that if the Operator fails to remove, at the end of the 30 day period, any remaining Operator's Equipment, surplus material, wreckage, rubbish, etc., the VMC may sell or otherwise dispose of such items. The VMC shall be entitled to retain, from the proceeds of such a sale, or from any other amounts due to the Operator, a sum sufficient to meet the costs incurred in connection with such sale or disposal. If the amounts due from the Operator are insufficient to meet the VMC's costs, the outstanding balance shall be recoverable from the Operator by the VMC.

6.7. Safety and Security

- 6.7.1. The Operator shall comply with all safety regulations applicable, access arrangements and operations on the Facility. The Operator shall be responsible in the operation of machinery and any other work, to take all precautions to ensure safety of the staff, labourers and public.
- 6.7.2. The Operator shall be responsible at its cost, for procurement, transport, receiving, unloading and safekeeping of all Materials, Operator's Equipment and other things required for the Works. Unless otherwise stated in this Agreement:
- i. The Operator shall be responsible for keeping unauthorised persons off the Facility and preventing encroachment on the Facility during Agreement Period.
 - ii. Authorised Persons shall be limited to the employees of the Operator and persons authorised by the VMC.
- 6.7.3. In the event of an accident the Operator shall, by most expeditious means, inform the concerned Civil and Police Authorities, and also the VMC. The Operator's responsibilities with regard to the Project shall in no way be diminished by informing the above officials and it shall take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Operator shall preserve the Project Facility of such accident intact, until completion of all legal formalities. The Operator shall then arrange for the expeditious removal of the wreckage or debris, and for cleaning the Project Facility. If any portion of the Project Facility suffers any damage, the Operator shall, with the consent of VMC, arrange for the repair and rectification thereof.
- 6.7.4. The Operator shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices).
- 6.7.5. Any communication to the news media made by the Operator shall provide only enough information to satisfy public concern, and the Operator shall make no admissions nor accept any liability in such communications.

- 6.7.6. The Operator shall indemnify, defend and hold harmless the VMC, during the term of this Agreement, from and against all liabilities, damages, actions, proceedings, and claims of any nature whatsoever, as suffered by the Operator due to such accidents.

6.8. Insurance Requirement

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

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

7. Obligations of the VMC

7.1. Obligations of the VMC

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

8. Representations and Warranties

8.1. Representations and Warranties of the Operator

The Operator represents and warrants to the VMC that:

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

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

8.2. Representations and Warranties of the VMC

The VMC represents and warrants to the Operator that:

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

- (g) all information provided by it in the Tender Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
- (h) it has good and valid right for construction and operation of the Project, and has power and authority to give license of the rights to the Operator; and
- (i) upon the Operator completing the Project as per this Agreement, and performing the covenants herein, it shall not at any time during the period of Concession, interfere with peaceful enjoyment of the Project Facility by the Operator, except in accordance with the provisions of this Agreement.

8.3. Disclosure

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

9. Performance Security

9.1. Performance Security

The Operator shall submit to the VMC a Performance Security of Rs. 1,00,000(Rupees one lakh only), in the form of a Bank Guarantee in favor of Vijayawada Municipal Corporation, payable at Vijayawada; the Bank Guarantee shall be prepared and submitted as per the format given in Schedule B of this Agreement.

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

9.2. Appropriation of Performance Security

- 9.2.1. Upon occurrence of an Operator Default during the subsistence of the Performance Security, the VMC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke and appropriate the relevant amounts from the Performance Security as Damages for such Operator Default. Upon such invocation and appropriation from the Performance Security, the Operator shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Operator shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the VMC shall be entitled to terminate this Agreement in accordance with Article 15.
- 9.2.2. In the event that construction of the Project is not completed by the Scheduled Commercial Operations Date, unless the delay is on account of reasons solely attributable to the VMC or due to Force Majeure, the VMC shall encash 5% of the Performance Security amount per month, for a maximum period of 6 (six) months after which VMC shall be entitled to terminate this Agreement. The Performance Security shall be replenished by the Operator as soon the Performance Security is encashed by VMC.

9.3. Release of Performance Security

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

10. Access to the Project Facility

10.1. Access

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

10.2. Others

10.2.1. Shared Access

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

10.2.2. Special/temporary right of way

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

10.2.3. Display of VMC logo

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

10.2.4. Parking

Users of Project Facility and the Operator shall be allowed to use the parking space available in Sambamurthy Road. The parking shall be on a chargeable basis and will be collected and enjoyed by VMC or any other contractor appointed for the task by VMC. Under no circumstances shall the Operator be allowed to charge and collect parking fees from the users of Project Facility

11. Project Implementation

11.1. Obligations prior to the commencement of any work

Prior to commencement of any work, the Operator shall:

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

11.2. Project Completion date

11.2.1. On or after the Effective Date, the Operator shall undertake construction works in the Project. The end of two hundred and ten days from the Effective Date shall be the end of Construction Period (the “**Scheduled Commercial Operations Date**”) for completion of construction and the Operator agrees and undertakes that the construction of the Project Facility shall be completed on or before the Scheduled Commercial Operations Date.

11.3. Construction Completion Certificate

11.3.1. The Operator after completion of the construction of the Project shall inform in writing to the VMC that it has completed as per Plan. The VMC shall issue the Construction Completion Certificate after satisfying itself that the work is complete; that the construction works conform to accepted safety norms and is as per the requirements set forth in this Agreement. The date on which the VMC shall issue the Construction Completion Certificate shall be deemed as the Commercial Operations Date (the “**Commercial Operations Date**”). The Operator can start commercial operations of the Project any time after the Commercial Operations Date.

11.4. Project Operation

- 11.4.1. Operator shall operate and maintain the Project Facility during the Agreement Period and adhere to Operation and Maintenance Requirements as mentioned in Schedule G. If VMC / PMB finds Operator failing to meet any Operation and Maintenance Requirements as stated in Schedule G, then VMC / PMB shall give a notice to Operator stating the fault (the “**Fault**”) and grant 5 (five) days to rectify the same. If VMC/ PMB finds the Fault has not been rectified within the time period specified, then VMC shall have the right to rectify the Fault and recover the expenses for the same from Operator. In such case, VMC shall have the right to encash Performance Security to the extent of expenses incurred in rectification of the fault.
- 11.4.2. Operator shall be required to apply for and obtain clearances as applicable for holding any event in the Project Facility, including but not limited to permissions from local bodies, police, traffic, fire etc.
- 11.4.3. Repair and maintenance of any kind in the Project Facility shall be the responsibility of Operator. However, Operator shall be required to take prior approval of VMC before undertaking any major maintenance in the Project Facility, including but not limited to painting and whitewashing.
- 11.4.4. Operator shall maintain the items mentioned under Schedule H in operational state. Any repair, maintenance and replacement of items will be the responsibility of Operator. Operator shall have to take prior approval of VMC before making any replacements of items stated in Schedule H to this Agreement.
- 11.4.5. Operator shall keep the premises clean and shall ensure proper disposal of any garbage generated in the Project Facility.
- 11.4.6. Operator shall ensure that operation of Project Facility does not disturb operations of other activities in Sambamurthy Road
- 11.4.7. Operator shall not damage the existing structures of Project Facility and of the Sambamurthy Road. Operator shall have to take written approval from VMC before carrying out temporary or permanent construction activity in the Project Facility. It shall be the responsibility of Operator that the greenery of Sambamurthy Road is not destroyed due to any activities carried out in Project Facility.
- 11.4.8. The Operator recognises and acknowledges the fact that the Project is intended to provide a public facility and the Operator shall have no right to prevent, impede or obstruct any bona fide Users from using the Project Facility, save for regulating such usage under the terms of this

Agreement. Under exceptional circumstances, if the Operator apprehends any detriment to the Facility, it shall seek instructions from the VMC, whose decision in this regard shall be final.

11.4.9. The opening and closing hours of the Project Facility shall have to comply with the city Shops and Establishment Act, and the opening and closing time of Vijayawada. The Project Facility shall not be allowed to be open after all the operations in the city have been closed for the day.

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

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

11.5. Project Monitoring Board

11.5.1. Constitution

11.5.1.1. VMC shall ensure that a Project Maintenance Board, comprising Municipal Commissioner, Accounts officer and Chief Engineer from VMC and two persons nominated by the Operator is established one month prior to Scheduled Commercial Operation Date or Commercial Operation Date, whichever is earlier. The Operator shall be obligated to depute its authorized representative to such board by the stipulated date.

11.5.1.2. Municipal Commissioner of VMC shall be chairman of the PMB.

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

11.5.1. Tenure

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

11.5.2. Roles and Responsibilities

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

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

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

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

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

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

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

11.6. Electricity and Water

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

11.6.2. Operator shall be required to pay to VMC cost for the units consumed in Project Facility, as measured by the sub-meter. The cost per unit of electricity shall be the applicable and prevalent rate per unit at which VMC makes payment for the electricity in Vijayawada. Operator shall be required to pay for electricity at the end of every two months. Operator shall ensure timely payment of electricity, water and other bills. In the event of default committed by the Operator in making payment of any such taxes the VMC will be entitled to impose a penal interest on the delayed payment as per Clause 21.3, besides right to terminate / revoke the Agreement.

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

11.6.4. Operator is required to make own arrangements of water for Project.

11.6.5. Operator shall have the option to procure water from VMC, to the extent supplied by VMC. Operator shall install a sub-meter for monitoring water consumption in Project Facility. For Any water supplied by VMC, Operator shall be required to pay to VMC cost for the units consumed in Project Facility, as measured by the sub-meter, at the applicable and prevalent rate for water fixed by VMC. Operator shall be required to pay for water at the end of every two months. In the event of default committed by the Operator in making payment of any such taxes the VMC will be entitled to impose a penal interest on the delayed payment, besides right to terminate / revoke the Agreement.

11.7. Quarterly Statement of Gross Revenue

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

11.8. Average Operational Time

11.8.1. Operator shall achieve Average Operational Time per Booth of atleast 75% of the total days on which Premises is operational. The Average Operational Time per Booth shall be calculated as follows:

Average Operational Time per Booth =

$$\frac{\sum(\text{Number of operational days in the year for Booth}_x)}{(\text{Number of days for which Premises was operational in the year X Number of$$

Booths) Where x = 1,2,3,...,n,

n = total number of Booths in Food Court and Shops, including booths / shops inside and outside the ticketing area

11.8.2. Operator shall calculate the Average Operational Time at the beginning of new Operational Year for the preceding Operational Year and submit it to PMB within seven days of commencement of the new Operational Year.

11.8.3. If PMB finds the Average Operational Time to be less than 75%, then Operator shall be required to pay a penalty of Rupees _____ (Rupees _____), (the "**Penalty**") which shall be equivalent to 10% of the Annual Concession Fee for the year for which such Penalty is imposed, to VMC within thirty days of commencement of the new Operational Year. In case Operator fails to pay the amount of penalty within specified time, VMC shall deduct the complete amount of penalty from Performance Security of Operator.

11.8.4. Average Operational Time shall be calculated only during Operations Period and shall not be applicable during the Construction Period.

12. Accounts and Audit

- 12.1.1. The Operator shall maintain books of accounts recording all its receipts (including all User Fee and other revenues derived/collected by it from or on account of the Project Facilities and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Operator shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts shall form the basis of payments by either Party under this Agreement. VMC shall have the right to inspect the records of the Operator during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to VMC for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 12.1.2. The Operator shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to VMC its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 12.1.3. On or before the thirty-first day of May each Year, the Operator shall provide to VMC, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) Gross Revenue with itemwise break-up (b) such other information as VMC may reasonably require.

12.2. Appointment of auditors

- 12.2.1.1. The Operator shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors. All fees and expenses of the Statutory Auditors shall be borne by the Operator. The Operator may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to VMC.
- 12.2.1.2. Notwithstanding anything to the contrary contained in this Agreement, VMC shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "**Additional Auditors**") to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

12.3. Certification of claims by Statutory Auditors

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

12.4. Dispute resolution

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

12.5. Books and Records

The Operator shall, at its cost:

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

13. Escrow Account

13.1. Escrow Account

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

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

13.2. Deposits into Escrow Account

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

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

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

13.3. Withdrawals during Agreement Period

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

-
- (a) all taxes due and payable by the Operator;
 - (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
 - (d) O&M Expenses and other costs and expenses incurred by VMC in accordance with the provisions of this Agreement, and certified by VMC as due and payable to it;
 - (e) Annual Concession Fee due and payable to VMC;
 - (f) monthly proportionate provision of Debt Service due in an Accounting Year;
 - (g) all payments to be made to licensees of Booths as their share of revenue generated from the Project Facility;
 - (h) all payments and Damages certified by VMC as due and payable to it by the Concessionaire;
 - (i) any reserve requirements set forth in the Financing Agreements; and
 - (j) balance, if any, in accordance with the instructions of the Operator.

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

13.4. Withdrawals upon Termination

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

- (a) all taxes due and payable by the Operator;
- (b) outstanding Annual Concession Fee;
- (c) all payments and Damages certified by VMC as due and payable to it by the Operator;
- (d) outstanding Debt Service;
- (e) incurred or accrued O&M Expenses;
- (f) any other payments required to be made under this Agreement; and

(g) balance, if any, in accordance with the instructions of the Operator:

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

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

14. Force Majeure

14.1. Force Majeure

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

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

14.2. Force Majeure Events

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

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

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

14.3. Duty to Report Force Majeure Event

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

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

14.4. Effect of Force Majeure Event

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

14.5. Allocation of Costs Arising out of Force Majeure

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

14.6. Termination Notice for Force Majeure Event

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

14.7. Termination Payment for Force Majeure Event

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

14.8. Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as mentioned in Article 18; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

15. Termination

15.1. Termination for Operator Default

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 15 (fifteen) days, the Operator shall be deemed to be in default of this Agreement (a “**Operator Default**”), unless the default has occurred solely as a result of any breach of this Agreement by VMC or due to Force Majeure event. The defaults referred to herein shall include:

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

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

15.2. Procedure to issue Termination Notice

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

15.3. Effect of Termination

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

15.4. Other Rights and Obligations of the VMC

Upon Termination for any reason whatsoever, the VMC shall:

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

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

16. Divestment of Rights and Interest

16.1. Divestment Requirements

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

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

16.2. Vesting Certificate

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

16.3. Divestment costs etc.

16.3.1. The Operator shall bear and pay all costs incidental to divestment of all of the rights and interest of the Operator in the Project Facilities in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Operator in connection with such divestment shall be borne by the Authority.

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

16.3.3. In the event that any of the Divestment Requirements set forth in Clause 16.1 are not fulfilled by the Operator within 15 (fifteen) days from the end of the Agreement Period, the Operator shall be required to pay to the VMC, a penalty equivalent to the multiple of the “Penal

Interest Rate” applicable on the date of Termination for each day of delay in the fulfilment of the Divestment Requirements beyond the 15 (fifteen) days specified herein.

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

17. Liability and Indemnity

17.1. General indemnity

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

17.2. Liability of VMC

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

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

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

17.3. Indemnity by the Operator

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

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

17.4. No consequential claims

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

17.5. Survival on Termination

The provisions of this Article 17 shall survive Termination.

18. Dispute Resolution

18.1. Dispute resolution

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

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

18.2. Conciliation

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

18.3. Arbitration

18.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 18.2, shall be decided by reference to Arbitral Tribunal appointed in accordance with Clause 18.3.2. Arbitration shall be held in accordance with the provisions of Arbitration and Conciliation Act, 1996. The venue of arbitration shall be Vijayawada, and the language of arbitration proceedings shall be English.

18.3.2. The Arbitral Tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator, and the third arbitrator shall be appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996.

18.3.3. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 18 shall be final and binding on the Parties as from the date it is made, and the Operator and the VMC agree and undertake to carry out such Award without delay.

18.3.4. The Operator and the VMC agree that an Award may be enforced against the Operator and/or the VMC, as the case may be, and their respective assets wherever situated.

18.3.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

19. Assignment and Charges

19.1. Restrictions on assignment and charges

19.1.1. The Operator shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of VMC.

19.1.2. The Operator shall not assign in favour of any person any right or benefit that has not been provided to the Operator by the Authority.

19.1.3. The Operator shall not create nor permit to subsist any Encumbrance in the Project Facility. It is further clarified that any assignment or license on the Project Facility and Project Facilities, given to the Operator, shall expire upon termination of this Agreement.

19.1.4. Restraint set forth in Sub-articles 19.1.1 and 19.1.3 above, shall not apply to:

- (a) Liens / encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Operator;
- (b) 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; or
- (c) Assignment of Operator's rights and benefits under this Agreement and other Project related agreements to or in favour of the Lenders, which shall include step in rights, as security for financial assistance provided by them.

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

20. Disclaimer

20.1. Disclaimer

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

21. Miscellaneous

21.1. Governing Law and Jurisdiction

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

21.2. Waiver of Immunity

Each Party unconditionally and irrevocably:

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

21.3. Delayed Payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay penalty for the period of delay calculated at a rate equal to SBI Base Rate + 2% (two percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

21.4. Waiver

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

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

21.4.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or

other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

21.5. Liability for Inspection of Documents

Except to the extent expressly provided in this Agreement:

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

21.6. Exclusion of Implied Warranties etc.

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

21.7. Survival

21.7.1. Termination shall:

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

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

21.8. Entire Agreement

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

21.9. Severability

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

21.10. No Lease

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

21.11. No partnership

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

21.12. Third Parties

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

21.13. Successors and Assigns

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

21.14. Notices

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

If to VMC:

Address:

Tel: No.

Fax No.

Attention :

If to the Operator:

Address :

Telephone :

Fax :

Attention :

21.15. Language

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

21.16. Counterparts

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

21.17. Validity

This Agreement shall be valid for the entire Agreement Period

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED

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

SECTION – III: SCHEDULES TO THE AGREEMENT

SCHEDULE A

DETAILS OF THE PROJECT FACILITY

Location: The project is located in the premises of Sambamurthy Road, Vijayawada.
Beside Namma Toilets established by VMC.

SCHEDULE B

FORMAT FOR BANK GUARANTEE

(Performance Security)

Municipal Commissioner,
Vijayawada Municipal Corporation
Vijayawada

WHEREAS:

- (A) **** (the “**Operator**”) and the Vijayawada Municipal Corporation (the “**Authority**”) have entered into a Agreement dated_____(the “**Agreement**”) whereby the Authority has agreed to the Operator undertaking Construction, Operation, Maintenance and Management of Food Stalls through Public Private Partnership on Design, Build, Operation, Maintenance, Management and Transfer (DBOMMT) basis (hereinafter referred to as the “**Project**”), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Operator to furnish a Performance Security to the Authority in a sum of Rs _____ (Rupees _____)] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Agreement Period (as defined in the Agreement).
- (C) We, ***** through our Branch at ***** (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of Chief Engineer ,Vijayawada Municipal Corporation that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

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3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
 4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
 5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
 6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
 7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
 8. The Performance Security shall cease to be in force and effect 3682 (Three thousand six hundred and eighty two) days from the date of the Agreement or an earlier date if the Agreement is terminated as per any provision of the Agreement, and provided the Operator is not in breach of this Agreement. Upon request made by the Operator for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Operator, the Authority shall release the Performance Security forthwith.
 9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
 10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

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11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE C

SPECIFICATIONS AND STANDARDS

Construction of Project Facility

(Refer Clause 2.1 of the Agreement)

The use of standards and specifications for use of material, construction technology and operations shall adhere to the national and international set of specifications and the best practices in the industry. The work will follow the latest standards, codes and recommendations of the Indian Bureau of Standards and/or other applicable standards, specifications, norms, codes etc. If any relevant/applicable code / standard / specification indicated is superseded by another code/ standard / specification, the later will be applicable.

1. Fire Fighting Facilities:

- | | |
|-----------|--|
| 1. | Operator shall provide the required fire fighting equipment and facilities including fire exits, fire proof doors, etc conforming to relevant standards and the applicable rules and regulations |
|-----------|--|

2. Facilities for Physically Challenged persons:

- | | |
|-----------|--|
| 1. | Operator shall provide all the necessary facilities to the entry/exit, seating and movement of physically challenged persons including wheel chairs. |
|-----------|--|

3. Equipment

The equipment and component parts shall conform to the relevant standards by Bureau of Indian Standards wherever available.

SCHEDULE D

LIST OF PROHIBITED ACTIVITIES

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

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

SCHEDULE E

ESCROW AGREEMENT

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

AMONGST

- 1 [**** Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at **** (hereinafter referred to as the "**Operator**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 ****[name and particulars of Lenders' Representative] and having its registered office at *** acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Escrow Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 ****[name and particulars of the Escrow Bank] and having its registered office at ****(hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Vijayawada Municipal Corporation, represented by Municipal Commissioner, and having its office at Canal road, Vijayawada - 520001 hereinafter referred to as the "**VMC**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The VMC has entered into a Agreement dated *** with the Operator (the "**Agreement**") for Design, Build, Operation, Maintenance and Management of Food Stalls in Vijayawada through Public Private Partnership on Design, Build, Operation, Maintenance, Management and Transfer (DBOMMT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

-
- (B) Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Agreement requires the Operator to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Escrow Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"Agreement" means the Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"Cure Period" means the period specified in this Escrow Agreement for curing any breach or default of any provision of this Escrow Agreement by the Operator, and shall commence from the date on which a notice is delivered by the VMC or the Lenders' Representative, as the case may be, to the Operator asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Escrow Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

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

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Operator hereby appoints the Escrow Bank to act as trustee for the VMC, the Lenders' Representative and the Operator in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Operator hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the VMC, the Lenders' Representative and the Operator, and applied in accordance with the terms of this Escrow Agreement. No person other than the VMC, the Lenders' Representative and the Operator shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Escrow Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of

this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Operator, Lenders or the VMC with the Escrow Bank. In performing its functions and duties under this Escrow Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the VMC, the Lenders' Representative and the Operator or their nominees, successors or assigns, in accordance with the provisions of this Escrow Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Escrow Agreement, and in any case prior to the Effective Date, the Operator shall open and establish the Escrow Account with the **** (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Operator shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Escrow Agreement and such mandates, terms and conditions, or procedures, this Escrow Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Operator. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the VMC, the Lenders' Representative and the Operator in the monies held in the Escrow Account are set forth in their entirety in this Escrow Agreement and the VMC, the Lenders' Representative and the Operator shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Operator

The Parties hereto acknowledge and agree that upon substitution of the Operator, it shall be deemed for the purposes of this Escrow Agreement that the nominated company is a Party hereto and the nominated company shall accordingly be deemed to have succeeded to the rights and obligations of the Operator under this Escrow Agreement on and with effect from the date of substitution of the Operator with the nominated company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Operator

3.1.1 The Operator agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Lenders and the VMC;
- (b) all funds received by the Operator from its share-holders, in any manner or form;
- (c) all User Fee levied and collected by the Operator;
- (d) any other revenues from or in respect of the Project; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Operator may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Escrow Agreement shall apply to such deposits.

3.2 Deposits by the VMC

The VMC agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the VMC to the Operator;
- (b) all User Fee collected by the VMC in exercise of its rights under the Agreement; and
- (c) Termination Payments:

Provided that the VMC shall be entitled to appropriate from the aforesaid amounts, any Annual Concession Fee due and payable to it by the Operator, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Lenders

The Lenders' Representative agrees, confirms and undertakes that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Escrow Agreement, the Lenders shall be entitled to make direct payments to the EPC contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Operator in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Agreement Period

- 4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Operator may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Operator;

-
- (b) all payments relating to construction of the Project Facility, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
 - (d) O&M Expenses incurred by the VMC, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Agreement and that the amounts claimed are due to it from the Operator;
 - (e) Annual Concession Fee due and payable to the VMC;
 - (f) monthly proportionate provision of Debt Service due in an Accounting Year;
 - (g) all payments and Damages certified by the VMC as due and payable to it by the Operator pursuant to the Agreement;
 - (h) any reserve requirements set forth in the Financing Agreements; and
 - (i) balance, if any, in accordance with the instructions of the Operator.
- 4.1.2 Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Operator shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Escrow Agreement, be appropriated and dealt with in the following order: ■

- (a) all taxes due and payable by the Operator;
- (b) outstanding Annual Concession Fee;
- (c) all payments and Damages certified by the VMC as due and payable to it by the Operator pursuant to the Agreement, and any claims in connection with or arising out of Termination;
- (d) outstanding Debt Service;
- (e) incurred or accrued O&M Expenses;
- (f) any other payments required to be made under the Agreement; and
- (g) balance, if any, in accordance with the instructions of the Operator.

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the VMC.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Escrow Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facility, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Escrow Agreement shall, until used or applied in accordance with this Escrow Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Operator and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Operator upon a certificate signed by or on behalf of the Operator;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Operator or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Operator of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Operator (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the VMC or the Lenders' Representative:

- (a) the Operator commits breach of this Escrow Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Operator causes the Escrow Bank to transfer funds to any account of the Operator in breach of the terms of this Escrow Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Operator commits or causes any other breach of the provisions of this Escrow Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Escrow Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Operator in respect of the debt, guarantee or financial assistance received by it from the Lenders, or any of its obligations to the VMC remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement. -

7.2 Substitution of Escrow Bank

The Operator may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the VMC and the Lenders' Representative, terminate this Agreement and appoint a new Escrow

Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Escrow Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Operator and the Lenders' Representative made on or after the payment by the Operator of all outstanding amounts under the Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Operator. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Operator shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Escrow Agreement such as the rights and obligations of Lenders, investment of surplus funds, restrictions on withdrawals by the Operator in the event of breach of this Escrow Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Escrow Agreement and in the event of any conflict or inconsistency between provisions of this Escrow Agreement and such supplementary escrow agreement, the provisions of this Escrow Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Operator will indemnify, defend and hold the VMC, Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third

party claims for any loss, damage, cost and expense arising out of any breach by the Operator of any of its obligations under this Escrow Agreement or on account of failure of the Operator to comply with Applicable Laws and Applicable Permits.

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

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

9.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10. Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Escrow Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for

Alternate Dispute Resolution, Vijayawada (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Vijayawada and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The VMC unconditionally and irrevocably:

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

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

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

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

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

11.6 No third party beneficiaries

This Escrow Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Escrow Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Escrow 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.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Escrow Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Escrow Agreement. .

11.8 Severability

If for any reason whatever any provision of this Escrow Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Escrow Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 Authorized representatives

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

11.13 Original Document

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

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

SIGNED, SEALED AND

DELIVERED

For and on behalf of

OPERATOR by:

SIGNED, SEALED AND

DELIVERED

For and on behalf of

LENDERS by the

Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND

DELIVERED

For and on behalf of

ESCROW BANK by:

SIGNED, SEALED AND

DELIVERED

For and on behalf of

VMC OF [***] by:

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

Designation)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

1.

2.

SCHEDULE F

QUARTERLY STATEMENT OF GROSS REVENUE

Project:

Quarter ____ : From ____ To ____

Monthly Statement			
Revenue Stream	For Corresponding Month ____ Previous Year of	For Preceding Month ____	For the Month ____ Reported upon
	Fee Collected (in lakh Rs.)	Fee Collected (in lakh Rs.)	Fee Collected (in lakh Rs.)
(1)	(2)	(3)	(4)
A: Of Operator from Booths (includes sale of over-the- counter items, services provided)			
B : of Operator from Booths (through streams of revenue, other than A, which is included in definition of Gross Revenue			
D : Other			
E: Total (of Operator)			
F: Of Licensees of Booths (includes sale of over-the- counter items, services provided)			
G : of Operator from Booths (through streams of revenue, other than G, which is included in definition of Gross Revenue			
H: Total (Of Licensees of Booths)			

I: Grand Total: (E + H)			
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*This table shall be given for each month of the quarter. For three months, the above table will be given three times, providing separate information for each month

Quarterly Statement			
Revenue Stream	For Corresponding Quarter Previous Year of	For Preceding Quarter	For the Quarter Reported upon
	Fee Collected (in lakh Rs.)	Fee Collected (in lakh Rs.)	Fee Collected (in lakh Rs.)
(1)	(2)	(3)	(4)
A: Of Operator from Booths (includes sale of over-the-counter items, services provided)			
B : of Operator from Booths (through streams of revenue, other than A, which is included in definition of Gross Revenue			
D : Other			
E: Total (of Operator)			
F: Of Licensees of Booths			
G : of Operator from Booths (through streams of revenue, other than G, which is included in definition of Gross Revenue			
H: Total (Of Licensees of Booths)			
I: Grand Total: (E + H)			

*This table shall be consolidated statement of Gross Revenue for the quarter.

SCHEDULE G

OPERATION & MAINTENANCE REQUIREMENTS

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

Cleanliness

- Operator shall ensure that the Project Facility areas are clean
- Operator shall arrange for dustbins in Project Facility areas to minimize littering from Users of the Project Facility
- There should be regular sweeping of the Project Facility areas multiple times in a day to ensure cleanliness
- While cleaning the Project Facility, Operator shall make sure that the dump shall not be thrown in rest of the areas of Vijayawada, except any area which is designated by the VMC for such purpose
- Operator shall follow adequate waste management and disposal methods for waste generated from Project Facility operations
- Operator shall follow the following timetable for routine cleaning of the Project Facility:
 - o **Daily Tasks:** Clean, sweep and wash floors, dust, clean (open) drains, empty dustbins, scrub kitchen tables.
 - o **Weekly Tasks:** Clear cobwebs, clean doors and windows, kitchen walls,
 - o **Monthly Tasks:** Repairs, fumigation, wash curtains, cushion covers, water tanks.
 - o **Annual Tasks:** Whitewash, pest eradication, contract renewals, clean air-conditioning system
- Operator shall ensure that operation of the Facility does not disturb rest of the activities in Vijayawada.
- Information signages and display boards shall be visible, legible and functional. These shall be cleaned once in a week. Damaged signages and boards shall be replaced, repaired within seven days of detection.
- Operator shall not damage, destruct or demolish any structure, area or asset, which is owned by VMC, inside or outside Project Facility areas without prior instructions and / or approval of VMC
- **Electric Meter** – Operator shall check all meters once in a month time to ensure that they are functioning and are showing correct readings
- **Standby Power Supply** – Operator shall have arrangement of standby power supply by DG sets which should be available 24 hours.
- Any fault in the electrical equipments like switches, receptacles, wiring etc. shall be identified, tested and repaired within 24 hours of detection to prevent accidents