



**VOLUME II
DRAFT AGREEMENT (PROJECT III)**

between

MUNICIPAL CORPORATION SHIMLA

and

(Operator)

For

**RENOVATION, OPERATION AND MAINTENANCE OF COMMUNITY
TOILETS IN SHIMLA**

MUNICIPAL CORPORATION SHIMLA

This Agreement ("**Agreement**") mutually agreed and entered into on this the _____ day of _____ (*Month*), Two Thousand and Fifteen at Shimla,

BETWEEN

Municipal Corporation Shimla, through its Commissioner, having its office at The Mall Road, Shimla 171001, hereinafter referred to as "**MCS**" which expression shall unless repugnant to the context include its administrators and assigns, of THE ONE PART,

AND

_____ ¹ represented by _____, having its registered office at _____, hereinafter referred to as the "**Operator**" which expression shall unless repugnant to the context include its successors and permitted assigns, of THE OTHER PART.

WHEREAS,

- A. Municipal Corporation Shimla (hereinafter referred to as "**MCS**") is a statutory body established under the Himachal Pradesh Municipal Corporation Act, 1994. The obligatory function of MCS includes provision of construction, maintenance and cleaning of public and community latrines, urinals and similar conveniences;
- B. With an objective to improve provision of services to the Users of community toilets in Shimla, MCS invited proposals from interested parties through a transparent and competitive bidding process to renovate and manage 42 (forty two) community toilets (hereinafter referred to as the "**Project Asset**" and more fully described in **Schedule IX**) on a Renovate, Operate, Maintain and Transfer (**ROMT**) basis with private sector participation (hereinafter referred to as the "**Project**").

¹ Insert name of the Successful Bidder and its status.

- C. After evaluation of the Proposals received, MCS accepted the proposal submitted by the Operator and issued a Letter of Acceptance (LoA) No. _____ dated _____.
- D. In terms of the LoA the Parties hereto are required to enter into this Agreement being these presents to record the terms, conditions and covenants hereof.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Agreement, its recitals, schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.

“Agreement Period” shall have the meaning ascribed thereto in Clause 2.2 of the Agreement.

“Applicable Law” means all laws, brought into force and effect by Government of India or the Government of Himachal Pradesh including rules, regulations and notifications made thereunder, 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, permits, authorisations, consents and approvals required to be obtained or maintained by the Operator under Applicable Laws.

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

“Commercial Operation Date” or “COD” means the date on which the Operator obtains the Completion Certificate.

“Completion Certificate” shall mean the certificate issued by MCS certifying, inter alia, that the Operator has completed the Renovation Works.

“Due Date” means the date(s) on which MCS is required to make payments of O&M Fee to the Operator in accordance with **Schedule III**.

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations.

“Expiry” means expiry of the Rights by efflux of time at the end of 5 (five) years from the date of the Agreement.

“Expiry Date” means the date on which Expiry of the Agreement occurs.

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

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

“Material Adverse Effect” means a material adverse effect on (a) the ability of the Operator to exercise any of its Rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Milestone” means the project milestones set forth in Schedule IV;

“O&M Fee” means the amounts payable by MCS to the Operator in accordance with Article 5.

“O&M Requirements” shall mean the requirements as to operation and maintenance of the Project Facilities as set forth in **Schedule II**.

“Parties” means the parties to this Agreement and **“Party”** means either of them, as the context may admit or require.

“Project Asset” shall have the meaning ascribed thereto in Recital B.

“Project Facilities” means the existing facilities provided in **Schedule IX** and facilities renovated or procured provided by the Operator in the Project Asset as provided in **Schedule I** and in terms of this Agreement.

“Quarter” or “Quarterly” shall mean a period of 3 months.

“Renovation Requirements” shall mean the requirements as to renovation of the Project Assets as set out in **Schedule I**.

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

“Rights” shall have the meaning ascribed thereto in Clause 2.1 of this Agreement.

“Scheduled Project Completion Date” means 8 (eight) months from the date of this Agreement within which the Operator shall complete Renovation Works and achieve Commercial Operation Date.

“**Tax**” shall mean and include all taxes, cesses, duties, levies that may be payable by the Operator under the Applicable Laws.

“**Technical Proposal**” shall mean the technical proposal submitted by the Successful Bidder as part of its Proposal for the Project and attached as **Schedule VIII**.

“**Termination**” means early termination of this Agreement in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include Expiry.

“**User**” means a person who uses the Project Asset but does not include the Operator and its employees.

1.2 Interpretation

- a) In this Agreement, unless the context otherwise requires,
- (i) 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;
 - (ii) 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 including all Applicable Law of Government of Himachal Pradesh and as from time to time may be amended, modified, supplemented, extended or re-enacted;
 - (iii) the 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;
 - (iv) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
 - (v) any reference to day shall mean a reference to a calendar day;
 - (vi) references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Shimla are

- generally open for business;
- (vii) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - (viii) references to any date, period or Milestone shall mean and include such date, period or Milestone as may be extended pursuant to this Agreement;
 - (ix) 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;
 - (x) the words importing singular shall include plural and vice versa;
 - (xi) references to any gender shall include the other and the neutral gender;
 - (xii) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence 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 MCS hereunder or pursuant hereto in any manner whatsoever;
 - (xiii) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Monitoring Agency shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Monitoring Agency, as the case may be, in this behalf and not otherwise;
 - (xiv) 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;
 - (xv) 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;

- (xvi) 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"); and
 - (xvii) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- b) 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.
 - c) Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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 the Documents

- (a) The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- i. Agreement;
- ii. Schedules of Agreement;
- iii. Letter of Award
- iv. RFP; and
- v. Notice Inviting Tender

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

- i. between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- ii. between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- iii. between any two Schedules, the Schedule relevant to the issue shall prevail;
- iv. between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2

2. RIGHTS

2.1 Grant of Rights

Subject to and in accordance with the terms and covenants set forth in this Agreement, MCS hereby grants and authorises the Operator to investigate, study, design, engineer, procure, finance, renovate, repair, re-construct, redevelop, operate and maintain the Project Asset. The Operator has the right to regulate entry of the Users into the Project Asset and exercise and/or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement and transfer the Project Asset on the Expiry Date or the Termination Date as the case may be (“the **Rights**”).

2.2 Agreement Period

The Rights hereby granted is for a **period of 5 (five) years** commencing from the date of this Agreement and ending on the Expiry Date (“the **Agreement Period**”). Based on the performance of the Operator and subject to discretion of MCS, the Agreement Period may be extended for a period of 1 year. Provided that in the event of Termination, the Agreement Period shall mean and be limited to the period commencing from the date of this Agreement and ending with the Termination Date.

2.3 Acceptance of Rights

In consideration of the rights, privileges and benefits conferred upon by MCS and other good and valuable consideration expressed herein, the Operator hereby accepts the Rights and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

ARTICLE 3

3. PROJECT ASSET

3.1 Handover of Project Asset

- (a) MCS shall for the purpose of implementing the Project, within 7 (seven) days from the date of this Agreement, handover to the Operator on as-is-where-is basis physical possession of the Project Asset free from Encumbrance and together with all way leaves, easements, unrestricted access necessary for the purpose of implementing the Project. Provided that the toilets which are under construction as set out in **Schedule IX** shall be handed over to the Operator by MCS on completion of its construction.
- (b) Before the handover of the Project Asset as provided in the above Clause, MCS and the Operator shall conduct a joint survey of the Project Asset and finalise details of the Project Asset to be made available to the Operator and details of the existing infrastructure/facilities in each of the toilets forming part of the Project Asset. Based on the joint survey, necessary amendment shall be made in **Schedule IX**, which shall form part of this Agreement.
- (c) Upon the Project Asset being handed over pursuant to the preceding sub-clause (a) and (b), the Operator shall have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Asset as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 Rights and Use of the Project Asset

- (a) The Operator shall have the right to use the Project Asset in accordance with the provisions of this Agreement and for this purpose it may regulate the entry into and use of the same by third parties.

- (a) The Operator shall not part with or create any Encumbrance on the whole or any part of the Project Asset / Project Facilities save and except as set forth and permitted under this Agreement.
- (b) The Operator shall not without the prior written approval of MCS use the Project Asset / Project Facilities for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (c) Subject to Applicable Laws and the guidelines relating to advertising, the Operator shall, post COD period, have the right to use the walls of toilets (both exterior and interior) for the purposes of advertising and collect, retain and appropriate all moneys received therefrom.
- (d) The number and size of advertising boards at each community toilet shall be decided by MCS in accordance with the Applicable Law.

ARTICLE 4

4. OPERATOR'S OBLIGATIONS

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

4.1 Performance Security

- (a) The Operator shall, for due and punctual performance of its obligations under this Agreement has submitted to MCS, a bank guarantee for a sum of Rs. 3,00,000/- (Rupees Three lakhs only)² substantially in the form as set forth in **Schedule VII ("Performance Security")**.
- (b) The Performance Security shall be valid throughout the Agreement Period and for a period of 3 months thereafter.
- (c) In the event of breach of this Agreement or where the Operator fails to pay any amount due to MCS including damages, if any, payable under this Agreement, MCS shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Operator.
- (d) Upon encashment and appropriation from the Performance Security, the Operator shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, 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 MCS shall be entitled to terminate this Agreement.

² Bank guarantee is to be issued by a Scheduled Bank in India and submitted to MCS on or before the date of this Agreement.

4.2 Financing Arrangement

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

4.3 General Obligations of the Operator

- (a) Upon taking over of the Project Asset, the Operator shall:
- i. Within 4 (four) weeks from the date of this Agreement, estimate the expenses likely to be incurred for undertaking Renovation Works and in consultation with the MCS, agree upon the amount of Renovation Expenses ("Renovation Expenses") and the submit a renovation plan based on the same. Such agreement on the Renovation Expenses by the Parties would be broadly based on the Technical Proposal submitted by the Successful Bidder;
 - ii. renovate the Project Asset as per the Renovation Requirements set out in **Schedule I**;
 - iii. operate and Maintain the Project Assets as per the O&M Requirements set out in **Schedule II**; and
 - iv. obtain Applicable Permits and comply with Applicable Laws.
- (b) The Operator shall bear all costs of consumables/equipments, salaries to its employees and any other related expenses relating to renovation, operation and maintenance of the Project Assets;
- (c) The Operator shall adhere to the Applicable Law including labour laws, environmental law etc. in discharge of its obligation under this Agreement;
- (d) The Operator in consultation with MCS shall, develop a system for tracking the number of Users on daily basis and aggregate the data to derive the water requirement for a Quarter.
- (e) The Operator while undertaking the Renovation Work shall ensure minimal inconvenience or disturbance to the Users. During this period, atleast one ladies toilet and one gents toilet and one urinal in each of

the community toilet shall be made available to Users. Where there is an Emergency for closure of any toilet, the same may be undertaken by the Operator with the prior approval of MCS in writing and not exceeding the period as approved by MCS. On such Emergency closure of toilets, the Operator shall display a notice in front of the toilet informing the users about the closure thereof and the likely date of opening.

- (f) The Operator shall submit a report on Quarterly basis to MCS in the manner and in the form mutually agreed between the Parties ("**Quarterly Report**"). Parties agree that the first Quarterly Report by the Operator shall be submitted within 5 (five) days of the end of first Quarter commencing from date of this Agreement. The Quarterly Report submitted by the Operator shall inter alia include following details with respect to each of the toilets forming part of the Project Asset;;
- i. Actual number of Users on daily basis (with breakdown of number of male and number of female Users and the type of usage).
 - ii. User Fee collected with details about type user/usage type and revenue generated through advertisements;
 - iii. Actual water consumed during the Quarter along with details of quantum of water supplied by MCS through pipe network and tankers.
 - iv. The performance standard maintained by the Operator in each of the toilets along with the copies of the inspection card maintained in accordance with this Agreement;
 - v. Repair or renovation work carried out in each of the toilets forming part of the Project Asset and the expenses incurred in respect thereto;
 - vi. The manpower deployed detailing out the gender breakdown and number of shifts;

- vii. Updated asset inventory capturing details of all repairs and replacements done during the Quarter;
 - viii. Number of complaint or suggestions received, the type thereof and the manner in which the same was resolved; and
 - ix. Additional water required in each of the toilets to meet the performance standards for the next Quarter. To assess the additional water required in each of the toilets, ,
 - x. Any other matter as may be directed by MCS.
- (g) To enable Users of the Project Asset to seek grievance redressal or give suggestions for better service delivery by the Operator to the Users, the Operator shall display a helpline number provided by MCS at the entrance of each of the toilets or at any conspicuous place. Further, the Operator shall also display contact details of the supervisory staff of the Operator and the representative of MCS as provided by MCS.
- (h) The Operator shall adopt a mobile or web based application, if any, developed by MCS for enabling registration of grievances by the Users and for monitoring of its redress.
- (i) The Operator shall also maintain a complaint/suggestion register at the entrance of each toilet and the same shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint/suggestion number, date, name and address of the complainant, substance of the complaint/suggestion and the action taken by the Operator.
- (j) If the Bidder has in the past 3(three) years preceding the Proposal Due Date have constructed/renovated 40 toilet complex having aggregate cost of at least 75,00,000/-, it shall undertake Renovation Works by itself. Otherwise, the Operator is required to undertake the Renovation Work through any Government approved Contractor possessing requisite technical, financial and managerial expertise/capability; but

in either case, the Operator shall remain solely responsible to meet the Renovation Requirements.

- (k) The Operator shall possess requisite technical, financial and managerial expertise/capability for undertaking O&M activities. Further, the Operator shall carry out the O&M activities by itself and shall not sub-contract any part or whole of the O&M to any other party through a Contractor.
- (l) Notwithstanding anything contrary, where MCS unable to supply water required under this Agreement at the toilet level, the Operator shall make arrangement at its cost to collect water from MCS through tankers or other suitable means. The water for filling the tanker shall be provided by MCS.
- (m) If there is any specific request by MCS for provision of any emergency services in any of the toilet or to extend the Operational Hours of any of the toilets forming part of Project Asset and of any other similar nature, the same shall be carried out by the Operator within the time specified in that special request by the MCS. The Parties in such eventuality may mutually agree on the payment to be made by MCS to Operator for undertaking such specific request.

4.4 Project Implementation: Renovation Work

- (a) Operator is required to commence Renovation Work within 7 (seven) days from the date of finalisation of the Renovation Expenses in accordance with Clause 4.3 (a)(i);
- (b) The Operator shall adhere to Renovation Requirements and achieve COD on or before the Scheduled Project Completion Date as set out in the Project Completion Schedule. If the Operator fails to achieve any of the Milestone set out in the Project Completion Schedule within 15 (fifteen) days from such Milestone as set out in **Schedule IV**, for any reason other than conditions constituting Force Majeure or for reasons attributable to MCS, the Operator shall pay to MCS, Rs. 500 (five hundred) for each day of delay until such Milestone is achieved;

provided that if any or all Milestones or the Scheduled Project Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in **Schedule IV** shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if **Schedule IV** has been amended as above; provided further that in the event Commercial Operation Date is achieved on or before the Scheduled Project Completion Date, the Damages paid under this Clause 4.4(b) shall be refunded by MCS to Operator, but without any interest thereon..

- (c) For the purposes of determining whether the Renovation Works undertaken by the Operator are in accordance with the Renovation Requirements, the Monitoring Agency appointed by the MCS will regularly inspect the Renovation Works. The Operator shall on completion of each milestone of Renovation Works as per the Project Completion Schedule as set out in **Schedule IV**, notify the Monitoring Agency and MCS. After receiving the notice of completion, the Monitoring Agency will in consultation with and in the presence of representative of the MCS, undertake inspection of the Project Asset to verify compliance of Renovation Requirements and may require the Operator to undertake tests as it may deem necessary. The Operator shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the test results.
- (d) If all the tests are successful and milestones are achieved to the satisfaction of the Monitoring Agency, MCS will on completion of all the Milestones set out in the Project Completion Schedule, issue the Completion Certificate.
- (e) If the Operator fails to obtain the Completion Certificate within 15 (fifteen) days of the Scheduled Project Completion Date, MCS shall, subject to the provisions of Clause 4.4(b), be entitled to terminate this Agreement and to appropriate the Performance Security.

4.5 Operation and Maintenance Obligation

- (a) Subject to Clause 4.3(d), the Operator shall during the period prior to COD, may undertake curtailed operation of the Project Asset. For avoidance of doubt, the Operator shall on best effort basis meet the Performance Standards. However, during this period, the Operator shall not be liable to pay any damages for any lapses/shortfalls as provided in **Part C, Schedule II**.
- (b) The Operator shall keep the Project Asset open on all the days including Sunday and holidays during the period specified in the table below. ("**Operational Hours**").

Sr.No.	Season/period	Timings
1	Summer	5:30 AM to 10:00 PM
2	Winter	6:00 AM to 9:00 PM

- (c) The Operator shall maintain the Project Asset/Project Facilities in accordance with the O&M Requirements set out in **Part A, Schedule II** and shall adhere to the Performance Standards provided as **Part B, Schedule II**.
- (d) The Operator shall engage cleaners for the purpose of meeting the Performance Standards. The Operator shall engage a female cleaner for the ladies toilet. The caretaker/attendant of each of the toilets forming part of the Project Asset shall, on daily basis fill up the inspection card for compliance with monitoring parameters. The indicative format of the inspection card is provided in **Schedule V** and same shall be finalised by the parties.
- (e) The Operator shall ensure that lighting arrangements within the toilet units are functional at all times.
- (f) The Operator shall bear all the periodical maintenance expenses relating to Project Asset including repair and replacement costs of the Project Facilities, payments for electricity, cost of employees/labour and cost of consumables such as soaps, cleansing agents etc.
- (g) If the Operator fails to operate and maintain the Project Assets in accordance with O&M Requirements, and such failure has not been

remedied despite a notice to that effect issued by MCS/Monitoring Agency ("**Notice to Remedy**"), the Operator shall be deemed to be in material breach of O&M Requirements.

4.6 Change of Scope

- (a) Notwithstanding anything to the contrary contained in this Agreement, MCS may require the Operator to renovate, operate and manage additional community toilets not forming part of the Project Asset and/or provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement in any of the toilets forming part of the Project Asset ("**Change of Scope**").
- (b) During the Agreement period, if MCS requires a Change of Scope, it will issue a notice of Change of Scope (the "**Change of Scope Notice**") to the Operator.
- (c) Upon receipt of Change of Scope Notice, the Operator shall within 15 (fifteen) days thereof, provide to MCS its proposal ("**Change of Scope Proposal**") comprising the cost and time required to undertake the Change of Scope. The Change of Scope Proposal shall also include the detailed breakdown of works specifying the material and labour costs, payment terms including reasonable handling charges, if any etc., with respect to such Change of Scope.
- (d) Upon receipt of information set forth in sub-clause (c) above, MCS shall intimate the Operator its acceptance of the same or request for revision therein and the Parties shall in good faith, make efforts to mutually agree upon the Change of Scope Proposal and agree on the payment terms with respect to such Change of Scope. MCS shall then issue an order to the Operator for the Change of Scope ("**Change of Scope Order**").
- (e) MCS shall make payments to the Operator in accordance with the Change of Scope Order.

- (f) The Operator shall follow relevant procedures set out in Clause 4.4 and 4.5 for renovation, operation and maintenance of works under Change of Scope Order.
- (g) If the Operator shall have failed to complete the Renovation Works on account of Force Majeure or for reasons solely attributable to MCS and as the result of which if there is any reduction in the scope of the Project, MCS shall, reduce the Renovation Expenses to be paid to the Operator under Article 6 on pro-rata basis taking into account the milestone, during which the work was stopped and shall also revise the O&M Fee on pro-rata basis.

4.7 Excuse from performance of obligations

The Operator shall not be considered in breach of its obligations under this Agreement if any part of the community toilet forming part of the Project Asset is not available to Users on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safety of the Users except when unsafe conditions occurred because of failure of the Operator to perform its obligations under this Agreement; or
- (c) compliance with a request from MCS, the effect of which is to close all or any part of the Project Asset.

Notwithstanding the above, the Operator shall keep all unaffected parts of the Project Asset open to Users provided they can be operated safely.

4.8 Insurance

The Operator shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the Agreement Period, such insurance as are necessary to protect the Operator, its employees and its assets in accordance with Good Industry Practice. The Operator shall maintain a register of entry in order of premiums paid towards the insurance and proof of payments made shall be submitted to MCS whenever requested.

4.9 Indemnity

The Operator shall, subject to the provisions of the Agreement, indemnify MCS for an amount not exceeding 3 (three) times the value of the O&M Fee for any direct loss or damage that is caused due to any deficiency in its services under this Agreement.

Further, parties agree that, MCS shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of remuneration, continuance or regularization of services, absorption or employment of the employees/staffs engaged by the Operator and MCS shall be free from any such obligation. The Operator shall be liable to indemnify, defend, save and hold harmless the MCS against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature in this regard.

ARTICLE 5

5. OBLIGATION OF MCS

MCS shall:

- (a) where appropriate provide necessary assistance to the Operator in securing Applicable Permits;
- (b) provide electricity lines to each of the toilets forming part of the Project Asset;
- (c) provide water pipelines upto each of the toilets and supply sufficient volume of water to every toilets forming part of the Project Asset on daily basis during the first Quarter of the Agreement Period;
- (d) after the first Quarter of the Agreement Period, supply from time to time, at its own cost, in addition to the water supplied under sub-clause (c) above, such additional volume of water as may be estimated by the Operator in Quarterly Report, either through tanker or by any other means; and
- (e) improve public safety through installation and maintenance of streetlights in the approach roads to toilets.
- (f) to ensure safety of the Users, adopt necessary disaster management system to overcome incidents of heavy snowfall, landslide etc. in the proximity of the public toilets;
- (g) provide wastewater connection for each of the public toilets where the sewer connection is not available;
- (h) support, cooperate with and facilitate the Operator in the implementation of the Project in accordance with the provisions of this Agreement. and
- (i) If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost incurred by the Operator in performing its

obligations under this Agreement, by an amount exceeding 5% (five per cent) of the O&M Fee, then the O&M Fee otherwise payable by MCS under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid O&M Fee.

ARTICLE 6

6. PAYMENT TERMS

6.1 Payment Obligation³

- a) Subject to the provisions of this Agreement and in consideration of the Operator accepting the Rights and undertaking to perform and discharge its obligations in accordance with this Agreement, MCS agrees and undertakes to pay to the Operator, Rs. _____⁴/- (Rupees _____) on Quarterly basis (hereinafter referred to as "O&M Fee") as set out in **Schedule III**.
- b) Any delay in payment of O&M Fee shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at the rate of 8% per annum from the relevant Due Date till the date of payment/ realization.

6.2 Mode of Payment

The O&M Fee amount shall be deposited by MCS on Due Date, in the bank account as may be specified by the Operator.

6.3 Damages

- a) The Operator would be liable to pay damages for any lapses/shortfall as set out in **Part C, Schedule II**.
- b) MCS shall based on the Monthly Report submitted by the Monitoring Agency, MCS shall determine the damages payable by the Operator for any of the lapses/shortfall and recover the same from Operator.

³ This shall be retained where the Successful Bidder requests Premium and where the Successful Bidder offers Premium, this shall be deleted.

⁴ Amount of O&M Fee quoted by the Successful Bidder in its Financial Proposal

- c) MCS shall within 10th day of every month send a notice for payment of damages, if any, for the previous month and the Operator shall within 7 (seven) days of such notice, deposit the amount so specified as damage in the notice with MCS in the manner as may be prescribed from time to time.

ARTICLE 7

7. RENOVATION EXPENSES

- (a) MCS agrees to provide to the Operator Renovation Expenses as determined in accordance with provisions of this Agreement for carrying out the Renovation Works.
- (b) Renovation Expenses will be disbursed by MCS to the Operator during the Renovation Period on completion of the Milestone and in the manner set out in **Schedule IV**.
- (c) In the event of occurrence of an Operator Default, disbursement of Renovation Expenses shall be suspended till such Operator Default has been cured by the Operator.
- (d) Renovation Expenses shall be paid by MCS to the Operator within 15 (fifteen) days of receipt of a statement from Monitoring Agency along with necessary bills submitted in support thereof stating the completion of the Milestones set out in **Schedule IV**. Renovation Expenses shall be inclusive of all taxes that may be applicable.
- (e) Any delay in payment of Renovation Expenses shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default **at the rate of 8% per annum** from the relevant due date till the date of payment/ realization.

ARTICLE 8

8. MONITORING MECHANISM

8.1 Monitoring procedures

MCS shall within 15 (fifteen) days of date of Agreement, MCS shall nominate monitoring agency ("**Monitoring Agency**"). The toilets in the Project Asset shall be monitored by the Monitoring Agency based on the parameters listed in **Schedule VI**. The Monitoring Agency shall notify the Operator about any unsatisfactory services rendered by the Operator or non-adherence to the Performance Standards set out in **Schedule II** and shall give Notice to Remedy through MCS as may be considered necessary. The Operator shall be bound to carry out the works suggested by the MCS in the Notice to Remedy within the period prescribed by them.

Further, the Monitoring Agency shall submit the inspection report to MCS within 5th day of every month or in case of holiday, on immediate next working day ("**Monthly Report**"). The Monthly Report shall inter-alia include details about the non-compliance of Performance Standard by the Operator under the Agreement and the damages to be imposed in respect thereto as per the terms of this Agreement including damages imposed for any lapses/shortfall as specified in **Part C of Schedule II**.

8.2 Monthly Review Meeting

- (a) During the Agreement Period, Parties shall conduct a meeting on 7th day of every month or in case it is a holiday then on immediate next working day to assess the progress of the Project and review the performance of the Operator under the Agreement. MCS shall maintain records of the discussions made during the review meeting and the decisions taken in each of the meeting.
- (b) One of the primary objectives of the MCS includes provision of clean community toilets. In this regard, the MCS may engage any other entities for rendering services, similar to the services rendered by the Operator under this Agreement, with respect to other public and

community toilets in Shimla. Based on the feedback received from the Users, with regard to the performance of toilets operated by these entities including the Operator, MCS may recognise and reward suitably, the best performer in the field.

- (c) To encourage the staffs engaged by the Operator under this Agreement and to incentivise them for better performance, MCS may recognise and reward the staffs working for any best maintained toilets to be identified by MCS.

8.3 Review of Agreement

The Parties shall on completion of the first anniversary of this Agreement, review the terms and conditions of the Agreement to assess the following factors:

- (a) number of Users using the Project Asset;
- (b) service levels achieved by the Operator in the previous year, and modifications or improvements, if any, required for remaining period of the Agreement;
- (c) water consumption at each of the community toilets forming part of the Project Asset;
- (d) adequacy of water storage tank; and
- (e) any other matter as the Parties may consider appropriate.

Based on the above information, the Parties will meet and discuss the requirement of any additional facilities to be provided to the Users. The Parties will also decide at this stage, any expenses to be incurred for provision/ modification of facilities and an appropriate compensation mechanism in respect thereto. Where any additional facilities are decided to be provided to the Users, the same would be undertaken as set out in Section 4.6.

ARTICLE 9

9. TERMINATION OF CONTRACT

9.1. Force Majeure

- (a) If any terms or conditions of the Agreement cannot be adhered to by the Parties because of any event entirely beyond the control of either MCS or the Operator (a "**Force Majeure**"), MCS shall certify that the Agreement has been frustrated. Thereupon, this Agreement shall be terminated and the Operator shall be liable to be paid termination payment equal to twice the O&M Fee.
- (b) Where the effect of Force Majeure is limited only to the part of Project Assets, the Agreement shall be ineffective only with respect to such part of the Project Asset and the remaining part of the Project Asset shall continue to be governed under this Agreement. However, in such event, the Operator shall not be entitled for any termination payment as provided in sub-clause (a) above, but the Parties shall mutually agree on revised O&M Fee on pro-rata basis.

9.2 Termination for Operator Default

- (a) 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 30 (thirty) days, the Operator shall be deemed to be in default of this Agreement (the "**Operator Default**"), unless the default has occurred solely as a result of any breach of this Agreement by MCS or due to Force Majeure. The defaults referred to herein shall include:
- i. the Performance Security has been encashed and appropriated in accordance with Clause 4.1 and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
 - ii. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 4.1, the Operator fails to cure, within a Cure Period of 30 (thirty) days, the Operator

- Default for which whole or part of the Performance Security was appropriated;
- iii. the Operator does not achieve the COD within the period stipulated in Clause 4.4(e);
 - iv. the Operator is in breach of the O&M Requirements;
 - v. the Operator without any prior permission of the Authority, keep any toilet in the Project Asset closed for more than 7 continuous days during the Operational Hours or for more than aggregate of 10 days in any Accounting Year;
 - vi. the Performance Standard are not met with respect to one or more toilets forming part of the Project Asset by the Operator continuously for more than 1 (one) month or for more than aggregate of 6 (six) months in any Accounting Year;
 - vii. the Operator has failed to make any payment to MCS within the period specified in this Agreement;
 - viii. the Operator fails to comply with terms of this Agreement regarding display of advertisement(s) and continues to be in violation even after notice by MCS;
 - ix. the damages imposed under this Agreement exceeds **Rs. 25,000 (Twenty five thousand)** on any Quarter during the term of this Agreement;
 - x. the Operator creates any Encumbrance in breach of this Agreement;
 - xi. the Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
 - xii. 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 that has a material bearing on the Project;
 - xiii. the Operator has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
 - xiv. the Operator commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on MCS; or
 - xv. any representation or warranty of the Operator herein contained

which is, as of the date hereof, found to be materially false or the Operator is at any time hereafter found to be in breach thereof;

- (b) On occurrence of Operator Default, MCS may terminate the Agreement with one month's notice. On such termination the Project Asset along with the Project Facilities shall vest with MCS and MCS shall have the right to forfeit the Performance Security.

9.3 Termination for MCS Default

- (a) In the event that any of the defaults specified below shall have occurred, and MCS fails to cure such default within a Cure Period of 30 (thirty) days or such longer period as has been expressly provided in this Agreement, MCS shall be deemed to be in default of this Agreement (the "**MCS Default**") unless the default has occurred as a result of any breach of this Agreement by the Operator or due to Force Majeure. The defaults referred to herein shall include:
- i. MCS has failed to make any payment to the Operator within the period specified in this Agreement;
 - ii. MCS commits a material default in supply of water or provision of electricity and such default has a Material Adverse Effect on the Operator; or
 - iii. MCS repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.
- (b) On occurrence of MCS Default, the Operator may terminate the Agreement with one month's notice. On such termination the Project Asset along with the Project Facilities shall vest with MCS and MCS shall be liable to pay the following as the termination payment to the Operator and shall return the Performance Security;
- i. Amount equal to twice the amount of O&M Fee; and
 - ii. reimburse any reasonable cost incidental to the prompt and orderly termination of this Agreement by the Operator.

ARTICLE 10

10. HANDBACK OF PROJECT ASSETS

10.1 Ownership

Without prejudice and subject to the Rights, the ownership of the Project Asset and Project Facilities, including all improvements made therein by the Operator, shall at all times remain that of MCS.

10.2 Operator's Obligations

- (a) Upon Expiry, the Operator shall on the Expiry Date, hand back vacant and peaceful possession of Project Asset/Project Facilities to MCS free of cost and in good operable condition. For avoidance of doubt, any Project Facilities which are existing on the date of signing of this Agreement shall be transferred to MCS.
- (b) At least 6 (six) months before the Expiry, a joint inspection of the Project Asset shall be undertaken by MCS and the Operator. MCS shall, within 30 (thirty) days of such inspection prepare and furnish to the Operator a list of works/ jobs ("Handback Requirements"), if any, to be carried out so as to ensure hand back of Project Asset in good condition. The Operator shall promptly undertake and complete such works/ jobs at least 15 (fifteen) days prior to the Expiry and ensure that the Project Asset continues to meet such requirements until the same are handed back to MCS.
- (c) If at the time of handing back of the Project Asset any material defect is observed or any Project Facility is found missing, then the Operator shall be obligated to make good the defect or replace such Project Facilities, failing which, MSC shall reserve the right to deduct such amount from the Performance Security.

10.3 Obligations of MCS

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

- (a) carrying out works/ jobs listed under Clause 10.2 (c) which have not been carried out by the Operator,
- (b) purchase of items, which have not been handed back to MCS along with the Project Asset;
- (c) any outstanding dues, which may have accrued in respect of the Project; and
- (d) duly discharge and release to the Operator the Performance within 3 (three) months from the Expiry Date.

ARTICLE 11

11. DISPUTE RESOLUTION

11.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-clause (b) below.
- (b) Either Party may require such Dispute to be referred to the _____ and the _____ of the Operator for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 11.2 below.

11.2 Arbitration

(a) Procedure

Subject to the provisions of Clause 11.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act.

(b) Place of Arbitration

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

(c) Enforcement of Award

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

(d) Performance during Arbitration

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

ARTICLE 12

12. MISCELLANEOUS

12.1 Assignment and Charges

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

12.2 Representations and Warranties of the Operator

The Operator represents and warrants to MCS that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;

- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (g) there are no actions, suits, proceedings or investigations pending or to the Operator's 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 constitute Operator's Default;
- (h) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (i) Without prejudice to any express provision contained in this Agreement, 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 Project Assets, and the information provided by MCS, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Operator in the course of performance of its obligations hereunder.

The Operator also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that MCS shall not be liable for the same in any manner whatsoever to the Operator.

12.3 Representations and Warranties of MCS

MCS represents and warrants to the Operator that:

- (a) MCS has full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement; and
- (b) This Agreement constitutes MCS's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

12.4 Governing Law and Jurisdiction

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

12.5 Survival

Termination of this Agreement

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

12.6 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

12.7 Notices

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

If to MCS:

The Commissioner,
Municipal Corporation Shimla,
Old District Court Complex at DC Office,
Mall Road, Shimla - 171001

If to the Operator:

.....

Fax No. -----

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

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

12.8 Authorised representatives

- (a) Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by MCS or the Operator, as the case may be, may be taken or executed by the officials specified in this Clause 12.8.
- (b) MCS may, from time to time, designate one of its officials as the its Authorised Representative. Unless otherwise notified, the Authorised Representative of MCS shall be:

(c) Operator may designate one of its employees as Operator's Representative. Unless otherwise notified, the Operator's Representative shall be:

12.9 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of MUNICIPAL CORPORATION SHIMLA by: For and on behalf of OPERATOR by:

(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)

In the presence of :

1) 2)

SCHEDULE I RENOVATION REQUIREMENTS

It is not the intent to specify completely herein, all the details of design and renovation of the facilities including fixtures and fittings. However, the facilities shall conform, in all respects, to highest standards of engineering, design and workmanship and be capable of performing in continuous operation in a manner acceptable to the MCS, who shall have the power to reject any specifications and shall have the power to reject any work or materials, which, in its judgment, are not in full accordance therewith.

General

- The Operator shall execute the whole and every part of the work in the most substantial and work-man like manner both as regards, materials and labour and otherwise in every respect in strict accordance with the CPWD specifications for class-1 building works and standards as given in the National Building Code..
- All the necessary sanitary fitting fixtures shall be used of standard specifications and of the reputed makes.
- Civil work shall be got done through a licensed plumber having a certificate to this effect.
- The fixtures used for installation should be leak proof.
- Material used should be durable and resistant to vandalism and neglect. Example of good materials; (a) Floor - Non-slip ceramic tiles, natural stone, homogenous tiles etc. (b) Wall - Ceramic tiles, natural stone, homogeneous tiles, aluminium panel etc. (c) Ceiling - Mineral fibre board, fibrous plaster board, aluminium panels or strips.
- Floor finishing selected must be sufficiently durable to withstand the anticipated traffic levels and the toilet cleaning frequency
- Wall finishes shall be of materials which are impervious and durable such as ceramic tiles and phenolic panels to facilitate cleaning.
- The water absorption of the ceramic surface shall be minimal to make it difficult for urine to remain in body and odour eliminated.
- Internal and external wall surface shall be finished with good quality plastic emulsion paint of make and shade acceptable to the MCS.
- The floor should slope gently towards the floor trap. The floor of W.C area should be sunk to avoid the flow of water outside the W.C. area.

- All water pipes, drainage and waste pipes would be concealed.
- The Operator shall be responsible for ensuring the safety of Users and staffs and shall take necessary steps in this regard.
- The toilet's main entrance shall preferably have no door, and the cubicles, urinals and mirrors shall be away from the line of sight from the main entrance.
- Cubicle partitions shall be of rigid design and wall or ceiling hung, where practical, without leg support for easy cleaning of the floor.
- The facilities and entrances should provide adequate visual barrier from invasive surroundings for healthy social living.
- The Operator shall provide the information board to give necessary information about maintaining of cleanliness and saving of water in the toilet complex by the Users.
- Roof should be provided for visual privacy from adjoining areas.

Installation standards

- All pipe works should be concealed, except for final connection to the fixtures. Pipe work exposed to view should be chrome-plated
- Avoid sharp corners or edges. Coved tiles or PVC strips should be provided along the edges as far as possible.

Fitting and Fixtures

- The ceramic fixtures shall be of first quality white/coloured and of the reputed makes acceptable to the MCS
- Round/oval wash hand basins shall be provided and it should be flush with the wall surface.
- Flushing system should be used for urinals.

Electrical and Lighting

- PVC insulated cables shall be used in general for internal wiring purposes as per Bureau of Indian Standards (BIS) amended upto date and mentioned in the IS Standards.
- Concealed conduit pipe with standard copper wire (ISI marked) shall be provided

- Well designed lighting system that saves the electrical energy but at the same time improves the appearance of the toilet should be used.
- All toilets should be provided with warm colour lighting for general lighting as well as down lights above the wash basin/mirror.
- Entrance of the toilet should have proper lightings.

Wash basins & Mirrors

- Where there is a requirement of replacement of existing wash basins, the substantial size basin depending on the availability of space shall be installed.
- The water pressure and tap/wash basin position should not cause water to splash onto user's body during activation.
- Wash hand basins shall be installed such that there is sufficient gradient to allow dirt and debris to be effectively washed into the drain pipes.
- Mirror should be fixed covering full area of wash basin platform.

Disposal bins

- Each of the toilets shall have atleast one dust bin with lid separately for men and women unit.
- Apart from a dust bin near the wash room, female toilet shall have a sanitary disposal bins with lid inside the toilet to avoid the Users using WC to flush items like packets, STs and cause blockage.

Suggestion box/Complaint register

- The Operator shall provide suggestion box/complaint register within the premises of the toilets for Users

Doors

- All the doors in the toilet should be lockable
- Aluminium window shutters with powder finish shall be provided
- Door shutter with aluminium frame and panel of pre-laminated board shall be provided.
- where the doors are to be replaced, the same shall be replace with the doors made of stainless steel/composite material.

Signage

- Directional signs leading to the toilets should be provided for each of the toilets.
- The directional signs used should be sufficient and prominently displayed so as to assist the needy to access the toilet easily.
- Signages used should show contrast of dark solid figure against a white background and significantly to be seen by the visually handicapped and the aged.
- Fancy signage using “Queen” and “King” etc. are confusing and should be avoided.
- Signage should be both in English and Hindi.

ANNEX – SCHEDULE I

1 PROJECT FACILITIES TO BE RENOVATED OR PROCURED, AS THE CASE MAY BE IN ALL THE TOILETS FORMING PART OF THE PROJECT ASSET

Following facilities shall be provided by the Operator in all the toilets forming part of the Project Assets and as listed in Schedule IX.

- Doors with latches
- dustbins
- mugs/buckets
- instructions on how to use the toilet and keep the premise clean (in Hindi/English)
- Complaint box with telephone number for escalation (MCS/operator)
- Display board on user fee
- Signage of toilet
- Lights and running water
- Door Mats
- Mirrors and washbasins
- Hand soaps (paper soaps/regular soaps)
- Ventilation
- Air fresheners
- Any other items as required to be provided for better user experience

SCHEDULE II

O&M REQUIREMENTS, PERFORMANCE STANDARDS AND PENALTIES

A. O&M REQUIREMENTS

1. The Project Asset including toilets/urinals/floors/walls shall be serviced, cleaned and maintained according to MCS's requirements on all 7 days of the week with no exceptions except in the case of Force Majeure.
2. The Operator shall ensure following frequency on cleaning;
 - i. 1 cleaning cycle for every 8 Toilet uses (both men and women)
 - ii. 1 cleaning cycle for every 50 urinal uses (men)

During the cleaning cycle, the operator shall ensure that the entire toilet/urinal is properly cleaned with disinfectants and water and litter or stains are removed to make it ready for the next usage. Apart from the above, Operator shall carry out the following operations at the frequencies specified below:

- a) Hourly (during peak hours in the morning & evening) - Ensure all toilet seats are clean and dry. Remove any damaged toilet seats. To maintain the acceptable standard, check sanitary ware, floors, etc., clean all soiled areas using the approved cleaner/descaler or hard surface cleaner as appropriate and disinfect. Disinfect around all sanitary ware and washbasins.
- b) Two Hourly - Replenish soaps and other consumables as necessary. Refill soap dispensers where required and wipe clean. Empty and disinfect all disposal bins.
- c) Two Hourly - Spray air freshener throughout interior of the building sufficient to mask unpleasant odours.
- d) Daily - Check operation of taps and pipework for leaks and repair leaks immediately.
- e) Daily - Clean off all surfaces of sanitary ware using sanitary cleaner/descaler with particular attention to the reduction of any encrustations found. 'Standing areas' of urinals shall be treated with sanitary cleaner/descaler and washed down.

- f) Daily - Wash down all walls and partitions using hard surface cleaner. Damp wipe doors using a diluted disinfectant solution.
 - g) Daily - Sweep any entrance ways, subways and/or steps which service the toilet.
 - h) Daily - Wipe clean any ledges, fittings, pipe work and any other surfaces where dust/dirt may accumulate.
 - i) Daily - Sweep any entrance ways, subways and/or steps which service the toilet.
 - j) Weekly - Clean graffiti, painting over where necessary from all surfaces both inside and outside of the toilet taking care to avoid damage to the surface beneath.
 - k) Weekly - Remove cobwebs and obvious dust collections from ceilings.
 - l) Monthly - Wash windows and frames both inside and outside.
 - m) Half yearly - Apply approved polish to hardwood doors and fittings and polish.
 - n) Half yearly - shall undertake white washing and painting of the toilets at the interval of every six months
 - o) As Necessary - Clean out rainwater gutters and downpipes and remove debris from flat or low pitched roofs. It is the Operator's responsibility to inspect and carry out these preventive works to ensure the free flow of water to drainage. In case of snow fall or landslide, remove snow or debris as the case may be to provide easy access to the toilet.
3. The Operator ensure sufficient water supply at the structure for cleaning and washing.
 4. The Operator shall make own arrangement for security of the toilet block and its fixtures.
 5. The Operator shall furnish the names of the persons who have been appointed as attendant/caretaker for the toilet blocks and their names will be registered with MCS. The said attendant/caretaker of the Operator shall not allow any other person to occupy the toilet blocks.

6. The Operator will not allow any person to use toilets for residential purpose or for stocking of any material etc, and not keep any animal / motor vehicle in or around the complex other than one attendant -cum-sweepers at each toilet block to ensure continuous service.
7. The Operator shall maintain hygiene condition around the toilet and ensure that no wastes of any kind are dumped or waste water is stagnated or overflowed around the toilets.
8. The Operator shall ensure that the complaint or suggestion register along with feedback form and pen are made available and accessible to the Users at all time during the Operational Hours.
9. The toilet shall be provided with good quality consumables/disinfectants/equipment, including the following:
 - (a) The liquid soap/soap cakes of standard quality and make, which will be provided in the wash basins.
 - (b) Phenyl, acid, naphthalene balls, brooms, coir brush, scrping sheet, baskets, mugs, bleaching powder and lime powder.
 - (c) The quality of hand driers, if any shall be maintained in proper condition.
10. The consumables to be available at all times and will be replaced as soon as required. To facilitate this, enough stock of the consumables for at least a week shall be made available at all times. This will include:
 - a) Replacement of all consumable as and when required.
 - b) Repair of any defective fixture before next use and replacement thereof to the original specifications and design.
 - c) Provide clean and dry consumables for each user.
11. The staff should be polite, clean and behave decently with decent verbal skills. The staff will also be trained to answer any queries by the customer or citizens. The staff will also be trained with cleaning procedures and all procedures to keep the premises clean.
12. All electrical fixtures shall be working during the Agreement period. The Operator shall ensure timely replacements of electrical fixtures on need basis.

13. The Operator shall maintenance all plumbing, floors, pump etc. in good working conditions on regular basis and undertake repairs or replacement as and when required;
14. The Operator shall ensure that the access to toilets is well lit. In case the street lights on the access to toilets are not functional, it shall immediately complaint to MCS about the same and get it rectified.
15. Ensure proper disposal of drainage upto the pitfall and any choking of drainage should be attended to promptly.
16. The Operator shall maintain following records:
 - a) Record on number of Users using the toilet;
 - b) Record of the Complaint or Suggestions made by the Users from time to time; and
 - c) Books of accounts of the advertisements displayed from time to time submit details of the same at time of making payment of advertisement tax and produce the relevant books of accounts, as and when specifically required by MCS.

Note: Cleaning materials, e.g., dusters, cloths, brushes, mops used for cleaning of urinals and WC pans must be kept exclusively for that purpose and not used for cleaning anything else.

B. PERFORMANCE STANDARDS

Project Utility	Minimum Service Level	Maximum Tolerance Level	Permissible Time Limit for repairs/rectifications
Toilet Floors	<ul style="list-style-type: none"> • smooth and free from cracks, chipping or any other similar damage • Kept clean, dry without any litter, 	Nil	<ul style="list-style-type: none"> • Repaired/rectified within 7 days from detection • Debris/ garbage/other litter shall be removed immediately upon detection • Damaged/dysfunctional dustbins/ spittoons shall

	stains etc. at all time.		be repaired/replaced immediately upon detection
Plumbing Fittings	All plumbing fittings shall be functional as per the generally accepted standards	Nil	Any damaged/worn fittings shall be repaired/replaced within 24 hours of detection of damage or break down
Electrical Fixtures	All electrical fixtures i.e. exhaust fan, hand drier, tubelights, bulbs, etc. shall be functional as per the generally accepted standards and the toilet shall be well lit	Nil	Any damaged/spoiled electrical fittings shall be repaired/replaced within 24 hours of damage or break down.
Water availability	At all times when toilets are open for the purpose of flushing and ablution	Nil	Operator to ensure availability of water within 1 hour of its shortage.
Complaint Register	At all times available and accessible to users during Operational Hours	Nil	-
Closure of toilet	Shall be kept open at all times during Operational Hours	Nil	-
Consumables	Enough stock should be maintained at	Nil	Consumables which are out of stock shall be replaced within 1 hour.

	all times		
Hygiene condition	<ul style="list-style-type: none"> • No waste shall be dumped around the toilets. • No waste water shall be stagnated around the toilets. • Water shall not overflowed around the toilets 	Nil	To be removed or rectified immediately upon detection.
Information Boards/ Signages/ display of user fees applicable	visible, legible and functional	Nil	<ul style="list-style-type: none"> • Obstructions shall be removed immediately upon detection • Dirty information boards/signages shall be cleaned immediately upon detection • Damaged information boards/signages shall be repaired/replaced within 24 hours of detection

C. Damages for Lapses / Shortfalls

Operator would be required pay Damages as shown below to MCS for any lapses/shortfall listed below. For the purpose of calculating damages hereunder, an event of lapse/shortfall in any of the category in any toilet forming part of the Project Asset shall be considered as the first occurrence of default. Where the lapse/shortfall occurs again in the same category either in the same toilet or any other toilet forming part of the Project Asset shall be considered as the second occurrence of default and so on.

Category of lapses/shortfall	Description of lapses/shortfall	Penalty per lapse/shortfall for first ten occurrences
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		of default
1.	Continual activities like collecting litter, refuse, leaves, other debris not carried out	500/-
2.	Failure to undertake any of the activities which are required to be carried out at the interval of every two hours as set out in this schedule	1000/-
3.	Failure to undertake any of the activities which are required to be carried out on daily basis as set out in this schedule	1000/-
4.	Failure to undertake any of the activities which are required to be carried out on weekly basis as set out in this schedule	500/-
5.	Failure to undertake any of the activities which are required to be carried out on monthly basis as set out in this schedule	500/-
6.	Failure to undertake any of the activities which are required to be carried out on half yearly basis as set out in this schedule	2000/-
7.	Caretaker/attendant absent (per day at each toilet)	500/-
8.	On receipt of any genuine complaint from the user(s)	500/-
9.	Non availability of water whenever the toilet is open	2000/-
10.	Closure of the any toilet in the Project Asset for more than 3 consecutive days unless it's a force majeure event or with the prior approval of MCS	2000/-
11.	Non availability of consumables in any of the toilet in the Project Asset for more than 3 consecutive days	2000/-
12.	Non-compliance to any of the Performance standard for more than twice the permissible time limit specified for repairs/rectification	500/-
13.	Non-compliance to advertisement norms at any time	500/-

Note: For any lapses/shortfall committed by the Operator after the tenth occurrence of default in any category listed above, the Operator shall be liable to pay 125% of the penalty amount most recently served for the same default. For example, where the operator fails to comply with the advertisement norms, it shall be liable to pay Rs. 500 for the first, second upto tenth occurrences of default. On the Operator committing the same default for the eleventh time, it shall be liable to pay Rs.750 and on twelfth occurrence of the same default Rs. 1125 and so on.

**SCHEDULE III
O&M FEE DISBURSEMENT**

Date of the Agreement - _____

Payment No.	Due Date <i>(actual dates to be inserted commencing from the date of the Agreement)</i>	O&M Fee in Figures (Rupees)	O&M Fee amount in words (Rupees)
1	1 st Quarter		
2	2 nd Quarter		
3	3 rd Quarter		
4	4 th Quarter		
5	5 th Quarter		
6	6 th Quarter		
7	7 th Quarter		
8	8 th Quarter		
9	9 th Quarter		
10	10 th Quarter		
11	11 th Quarter		
12	12 th Quarter		
13	13 th Quarter		
14	14 th Quarter		
15	15 th Quarter		
16	16 th Quarter		
17	17 th Quarter		
18	18 th Quarter		
19	19 th Quarter		
20	20 th Quarter		

SCHEDULE IV

PROJECT COMPLETION SCHEDULE AND MILESTONE FOR PAYMENT OF RENOVATION EXPENSES

Sr.No.	Time Period (from the date of signing)	Milestones	Description	Renovation Expenses to be paid (in terms of %)
1.	3 months	Civil Works	This may on case to case basis include but not limited to removal of Floor & wall tiles, Water Supply fittings, Sanitary Fittings, Electrical fittings, Doors & Removal of Plaster by chipping the walls in each of the toilets.	20%
2.	5 months	Plumbing, electrical works & Interior works	This may on case to case basis include but not limited to relaying of water supply & Electricity line, New Wall & floor tiles fixing, Fixing new Sanitary fittings, Plastering & painting works for Internal walls & Fixing of New Doors. Installation of mirrors, wash basins, hand dryers etc.	40%
3.	8 months	Exterior Finishing Works	This may on case to case basis include but not limited to, plastering & painting for External walls, Fixing wall tiles for external walls & Fixing name boards etc.	40%

SCHEDULE V

FORMAT OF INSPECTION CARD

Further, the Operator shall maintain at each of the toilets an Inspection Card containing the following details and shall be signed by the Caretaker/attendant on daily basis:

Sl. No	Activities	Date	Signature of staff																
			06:00	07:00	08:00	09:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00
Multiple times in an hour	Collection & removal of litter & other debris																		
	Cleaning WCs and keeping it dry																		
	Check operation of taps & pipes																		
	Cleaning floors																		
	Cleaning Urinals																		
	Cleaning of common area																		
	Cleaning of mirrors & washbasins																		
Once in two hours	Usage of disinfectants																		
	Replenishing toilet paper																		
	Air freshener sprayed																		
	Replenishing soaps																		
Daily Activities	Cleaning of surfaces of sanitary ware																		
	Washing of floors																		
	Washing of walls & partitions																		
	Wiping of ledges, fittings, pipe works																		
	Sweeping of entrance																		
Weekly activities	Remove cobwebs & dust collection from ceilings																		
	Cleaning graffiti																		

Monthly/half yearly & other activities	Wash windows and frames inside & outside																		
	Apply approved polish to hardwood doors and fittings																		
	White washing and painting																		
	Cleaning rain water gutters																		
	Removing debris from roof																		
	Cleaning tanks																		
Carrying out other preventive works																			

SI No	PARAMETERS	YES	NO	NA
1.	Water supply			
2.	Electricity			
3.	Sewerage connection			
4.	User Fees as per the agreement			
5.	Advertisement - adherence to standards			
6.	Complex Interior; Odour free			
7.	Flooring; Dry & Clean			
8.	Consumables: Adherence to quality recommended			
9.	Consumables: Stock as per standards			
10.	Availability of cleaning equipments			
11.	Book keeping - Suggestion Book & complaint register			
12.	Water Closets; Dry & Clean			
13.	Walls; Dry & Clean			
14.	Washbasin Dry & Clean			
15.	Litterbins; Clean			
16.	Windows; Clean			
17.	Door; Clean			
18.	Glass (Windows & ventilators); Clean			
19.	Mirror; Clean			
20.	External building Surface Clean			
21.	Surroundings Clean			

SCHEDULE VI

MONITORING PARAMETERS

The monitoring process by the Monitoring Agency shall involve inspection of parameters listed below;

Further, the Operator shall maintain at each of the toilets an Inspection Card containing the following details:

Sl No	PARAMETERS	YES	NO	NA
1.	Water supply			
2.	Electricity			
3.	Sewerage connection			
4.	Advertisement - adherence to standards			
5.	Complex Interior; Odour free			
6.	Flooring; Dry & Clean			
7.	Consumables: Adherence to quality recommended			
8.	Consumables: Stock as per standards			
9.	Availability of cleaning equipments			
10.	Book keeping - Suggestion Book & complaint register			
11.	Water Closet; Dry & Clean			
12.	Walls; Dry & Clean			
13.	Washbasin Dry & Clean			
14.	Litterbins; Clean			
15.	Windows; Clean			
16.	Door; Clean			
17.	Glass (Windows & ventilators); Clean			
18.	Mirror; Clean			
19.	External building Surface Clean			
20.	Surroundings Clean			

SCHEDULE VII
PERFORMANCE SECURITY
(PROFORMA OF BANK GUARANTEE)⁵

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

In favour of

Municipal Corporation Shimla, represented by the _____, having its office atMunicipal Corporation Shimla, Shimla, hereinafter referred to as “MCS”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

By the Agreement being entered into between MCS and _____, having its registered office/ permanent address at _____ (“the Agreement”), the Company/firm has been granted the Rights to implement the project envisaging redevelopment, operations, maintenance and transfer of the Toilet in Shimla, hereinafter referred to as Project.

A. In terms of Clause 4.1 of the Agreement, the Company is required to furnish to MCS, an unconditional and irrevocable bank guarantee for an amount of Rs. 3,00,000/- (Rupees Three Lakhs Only) as security for due and punctual performance/discharge of its obligations under the Agreement, relating to achieving operations of the Project, substantially in the format annexed as **Schedule VII** to the Agreement.

B. At the request of the Company, the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Agreement relating to achieving operations of the Project.

⁵ To be issued by a Scheduled Bank in India

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Agreement.

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called "the Operator") of all its obligations relating to achieving operations of the Project during the Agreement Period.
2. The Guarantor shall, without demur, pay to MCS sums not exceeding in aggregate Rs. 3,00,000/- (Rupees Three Lakhs Only), within five (5) calendar days of receipt of a written demand therefor from MCS stating that the Company has failed to meet its performance obligations under the Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Operator or validity of demand so made by MCS and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Operator or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
3. In order to give effect to this Guarantee, MCS shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by MCS or any indulgence shown by MCS to the Operator and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by MCS or any indulgence shown by MCS provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
4. This Guarantee shall be irrevocable and shall remain in full force and effect until _____ unless discharged/released earlier by MCS in accordance with the provisions of the Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. 3,00,000/- (Rupees Three Lakhs Only).

5. This Guarantee shall not be affected by any change in the constitution or winding up of the Operator/the Guarantor or any absorption, merger or amalgamation of the Operator/the Guarantor with any other Person.
6. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

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

SIGNED AND DELIVERED

by _____ Bank
by the hand of Shri _____
its _____ and authorised official.

SCHEDULE VIII

TECHNICAL PROPOSAL

[Technical proposal submitted by the Successful Bidder as part of its Proposal,
which shall be attached at the time of execution of the Agreement]

**SCHEDULE IX
DESCRIPTION OF THE PROJECT ASSET**

LIST OF TOILETS

S.No.	Toilet	Toilet ID
1.	12 Ghar Ki line Near Old Motor Barrier	31
2.	12 Ghar Ki line	32
3.	Bhargwa Estate	34
4.	Chet Villa	45
5.	Parao, Boileauganj	27
6.	Shankli	71
7.	Idgah, RulduBhata	60
8.	M.C. Qutrs, Cout hill	28
9.	Shyamsaran Building RulduBhata	69
10.	Hari Nagar	30
11.	Near Rain shelter Fingas	73
12.	Bhagat Singh Road,Ganj Bazar	83
13.	Near govt school Ram Nagar	53
14.	Kushta colony	51
15.	Dhobi Ghat, Ram nagar	52
16.	Labour hostel, Phagli	48
17.	MC Line Ram Nagar	54
18.	Near Dispensary, Phagli	47
19.	Slaughter house	94
20.	Below LalPani school	95
21.	Labour Hostel ,Krishna Nagar	90
22.	Near Cow Shed	80
23.	Ghora Sarai	84
24.	Below Sunder Building	91
25.	Kali Dass Building	92
26.	Labour hostel	96
27.	Sikh Line	87
28.	Old Abkari	97
29.	Engine Ghar	120
30.	Chalunthi	124
31.	Upper Verma Colony	122
32.	Lower Verma Colony	123
33.	Kanlog	138
34.	Lower Kanlog, Cemetry	139
35.	Shiv Puri	140
36.	Sangti	82

37.	Near NathuHalwai, Lower bazar	67
38.	Bhagog	20
39.	Gadoag, below Army Colony	21
40.	5 Gharki line	9
41.	Near MachiWaliKothi	117
42.	Green Gate	

Details of each toilet as to its location along with indicative existing Project Facilities in each toilet are given in Project Information Memorandum and same shall form part of this Agreement.