

Request for Proposal  
For  
Design, Installation Operation, Maintenance and Transfer  
of Public Bicycle Sharing System in Imphal under Smart  
City Mission

Volume II  
Service Provider Agreement



Imphal Smart City Limited,  
Directorate of MAHUD, PDA Complex,  
North AOC, Imphal-795001,  
Manipur  
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## Service Provider Agreement

### Agreement for Design, Installation, Operation, Maintenance and Transfer of Public Bicycle Sharing System in Imphal City

This AGREEMENT (hereinafter called the "Agreement") is made on the \_\_\_\_ day of the month of \_\_\_\_\_ 2021,

Between

(1) The Imphal Smart City Limited, a Special Purpose Vehicle constituted under Company Registration Act 2013 and having its registered office at Directorate of MAHUD, PDA Complex, North AOC, Imphal-795001, Manipur (hereinafter referred to as the "ISCL" or "Authority") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part

And

(2) \_\_\_\_\_ a company incorporated under the provisions of the Companies Act, 2013/ Partnership firm / Proprietary firm and having its registered office -----

or A consortium consisting of:

\_\_\_\_\_ a company incorporated under the provisions of the Companies Act, 2013/ Partnership firm / Proprietary firm and having its registered office and -----

\_\_\_\_\_ a company incorporated under the provisions of the Companies Act, 2013/ Partnership firm / Proprietary firm and having its registered office-----  
(hereinafter together referred to as the "Service Provider" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

Whereas

- A. ISCL is mandated with implementation of the Imphal Smart City Plan under Smart City Mission of Govt of India.
- B. Under Imphal Smart City Plan various projects have been identified for implementation across the city. Design, Installation Operation and Maintenance of Public Bicycle Sharing System in Imphal under Smart City Mission has been identified as one of the projects for Implementation under Imphal Smart City Plan.
- C. ISCL, through its Project Management Consultant (PMC) has prepared Detailed

Project Report for Design, Installation Operation and Maintenance for five and half years for Public Bicycle Sharing System in Imphal under Smart City Mission (hereinafter referred to as the '**Project**').

- D. ISCL invited bid for selection of a Service Provider for Design, Installation Operation, Maintenance and Transfer of Public Bicycle Sharing System in Imphal under Smart City Mission by issuing RFP no ----- dated ----- containing the inter-alia the qualification for a bidder, technical specifications and other terms and conditions for implementation of the Project.
- E. Pursuant thereto, after evaluation of all the Bids received, the ISCL accepted the Bid of the ----- and accordingly issued a Letter of Award bearing No. ----- dated ----- (hereinafter called the "LOA") to the Selected Bidder for Design, Installation, Operation, Maintenance and Transfer of Public Bicycle Sharing System in Imphal and requested the Service Provider to submit the Performance Bank Guarantee as stipulated in RfP.
- F. Service Provider vide its letter no. ----- dated ----- has accepted the LoA and has submitted Performance Security vide Bank Guarantee no. .... dated mentioned in the LoA
- G. The ISCL and the Service Provider have agreed to the responsibilities and rights and abide by the terms and conditions for execution of the Project as mutually agreed and set hereunder in this Agreement.

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

## **1. General conditions of the contract**

### **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 Period/Contract Period"** shall be the period as defined in Clause 2.2.

**"Applicable Laws"** means all statutes and laws promulgated or brought into force and effect by the Central Government of India or any State Government(s) or Local Government(s), including regulations and rules made by them, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

**"Applicable Permits"** means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws for providing

Bicycle Sharing Operation and maintenance services as per this Agreement in connection with the Public Bicycle Sharing System during the subsistence of this Agreement.

**“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 as in force today and shall include any and all modifications/ amendments thereto or any re- enactment thereof as in force from time to time.

**“Affected Party”** shall mean occurrence of any of the Force Majeure Event which affects the performance by the Party claiming benefit of Force Majeure Event for performance of its obligation 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 Affected Party.

**“Authorised Fleet”** is the number of Cycles in operation as defined by ISCL.

**“Bicycle or Cycles”** means a bicycle that meets the Technical Specifications described in this RFP and is to be procured, maintained, and operated as part of the Public Bicycle Sharing System by the Service Provider as this Agreement.

**“Collection”** is a set of processes designed to the reception, consolidation, transportation and deposit of the moneys derived from the initialization, charge and sale of the means of payment in the points of sale of the Public Cycle Sharing System.

**“Commencement of Operations Date or COD”** means the date when the Service Provider begins commercial operations of the Public Cycle Sharing System pursuant to issuance of Completion Certificate by the Authority .

**“Control Centre”** means the central facility of the Public Bicycle Sharing System used mainly for service monitoring, operations control, and customer service. It is the location for collecting, storing, consolidating, processing the information obtained from various elements of the Public Bicycle Sharing System as well as from users, agents, employees, and service providers.

**“Public Bicycle Sharing System”** herein refers to the hardware, software, and premises associated with this RFP for the city of Imphal that is being implemented by ISCL in various phases, unless otherwise specified.

**“Depot”** is the area equipped with facilities and equipment for general management, repair, maintenance, cleaning, and parking of Bicycles and stations for the Public Bicycle Sharing System. The depot may be included with the Control Centre or at a different location.

**“Dock”** means an physical unit for locking a single Bicycle at a station when the Bicycle is not in use.

**“Encumbrance”** shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss, payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the this Project (i.e. O&M Services, stations, depots and bicycles), physical encumbrances, claims for any amounts due on account of taxes, cess,

electricity, water and other utility charges.

**“Expiry Date”** shall mean the date on which the Agreement expires in the normal course with the efflux of time.

**“Fleet”** means the number of Bicycles that are available for use in the Public Bicycle Sharing System in accordance with the provisions of this document. The Fleet on a given day is the sum of all Bicycles that are in a good condition of repair and are available for commercial service for at least 14 hours during the respective 24- hour period.

**“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 Public Bicycle Sharing System.

**“ISCL”** means Imphal Smart City Limited, an entity incorporated as a company under The Companies Act, 2013 for the purpose of planning, establishment, implementation, management, supervision of projects under Smart City Mission of India including the Public Bicycle Sharing System and its authorized successors and assigns at all times.

**“Letter of Award”** means the letter issued by ISCL to the Successful Bidder to undertake and execute the Bicycle Sharing Project in conformity with the terms and conditions set forth in the RFP.

**“Material Adverse Effect”** shall mean a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provision of this Agreement and which act or event cause a material financial burden or loss to either party.

**“Material Breach”** means a breach by either Party of any of its obligations under the Service Provider Agreement which has or is likely to have a Material Adverse Effect on the continued operation of the Public Bicycle Sharing System or implementation of the Project, and which such Party has failed to cure.

**“Membership”** means an agreement between the Service Provider and a customer for a specified period of time in which the customer gains access to the Public Bicycle Sharing System.

**“Member”** means a customer who has entered a Membership agreement with the Service Provider.

**“Project Asset”** means Stations, Bicycles, the Control Centre, and other facilities created as part of the Public Bicycle Sharing System.

**“Operating Plan or Operations Plan”** means the detailed plan for the Bicycle Sharing Service that is developed by Service Provider and finalized by ISCL, in consultation with the Service Provider with which ISCL has entered into a contract.

**“Redistribution”** is process wherein a Bicycle is being moved by the Service Provider (normally from one Station to other Station or Station to Depot).

**“Ride”** is a trip taken by a registered customer of the Public Bicycle Sharing System in which a Bicycle is checked out from one Station and returned to another Station.

“**RFP**” means the Request for Proposal documents.

“**Scope of Work/ Project**” mean installation, operation and maintenance of the Public Bicycle Sharing Systems as per the Operation Plan and in compliance with all terms and obligations specified in this Agreement and RFP.

“**Service Provider Agreement**” or simply “Provider Agreement” means the Agreement including, without limitation, any and all Annexures thereto which will be entered into between ISCL and the Successful Bidder through which ISCL will grant the rights to the Successful Bidder to design, install operate maintain and transfer the Imphal Public Bicycle Sharing System during the period of the Agreement.

“**Service Provider Facilities**” means the facilities and equipment produced or developed by the Service Provider that are required for the due implementation of this Contract, including control centre, stations and depots.

“**Service Provider**” means the successful bidder selected under this RFP with whom ISCL has entered into a Service Provider Agreement to operate the Public Bicycle Sharing System.

“**Standby Bicycles**” means the number of additional Bicycles that the Service Provider shall procure and maintain to ensure that the size of the operational Fleet is equal to or greater than that of the Authorised Fleet at all times.

“**Station**” means a unit with a user terminal and docking positions where users can pick cycles.

“**Third Party**” means any Person other than ISCL and the Service Provider.

“**Training and Testing Period**” is the period preceding the Commercial Operations Date during which Service Provider shall demonstrate the functionality of the Public Bicycle Sharing System.

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

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

“**Vandalism**” means destruction of or damage to a Project Asset, deliberately and for no good reason by the persons other than the employee or subcontractor of the Service Provider and/or for no reasons attributable to omission of act or breach of obligation of the Service Provider.

Any other term(s), not defined herein above but defined elsewhere in this RFP shall have the meaning(s) ascribed to such term(s) therein and shall be deemed to have been included in this Section.

## **1.2 Principles of Interpretation**

The table of contents, numbers, headings and marginal headings in this Agreement are

solely for the purpose of facilitating reference and shall not impact the implementation or installation or interpretation of this Agreement.

- i. Words importing Persons or Parties shall include firms, companies, corporations, trusts, associations and any organizations, having legal capacity to sue and be sued in their names.
- ii. Words importing the singular also include the plural and vice versa where the context requires.
- iii. Words importing one gender also include other gender.

In case of ambiguities or discrepancies in this Agreement, the following shall apply:

- i. Between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles.
- ii. Between the Article/Clause and the Schedules, the Articles shall prevail:
- iii. Between the written description on the drawings and the System Requirements/Public Bicycle Sharing System Specifications, the latter shall prevail
- iv. Between any value written in numerals and that in words, the latter shall prevail.

Refer

capable of applying to any transaction entered into hereunder.

References to laws of Manipur, laws of India or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted.

Any discrepancy or change in meaning or description between the other documents such as the RFP and main Agreement shall be resolved in favour of the Agreement.

Repetition, clarification or mention of any RFP provisions in the Agreement does not obviate, for either party, the need to observe the other provisions of the RFP.

### **13 Meaning of “Service Provider Agreement”**

The Service Provider Agreement comprises of the following and accordingly it shall mean and include the following:

- i. This Agreement along with all Schedules hereto.
- ii. Request for Proposal (RFP) in its entirety including all its Sections, Appendices and Schedules, and Addendums thereto.
- iii. Letter of Award
- iv. Performance Guarantee

Further, any matters extraneous to the Agreement which may be required to be added/modified after the signing of this Agreement would be so rendered by an exchange of acknowledged letters, and such letters would be appended to the agreement



to become integral part of the Agreement.

#### **14 Standard of Performance**

The Service Provider shall perform the services and carry out its obligations under the Agreement with due diligence, efficiency and economy; in accordance with generally accepted practices followed in the industry and in a professional manner and shall observe sound management, technical and engineering practices. Service Provider shall deploy appropriate technology, safe and effective equipment, skilled, competent and professionally trained staff and use latest methods for the Public Bicycle Sharing System. In the event that ISCL requires any interaction and / or arrangement with a third party in relation to the Public Bicycle Sharing System, Service Provider shall act as a faithful advisers to ISCL in such process and shall, at all times, support and safeguard ISCL's legitimate interests in this context.

#### **15 Use of Provider Agreement & Information**

Service Provider shall not, without ISCL's prior written consent, disclose the contents of this Agreement, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of ISCL in connection therewith, to any Third Party.

Service Provider shall not, without ISCL's prior written consent, make use of any document or information, which becomes available to the Service Provider during the performance of the Provider Agreement, except such use of information for the purpose of performing the Service Provider Agreement

All documents other than the Service Provider Agreement itself, including without limitation any drawings, plans, specifications, charts, etc. shall remain the property of ISCL and shall be retained (in all copies) by ISCL.

#### **16 Delay in providing the Public Bicycle Sharing System**

The Service Provider shall ensure that the Public Bicycle Sharing System is provided to ISCL as per the time schedule given in the Service Provider Agreement and / or any amendments thereto. A delay by Service Provider in the performance of its obligations under the Service Provider Agreement shall render Service Provider liable to any or all the following sanctions in the sole discretion of ISCL:

- (a) Forfeiture of Service Provider's Performance Guarantee
- (b) Imposition of liquidated damages on Service Provider in terms of this RFP
- (c) Termination of the Service Provider Agreement

If at any time during performance of the Service Provider Agreement, Service Provider should encounter conditions impeding the timely completion and/or performance of the

services as per the Agreement, Service Provider shall promptly notify ISCL in writing of the fact and reasons for the delay and likely duration of such delay. As soon as practicable after receipt of Service Provider's notice in this behalf, ISCL shall evaluate the situation and may at its discretion extend Service Provider's time for performance of Service Provider's obligations under the Agreement. Any such extension shall be valid only if ratified by the parties by way of making appropriate amendment(s) in writing to the Service Provider Agreement as may be mutually agreed to between the parties.

## **1.7 Quality check & acceptance of equipment**

Service Provider shall finalise a Quality Checks and Acceptance Test Plan of offered systems to ISCL and after finalisation, the same shall form part of the Service Provider Agreement. The cycles offered by the Service Provider for the Imphal Public Bicycle Sharing System shall be inspected for acceptance/rejection (as applicable) in accordance with the Quality Check and Acceptance Test Plan given in the Bicycle specifications by ISCL or its authorized agency.

## **1.8 Right to Inspect Bicycles, Support Facilities and Documents**

Service Provider shall make the Public Bicycle Sharing System and all support facilities along with all documents, certificates as required to the Public Bicycle Sharing System available for inspection by ISCL and its staff and authorized representatives from time to time.

ISCL reserves the right to inspect/arrange inspection of any cycle, station, and/or any support facility used by Service Provider in relation to the implementation of the Public Bicycle Sharing System, through an authorized agent / representatives. ISCL shall do so after giving prior notice to Service Provider and make a visit during the office hours of Service Provider. Service Provider shall at all times assist ISCL in such inspections.

ISCL reserves the right to inspect/ arrange inspection of any all relevant documents/ records of business operations / records including the books of accounts of statutory payments like PF, ESIC, Service Tax, etc. of the Provider at any time to monitor compliance with Service Provider's obligations in relation to implementation of the Public Bicycle Sharing System, through an authorized agent or representatives. ISCL shall do so after giving prior notice to Service Provider and make a visit during the office hours of Service Provider. Service Provider shall at all times assist ISCL in such inspections.

## **1.9 Confidentiality Obligations of Service Provider**

### **i. Confidential Information**

Service Provider shall treat as confidential any information which is clearly described as

confidential or proprietary to ISCL ("Confidential Information"). Notwithstanding the generality of the foregoing, Confidential Information shall include any proprietary or confidential information of ISCL relating to the Public Bicycle Sharing System or services provided under the Service Provider Agreement in relation thereto and information relating to ISCL's business or operations.

Service Provider shall not without ISCL's prior written consent use, copy or remove any Confidential Information from ISCL's premises, except to the extent necessary to carry out Service Provider's obligations hereunder. Upon completion or termination of each assignment hereunder, Service Provider shall return to ISCL all documents or other materials containing ISCL's Confidential Information and shall destroy all copies thereof.

## **ii. Confidential Exceptions**

Confidential Information shall not include information which:

- (a) is or becomes generally available to the public without any act or omission of Service Provider
- (b) was in Provider's possession prior to the time it was received from ISCL or came into Service Provider's possession thereafter, in each case lawfully obtained from a source other than ISCL 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, Service Provider shall so notify ISCL before such disclosure; or
- (d) is independently developed by or for Service Provider by persons not having exposure to ISCL's Confidential Information

## **iii. Period of Confidentiality**

## **2. Agreement**

### **2.1 Appointment of the Service Provider**

Subject to the Service Provider submitting Performance Security as per the terms of this Agreement and undertaking to operate and maintain the Public Bicycle Sharing System for five years in accordance with the terms and conditions of this Agreement, ISCL hereby appoints on non-exclusive and non-transferable basis, the Service Provider and the Service Provider hereby accepts on non-exclusive and non-transferable basis its appointment to design, install, operate, maintain and transfer the Public Bicycle Sharing System in Imphal in accordance with the terms of this Agreement and subject to Applicable Laws.

Service

## **2.2 Contract Period**

The period between the Date of Signing of the Agreement and the Expiry Date shall be termed the Agreement Period.

The Agreement shall remain in force for a period of five and half years (5.5 years) from the date of execution. The Agreement /Contract Period may be further extendable under mutual consent.

In the event of Termination, the Agreement Period shall mean and be limited to the period commencing from the Date of Signing and ending on the Termination Date.

## **2.3 Commencement of Operation Date (COD)**

Service Provider shall deploy the maintenance, operations and management staff required for operations and maintenance during the Training and Testing Period as specified in the Scope of Work. At the end of the Training and Testing Period, the Service Provider shall deploy adequate numbers of maintenance, operations and management staff required for operations and maintenance of the Public Bicycle Sharing System as per the standards specified in this Agreement. After which commencement of operation of Public Bicycle Sharing System shall be considered to begin (the "COD"). The maximum time limit for the COD is 5 (five) months from the signing of the agreement. Public Bicycle Sharing System size requirements are specified in clause 3.3 and also modified/specified from time to time by ISCL. Any delay or failure in such deployment shall lead to Liquidated Damages as per clause 20.2.

## **2.4 Undertaking**

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

## **2.5 Grant of rights to use Project Asset during Contract Period**

Subject to the terms and conditions as contained in this Agreement, ISCL hereby grants to the Service Provider only the right to access and use station area and Project Asset only and exclusively for the purpose of fulfilment of its obligations specified in this Agreement during Contract Period.

Nothing contained herein shall confer or be deemed to confer any right to possession or any other right, upon the Service Provider, with respect to the Project Asset during the Contract Period. Nothing contained herein shall confer or be deemed to confer any right for the Service Provider to sub-contract, sub- license, lease and sub-lease or make available in any other form the Project Asset to any Third Party, except as expressly permitted in writing by ISCL during Contract Period.

The Service Provider hereby guarantee that it shall use the Project Asset only and exclusively for the purpose of providing timely services and discharge of its obligation and should not do nor cause any damage or waste in the Project Asset or do any act which will in any way be prejudicial to the rights of the ISCL during Contract Period.

It is agreed and understood by the Service Provider that the rights granted under this Clause to the Service Provider by ISCL as part of the Project shall be co- terminus with the Contract Period of this Agreement. Upon early Termination of the Agreement prior to expiry of Contract Period, the Service Provider will leave the Project Asset in the same state and condition as it was at the time of the COD (normal wear and tear excepted).

Upon the expiry of the Agreement Period by efflux of time and in the normal course or Termination, the Service Provider shall at the end of the Agreement Period, as the case may be, hand over free from Encumbrances the peaceful possession of the all the Project Assets under administration or otherwise besides any other assets installed or developed by Service Provider by way of this Agreement for the Public Bicycle Sharing System Project including without limitation any and all hardware, software, firmware, deliverables in the depot etc.in sound condition.

The Project Assets allotted by ISCL shall be exclusively for Public Bicycle Sharing System project and Service Provider shall not use these Project Assets for any other purpose.

## **2.6 Existing Structure and Surrounding of Project Asset**

The Service Provider shall ensure that any activity of the Service Provider in the Project Asset during Contract Period does not damage any existing surrounding structure and that of asset/property of Third Party. The cost / compensation for any such damage brought about by the Service Provider directly or indirectly on account of its negligence or omission of act would have to be borne by Service Provider.

## **2.7 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.

## **3. Scope of Work**

### **3.1 General**

The scope of the work shall mean and include any and all obligations for the Service Provider to provide toward the Public Bicycle Sharing System during the Contract /Agreement Period (the "Scope of the Work").

Performance and fulfilment of all other obligations of the Service Provider in accordance with the provisions of this Agreement and matters incidental thereto or necessary for

the performance of any or all of the obligations of the Service Provider under this Agreement.

Service Provider have to provide integrated and innovative solutions for the Imphal Public Bicycle Sharing System, including: cycle track marking, cycles; stations; a control centre; electronic payment systems; operations and maintenance; marketing and outreach; and customer service.

### 3.2 Detailed Scope of Works

The detailed Scope of Work for design, installation and operation and maintenance of the Public Bicycle Sharing System of Imphal shall be as provided in RFP.

### 3.3 Timelines

The Service Provider will be expected to meet the following timeline:

Task to be completed before the end of the indicated month	Time Period
Signing of Agreement	T
Demonstrate initial prototype stations and cycles.	T+1 month
Submit station plans for review.	T+1 month
Submit beta website for review.	T+2 months
Demonstrate final prototype stations and cycles.	T+2 months
Back office systems operational.	T+4 months
Website information and subscription sections operational.	T+4 months
Install 20 Stations and 100 Cycles.	T+5 months
Training and Testing Period complete.	T+5 months
Commercial Operation Date (COD)	T+5 months

### 3.4 Fleet Size

Service Provider will maintain the Fleet to match the Authorised Fleet requirements as per the timeline below.

Milestone	Authorised Fleet
Within 5 months of signing of the Service Provider Agreement	100 Bicycles

The Training and Testing Period is defined as the period preceding the Commercial Operations Date during which Service Provider shall make available the following equipment:

- a) Staff required for operations and maintenance of the entire Public Bicycle Sharing System.
- b) At least 2 Stations (with at least 20 Cycles), the central control system, and a depot for the purpose of training and testing of operations.

The Service Provider is required to run an on ground test of the system components for at least 1 month before the formal launch of the system to the general public. ISCL and Service Provider shall use this period to understand the intricacies of operations and fine-tune the Public Bicycle Sharing System. No penalties shall be applicable during this period.

### 3.6 Covenant

Notwithstanding anything covered in this Agreement/RFP, the Service Provider acknowledges and agrees that in case of any change in the terms and conditions of the Agreement/RFP including scope of work due to statutory notifications or change in regulations, the Authority will discuss the same with the Successful Bidder and the decision of the Authority shall be final and binding. There shall not be any increase in the contract value unless there is substantial change in the scope of work.

## 4. Payment to the Service Provider

### 4.1 Terms of Payment

The capital grant of the system that is quoted by the Service provider will be paid by ISCL. The ownership of the system hence lies with ISCL. The capital grant of the system is determined as the amount that the Service Provider quotes in the bid as his capital grant. The capital grant quoted by the Service Provider will be repaid in three installments by ISCL to Service provider as per following schedule.

S e r v i c e	<b>Milestones</b>	<b>Eligible payment</b>
	Delivery of the all cycles at Imphal	60% of the quoted capital grant
	2 months from date of Commercial Operation	30% of the quoted capital grant
	On completion of 12 months of Commercial Operation	10% of the quoted capital grant

Provider shall submit the utilization certificate of each installment of capital grant before submitting demand for subsequent installment.

### 4.2 Damages and replacement of assets

- i) The Service Provider shall be liable to repair, rectify, or replace any assets, including cycles, docks, etc, at its own cost, unless specifically excluded by ISCL or under Force Majeure Conditions. These include:
  - a) Damage to Project Asset due to regular wear and tear under field conditions, or breach of its maintenance obligations or any other obligations specified in this Agreement and/ or omission of act by the Service Provider.

- b) Loses due to theft of Cycles while Cycles are check out by Members, or due to acts of vandalism.
- ii) The Service Provider may obtain an insurance policy to cover such losses and the payment of the insurance premium will be the liability of the Service Provider.
- iii) Damages due to negligent driving or accidents by Service Provider personnel or authorised representatives on street shall be the liability of the Service Provider. Any fines/penalty levied against the Service Provider or any of its staff or subcontractors by traffic police or any competent authority will be borne directly by the Service Provider. ISCL claims no liability for such infractions.

### 4.3 Tariff

Effective from the date from the Commencement of Operations of the Project and during the Term of this Agreement, the Service Provider shall be entitled to the following tariffs:

- i) **Fare Box Income:** Revenue earned from sale of memberships and rental income earned from renting of Cycles to the users as per Fare structure given in RFP document. Any change in the user charges, membership fee or any other charges shall be subject to approval of the ISCL.
- ii) **Advertisement Revenue/ Sponsorship Contract Revenue:** The Service Provider will be given the rights to sell advertisement space on the system. This includes advertisement space on Cycles and Station infrastructure like panels and docks at the Station. Alternatively, the Service Provider may also sell sponsorship contract to the system to a single entity.
- iii) **Kiosk Revenue:** The Service Provider can setup kiosks at approved Stations and provide an undertaking as to the retail usage of the kiosk (the type of goods and/or services being offered). The type of retail services offered are also subject to approval from ISCL.
- iv) **Any other sources of revenue like Annual Cycle Event :** The Service Provider will be given the rights to conduct an annual cycling event in the city. The profits made from this event will also be used to run the Public Cycle Sharing system

The Service Provider shall have right to demand, collect, retain and appropriate, enforce the user and other charges effective from date of the Commencement of Operations of the Project and during the Term of this Agreement by itself or through any Person/collection agents appointed by it.

The Service Provider expressly recognises that if any user fails to pay Tariff, the Service Provider may exercise all rights and remedies available under the Applicable Laws for recovery thereof, including the suspension, termination or cancellation of provision of the applicable service to the relevant defaulting user; provided that the same shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Government Authorities, if any, and Prudent Utility Practice in this behalf.

## 5. Revenue Sharing

- 5.1 The Service Provider- will offer a revenue share to the ISCL that would be calculated at



10 percent (Ten percent) of gross revenue from the Project ('Revenue Share') which shall be paid quarterly. The amount so paid would be adjusted at the end of the financial year based on annual audited accounts in respect of the Project. It is expressly agreed and acknowledged by the ISCL that the Revenue Share would be payable only after commencement of commercial operation.

- 5.2** The Revenue Share shall be payable through a cheque or demand draft in the name of "Imphal Smart City Ltd" payable at Imphal, Manipur, on or before fifteenth (15th) day of first month of subsequent quarter.

## **6. Ownership of Assets**

The ownership of the Public Bicycle sharing system including all its hardware and software shall be in the name of ISCL. The bidder shall ensure all documentation as required for this purpose to the satisfaction of ISCL. Disbursement of Grant shall be also subject to compliance of the same.

The Service Provider shall not part with or create any lien or security interest or encumbrance on the whole or any part of the assets of Public Bicycle Sharing system except as set forth and permitted under an Agreement signed with ISCL. Service Provider shall not permit any other person to create any lien or Encumbrances or any security interest on Project Asset.

## **7. Service Provider's Obligations**

### **7.1 Obligations relating to Operation and Maintenance of Public Bicycle Sharing System**

The Service Provider's obligations are as follows:

- i. Bear all cost pertaining to operation and maintenance of Public Bicycle Sharing System and insurance.
- ii. Operate and maintain the Public Bicycle Sharing System as per the Scope of Work at his cost and as per directions of ISCL under the provisions of this Agreement. The Service Provider shall only operate the Public Bicycle Sharing System in areas and during operating hours specified by the ISCL.
- iii. Ensure that all Project Assets of the Public Bicycle Sharing System shall be directly under the control of ISCL. The Service Provider shall ensure adherence to the instruction of ISCL.
- iv. Operate the Public Bicycle Sharing System according to the Operating Plan at all time during the Contract Period.
- v. Provide trained and skilled staff for operation, maintenance, redistribution and supervision of the Public Bicycle Sharing System and other facilities related thereto at his cost for services as per the Agreement.
- vi. Ensure that staff shall wear uniform as approved by ISCL.
- vii. Arrange for regular preventive maintenance according to service and maintenance

plan as specified in the Operating Plan approved by ISCL.

- viii. Apart from above, the Service Provider will permanently guarantee the sound mechanical condition of the Public Bicycle Sharing System during the Contract Period. The Service Provider shall carry out preventive and corrective maintenance in compliance with standards of frequency, qualification of procedures laid out by manufacturer/ISCL and as per the Operating Plan. The Service Provider shall make available to ISCL or its authorized personnel for inspection as and when required/instructed by ISCL for assessment of compliance with maintenance and compliance. Upon such inspections any suggestions/instruction received from the ISCL with regards to corrective actions, maintenance requirement, part replacement requirement, shall be implemented by the Service Provider at its own cost within the 15 days or reasonable time period specified by the ISCL during such inspection. In case of non rectification/non action of such instruction within stipulated time period, the ISCL may rectify such defect at a cost to the Service Provider. Repeated occurrence of such events may lead ISCL to impose penalty/damages on Service Provider and to proceed for Termination.
- ix. The Service Provider shall also follow the schedule of preventive maintenance as per manufacturer's instruction or any other instruction provided by a third party supplier.
- x. The record of all preventive maintenance activities shall be kept in the Public Bicycle Sharing System maintenance log book and duly authenticated by the person in charge of carrying out maintenance. The log books shall be produced for inspection by ISCL staff as and when demanded.
  - (a) Ensure highest standards of cleanliness both in and around the Bicycle Sharing Station and depots as stipulated in the Operating Plan.
  - (b) Provide all information, data, records, documents etc. as required by ISCL and respond to all notices letters communications received from ISCL within the given time frame with complete and full replies.
  - (c) Submit bills timely and pay all dues payable to ISCL as per terms of Agreement without any delays.
  - (d) To allow adequate supervision of execution of the Agreement by ISCL or its auditors, inspectors and supervisors, allowing full and unrestricted access to any installation, equipment, IT System, and information by personnel authorized by it.
  - (e) To execute, at his own risk and costs, all ancillary or complementary contracts to the Agreement required for the proper operation of the Public Bicycle Sharing System.
  - (f) To allow access to the Public Bicycle Sharing System to all eligible members in good membership standing of the public without any prejudice or discrimination.

## 7.2 Operations Plan

- a) The Service Provider shall submit an Operations Plan within 15 days of the execution of the Agreement.
- b) The Operating plan, at the minimum, shall provide detailed activity chart for operationalising the responsibilities of the Service Provider as provided in this Agreement, including training plan, staff deployment (i.e. number of management staff details for operation and maintenance monitoring, maintenance staff) including time schedule, preventive maintenance methodology and plan according to Good Industry Practice and manufacturer's manual/instructions , along with all other tasks specified , time required for each task, the task/person/efforts resource allocation . This information shall also be provided in the form of a write up and detailed Chart elaborating all milestones to ensure that the operations shall begin on time.
- c) To allow fitment of reasonable third party vehicle and system tracking tools, as approved by ISCL. The cost of such installation shall not be borne by the Service Provider but the Service Provider shall make Project Assets reasonably available.
- d) The Service Provider shall not tamper or interfere with any equipment, instrument or system including the GPS tracking facilities or any other IT monitoring devices provided in the Project Asset approved by the ISCL.
- e) Obtain the permission from ISCL, if need so arises for replacement/addition/install any equipment/ancillaries/accessories beyond the specifications inside or on the outside of the Public Bicycle Sharing System. Also ensure that the proposed equipment/ancillaries/ accessories are compatible with existing ones. ISCL shall establish the conditions and specifications of the equipment which the Service Provider shall install.
- f) To perform maintenance of Project Assets strictly following manufacturer's instruction/manual and Project Implementation and Management plan.
- g) To engage suitably skilled and qualified personnel to operate the Public Bicycle Sharing System as per the statutory and contractual provisions as applicable in the Operational Plan and sound Business practices.
- h) Train staff and organize refresher training programs at regular interval for updating their skills in all the related fields at his cost and participate in all the meetings, committees etc. as directed by the ISCL from time to time.
- i) To ensure that the personnel engaged by the Service provider do not involve in any subversive activities, disruption in normal services and inconvenience or/and harassment to the Public Bicycle Sharing System Members or other members of the general public.
- j) The Service Provider shall supervise and ensure that all aspects of the Public Bicycle Sharing System operations are operated in conformity with all the legal, statutory, and all other requirements as per the applicable labour acts/motor transport worker acts/rules/regulations/practices are fully complied with by the Service Provider. Service Provider shall further ensure that it shall not use or allow to use the redistribution vehicle in the commission of an offence under Indian the Indian Penal Code on local or special laws or any statutory control order. ISCL is fully and completely absolved of any responsibility, liability of any kind whatsoever on this behalf and or of any act of omission/commission by them. ISCL is expressly understood to be indemnified by the Service Provider of any of the acts of omission/commission and of any consequential damages/losses caused by the Service provider's employees, agents, contractors, etc.

- k)** The Service Provider shall also provide and maintain (and keep up to date) first aid box in each of the redistribution vehicle during Contract Period.
- l)** Comply with the operating instructions issued by ISCL, and/or its authorized representatives and/or its control centers/offices and to enforce them among its employees, contractors or agents, and to guarantee the operational ability, security, quality and functionality of the system.
- m)** Take out and maintain for a Comprehensive Insurance Policy at its own cost as per the terms mentioned in the RFP.
- n)** Ensure that the number of Bicycles, docks and Stations for which it has been granted the Agreement are in operation, in compliance with the maintenance standards and maintenance requirements for the Public Bicycle Sharing System as stipulated in this Agreement, at all times during the term of the Agreement.
- o)** To provide services of appropriate quality as required by ISCL and maintain the parameter of service quality as described in this Agreement and subsequently specified by the ISCL time to time during the Contract Period.
- p)** The Service Provider(s) shall not form/establish any Employee's or Service Provider's Union, and no such activity shall be entertained by ISCL.
- q)** The Service Provider shall establish single point contact to manage all the communications and correspondence with ISCL.
- r)** The Service provider shall abide by maintenance and operation requirement specified in the Operational Plan and by manufacturers maintenance manuals/instructions and/or ISCL during the Contract Period.
- s)** The Service Provider shall comply with the relevant safety standards and safety standards provided by ISCL from time to time and shall take utmost care of safety of the Members, ISCL and its own staff and third party during the Contract Period. ISCL may impose penalties/damages for breach of safety, maintenance and operating requirements.
- t)** The Service Provider undertakes to provide any and all equipment, fuel, consumable, machine or material that is required for the uninterrupted and continuous operation, management and maintenance of the Public Bicycle Sharing System at all times and places during the Contract Period.
- u)** The Service Provider shall ensure that the operations of the Public Bicycle Sharing System is uninterrupted, continuous and is not suspended or stopped in any manner (except as permitted under the terms and conditions of this Agreement).
- v)** Subcontracting of Public Bicycle Sharing System operations shall not be permitted without the written authorization from the ISCL.
- w)** The Service Provider shall further ensure followings:
  - i.** No alteration to the design, branding, colour or any visual or functional aspect of the Public Bicycle Sharing System without prior approval of ISCL.
  - ii.** No fixing of any additional gadgets, lights any fixtures on the exterior or interior without prior approval of ISCL.
- x)** The Service Provider shall have to replace spare/device/equipment/ fixtures/component if such need arise due to damages/accident or due to preventive and corrective maintenance requirement as per ISCL's instruction or as specified in manufacturer's manual or in regular course after fixed usage as

per standard industry practice or provision set forth in this Agreement. Such replacement shall be of the original technical specification as approved by the ISCL. Non compliance of such instruction shall be considered Event of Default of the Service Provider

### **7.3 Customer Service, Depot and Maintenance Facility**

- a) In order to set up a Customer Service, Depot and Maintenance Facility and other facilities related to operation and maintenance of the Public Bicycle Sharing System, the Service Provider shall maintain certain premises. The Service Provider shall use, hold, maintain and operate the premises at his risk and cost.
- b) Service Provider shall also allow access to ISCL, its employees, agents, contractors, etc. as and when required to the premises.
- c) ISCL or its authorized representative retains the rights to inspect premises/Project Asset allotted to the Service Provider all time during the Contract Period.
- d) It shall be Service provider's responsibility to comply with the applicable laws, rules, and guidelines as applicable for this purpose or orders issued by the ISCL with respect to the above.
- e) The Service Provider shall use such premises only and exclusively for the purpose of providing timely services and carry out maintenance obligations only and should not and do not used for any illegal activities.
- f) The Service Provider shall pay all charges and taxes related to the premises such as such as rent, Government taxes, cess and charges, including utility bills for electricity, water, gas etc. pertaining to period during which the premises are used by the Service Provider. The Service Provider shall make arrangements, at his own expense, for provisions for supply of any utilities, security, maintenance etc. required by him for use of premises.

### **7.4 Working Capital Management**

The Service Provider shall arrange by himself the working capital necessary for the operation and maintenance of Public Bicycle Sharing System and other related facilities/equipment/services etc. through his own credit and resources and without recourse to any support from ISCL.

### **7.5 Liability and Losses**

The Service Provider shall be liable for and make good any damages or statutory claim like motor accident claim which may be caused to ISCL or to third parties, for non-compliance of any of its statutory/contractual obligations or for negligence on the part of Service Provider or its employees and responsibilities with respect to any party.

### **7.6 Project Operation and Maintenance**

- a) The Service Provider shall operate and maintain the Public Bicycle Sharing System

in accordance with the requirements of the Scope of Work as per the clause 4 of the Volume I of RFP and clause 3 of this Agreement and maintaining service standards specified in Schedule 1, elsewhere in Agreement and modified time to time by the ISCL.

- b) The Service Provider shall, during the Contract Period:
- i. Designate and appoint suitable officers / representatives as it may deem appropriate to supervise the service provider's activities in the Bicycle Sharing System Project, to deal with ISCL and to be responsible for all necessary exchange of information required pursuant to this Agreement.
  - ii. Conduct all inspections, maintain reports of operation and maintenance and organize necessary tests to ascertain their compliance with the stipulated requirements.
  - iii. Suspend forthwith the whole or any part of the operations under the Public Bicycle Sharing System upon receiving a written notice from ISCL, who may require the Service Provider to suspend the activities in whole or part if in the reasonable opinion of ISCL, the operations are being carried on in a manner that is not in conformity with the provisions of this Agreement.
  - iv. In the event the Service Provider has failed to operate and maintain the Public Bicycle Sharing System and or carry out all other activities in accordance with the provisions of this Agreement, and such failure has not been remedied despite a notice to that effect issued by ISCL or ("Notice to Remedy"), ISCL may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to take such actions as are specified in the Agreement including demanding replacement of any equipment or staff, suspension of the Public Bicycle Sharing System Operations and/or the Agreement and or replacement of the Service Provider.
- c) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and Service Provider hereby indemnifies ISCL against any claims, damages, expenses or losses in this regard and agrees that in no case and for no purpose shall ISCL be treated as an employer in this regard.
- d) Service Provider shall be responsible for all the health, security, environment and safety aspects of the services provided by him for the Public Bicycle Sharing System.
- e) Service Provider shall be responsible for payment of all statutory levies including ESIC Contribution, PF etc. in respect of the staff engaged by Service Provider for operation & maintenance of the Project Assets. Notwithstanding the generality of the foregoing, any and all payments to be made to any sub-contractors to any party /

personnel in relation to the Service Provider Agreement of the Public Bicycle Sharing System Project shall be the sole responsibility of Service Provider and ISCL shall neither incur any liability in this respect nor entertain any claims in this respect.

**7.7 Obligations with regards to Compliance with Public Bicycle Sharing System's instruction/manual**

Service Provider Shall provide literature received from Public Bicycle Sharing System Manufacturers in terms of manuals, operating, and maintenance and safety instructions/manual to the ISCL. Service Provider shall be responsible to understand working of the Public Bicycle Sharing System allotted to it in all aspects specified above including safety features.

Service Provider shall abide by the instructions specified in the operating, and maintenance and safety instructions/manual all times during the Contract Period. The inspection procedures as the frequency and type of the inspection for each technical condition criteria specified therein for all aspects of the Public Bicycle Sharing System shall be promptly followed by the Service Provider.

**7.8 Authorized Fleet**

The Service Provider shall operate only such a Cycle fleet that meet maintenance requirement/ maintenance obligations specified in this Agreement and in conformity with the Authorized Fleet. Such fleet of Bicycle available for operation and meeting the maintenance requirement/maintenance obligations shall not be less than 100 cycles at any time during the Contract Period ("Authorized Fleet").

**8. Performance Guarantee**

**8.1 Details of Performance Guarantee**

- a)* The Service Provider has submitted a Performance Security of amount Rs..... vide Bank Guarantee Number ----- dated-----.
- b)* The Performance Security shall be retained by the ISCL for a period of 60 (sixty) days after expiry of Contract Period. On the performance and completion of the contract in all respects including warranty, the Performance Security will be returned to the Service Provider without any interest and upon submission of no claim certificate.
- c)* If the Contract is terminated for reasons other than which can be attributable to the Service Provider , the Performance Security, shall, subject to the ISCL's right to receive amounts, if any, due from the Service Provider under this contract, be duly discharged and released to the Service Provider.

**8.2 Encashment of Performance Guarantee**

The ISCL shall be entitled to encash the Performance Security fully or partially as the case may be, under the following circumstances:

- v. Nonpayment of any dues/penalties by the Service Provider to ISCL as required to be paid under Service Provider Agreement including damages as provided.
- vi. An Event of Default not being remedied in Remedial Period by the Service Provider despite notice as provided in this Agreement.
- vii. Non removal of deficiencies during the Handover period at the end or prior to the expiry of contract period.

Provided the extent of such encashment shall be no greater in amount than that required to remedy the circumstances warranting encashment stipulated above and provided further that in case of any encashment of the Performance Security pursuant to the Encashment Notice, ISCL at its sole discretion may return the amount so encashed if the circumstances requiring the encashment have been remedied to the full satisfaction of ISCL.

The provision under this clause authorizing ISCL to encash the Performance Security shall be exercisable in addition to and without prejudice to any other rights available to ISCL under this Agreement.

### **8.3 Fresh Performance Security**

In the event of the encashment of the Performance Security by ISCL pursuant to clause 8.2 above, , Service Provider shall within 15 (fifteen) days of the encashment furnish fresh Performance Security of the original amount to the ISCL, failing which the ISCL shall be entitled to terminate Service Provider Agreement by giving 30 days notice in accordance with the provisions herein.

## **9. Insurance**

### **9.1 Insurance during the Contract Period**

The Service Provider shall, at its cost and expense, purchase and maintain insurances, as per law of India and as per prudent market practices starting from the signing of the contract up to the end of the Contract Period covering the following;

100% replacement cost for any loss and damages to Project Asset/Premises with ISCL as beneficiary. Shortfall in insurance cover, if any, shall be borne by the Service provider.

Service provider's shall maintain all risk insurance with the ISCL as co-beneficiary;

- i. Comprehensive third party liability insurance.
- ii. 100% insurance of employee compensation and other liability as per Workmen's Compensation Act 1923.
- iii. Any other insurance that may be necessary to protect the Service Provider, its employees and the Project Asset/Premises against loss, damage or destruction at



replacement value including all Force Majeure Events that are insurable and not otherwise covered above with the ISCL as beneficiary/co-beneficiary.

The Service Provider shall be responsible to pay the premium regularly and maintain the insurance policies specified above all time during the Contract Period. Service Provider shall be solely responsible in case of failure of its renewal.

Apart from above, any liabilities arising out of or incidental to accidents in which any Project Asset is involved shall be on account of the Service Provider, whether such compensation payments becomes claimed, or paid during or after the currency of the contract. ISCL shall not be responsible for payment of any such compensation to aggrieved parties on accounts of accidents of any kind involving the Public Bicycle Sharing System.

## **9.2 Evidence of Insurance Cover**

The Service Provider shall, from time to time, provide to ISCL copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by it in accordance with Service Provider Agreement.

If Service Provider fails to effect and keep in force the insurance for which it is responsible pursuant hereto, ISCL shall have the option to take or keep in force any such insurance, and pay such premium and recover all costs thereof from Service Provider.

## **9.3 Application of Insurance Proceeds**

Subject to the provisions of this Agreement, all moneys received under insurance policies shall be promptly applied by the Service Provider towards repair or renovation or restoration or substitution of the Project Asset or any equipment/part thereof or Third Party Property which may have been damaged or required repair/modification.

The Service Provider shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that Project Asset, or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

For insurance policies where the ISCL 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 Project Asset will be disbursed to the Service Provider or its authorized agent.

## **9.4 Validity of Insurance Cover**

The Service Provider shall pay the premium payable on such insurance policy/policies so as to keep the insurance in force and valid throughout the Contract Period and furnish copies of the same to the ISCL for each year/policy period. If at any time the Service Provider fails to purchase, renew and maintain in full force and effect, any and

all of the insurance required under this Agreement, ISCL may at its option purchase and maintain such insurance and all sums incurred by the ISCL therefore shall be reimbursed by the Service Provider forthwith on demand, failing which the same shall be recovered by the Authority by encashment of Performance Security, exercising right of set off or otherwise.

## **9.5 Complaint Redressal Obligations**

The Service Provider shall adopt a proper complaint/grievances redressal mechanism in consultation with ISCL. The Service Provider shall maintain a record of all the complaints received from use of the Public Bicycle Sharing System, any third party or ISCL and will at its own cost commence investigation within 3(three) days of receipt of complaint and shall be recorded in a fair and accurate manner. The Service Provider should respond in writing within 7 (seven) days of the receipt of the complaint with the proposed course of action/relief to be provided to the complainant. All complaints of a sensitive nature shall be dealt at the Service Provider 's managerial level and in case there is no suitable course of action taken by the Service Provider within 10 (ten) days of receipt of such complaint, the matter shall be handled by ISCL, at the Service Provider 's cost and risk. The nature and information of complaints shall be kept confidential by the Service Provider except as otherwise required to be disclosed under the Applicable Laws or as instructed by ISCL.

The Service Provider shall provide a summary of all the complaints and the written responses received on a monthly basis to ISCL as per the service level agreement

ISCL shall review the complaints received and the written responses with the course of action taken by the Service Provider. In the event that course of action that has been taken by the Service Provider is not appropriate, ISCL shall direct the Service Provider to take a suitable action.

## **10. ISCL's Obligations**

ISCL shall follow the following obligations during the Agreement Period.

### **10.1 Obligations with respect to Supply of Public Bicycle Sharing System**

To provide plan that specifies the station location made available to the Service Provider within 7 days acknowledgment of LOA. Such Plan shall provide information on station size and number of docks to be provided to the Service Provider. The Plan will also stipulate operating hours, membership fees and usage fees.

### **10.2 General Obligations**

- a) ISCL will specify the requirements and provisioning standards for station

locations, system branding, and service levels for the Service Provider to develop the requisite Public Bicycle Sharing System.

- b) Specify the requirements and provisioning standards for the system and its elements clearly, engage all other service providers, if any, in time..
- c) Establish effective system of communication and coordination among all the stakeholders of the system.
- d) Ensure timely payments to the service providers as per the payment system specified in this Agreement.

## **11. ISCL'S Rights**

- a) Without prejudice to the obligations, ISCL shall enjoy the following rights during the Agreement Period.
- b) ISCL shall have right to take the Public Bicycle Sharing System from the Service Provider for not carrying out his obligation at the end of Agreement Period or Termination whichever is earlier.
- c) ISCL, its personnel, and authorized contractors shall have access to payment collection system and shall not be in any manner obstructed by the Service Provider, its personnel, or contractors, and the said machines shall in no manner be tampered with or damaged by the Service Provider or its personnel.
- d) ISCL reserves the right and will provide specifications for the advertisement at bicycle sharing stations. The Service Provider can create display areas at stations, and other locations for advertisements as per the technical specifications and subject to approval by ISCL.
- e) ISCL reserves its right to install any value added services such as CCTV, Cameras / phone / entertainment and passenger information equipment, other systems etc. and other gadgets / equipment for any reason including to enhance safety, for commuter convenience, for better quality of service, to meet statutory requirements, etc. Service provider would not claim any share in the revenue, which may accrue to ISCL due to the aforementioned services / equipment / gadgets. Service provider would not increase or hike maintenance charges because of above, nor would the quality / parameters of services provided get impaired due to such installations equipment. Service provider would take due care so as to ensure that there is no damage to the installations / equipment etc., during /after maintenance services. ISCL may have a separate maintenance contract for these additional equipment / installations and Service provider would have no objection for same. Service provider would take due care that any such equipment is not damaged during maintenance / cleaning.
- f) ISCL shall have a right to make request to Service Provider to operate the Public Bicycle Sharing System outside the Coverage Area.
- g) ISCL shall have right to decide the daily schedule with regards to allotted Public

Cycle Sharing System operation maintaining the minimum operation hours as mentioned in the Fare Structure.

- h) ISCL shall have right to levy penalties /damages as per this terms of this Agreement and recover the same from the dues payable to the Service Provider and/or from the Performance Security.
- i) Right to issue operating instruction and any other advisory or instruction as deemed necessary to maintain highest standards of Public Bicycle Sharing System services including safety, functionality and operations of the services.
- j) Service provider would maintain log books, on all maintenance work / activities pertaining to all aspects of the Public Bicycle Sharing System; would be entered therein on regular basis. ISCL would be free to inspect logbooks at all times and the service provider would make logbooks available to him/ his representative and answer all queries to ISCL satisfaction.
- k) The right to supervise the performance and execution of this Contract, and to have access to the documents as per terms of this Contract.
- l) Any other rights for implementation of the Public Bicycle Sharing System.

## **12. Service Provider's Rights**

Without prejudice to the obligations, the Service Provider shall enjoy the following rights during the Agreement Period:

- i. to operate the Public Bicycle Sharing System for as per the terms of this Agreement.
- ii. to collect fare for the Public Bicycle Sharing System and to determine and implement the methodology for the same.
- iii. to fix the advertisement rate and receive payment of the Authorized Fleet from ISCL at the rates fixed and as per the payment system prescribed in this Agreement.
- iv. to 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 ISCL.
- v. To receive the revenue from the advertisement,
- vi. To organize cycle rally subject fulfillment of all applicable rules & regulations.

## **13. Force Majeure and Change in Law and Termination**

### **13.1 Force Majeure Event**

None of the Parties shall be liable to the other Party or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of its

own obligations in relation to the Agreement, if the delay to failure is due to any Force Majeure, provided the Parties has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, cause or is likely to be caused to the project facilities as a result of the Force Majeure Event and to restore the project facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement.

For this purpose, Force Majeure ("Force Majeure") shall be defined as any event lying beyond the reasonable control of either the Service Provider or ISCL. Such events, shall include, but not be limited to, the following:

- i. Earthquake, flood, inundation and landslide,
- ii. Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances.
- iii. Fire caused by reasons not attributable to the Service Provider or ISCL or any of the employees, contractors or agents appointed by the Service Provider or ISCL,
- iv. Acts of terrorism;
- v. Strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Service Provider or ISCL.
- vi. Action of a Government Agency having Material Adverse Effect including but not limited to
  - (a) Acts of expropriation, compulsory acquisition or takeover by any Government Agency of any Project Assets or Property or any part thereof or of Service Provider's rights in relation to the Project.
  - (b) Any judgment or order of a court of competent jurisdiction or statutory authority in India made against Service Provider or any contractor appointed by Service Provider for the purposes of the Project, in any proceedings which is non-collusive and duly prosecuted by Service Provider.
  - (c) Any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Approvals, in each case, for reasons other than Service Provider's or any of its contractor's breach or failure in complying with the Applicable Laws, Applicable Approvals, any judgment or order of a Governmental Agency or of any contract by which Service Provider or its contractor as the case may be is bound
- vii. Early termination of this Agreement by ISCL for reasons of national emergency or national security.
- viii. War, hostilities (whether declared or not), invasion by foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionizing radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, and volcanic eruptions.
- ix. Changes in law that materially affect the respective rights and obligations of the parties signatory to this Agreement and/or their capability to perform according to the provisions of this Agreement.
- x. Pandemic

If a Force Majeure situation arises, Service Provider shall promptly notify ISCL in writing of such conditions and the cause thereof as provided for in Clause 13.2. Unless otherwise

directed by ISCL in writing, Service Provider shall continue to perform its obligations under the Agreement as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

Any insurance proceeds received shall be, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event or in accordance with Good Industry Practices.

### **132 Notice of Force Majeure Event**

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

- i. The nature and extent of the Force Majeure Event;
- ii. The estimated Force Majeure Period;
- iii. The nature of and the extent to which, performance of any of its obligations Under this Agreement is affected by the Force Majeure Event;
- iv. the measures which the Affected Party has taken or proposes to take to alleviate / mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
- v. Any other relevant information concerning the Force Majeure Event, and / or the rights and obligations of the Parties under this Agreement.
- vi. As soon as practicable and in any case within 7 (seven) days of notification by the Affected Party in accordance with the preceding clause (a), the Parties shall meet, hold discussions in good faith in order to:
- vii. Assess the impact of the underlying Force Majeure Event,
- viii. To determine the likely duration of Force Majeure Period and,
- ix. 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.

### **133 Performance of Obligations**

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

- i. Due notice of the Force Majeure Event has been given as required by the preceding

- ii. The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event
- iii. 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 Cycle Sharing System/Project and / or the Agreement as a result of the Force Majeure Event and to restore the Cycle Sharing System/Project and Premises, in accordance with the Good Industry Practice and its relative obligation under this Agreement;
- iv. When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice as soon as possible to that effect, and in any case not later than fourteen (14) days following the occurrence of such event and shall promptly resume performance of its obligations hereunder, the nonissue of such notice being no excuse for any delay for resuming such performance;
- v. The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;

#### **134 Relief for a Force Majeure Event**

Subject to the clauses in this section 11, the rights and liabilities of both the Parties shall be suspended during the duration of Force Majeure Event and the Agreement period shall be extended for the period.

#### **135 Termination due to Force Majeure Event**

If a Force Majeure Event as described in Clause 13.1 continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 days, the parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the parties are unable to reach an agreement in this regard, the affected party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement

Upon Termination of this Agreement on account of a Force Majeure Event, the Service Provider shall be entitled to the following (a) receive any outstanding payments due to it for services rendered under the Service Provider Agreement up to the date of Termination and (b) discharge of the performance guarantee in full. On occurrence of Termination due to Force Majeure, ISCL shall have right to take back Premises provided to the Service Provider and assets developed by the Service provider.

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding clause (a) it shall issue Termination Notice setting out: (i) in sufficient detail, the underlying Force Majeure Event; (ii) the Termination Date which shall be a date occurring not earlier than 60(Sixty) days from the date of Termination Notice; (iii) if and to the extent applicable the estimated money payable by / to the Affected Party including the details of computation thereof and; (iv) any other relevant information.

### **13.6 Liability for other losses, damages etc.**

Save and except as expressly provided in this Agreement, and the RFP documents, neither Party hereto shall be liable in any manner whatsoever to the other party in respect of indirect or any consequential loss.

## **14. Events of Default and termination**

Events of Default shall mean either Service Provider Event of Default or ISCL Event of Default or both as the context may admit or require.

### **14.1 Service Provider Event of Default**

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

- i. Service Provider is in breach of any of its obligations under this Agreement and the same has not been remedied for more than sixty (60) days:
- ii. A resolution for voluntary winding up has been passed by the shareholders of Service Provider
- iii. Any petition for winding up of Service Provider has been admitted and liquidator or provisional liquidator has been appointed or Service Provider 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 and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Service Provider under this Agreement.
- iv. The Service Provider has been declared bankrupt or insolvent.
- v. Service Provider fails to adhere to the timelines set forth in the Agreement for performance of Service provider's obligations there under; and / or
- vi. Service Provider fails to comply with the applicable laws, rules, regulation of the country.
- vii. Any representation made or warranties given by the Service Provider under this Agreement is found to be false or misleading;
- viii. Service Provider suspends or abandons the operations of the Public Bicycle Sharing System without the prior consent of ISCL, provided that the Service Provider 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 ISCL.
- ix. Service Provider repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.



- x. The Service Provider failed to make any payments/damages/penalties due to Authority within period specified in Service Provider Agreement or indicated by ISCL without any valid reason.
- xi. Service Provider failed to perform any of the Service Provider's obligations including operations and maintenance obligations
- xii. Service Provider is in/commits a Material Breach of the Service Provider Agreement.
- xiii. Service Provider sub-let or sub lease or sub contract the Project Asset without prior approval of ISCL.
- xiv. Service Provider fails to adhere to the timelines set forth in the Service Provider Agreement for performance of Service Provider's obligations there under; and reason thereof Liquidated Damages exceeds value of Performance Security;
- xv. Levy of an execution or restraint on the Service Provider's assets which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 60 (sixty) days.

#### **14.2 ISCL Event of Default**

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

- i. ISCL is in breach of any of its obligations under this Agreement and has failed to cure such breach within sixty (60) days of occurrence thereof.
- ii. ISCL has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- iii. ISCL or any Governmental Agency has by an act of commission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Service Provider and has failed to cure the same within 60 days of notice thereof by the Service Provider.
- iv. Any representation made or warranties given by the ISCL under this Agreement is found to be false or misleading.

#### **14.3 Termination for Service Provider Event of Default**

In the event of the Service Provider Event of Default, ISCL shall have the right to any or all of the following:

- i. Invoke the Performance Guarantee
- ii. Take any other action including provisioning of the equipment of the Public Bicycle Sharing System through any replacement service provider selected by ISCL in its sole discretion at the risk and cost of the Service Provider
- iii. Take over the entire infrastructure developed by the Service Provider for the Public Bicycle Sharing System or any part thereof.

- iv. transfer the said infrastructure or part thereof to a replacement Service Provider selected by ISCL , at ISCL 's sole discretion.

Upon Termination of this Agreement on account of Service provider Event of Default, ISCL shall not be liable to pay any termination payment to Service provider.

#### **14.4 Termination for ISCL Event of Default**

Upon Termination of this Agreement on account of ISCL Event of Default, the Service Provider shall be entitled to the following:

- i. Receive any outstanding payments due to it for services rendered under the Service Provider Agreement up to the date of Termination.
- ii. Discharge of the performance guarantee in full.

#### **14.5 Termination for Insolvency, dissolution, etc.**

ISCL may at any time terminate the Agreement by giving written notice to Provider without any compensation to Provider, if Provider becomes bankrupt or otherwise insolvent or in case of dissolution of firm or winding up of the company, provided that such termination will not prejudice any other rights of ISCL. Notwithstanding the generality of the foregoing, ISCL reserves the right to invoke the Performance Guarantee and/or take any other action including appointment of any replacement Provider selected by ISCL in its sole discretion, take over the entire infrastructure developed by Provider for the Public Bicycle Sharing System or any part thereof, and to transfer the said infrastructure or part thereof to a replacement Provider selected by ISCL, in ISCL's sole discretion.

#### **14.6 Termination Notice Period**

Either Party terminating the Agreement shall provide a notice of 30 (thirty) days.

### **15. Project Handover**

The handing over process for Project shall be initiated at least 6 (six) months before the Expiry Date by joint inspection of ISCL and the Service provider. ISCL shall within 15 (fifteen) days of such inspection prepare and furnish to the Service Provider a list of works / jobs / addition / alterations, if any, to be carried out to bring the Public Bicycle System to the prescribed level of service condition at least 2 (two) months prior to the date of the expiry of the Agreement Period. In case the Service Provider fails to carry-out the above works, within the stipulated time period the ISCL shall be at liberty to have these works executed by another agency or on its own at the risk and cost of the Service provider. Any cost incurred by ISCL in this regard shall be reimbursed by the Service Provider to ISCL within 7(seven) days of receipt of demand.

For this purpose, ISCL shall without prejudice to any other right/remedy available to it,

under this Agreement, have the right to appropriate the Performance Security and / or to set off any amounts due, if any and payable by ISCL to the Service Provider to the extent required / available and to recover deficit amount, if any, from the Service provider.

On the expiry of the Term or at any prior determination of the Contract, the Service Provider shall deliver possession of the Project unto the ISCL including all station, hardware & software thereat.

The Contractors/employees hired by the Service Provider during the Term, and any extensions thereof shall automatically be transferred to the ISCL at the end of the Term, but at the sole discretion of the ISCL. Should ISCL decide not to hire any of the Contractors/employees, their services would be deemed to have been terminated. The Service Provider should include a covenant to this effect in its entire contractual agreements/ appointment letters.

## **16. Dispute Resolution and Arbitration**

All disputes or differences of any kind whatever arises between the Parties in connection with or arising out of or relating to, or under this Agreement, the Parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement

In the event of any dispute arising between the Parties in relation to or under this Agreement, that could not be settled amicably, the same shall be settled by arbitration conducted by an arbitral tribunal consisting of three arbitrators, one to be appointed by each party and the third arbitrator being appointed by the two arbitrators so appointed. The decision of the arbitration tribunal shall be final and binding. The seat and venue for the arbitration shall be Imphal. The arbitration will be governed by the provisions of the Arbitration and Conciliation Act, 1996. The costs of the arbitration tribunal shall be equally borne by both the parties. Each Party shall bear its own cost of the arbitration provided however, the parties can claim costs as part of the relief sought from the arbitration tribunal.

## **17. Jurisdiction**

The courts in Imphal shall have jurisdiction to try all disputes and matters arising out of an under this Agreement, after reference to arbitration.

## **18. 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.

## **19. Representations and Warranties**

### **19.1 Representation and Warranties of the Service provider**

The Service Provider represents and warrants to ISCL that: it is duly organized, validly existing and in good standing under the laws of India;

- i. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- ii. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- iii. It has the financial standing and capacity to undertake the Service Provider Agreement for the Public Bicycle Sharing System Project;
- iv. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- v. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Service provider's Memorandum and Articles of Association OR Partnership Deed as may be applicable or any Applicable Laws or any covenant, Agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- vi. There are no actions, suits, proceedings or investigations pending or to the Service provider'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 an event of default on the part of the Service Provider or which individually or in the aggregate may result in material adverse effect;
- vii. It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material adverse effect;
- viii. 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;
- ix. No representation or warranty by the Service Provider contained herein or in any other document furnished by it to ISCL or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- x. No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Service Provider to any person to procure the contract.
- xi. Without prejudice to any express provision contained in this Agreement, the Service Provider acknowledges that prior to the execution of this Agreement, the

Service Provider has after a complete and careful examination made an independent evaluation of all aspects of the Public Bicycle Sharing System Project, and the information provided by ISCL, 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 Service Provider in the course of performance of its obligations hereunder.

- xii. The Service Provider 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 ISCL shall not be liable for the same in any manner whatsoever to the Service provider.

## **192 Representations and Warranties of ISCL**

ISCL represents and warrants to the Service Provider that:

- i. ISCL has full power and authority to grant the RFP and enter into Agreement with Service Provider.
- ii. ISCL has taken all necessary action to authorize the execution, delivery and performance of this Agreement;

## **193 Obligation to Notify Change**

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

## **194 Indemnification**

Service Provider shall at all times, i.e. during the subsistence of the Agreement and at any time thereafter, defend, indemnify and hold ISCL 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 court costs) arising out of or relating to the breach by Service Provider of any covenant representation or warranty or from any act or omission of the Service Provider or his agents, employees or sub-contractors.

## **20. Miscellaneous**

### **20.1 Assignment and charges**

Service Provider shall not assign, in whole or in part, any right or delegate any duty under the Agreement to any third party, except with ISCL's prior written consent in this:

- a) The Service Provider shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of ISCL.

- b) The Service Provider shall not create nor permit to subsist any encumbrance over premises except with prior consent in writing of ISCL, which consent ISCL shall be entitled to decline without assigning any reason whatsoever.
- c) Restraint set forth in clauses (a) and (b) above shall not apply to liens/ encumbrances arising by operation of law (or by an Agreement evidencing the same) in the ordinary course of the Business of the Service provider;

## **202 Liquidated Damages**

In the event of delay in supply of the Cycle Sharing System by the Service Provider beyond the Commencement Date (including the grace period if any as approved by ISCL) and up to the end of the additional period (90 days) provided by ISCL, Service Provider shall pay to ISCL liquidated damages at 1% of the performance guarantee per day of delay in making the service operational, for the first 90 days.

In case the Service Provider is unable to make the system operational with manpower and supporting maintenance infrastructure within these 90 days of Commencement Date, ISCL reserves the right to terminate the Service Provider Agreement and forfeit the Performance Guarantee amount. No interest shall be paid by ISCL on the Performance Guarantee.

## **203 Survival**

It is provided that the termination of this Agreement shall not relieve the Service Provider or ISCL of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and except as otherwise provided in any provision of this Agreement expressly limiting the liability of either party, shall not relieve either Party of any obligations or liability for loss or damage to the other party arising out of or caused by acts or omission of such party prior to the effectiveness of such Termination or arising out of such Termination.

## **204 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, recognized courier, mail or email transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to ISCL:

Chief Executive Officer Imphal Smart City Ltd.

Directorate of MAHUD, PDA Complex, North AOC, Imphal – 795001.

Email: ceoimphalsmartcity@gmail.com

If to the Service provider

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

In the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at the address, and in the case of any communication made by email, when transmitted properly addressed to such email address.

## **20.5 Severability**

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

## **20.6 Language**

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

## **20.7 Ownership & Protection of Project Assets during Contract Period and Transfer of Project Assets after end of Contract Period**

ISCL shall retain the title and ownership of assets developed for Public Bicycle Sharing System.

Service Provider shall exercise all due caution to protect and maintain Project Assets, Premises and the data created out of this Public Bicycle Sharing System Project including identification and financial data collected from Members. Service Provider shall not share, sell, or in any manner use the data created by Service Provider out of this Public Bicycle Sharing System otherwise than in accordance with the terms of the Service Provider Agreement.

Security of premises and Project Assets including theft thereof shall be the responsibility/liability of the Service Provider. Upon occurrence of theft of any instrument/hardware /software installed by the ISCL or Service Provider, the Service Provider shall reinstall/reinststate at his cost such hardware/software/instrument that of original specification and functionality of that hardware/software/instrument.

Service Provider shall not share, sell or in any manner use the data created by Service Provider out this Public Bicycle Sharing System Project otherwise than in accordance with the terms of the Agreement.

ISCL shall own any and all data created out of the Cycle Sharing Project at all the times, during and after the expiry/termination of the Agreement. Service Provider shall not

have any claim on and for such data and shall not for any reason withhold such data from ISCL. After the expiry or termination of the Service Provider Agreement, Service Provider shall have no right, title, or interest in or to any work including without limitation the designs, software, modifications, bicycles or facilities developed by ISCL under the Public Bicycle Sharing System for any purpose whatsoever. The Service Provider shall hand over all identification and financial data about Members to ISCL. The Service Provider's copy (ies) of Member data shall be destroyed.

## **20.8 Intellectual Property Rights**

Service Provider shall acknowledge and agree that any and all hardware, software, and / or firmware developed by ISCL or Service Provider in relation to the Public Bicycle Sharing System and any modifications thereto or works derived therefrom shall be the exclusive property of ISCL at all times and ISCL shall retain all right, title and interest in and to the same. Provided however that the Service Provider shall have the right to possess and use the same during the Agreement Period for purposes of effective implementation, operation and maintenance of the Public Bicycle Sharing System on specific approval of the same by ISCL.

For purposes of the Agreement the terms "software", "software programs" shall include without limitation the specifications, documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to any of the foregoing provided at the sites by the Service Provider in relation to the Public Bicycle Sharing System pursuant to the Agreement.

## **20.9 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:

Signed by:



1. [ISCL]

2. <Service Provider>

\_\_\_\_\_  
<sign here>

\_\_\_\_\_  
\_<sign here>

\_\_\_\_\_  
(Typed or printed name)

\_\_\_\_\_  
(Typed or printed name)

Title:

Title:

Company: Date:

Company: Date:

In presence of

1. For and on behalf of ISCL (Witnesses)

(i) [Authorized Representative] (ii)

2. For and on behalf of [name of Consultant], In presence of (Witnesses) (i)

(ii)

### Schedule 1: Service Level Indicator

1. The Exhibit below provides the Service Levels to be adhered by the Service Provider during the operational hours of the project/system/sub-system/components. The scheduled maintenance and the scheduled down time shall be carried out by the Service Provider during the non-operational hours of the project. In case of not meeting the Service Level, the corresponding penalties as defined in the Exhibit below shall apply:

Sl. No.	Performance Indicator	Service Level Indicator	Penalty
1	Bicycle Availability of the total authorized fleet size during the operating hour	95% or more	No Penalty
		Less than 95%	INR 2000 per day

2	Service Availability (Number of hours when the system is operational)	Should always be 98% of the agreed hours of operations, measurable on monthly basis (unless permission has been granted by Authority for otherwise)	INR 50000 per month
		Repetition of more than thrice in a financial year	Possible Termination of Contract.
3	Combined number of hours that stations have no empty docks (Redistribution of Cycles)	More than 1 hour per day	INR 1000 per day
4	Average days taken to Resolve customer complaints.	More than 3 (three days)	INR 1000 per day

2. Service Provider shall prepare and distribute Service level performance reports in a mutually agreed format by the 7th working day of subsequent month. The reports shall include “actual versus target” Service Level Performance, a variance analysis and discussion of appropriate issues or significant events. Performance reports shall be distributed to Authority management personnel as directed by Authority. Also, Agency may be required to get the Service Level performance report audited by a third-party Auditor appointed by the Authority (if required).
  
3. Service Level Change Control
  - (a) It is acknowledged that this **Service Levels may change as Authority’s business needs evolve over the course of the contract period.** As such, this document also defines the following management procedures:
    - (i) A process for negotiating changes to the Service Levels;
    - (ii) An issue management process for documenting and resolving particularly difficult issues;
    - (iii) Authority and Service Provider management escalation process to be used in the event that an issue is not being resolved in a timely manner by the lowest possible level of management.
  - (b) The Parties may amend Service Level by mutual agreement in accordance. Any changes to the levels of service provided during the term of this Agreement shall be requested, documented and negotiated in good faith by both Parties. Either Party can request a change.

**Schedule 2: Manufacturer's Instruction and Manual**

(To be provided by the Service Provider to the [ISCL]).

**Schedule 2: Operating Plan**