

## **AGREEMENT FOR REVENUE SHARING FROM MAINTAINING & ORGANISING EVENT AT 11 SIDHI LAWNS**

THE **AGRA DEVELOPMENT AUTHORITY** in short **“ADA”** was constituted by U.P. Government on 13<sup>th</sup> Sept 1974 under Uttar Pradesh Nagar Planning & Development Act 1973. This Authority is constituted for Planned Urban Development of Agra and having its principal office at Jaipur House Colony, Agra (hereinafter referred to as the **“Authority”**, which expression shall include its successors and permitted assigns);

### **AND**

[**XYZ LTD.**], a company incorporated under the Companies Act, 2013 acting through \_\_\_\_\_ having its registered office at \_\_\_\_\_ (hereinafter referred to as the **“Operator”**, which expression shall include its successors and permitted assigns);

The Authority and the Operator are hereinafter individually referred to as **“Party”** and collectively as **“Parties”**

### **WHEREAS**

- A. The Authority is maintaining, operating and managing **“11 Sidhi Lawn”** near MehtabBagh for tourist attraction and activities.
- B. In order to improve/augment the above services being presently provided by the Authority, has issued an **“RFP”** whereby for the services of maintenance and organising events in accordance with Environmental Management Plan at 11 Sidhi Lawn spread in more than 15 acre Land, in north of TajMahal on bank of Yamuna River, will be undertaken by a private sector partner selected through a competitive tender process (**“Scheme”**). After evaluating the bids received in response to its Request for Proposal dated \_\_/\_\_/20\_\_, the Authority accepted the bid submitted by the Selected Bidder and communicated the acceptance of the Selected Bidder’s bid vide letter of

award dated \_\_/\_\_/20\_\_ (“**Letter of Award**”). As required by the RFP, for implementing the Project.

- C. The Authority and the Operator are hereby entering into this Agreement to implement the Project of maintaining the 11 sidhi lawn and organising events there in accordance with rules and regulations, as defined in Clause 1.1 below.

**NOW, THEREFORE, the Parties hereto hereby agree as follows:**

## **1. DEFINITIONS AND INTERPRETATION**

- 1.1. In the Agreement, unless the context otherwise requires, the following terms and expressions, whenever used, shall have the following meanings hereinafter respectively ascribed to them:
- 1.1.1. “**Agreement**” means this agreement executed between the Authority and the Operator together with its annexures, NOC, and any further correspondence, notices and conditions, in the RFP or otherwise, that the Parties signatory to this Agreement have expressly agreed to include as part of this Agreement.
  - 1.1.2. “**Applicable Clearances**” means all clearances, permits, no objection certifications, exemptions, authorisations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the Project, during the subsistence of this Agreement.
  - 1.1.3. “**Applicable Laws**” means all the laws, acts, ordinances, rules, regulations, notifications, guidelines or bye-laws, in force and effect, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement, and applicable to the Project.
  - 1.1.4. “**Authority**” means the Agra Development Authority or its authorized representatives.
  - 1.1.5. “**Authority Clearances**” means the clearances, which are required to be procured by the Authority in accordance with Applicable Laws and which have been provided in detail in this Agreement.

- 1.1.6. **“Authority’s Event of Default”** shall have the meaning as ascribed thereto in the Clause 21.2 of the Agreement.
- 1.1.7. **“Bid Amount”** shall have meaning as an amount the Authority accepted the bid submitted by the Selected Bidder and communicated the acceptance of the Selected Bidder’s bid vide letter of award dated \_\_/\_\_/20\_\_ (**“Letter of Award”**). As required by the RFP, for implementing the Project.
- 1.1.8. **“Commercial Operations Date”/“COD”** shall be the date of handover of Contracted 11 Sidhi Lawn to the operator.
- 1.1.9. **“Conditions Precedent”** shall have the meaning specified in Clause 4 of this Agreement.
- 1.1.10. **“Construction”** means as per The Ancient Monuments And Archaeological Sites And Remains (Amendment And Validation) Act, 2010; "construction" means any erection of a structure or a building, including any addition or extension thereto either vertically or horizontally, but does not include any reconstruction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or, the construction or maintenance, extension, management for supply and distribution of electricity to the public or provision for similar facilities for public;'
- 1.1.11. **“Contract Period”** means ONE years for 11 Sidhi Lawn from the date of agreement, or as per other term specified thereunder.
- 1.1.12. **“Daily Rate”** shall have the meaning as an amount calculated by dividing the bid amount by 365 days.
- 1.1.13. **“Dispute”** shall have the meaning ascribed to it in Clause 25.1.1 of this Agreement.
- 1.1.14. **“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments.
- 1.1.15. **“Execution Date”** shall mean and refer to the date of execution of this Agreement.
- 1.1.16. **“Existing Location”** means the lawn and park of 11 Sidhi Lawn already in possession of the Authority and the details of other assets are provided in detail in **Annexure 1** to this Agreement.

- 1.1.17. **“Fines”** shall have the meaning as ascribed thereto in the Clause 19.1 of this Agreement.
- 1.1.18. **“Government”** means the **“Government of Uttar Pradesh”** or **“Government of India (GOI)”** as is relevant in the context;
- 1.1.19. **“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.
- 1.1.20. **“Invoice Amount”** shall have the meaning specified in Clause 14.2 of this Agreement.
- 1.1.21. **“Letter of Award”** means the letter of award dated \_\_\_/\_\_\_/20\_\_\_ issued by the Authority to the Selected Bidder.
- 1.1.22. **“Material Breach”** means a breach of the terms and conditions of this Agreement, which has a material adverse effect on any act or event, or on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement, which include but are not limited to an act or event which causes a material financial burden or loss to either Party.
- 1.1.23. **“Operation and Maintenance Standards”** means the operation and maintenance requirements which are required to be undertaken by the Operator throughout the Contract Period and have been provided at different places in the agreement.
- 1.1.24. **“Operations Manager”** shall have the meaning ascribed to it in Clause 16.1.7.
- 1.1.25. **“Operator”** shall have the meaning as ascribed thereto in the array of Parties in the Recitals above.
- 1.1.26. **“Operator Clearances”** means the clearances which are required to be procured by the Operator in accordance with Applicable Law and which have been provided in detail in this Agreement.
- 1.1.27. **“Operator’s Event of Default”** shall have the meaning as ascribed thereto in Clause 21.1 of the Agreement.
- 1.1.28. **“Payment Period”** shall have the meaning as ascribed thereto in Clause 12.2 of this Agreement.

- 1.1.29. **“Security Deposit”** shall have the meaning as ascribed thereto in Clause 6.1 of this Agreement
- 1.1.30. **“Service Area”** means 11 Sidhi Lawn for permitted activities and event organising, excluding protected and regulated Area.
- 1.1.31. **“Protected Area”** means as defined in The Ancient Monuments And Archaeological Sites And Remains (Amendment And Validation) Act, 2010, Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred (100) metres in all directions shall be the prohibited area in respect of such protected area or protected monument. That means 100 meters from 11 Sidi Monument.
- 1.1.32. **“Project”** means the operation, maintenance of the Contracted 11 Sidhi Lawn, and services being provided in the Service Area by the Operator in accordance with the terms of this Agreement.
- 1.1.33. **“RFP”** means this RFP document along with Annexure attached issued for the purpose of selecting an Operator for the Project;
- 1.1.34. **“Regulated Area”** means as defined in The Ancient Monuments And Archaeological Sites And Remains (Amendment And Validation) Act, 2010, Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains, declared as of national importance and extending to a distance of two (200) hundred metres in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains. That means 300 meters from 11 Sidi Monument.
- 1.1.35. **“Remedial Period”** shall have the meaning specified in Clause 21.1 and 21.2 of this Agreement.
- 1.1.36. **“Selected Bidder”** means the Bidder to whom the Authority issues the Letter of Award for undertaking the Project, as notified by the competent authority in relation to the Service to be implemented as per this Agreement.
- 1.1.37. **“Third Party”** means any person other than the Authority and the Operator.
- 1.1.38. **“Validity Period”** means the period for which the Security deposit has to be maintained in accordance with Clause 6.2 of this Agreement.
- 1.1.39. **“Vandalism”** shall have meaning specified in Clause 18.2 of this Agreement.

## 1.2. Interpretation

- 1.2.1. In this Agreement, unless the context otherwise requires:
- a. Words denoting the singular shall include the plural and vice versa;
  - b. Words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
  - c. Heading and bold type face are only for convenience and shall be ignored for the purposes of interpretation;
  - d. Reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
  - e. References to the word “include” or “including” shall be construed without limitation;
  - f. References to this Agreement or to any other agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied, supplemented or innovated; and
  - g. The Annexure to this Agreement form 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.
  - h. Terms and expression not herein defined shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (as amended) or the Indian Contract Act, 1872 (as amended) or the General Clauses Act, 1897 (as amended) as the case may be.
- 1.2.2. The following documents attached hereto shall be deemed to form an integral part of this Agreement:
- a. This Agreement along with all Annexure hereto.
  - b. Request for Proposal (RFP) in its entirety including all its Volumes, Sections, Annexure, Corrigendum and Addendums thereto.
  - c. Letter of Acceptance (LOA) no. \_\_\_\_\_ issued on \_\_\_/\_\_\_/2020.
  - d. N.O.C. issued by Regional Office, U.P. Pollution Control Board, Agra vide letter no 2344/NOC-119/2020 dated 13/10/2020.

- e. N.O.C. issued by Executive Archaeologist, Archaeological Survey of India, Agra Zone vide letter no 7/4/2019-SMAo-1/3878 dated 28/10/2020.
- f. N.O.C. issued by Deputy Director Tourism, Agra vide letter no 2709/vivid-prachar/2020 dated 24/09/2020.
- g. Any relevant correspondence between the two Parties that the signatories have agreed to includes as a part of the Agreement for validating and clarifying any points in the contract or by way of revised or improved understanding of any terms of the Agreement as appended herein.

## **2. APPOINTMENT OF THE OPERATOR**

### **2.1. Appointment of the Operator**

Subject to and in accordance with the provisions of this Agreement, the Authority hereby appoints, on a non-exclusive and non-transferable basis, and the Operator hereby accepts its appointment to maintain 11 Sidhi Lawn and organise events there in accordance with the terms of this Agreement and subject to the applicable laws and clearances.

### **2.2. Undertaking**

In consideration of the rights, privileges and benefits conferred upon the Operator, and other good and valuable consideration expressed herein, the Operator hereby accepts this Agreement and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof, and bear and pay all costs, expenses and charges in connection with, or incidental to the performance of its obligations in accordance with the terms contained herein.

## **3. TERM OF THE AGREEMENT**

3.1. The term of the Agreement shall be 1 (ONE) year as a Contract Period.

3.2. In the event of termination, the Total Contract Period shall be limited to the period commencing from the Execution Date and ending on the date on which this Agreement is terminated in accordance with the provisions contained herein.

3.3. The agreement will be valid for one year and if found satisfactory the validity of agreement may be extended further for a maximum period of two years but only for one year at a time with 10% increase in preceding year. If bidder is interested to extend the contract period then he will have to apply three months prior to the expiry of agreement.

#### **4. CONDITIONS PRECEDENT**

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 4 (“**Conditions Precedent**”).

##### **4.1. The Authority’s Conditions Precedent**

4.1.1. The Authority shall fulfil the following conditions precedents before the COD of the 11 SidhiLawn. The Authority shall:

- a. Issue the required letter to enable the implementation of this Project by the Operator in accordance with the applicable law and rules;
- b. Handover the Lawn according to this Agreement as per the terms contained herein; required to enable the implementation of this Project.
- c. Ensure that applicable registration of agreement is procured from the relevant Sub-registrar before handover of Lawn.
- d. Obtain and maintain all Legal Clearances in accordance with the applicable Laws and the terms contained herein.

##### **4.2. Operator’s Conditions Precedent**

4.2.1. The Operator shall provide the Security Deposit before the Execution Date in accordance with Clause 6 of this Agreement.

4.2.2. The Operator shall fulfil the following conditions precedents before the COD for the respective 11 Sidhi Lawn. The Operator shall:

- a. Submit an Inspection note of the 11 SidhiLawn.



- b. Appoint duly trained gardeners, janitors, maintenance, supervising staff and other personnel as required for the purpose of operation and maintenance of 11 Sidhi Lawn in accordance with this Agreement and applicable law and rules;
  - c. Execute the agreement with Authority for the Project;
  - d. Arrange the necessary moveable items and equipments required for maintenance as provided in this Agreement;
- 4.3. The Parties shall make all reasonable endeavours to satisfy the Conditions Precedent as provided in Clause 4.1 and Clause 4.2 within the stipulated time period.

#### 4.4. **Non-fulfilment of Conditions Precedent**

4.4.1. In the event of non-fulfilment of any of the conditions precedents specified in Clause 4.1 and 4.2 above for reasons other than for as a result of breach of this Agreement by any Party or due to Force Majeure, any such conditions precedent may be waived or the time period for satisfaction of such Conditions Precedent may be extended, though only through the mutual consent of both Parties in writing.

##### 4.4.2. Delay by the Authority

In the event of non-fulfilment in full by the Authority of any of the Conditions Precedent contemplated in Clause 4.1 within the stipulated time period or within such extended time that the Parties have agreed upon, and provided such Conditions Precedent has not been waived through mutual agreement of the Parties, then:

- a. The Operator shall have the right to: (A) refuse taking possession of the 11 Sidhi Lawn, in respect of which the conditions precedent have not been satisfied; or (B) refuse to operate and maintain the 11 Sidhi Lawn or carry out the events in relation to such 11 Sidhi Lawn which have been accepted by the Operator but in respect of which the conditions precedent have not been satisfied; until the fulfilment of the Conditions Precedent by the Authority to its satisfaction; and

##### 4.4.3. Delay by the Operator

In the event of non-fulfilment in full by the Operator of any of the Conditions Precedent contemplated in Clause 4.2 within the

stipulated time period or within such extended time that the Parties have agreed upon, and provided such Conditions Precedent has not been waived through mutual agreement of the Parties, then:

- a. The Authority shall have the right to: (A) refuse handing over of 11 Sidhi Lawn, in respect of which the Conditions Precedents have not been satisfied; or (B) take over the possession of 11 Sidhi Lawn in relation to which have already been handed by the Operator but in respect of which the conditions precedent have not been satisfied; until the fulfilment of the Conditions Precedent by the Authority to its satisfaction; and
- b. the Operator shall pay to the Authority damages that shall be calculated at twice of the daily rate payable by the operator for each day of delay until the fulfilment of the Conditions Precedent,
- c. In the event the Conditions Precedent are not fulfilled by the Operator and the Operator has paid damages to the Authority to the maximum of [20%] of the Security Deposit then the Authority may terminate the Agreement in accordance with the terms contained herein.

## **5. SCOPE OF WORK**

5.1. The Operator shall throughout the Total Contract Period:

- a. Maintain the 11 Sidhi Lawn in compliance with terms contained herein including their gardening, maintenance, and cleaning, etc., and/or as may be specified by the Authority from time to time;
- b. The area of Lawn is approximately 15 Acre and the same is situated at the bank of Yamuna river on the north side of TajMahal, and the Lawn shall not be used for any other purpose, other than specified in this agreement or required permission of which granted by the concerned authority;
- c. Provide duly trained staff to ensure the continued and uninterrupted operation and maintenance of the Lawn in accordance with the terms contained herein and as per Applicable Law;
- d. Ensure that all Gardeners, labour, technician, other staff and personnel (whether appointed/employed on a permanent or temporary basis) are provided the required training on safety, behaviour and hygiene aspects;

- e. At his own cost and expenses procure and maintain all Operator Clearances, as may be required, for the purposes of organising event services as per the terms of this Agreement;
- f. Repair, maintenance and upkeep the 11 Sidhi Lawn including trees & arboriculture works, etc, daily cleaning, etc. in good operable conditions in accordance with Good Industry Practices and other requirements set forth in the agreement.
- g. Ensure the safety and security of tourist, visitors and any third person in 11 Sidhi Lawn;
- h. Bear all taxes as may be levied under Applicable Law in relation to the events organised, save and except those taxes which are the responsibility of the Authority as per the terms of this Agreement and Applicable Law;
- i. Subject to prior written approval of the Authority, the operator may develop and establish a facility for the purposes of maintenance of the 11 Sidhi Lawn at its own cost and expense, and staff it with trained professionals for the purposes of maintenance of Lawn;
- j. Ensure any equipment installed on the 11 Sidhi Lawn including any monitoring device or equipment that is installed by the Authority is not tampered with in any manner; and that the Authority and its authorised personnel, are allowed to inspect the equipment installed on the 11 Sidhi Lawn at any time without any notice in this regard;
- k. Subject to Applicable Law in relation to display of advertisements in public, the Operator shall not have the right to display advertisements on the 11 Sidhi Lawn. The Operator shall ensure that no advertisements are aesthetically placed, if any instruction issued by the Authority from time to time for any display it is to be adhered to by the operator.
- l. Ensure that all Applicable Laws including but not limited to the Minimum Wages Act, 1948 PF, ESI, etc., are complied with in relation to appointment, hire, recruitment, of any personnel (whether on temporary, contractual or permanent basis) required in relation to the operation and maintenance of Lawn;
- m. Regular monthly reports to the Authority as per the format of reports stipulated in the RFP or/and as may be instructed by Authority from time to time; and
- n. The operator could charge any amount from the parties who organise the function at the lawn which are permitted in this agreement.

- o. Carry out all activities necessary for the effective implementation of the provisions of this Agreement.

## **6. SECURITY DEPOSIT**

- 6.1. For securing the due and faithful performance of the obligations of the Operator under this Agreement, the Operator, shall submit to the Authority, on the Execution Date an unconditional and irrevocable bank guarantee or FDR for amount equivalent to 15% of Bid Amount in favour of the Authority, from a nationalized bank, in India for the period of this agreement and 2months in excess .i.e. 14 month from date of execution.
  
- 6.2. The Operator shall maintain a valid and binding Security Deposit for a period of 1 Year plus 2 months.
  
- 6.3. The Authority shall be entitled to forfeit and appropriate the amount of the Security Deposit in whole or in part:
  - a. In the event the Authority requires to recover any sum due and payable to it by the Operator including but not limited to Damages; and which the Operator has failed to pay in relation thereof; and
  - b. in relation to Operator's Event of Default in accordance with the terms contained herein.
  
- 6.4. At any time during the Validity Period, the Security Deposit has either been partially or completely encashed by the Authority in accordance with the provisions of this Agreement. The Operator shall within 15 (fifteen) days of such encashment either replenish, or provide a fresh security deposit, as the case may be, failing which the Authority shall be entitled to terminate this Agreement.
  
- 6.5. On termination of this Agreement, the Security Deposit shall be returned to the Operator without any interest, subject to any deductions which may be made by the Authority in respect of any outstanding dues or damage to any 11 Sidhi Lawn under the terms of this Agreement.

6.6. In case, extension of the agreement fresh security deposit shall be submitted along with execution of renewal agreement.

## **7. HANDOVER OF THE CONTRACTED LOCATION**

7.1. The Authority shall hand over possession of 11 Sidhi Lawn which is already in the possession of the Authority within 3 (three) days of date of execution this Agreement and other items as provided in detail in **Annexure 1** to this Agreement,

7.2. Subject to the fulfilment of the Conditions Precedent (as provided in Clause 4 to this Agreement), the Operator shall commence operations at 11 Sidhi Lawn handed over in Clause 7.1 above, no later than 3 (three) days from the date of handover of 11 Sidhi Lawn, or any extended period as may be agreed upon the Parties in writing ("**Commercial Operations Date**" or "**COD**").

7.3. In the event the Operator is not able to start operations as per Clause 7.2, for reasons not attributable to the Authority or to a Force Majeure Event, and which in the opinion of the Authority can be attributable to the Operator, the Operator shall pay liquidated damages of Rs.5000 per day for delay till COD for that is achieved.

## **8. OWNERSHIP OF 11 SIDHI LAWN**

8.1. Subject to the terms, the ownership of the 11 Sidhi Lawn shall at all times remain solely vested with the Authority during the Total Contract Period.

8.2. Authority is solely empowered to take care of 11 sidhi lawn and at no time during the Total Contract Period shall any right, title, or interest over any of the 11 Sidhi Lawn vests in the Operator.

It is hereby clarified that the Operator only has the limited right to let out for holding events and maintain the 11 Sidhi Lawn for the sole purpose of implementation of this Agreement and the Operator will have no other right whatsoever in relation to such Contracted 11 Sidhi Lawn, without the prior written permission of the Authority.

## 9. PERMITTED ACTIVITIES

9.1. As already mentioned in RFP, 11 Sidhi is a Monuments of National Importance of India (Protected Monument) as declared by The Archaeological Survey of India. As per, The Ancient Monuments And Archaeological Sites And Remains (Amendment And Validation) Act, 2010,

9.1.1. Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of *one hundred (100) metres* in all directions shall be the prohibited area in respect of such protected area or protected monument. - **NO CONSTRUCTION IS ALLOWED IN THIS AREA.**

9.1.2. Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains, declared as of national importance and extending to a distance of *two (200) hundred metres in all directions* shall be the regulated area in respect of every ancient monument and archaeological site and remains. – ANY CONSTRUCTION/ RENOVATION/ TEMPORARY STRUCTURE IN THIS REGULATED AREA SHALL REQUIRE N.O.C. FROM COMMISSIONER, AGRA DIVISION.

9.2. The Authority shall handover the 11 Sidhi Lawn to the operator to maintain and generate revenue by organising social/cultural/corporate events in accordance with Environmental Management Plan (EMP) guidelines, details of the EMP (“**Environmental Management Plan**”) is Annexed as **Annexure-2**.

9.3. The permitted activities are

- Yoga/Martial arts or any other fitness activities
- Corporate meetings, etc.,
- Painting, Photography exhibitions etc.,
- Pre wedding shoots,
- Film/Documentary shooting etc.,
- Food festivals etc.,
- Any other recreational/Social activities in accordance with EMP Guidelines as Annexed.

NOTE: For film shooting/photo shoot prior permission from Directorate, A.S.I. Delhi is mandatory.

## 10. REVENUE COLLECTION

### 10.1. Usage Charges

The Operator can fix the quantum of usage charges as per the activities, or according to the activity and scope of work of the client using such facility at 11 sidhi lawn.

- 10.2 The Operator will have the rights to collect charges either by itself or through a third party.
- 10.3 The Operator shall issue a proper “Receipt/Invoice” of such charges and also charge and deposit Taxes, if any.
- 10.4 The Authority will have no right on usage charges collected by the operator and here warrants no liability upon validity/ reasonability of the charges collected by the operator.
- 10.5 Any dispute regarding collection/ payment or any matter with respect to usage charges will be the sole responsibility of the operator and in no circumstances the Authority will be a party to the dispute.

## 11. ADVERTISEMENT ON THE 11 SIDHI LAWN

The Authority has not permitted the Operator to display any kind of advertisements on the site of Contracted 11 Sidhi Lawn.

## 12. Payment of Fees for Contracted 11 Sidhi Lawn

- 12.1. As per conditions laid down by RFP dated \_\_\_\_\_ and pursuant to that, the operator offered the bid for Rs. \_\_\_\_\_, that is annual amount payable to the Authority by the operator as consideration of this agreement.
- 12.2. For Contracted 11 Sidhi Lawn the operator shall pay monthly invoice amount which is calculated by the bid amount as specified in clause 14.1 divided by 12 month i.e. **Rs. \_\_\_\_\_ plus applicable GST (The “Invoice Amount”)** from the date of execution, the Operator shall submit the 12 post dated cheques in advance to the Authority, Date of the first cheque would be the contract starting date, rest of the cheques will bear the same date of eleven consecutive months and in case of bounce of the cheque penal interest **@0.1% per day** will be charged (The “**Payment Period**”) along with bouncing charges.

### 13. Limitations to Liability of Authority for Operations and Maintenance

The Authority shall not be liable to make any payments whatsoever in any nature, that includes, inter alia-

#### 13.1. Liabilities arising from operator negligence

Any damages or suits arising due to operator negligence, or any incidents or any mis-happening at 11 Sidhi Lawn, it shall be sole liability of the Operator.

#### 13.2. Fines and Compensation

It will be sole responsibility of operator to ensure compliance of EMP Guidelines, if any violation of EMP Guidelines is noticed then concerning departments may take action as per their rules against the operator, and it will be sole responsibility of the Operator. The Authority shall have no liability in relation thereof.

### 14. TAXES AND STATUTORY LEVIES

14.1. The responsibility to pay taxes and statutory charges on due basis related to Services would be the sole liability of the Operator as mentioned in the responsibility matrix provided in the table below:

Sr.No	Taxes and Charges	Parties responsible for payment
1	Electricity Charges	Operator
2	Insurance premium for the 11 Sidhi Lawn and other assets owned by the Authority	Operator
3	Water Charges	Operator
4	Goods & Service Tax	Payable by the Operator

### 15. OPERATION AND MAINTENANCE STANDARDS

15.1. The Operator shall observe the minimum service standards for operations and maintenance of 11 Sidhi Lawn as provided in the Agreement.



- 15.2. The Operator shall operate and maintain the 11 SidhiLawn in accordance with the “EMP”, or as per the instructions of the Authority from time to time.
- 15.3. The Operator shall ensure that the following activities are undertaken as part of the maintenance activity of the 11 Sidhi Lawn without any disruption in accordance with the terms contained herein:
- a. Maintenance of Trees, Plant & Grass
  - b. Watering of Plantation
  - c. Replacement of Plants, if required
  - d. Maintain arboriculture work
  - e. Cleaning, sweeping and washing of 11 Sidhi Lawn on daily basis.
- 15.4. The Authority or representative of the Authority will monitor the maintenance done by the Operator and shall determine whether the replaced or re-installed plants, are the same or equivalent quality as originally provided or installed in the Lawn. In the event that the Authority or representative of the Authority determines that the replaced or re-installed plants are of an inferior quality then the Authority shall consider this an Operator’s Event of Default.

## **16. ROLES, RESPONSIBILITIES AND OBLIGATIONS OF THE OPERATOR AND THE AUTHORITY**

### **16.1. Obligations of the Operator**

In addition to the terms and conditions of this Agreement, the Operator shall perform the following obligations. The Operator shall:

#### **16.1.1. Operation and Maintenance of 11 Sidhi Lawn:**

- a. Take possession of the 11 Sidhi Lawn for the purposes of operating and maintaining in accordance with the EMP Guidelines and the terms contained herein;
- b. Operate and maintain the 11 Sidhi Lawn in accordance with the Operation and Maintenance Standards;
- c. Use the 11 Sidhi Lawn only for the purpose mentioned above in accordance with this Agreement and shall not use the 11 Sidhi Lawn for any other purposes;

- d. Allow access to the 11 Sidhi Lawn to all members of the public without any prejudice or discrimination;
- e. Ensure the highest standards of cleanliness both inside and outside the Contracted Lawn;
- f. Ensure safety and security of the tourist, personnel and any third party using the 11 SidhiLawn. The Authority may impose penalties/damages for breach of safety, maintenance and operating requirements;
- g. Ensure safety and security of the 11 Sidhi Lawn against theft or other forms of damage;
- h. Pay all money due and payable including but not limited to damages and/or fines to the Authority as per terms of Agreement without any delay;
- i. Maintain a pollution and noise free power back-up during the event Period;
- j. Make adequate arrangements either in-house or outsourced for organising events, etc to the satisfaction of the Authority.
- k. Shall not tamper, obstruct or interfere with any equipment, instrument or system including the CCTV surveillance and any other IT and monitoring devices provided in the 11 Sidhi Lawn and the Project to enable provision of safer services to the public;
- l. It is clarified that all the costs, including costs relating to the equipment, material and consumables shall be solely borne by the Operator.
- m. submit the copy of the Employee State Insurance and Provident Fund challans to the Authority every month; and agree to comply with all Applicable Laws including labour and local laws, pertaining to the employment of labour, staff and personnel engaged by it for implementing the Project, that are in force now or may become applicable in the future to Operator's management, operation and maintenance of the Project, and personnel/ gardeners, engaged in such operations covered by this Agreement and operations contemplated hereunder;

**16.1.2. Co-operation with the Authority**

- a. Cooperate with the Authority and/or any third party appointed by Authority for the purposes of establishing or operating any equipment, instruments or systems in the 11 Sidhi;

- b. Make adequate communication arrangements / develop communication facilities / centre for effective and efficient, timely communication of all incidents/ accidents/ breakdowns etc. to the relevant authorities / persons / officials;
- c. Cooperate with the Authority for the purposes of monitoring and supervision of the quality, efficiency and adherence of the Operator to other contractual arrangements pertaining to Project;
- d. Maintain log books of all maintenance work / activities pertaining to events shall be entered there-in on regular basis. Authority shall be free to inspect log books at all times and the Operator shall make log books available to Authority or its representative and answer all queries to their satisfaction;
- e. Respond to all notices letters communications received from Authority within the given time frame;
- f. Provide all information, data, records, documents or information as may be required by Authority or Project Management Consultant , from time to time; and
- g. Participate in all the meetings, discussions as directed by the Authority from time to time;

**16.1.3. Record and Reporting Requirements**

- a. Maintain record of all preventive maintenance activities shall be kept and duly authenticated by the person in charge of carrying out maintenance. The Operator shall submit the log books for inspection by Authority staff as and when demanded;
- b. submit to the Authority in a format as specified by the Authority from time to time:  
Monthly report which shall include but not be limited to:
  - Progress reports
  - Status of all risks and issues.
  - Status of readiness the skilled staff to operate 11 Sidhi Lawnoperation.
  - Status of 11 Sidhi Lawn with regards to compliance with highestmaintenance standards or instruction.
- c. Report on an immediate basis reporting incidents requiring urgent attention of the Authority such as accidents, theft, etc.

- d. Submit a summary of all the complaints on a monthly basis to Authority.

**16.1.4. Inspection:**

Make available 11 Sidhi Lawn to the Authority or its authorised personnel for inspection as and when required/instructed by Authority for assessment of compliance with maintenance and readiness for holding events.

Upon such inspections or any suggestions/instruction received from the Authority with regards to corrective actions, maintenance requirement, plants replacement requirement, shall be implemented by the Operator at its own cost within [15 (fifteen)] days or a reasonable time period as specified by the Authority. In case of non-rectification/non action of such instruction within stipulated time period, the Authority may replace or rectify such defect at its own cost and such expenses borne by the Authority shall be reimbursed by the Operator on an immediate basis.

It is hereby clarified that the Authority at its sole discretion, if it determines that such events are occurring on regular basis or are causing undue interference with the operation, may: (i) impose fines and/or damages in accordance with the terms contained herein; and/or (ii) terminate this Agreement.

**16.1.5. Repair, Replacement and construction**

- a. No Construction or any activities is allowed in prohibited area (i.e. 100 m distance from 11 Sidhimonument).
- b. No renovation/ alteration/ modification is allowed in regulated area (i.e. 200 m distance from end point of prohibited area) without prior permission of Commissioner, Agra Division.
- c. If any activity which are not specifically permitted in this agreement/ RFP and documents annexed, will be subjected to obtaining prior written permission of the Authority and any instructions/specifications issued by the Authority, also, the Operator will be liable to get the permission from Public/Private agency/NGT/ASI/TTZ,as required.

**16.1.6. Appointment of Staff**

- a. Appoint either on a temporary, permanent or contractual basis trained and skilled staff for operation, maintenance, and supervision of the Lawn and other facilities related thereto.

- b. Provided however, the Authority may require the Operator, to remove any person employed, who in the opinion of the Authority:
  - persists in any misconduct,
  - is incompetent or negligent in the performance of his duties,
  - fails to conform with any provisions of this Agreement, or
  - Persists in any conduct which is prejudicial to safety, health, or the protection of the general public / environment.
- c. Operator will solely and exclusively responsible for all gardeners, employees, workmen, personnel and staff employed for the purposes of implementing the Agreement. The Operator shall ensure that all personnel and staff are under its supervision so as to provide the Service in a safe and efficient manner to the public.
- d. Provided, however the Authority shall not be liable for any payment or claim or compensation (including but not limited to compensation on account of death/injury/termination) of any nature to such foregoing persons at any point of time during tenure of this Agreement or thereafter and the Operator shall keep the Authority indemnified in this regard.
- e. Hold periodic training sessions for gardeners, staff and all personnel (temporary or on contractual or permanent basis) so as to ensure to implementation of the Services efficiently.
- f. Will provide staff name, address, copy of licence & copy of aadhar card to the Authority, and in case of any change of staff the information is to be provided well in time to the Authority.
- g. Make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Operator's obligations under this Agreement and shall at all times be the principal employer in respect of such labour and personnel.

**16.1.7. Appointment of Operator's Manager**

Shall appoint a qualified personnel to act as a single point contact to manage all the communications and correspondence with Authority. (“**Operations Manager**”).

**16.1.8. Payment of Taxes and Duties**

Subject to Clause 16, make timely payment of all taxes and duties due and payable under Applicable Law.

**16.1.9. Payment of Fines**

Operator shall ensure that it promptly pays any fines or damages that may be imposed for any defaults in compliance with other Applicable Laws in relation to the operation of the Service.

**16.1.10. No Alterations or Modifications of the Contracted 11 Sidhi Lawn**

- a. Ensure that there no alterations in the 11 Sidhi Lawn or any part thereof made at any point of time including the colour of such 11 Sidhi Lawn without the prior written approval of the Authority.
- b. Ensure that no additional or new equipment, hardware or software is installed or used in the 11 SidhiLawn without prior approval of Authority.
- c. Shall not tamper or interfere with any equipment, instrument or system including any other equipment or monitoring devices provided in the Contracted Lawn

**16.1.11. Complaints Redressed**

- a. Maintain a complaints register on lawn site, and shall ensure that the Complaint Register is not tampered with in any manner at any point of time.
- b. Take appropriate action as per the instructions notified by the Authority in relation to any complaint made by the public or user of the Contracted Lawn or any third person in relation to the Service.

**16.2. Rights of the Operator**

The Operator shall have right to:

- 16.2.1. Charge Usage Fees/ Charges/ Rent/ Payment as per the terms mentioned in this Agreement;
- 16.2.2. Receive support for obtaining required permits and sanctions from the government, or local body and to obtain assistance and support in dutifully carrying out the obligations as provided for in this Agreement as may be within the purview and general jurisdiction of the Authority;

### **16.3. Authority's Rights and Responsibilities**

In addition to the terms and conditions of this Agreement, the Authority shall:

- 16.3.1. Hand over the possession of the 11 Sidhi Lawn to the Operator for the limited purpose of enabling it to operate and maintain the Services as per this Agreement;
- 16.3.2. Provide permission for water and electric supply to the Lawn during the Agreement Period, and the user payment will be made by operator.
- 16.3.3. Conduct regular inspections of 11 Sidhi Lawn and the Project at any time during the Contract Period.
- 16.3.4. Have the right to levy damages and or fines as provided in this Agreement and in the event the Operator fails to make payments of such fines, the Authority shall have the right to deduct the same from the Security deposit, have the right to issue operating instructions and any other advisory or instruction as deemed necessary to maintain highest standards of Services including safety, functionality and operationality of the Services.

## **17. INSURANCE**

### **17.1. Insurance to be taken out by the Authority**

- 17.1.1. Where the Authority has already paid for the insurances charges of 11 Sidhi Lawn/ any facility there the amount of renewal of these insurances shall be paid by the operator either directly to the insurance company or reimburse to the authority.
- 17.1.2. The Authority shall procure and maintain any additional Insurance as may be reasonably considered necessary and prudent in accordance with good industry practices, during the Total Contract Period.

### **17.2. Insurances to be taken out by the Operator**

- 17.2.1. The Operator shall at his own expense, procure and maintain the yearly fire & damage insurances of 11 Sidhi Lawn/ facilities there, if required, from the reputed Insurance company registered with IRDA.

- 17.2.2. In the event that the Operator fails to effect and keep in force the insurance for which it is responsible pursuant hereto, the Authority shall have the option to take or keep in force any such insurance and pay such premium and recover all costs thereof from Operator.
- 17.2.3. Any other insurance that may be necessary to protect the 11 Sidhi Lawn, tourists, visitors and the personnel against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable and not otherwise covered in above clauses with the Authority as beneficiary/co-beneficiary.
- 17.2.4. Standard fire and perils policies as per market practices for any loss and damages to the extent possible to Lawn or Space(s) handed over to the Operator.

**17.3. Evidence of Insurance Cover**

- 17.3.1. The Authority and the Operator shall, from time to time, and in no case later than [15 (fifteen)] days from receiving any insurance policy certificate, share with each other copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by it as provided in Clause 19.1 and Clause 19.2 above.
- 17.3.2. If the Operator fails to procure and maintain the insurance for which it is responsible pursuant hereto, Authority may take or keep in force any such insurance, and pay such premium, and in such an event shall have the right to seek reimbursement or recover such costs from the Operator thereof.

**17.4. Process of claiming Insurance and Application of Insurance Proceeds**

- 17.4.1. For the purpose of claiming insurance against any insurance policies taken out by the Authority in fulfilment of its obligations under this Agreement, the Operator shall raise an insurance claim in an applicable format as may be notified by the Authority from time to time, after getting the same approved and signed by the Authority.
- 17.4.2. Subject to the provisions of this Agreement for insurance policies where the Authority is the beneficiary and where it received the insurance proceeds, only such sums as are required from the insurance proceeds for restoration, repair and



renovation of the Contracted 11 Sidhi Lawn, shall be released by the Authority to the Operator within [7 (seven) days] of receipt towards repair or renovation or restoration or substitution of the plants based on such proof that such 11 Sidhi Lawn or any equipment/part have been damaged or required repair/modification.

#### **18. DAMAGE TO 11 SIDHI LAWN DUE TO VANDALISM**

18.1. In the event that any damages or need for repairs to the Lawn or any other asset provided by the Authority arises during the Total Contract Period on account of Vandalism, the Operator shall be required to make good the damages and repair the 11 Sidhi Lawn to the original conditions at the cost mutually agreed between both the parties.

18.2. The Operator may claim re-imburement of the cost less of insurance proceeds for such repair and rectification calculated at mutual agreed terms between Authority and the Operator.

For the purpose of this clause, “**Vandalism**” is defined as destroying or damaging Contracted Lawn, deliberately and/or for no reasons attributable to omission of act or breach of obligation of the Operator by the persons other than the employee of the Operator.

Provided however, damage to 11 Sidhi Lawn or any part thereof due to regular wear and tear, or breach of maintenance obligations or any other obligations by the Operator and/ or omission of act by the Operator shall not be considered within the scope of definition of Vandalism as defined herein, and shall be the liability of the Operator. In such cases, the repair, servicing and rectification Service shall be undertaken by the Operator at its own cost to the satisfaction of Authority.

#### **19. FINES/DAMAGES**

19.1. Without prejudice to and notwithstanding any other provision of this Agreement pursuant to which the Operator is liable to pay fines/damages, the Operator shall be liable to pay damages/fines during the Payment Period to the Authority in respect of the deficiencies/events found by the Authority. (“**Fines**”).

19.2. Fines in respect of the said deficiencies/events shall be payable at amount as may be decided by the Authority..

- 19.3. In the event the Operator fails to pay the damages and/or fines for non-performance in accordance with the terms contained hereof, such fines and/or damages shall be deducted from the Security deposit.

## **20. CONFIDENTIALITY OBLIGATIONS OF OPERATOR**

### **20.1. Protection of Confidential Information**

The Operator shall not without Authority's prior written consent use, share copy or remove any Confidential Information from Authority's sources, except to the extent necessary to carry out Operator's obligations hereunder. Upon completion or termination of each assignment hereunder, Operator shall return to Authority all documents or other materials containing Authority's confidential information and shall destroy all copies thereof.

For the purpose of this Clause, the term "Confidential Information" means the information or document which is specifically marked by the issuer/provider of information as confidential or otherwise clearly marked as confidential or proprietary, and shall include any proprietary or confidential information of Authority relating to the Services provided under the Agreement in relation thereto and information relating to Authority's business or operations.

Confidential Information shall not include information which:

- a. Is or becomes generally available to the public without any act or omission of Operator;
- b. Was in Operator's possession prior to the time it was received from Authority or came into Operator's possession thereafter, in each case lawfully obtained from a source other than Authority and not subject to any obligation of confidentiality or restriction on use;
- c. Is required to be disclosed by court order or operation of law; in such event, Operator shall so notify Authority before such disclosure; and
- d. Is independently developed by or for Operator by persons not having exposure to Authority's Confidential Information.

## **21. EVENT OF DEFAULT AND TERMINATION**

### **21.1. Operator's Event of Default**

Any of the following events shall constitute an Event of Default by the Operator ("**Operator's Event of Default**") unless such event has occurred as a result of a Force Majeure Event:

- 21.1.1. Operator is in breach of any of its obligations under this agreement and the same has not been remedied for more than [10 (Ten)] days;
- 21.1.2. A resolution for voluntary winding up has been passed by the shareholders of the Operator;
- 21.1.3. Any petition for winding up of Operator has been admitted and liquidator or provisional liquidator has been appointed or Operator has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Operator under this Agreement;
- 21.1.4. Operator fails to comply with the Applicable laws, rules and regulations.
- 21.1.5. Any representation made or warranties given by the Operator under this Agreement or under the RFP document is found to be false or misleading.
- 21.1.6. Operator fails to maintain/ refurbish/ replenish the security deposit as per terms of this Agreement.
- 21.1.7. Operator suspends or abandons the operations of Contracted 11 Sidhi Lawn without the prior consent of Authority, provided that the Operator shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by the Authority.
- 21.1.8. The Operator failed to make any payments/damages/damages due to Authority within period specified in this Agreement or indicated by Authority without any valid reason.
- 21.1.9. The Operator failed to perform any of the Operator's obligations, which has a Material Adverse Effect on the Agreement.
- 21.1.10. Operator creates an Encumbrance over the 11 sidhi lawn or its Spaces.
- 21.1.11. Construction in the Prohibited Area or Renovation, alteration, construction without approval from the competent authority in the regulated area.

- 21.1.12. Organising or providing the lawn/ any area of the lawn for any activity which is not permitted in this agreement or approval not availed from the concerned authority for the activity in which permission is compulsory in this agreement.
- 21.1.13. Repeated occurrence of breach of Operator's obligations specified in this Agreement and which shall not be remedied in Remedial Period specified by Authority; and

## 21.2. AUTHORITY'S EVENT OF DEFAULT

Any of the following events shall constitute an Event of Default by the Authority (Authority's Event of Default) unless such event has occurred as a result of a Force Majeure Event:

- 21.2.1. The Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within [10 (Ten)] days of occurrence thereof.
- 21.2.2. The Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement .

## 22. TERMINATION DUE TO EVENT OF DEFAULT

### 22.1. Termination for Operator's Event of Default

- a. Without prejudice to any other rights or remedies, which the Authority may have under this Agreement, upon occurrence of an Operator Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Operator of its intention to issue such Termination Notice and grant [15 (fifteen) days] or such other reasonable period as the Authority deems fit at its sole discretion to the Operator to remedy the default ("**Remedial Period**") and/or make representations, and may after the expiry of such Remedial Period on non-remedy of breach/default to the satisfaction of the Authority, whether or not it is in receipt of such representation, issue Termination Notice and then terminate the Agreement.
- b. In the event of termination for an Operator Event of Default, the Authority shall:

- i. Takeover peaceful possession without any Encumbrance of 11 Sidhi Lawn provided to the Operator; and
- ii. Refund the Security Deposit made by the Operator till the date of termination, after deduction of any pending dues, fines or any other charges to the Authority;

22.2. Termination for Authority's Event of Default

- a. Without prejudice to any other right or remedies which the Operator may have under this Agreement, upon occurrence of Authority's Event of Default, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Operator shall by a notice inform the Authority of its intention to issue such Termination Notice and grant [15 (fifteen) days or reasonable period to the Authority to remedy the default and/or make representations, and may after the expiry of such Remedial Period on non-remedy of breach/default, issue a Termination Notice.
- b. Upon Termination of this Agreement on account of Authority's Event of Default, the Authority shall:
  - i. Refund/ release of security deposit [if still subsisting] in full provided there are no outstanding dues off the Authority on the Operator.
  - ii. Pay any sum due and payable as the Operation Payment by the Authority till date of such termination.
  - iii. Takeover unencumbered possession of 11 Sidhi Lawn provided to the Operator.

**23. FORCE MAJEURE AND CHANGE OF LAW**

23.1. Force Majeure

- 23.1.1. For the purposes of this Agreement the expression "Force Majeure" or "Force Majeure Event" includes acts of God, war, revolutions, hostility, civil commotions, strikes, fires, floods, earthquake, epidemics, quarantine restrictions, freight embargoes or explosions and 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, and (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.

23.1.2. As soon as practicable and in any case within [seven(7) days] of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party, inter alia, the following in reasonable detail:

- a. the nature and extent of the Force Majeure Event;
- b. the estimated duration of the Force Majeure Event;
- c. the nature of and the extent to which, performance or any of its obligations under this Agreement is affected by the Force Majeure Event;
- d. the measures which the Affected Party has taken or proposes to take to alleviate / mitigate the impact of the Force Majeure Event and to resume performances of such of its obligations affected thereby; and
- e. Any other relevant information concerning the Force Majeure Event, and / or the rights and obligations of the Parties under this Agreement.

23.1.3. As soon as practicable and in any case within [5 (five) days] of notification by the Affected Party in accordance with the preceding sub-clause (a), the Parties shall, hold discussions in good faith in order to:

- a. assess the impact of the underlying Force Majeure Event;
- b. to determine the likely duration of Force Majeure Period; and
- c. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations the performance of which shall have been affected by the underlying Force Majeure Event;

23.1.4. The Affected Party shall during the Force Majeure Period provide to the other Party representative regular (which shall not be less than weekly) reports concerning the matters set out in the preceding sub clause (b) as also any information, details or document, which the other Party may reasonably require.

- 23.1.5. If the Affected Party is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligation to the extent it is unable to perform the same on account of such Force Majeure Event provided that:
- a. due notice of the Force Majeure Event has been given as required in accordance with the terms contained herein;
  - b. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
  - c. the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or likely to be caused to the Project as a result of the Force Majeure Event and to restore the Services affected as a result of the Force Majeure Event in accordance with the Good Industry Practice and its obligations under this Agreement;
  - d. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect, and shall promptly resume performance of its obligations hereunder the non-issue of such notice being no excuse for any delay in resuming such performance;
  - e. the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event, and which are capable of being performed in accordance with the Agreement; and
  - f. any insurance proceeds received shall be, subject to the provisions of Financing Documents, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.
- 23.1.6. If the inability on account of Force Majeure to perform continues for a period of more than one (1) months, each Party shall have the right to be released from further performance of the Agreement, in which case, neither Party shall have the right to claim damages from the other. All prior performance shall be subject to the terms of this Agreement.

- 23.1.7. Upon Termination of this Agreement on account of a Force Majeure Event, the Operator shall be entitled to receive:
- a. The refund/ release of Security Deposit in full provided if there are no outstanding dues off the Authority on the Operator.
  - b. Collect any other payments due in respect of services undertaken in terms of the Agreement to the satisfaction of the Authority till date of such termination

23.2. **CHANGE OF LAW**

- 23.2.1. Change in Law shall mean the occurrence or coming into force of any of the following, after the date of execution of this Agreement:
- a. The enactment of any new law;
  - b. The repeal, modification or re-enactment of any existing law;
  - c. A change in the interpretation or application of any law by a court of record;
  - d. Any order, decision or direction of a court of record; and
  - e. Any change in the rate of any of the taxes that have direct effect on the Agreement;

Provided, however, Change in Law shall not include:

- a. Coming into effect, after the Execution Date, of any provision or statute which is already in place as of the date of execution of this agreement;
  - b. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Effective Date which is a matter of public knowledge;
  - c. Any change in taxes, duties, levies, cess or any other form of charges;
- 23.2.2. Upon occurrence of a Change in Law, the Operator shall notify the Authority of the following:
- a. The nature and the impact of Change in Law on the Agreement and Project; and



- b. Upon receipt of the notice of Change in Law issued by Operator pursuant to preceding sub-clause, the Authority and the Operator shall hold discussions in relation thereof.

## **24. HANDBACK ON TERMINATION**

- 24.1. Contracted 11 Sidhi Lawn and other assets to be handed back to the Authority
  - a. The Authority shall retain at all times the title and ownership of 11 Sidhi Lawn provided by the Authority to Operator under this Agreement. Upon expiry of this Agreement or in case of any early termination of the Agreement for whatever reason, the Operator shall handover without payment of any monies and free from Encumbrances the peaceful possession of all 11 Sidhi Lawn and any other assets handed over or used by the Operator including without limitation any and all hardware, software, firmware, deliverables on board except the equipment, machinery and tools brought in by the Operator for the operation and maintenance of the Contracted Lawn, in sound condition, subject to normal wear and tear.
  - b. On expiry/ termination of this contract any damages to the Lawn which should not be classified as normal wear and tear, in the view of the authority, shall be recognised as damages payable and amount of damages will be deducted from the security deposit provided under Clause 6.

## **25. DISPUTE RESOLUTION**

### **25.1. Amicable Resolution**

- 25.1.1. Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non-completion of the Agreement between the Parties and so notified in writing by either Party to the other (the “Dispute”) in the first instance shall be attempted to be resolved amicably by the Parties and failing such resolution of the same, in accordance with the procedure set forth below.
- 25.1.2. Either Party may require the Dispute to be referred to the Vice Chairman Authority for amicable settlement. Upon such reference, both the Parties and the Other Designated Officers or his nominee (who can be an employee of Authority dealing the

Authority functions or otherwise) shall meet at the earliest mutual convenience and in any event within 15(fifteen) days of such reference to discuss and attempt to amicably resolve the dispute. If the Dispute is not amicably resolved within 15(fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of clause 25.2. below;

## 25.2. **Arbitration**

### 25.2.1. Arbitrator

In the event of any dispute arising between the Parties in relation to or under this Contract, the same shall be settled by arbitration conducted by an arbitration consisting of two arbitrators, one to be appointed by each Party. The decision of the arbitrators shall be final and binding.

### 25.2.2. Place of Arbitration

The place of arbitration shall be Agra.

### 25.2.3. Language

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

### 25.2.4. Procedure

The procedure to be followed within the arbitration and the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

### 25.2.5. Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceedings or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any Court having jurisdiction thereof.

### 25.2.6. Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties equally subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the

reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the said Party.

#### 25.2.7. Performance during Arbitration

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

## 26. INDEMNITY

The Operator shall at all times, i.e. during the Total Contract Period and at any time thereafter, defend, indemnify and hold the Authority harmless from and against all claims (including without limitation claims for infringement of intellectual property, breach of contract, death or injury to person or injury to property, or other tort claims) and expenses (including costs incurred in defending itself in court proceedings) arising out of or relating to the breach by Operator of any covenant representation or warranty or from any act or omission of the Operator or his agents, employees or sub-contractors.

## 27. DELAYED PAYMENTS

Any payments due under any clause of this Agreement to either Party by the other Party which is delayed beyond the time stipulated in this Agreement, and for which payment for any extended time has not been permitted through mutual agreement in writing between the Parties, shall be paid along with interest at the rate of **0.1% per day** on the delayed amount for the delayed time.

## 28. MISCELLANEOUS

### 28.1. Governing Law and Jurisdiction

28.1.1. This Agreement shall be governed and interpreted in accordance with the laws of India.

28.1.2. The Courts of Agra alone shall have exclusive jurisdiction over all matters arising out of or in respect of the Agreement.

**28.2. No waiver of rights and claims**

Any forbearance, toleration or delay in invoking any of the rights or claims accruing in favour of any party under the terms of this Agreement shown or made by such a party in whose favour such rights or claims might have vested by virtue of this Agreement shall neither constitute nor be construed to be a waiver of such rights or claims accruing in respect of such a party.

**28.3. Schedules and Annexure**

All schedules and annexures and other explanatory details attached to this Agreement shall be deemed to be a part of this Agreement.

**28.4. Supersession of earlier Agreements**

This Agreement represents the entire Agreement between the Authority and the Operator, and all agreements, correspondence, notes or any other document submitted or understandings made or reached by and between the Parties inter se in respect of the subject matter of these presents prior to the date hereof shall be deemed to have been superseded and revoked on the execution of this Agreement.

**28.5. Notices**

Unless otherwise stated, notices to be given under this Agreement shall be in writing and shall be given by hand delivery/ recognized courier, mail, and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Authority \_\_\_\_\_

If to the Operator

\_\_\_\_\_.

All notices under this Agreement shall be in Hindi or English.

**28.6. 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 one Agreement.

**28.7. Assignment**

No assignment of this Agreement, or any rights or duties hereunder shall be made in whole or in part by any Party at any point of time during the Total Contract Period.

Provided, further that, under no circumstances shall the Operator be absolved of his rights, duties, obligations under the terms and conditions of this Agreement, and the Operator shall be solely and exclusively responsible for the implementation of this Agreement.

**28.8. No Partnership**

Nothing herein contained shall be construed to constitute a partnership between Authority and the Operator, or to constitute either party as the agent of the other and neither party shall hold itself out as such.

**28.9. Severability**

If any provision of this Agreement shall be declared illegal, void or unenforceable, the same shall not affect the other provisions herein which shall be considered severable from such provision and shall remain in full force and effect.

**28.10. Representation and Warranties**

**28.10.1. Representation and Warranties of the Authority**

The Authority hereby represents, assures, confirms and undertakes to the Operator as follows:

- a. That it is duly incorporated under the laws of India and has the power to conduct its business as presently conducted, and to enter into this Agreement;
- b. That it has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedure required to authorise the execution, delivery and performance of this Agreement;
- c. Nothing in this Agreement conflicts with its constitutional authority, mandate, or any law or any other agreement,

understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it; and

- d. All approvals and permissions as are necessary for the execution of this Agreement have been obtained, all the required procedure for the due execution of this Agreement have been adhered to, and this Agreement will be valid, legal and binding against it under the Applicable Law.

28.10.2. Representation and Warranties of the Operator

The Operator hereby represents, assures, confirms and undertakes to the Authority as follows:

- a. That it is duly incorporated under the laws of India, and has the power to conduct its business as presently conducted and to enter into this Agreement;
- b. That it has full power, capacity and authority to execute, deliver and perform this Agreement, and has taken all necessary sanctions and approvals (corporate, statutory or otherwise) to authorise the execution, delivery and performance of this Agreement;
- c. Nothing in this Agreement conflicts with its Memorandum and Articles of Association or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it; and
- d. This Agreement will be valid, legal and binding against it under the Applicable Law.

28.10.3. Exclusion of Consequential Losses

Notwithstanding anything to the contrary contained in this Agreement, 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.

IN WITNESS WHEREOF the Parties hereto have placed their respective hands and seals hereto on the day and year first herein above mentioned.

SIGNED, SEALED AND DELIVERED BY:

Party of First Part

Party of Second Part

**Forandonbehalfof**

**Forandonbehalfof**

(Signature)

**Name:-**

**Designation:**Vice Chairman,  
Agra Development Authority

**Place:-Agra**

(Signature)

**Name:-**

**Designation:**

**Place:-Agra**

**Annexure 1**

**(A) Details of Items Provided at 11 Sidhi Lawn**

S.No.	Type of Asset	Make	Other Details
1			
2			
3			
4			
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**Environmental Management Plan (EMP) Guidelines**

**(A) Air Environment**

- Dust suppression arrangement must be done to avoid dust emission.
- Uninterrupted electric power supply to be ensured from local grid during the event period to eliminate the emergent requirement of DG sets.
- Low emission DG set should be used in case of emergency power requirement.
- Use of coal and fire wood based stalls prohibited.
- For cooking electrically heated stoves/LPG should be used
- Cooking, fuel burning, water heating and entry of vehicles carrying equipment's/materials should be strictly prohibited in 500m distance from TajMahal.
- Smoking should be prohibited in the event site as well as separate smoking zone should be provided.
- All trucks carrying stage/other materials should follow latest Bharat Stage norms as well as should be in good condition.

**(B) Noise Environment**

- Power supply should be guaranteed to avoid the requirement of D.G. sets. If required, then standby pollution free D.G. sets with silent acoustic enclosures should be used.
- Speakers should be of good condition.
- During concert or any activity noise levels should not exceed 120 db.
- Noise reaching TajMahal Should not be more than 50 DB at day time and 40 DB at evening time, means from sunrise to sunset.
- Light should not be focussed to TajMahal.

**(C) Water/waste water Environment**

- Drinking water should be clean and purified.
- In accordance with the existing slop/sewage network, construction of temporary drain pits/sewage line should be done to avoid stagnation and flooding.
- Treated sewage water could be used for frequent water sprinkling to reduce local dust emission and washrooms/toilet facilities.
- Surface drainage system should be provided.

- Provision should be made to prevent contamination of surface and ground water sources.
- Untreated water should not be discharge into river before prior treatment.

**(D) Biological Environment**

- Avoid unauthorized felling of trees, prior clearance should be taken from authority.
- Avoid the damage to the greenbelt on northern and north-west side of the TajMahal.
- Conserve native flora/fauna of the region.
- Re-vegetation of disturbed area should be done as early as possible.

**(E) Land Environment**

- The event should be organized on temporary stage.
- Land use pattern should be retained and only aesthetic improvement to be undertaken.
- Excavated soil should be filled back.
- Surplus quantity of rubbish should be cleared and can be utilized to fill up low laying areas.

**(F) Solid Waste Management**

- Solid waste generation should be low.
- Sufficient rubbish bins should be provided, so litter isn't thrown on the ground or in water areas.
- Solid waste generated during event should be cleared with the interval of time.
- Burning of any solid waste should be strictly prohibited.
- Compostable plates should be used to serve food on food stalls.
- Use of plastic strictly prohibited and segregation of waste should be done according to its type.
- Any type of waste should be disposed using proper disposal practices and should not be disposed in river or any other water body.
- Sufficient staff should be provided for cleaning of the toilets/washrooms/drainage.

**(G) Socio Economic Environment**

- Proper tourism management plan should be prepared for smooth functioning of the event without disturbing the society.
- Adequate parking and traffic management should be made to avoid congestion and overcrowding.
- Basic facilities should be planned at convenient location for local community and visitors.

- Temporary infrastructure facilities like drinking water, washrooms, public toilets, resting places, ambulance, medical and other facilities, security guards, police, fire fighting and solid waste management facilities etc should be provided.
- Provisions need to be considered for people with disabilities to access and move around the venue/site.

#### **(H) Fire and safety**

- Appropriate information, instruction and training should be provided to the employees, about the fire precautions.
- Potential ignition sources such as naked flames, hot surface, mechanically and electrically generated sparks etc. should be identified.
- Fire-fighting equipment and facilities should be provided.
- For emergency exit escape routes should be designed.
- Venue should be provided with exits that are sufficient for the number of people present with respect to their width, number and sitting.
- Signs must be used, where necessary, to help people identify escape routes/exits
- All norms regarding fire safety should be followed.