



**DMIC INTEGRATED INDUSTRIAL TOWNSHIP GREATER NOIDA LIMITED
INTERNATIONAL COMPETITIVE BIDDING (ICB)**

**REQUEST FOR QUALIFICATION (RFQ) CUM REQUEST FOR PROPOSAL (RFP)
VOLUME II**



(Reference No: DMIC - IITGNL/2025-26/563, Dated: 07.11.2025)

**DEVELOPMENT OF GREENFIELD MULTI MODAL LOGISTICS HUB (MMLH) ON
DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS AT
GREATER NOIDA, GAUTAM BUDDH NAGAR, UTTAR PRADESH**

DRAFT CONCESSION AGREEMENT

November 2025

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PART - I: PRELIMINARY

CONCESSION AGREEMENT

(To be executed on non-judicial stamp paper of appropriate value as per Stamp Act and duly notarized)

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

BETWEEN:

1. DELHI MUMBAI INDUSTRIAL CORRIDOR INTEGRATED INDUSTRIAL TOWNSHIP GREATER NOIDA LIMITED (“**DMIC IITGNL**”), a company incorporated under the provisions of the Companies Act, 1956 with CIN U74900UP2014PLC063430 and having its registered office at 11th Floor, Tower-1, Plot No. 1, Knowledge Park-IV, Greater Noida, Gautam Buddh Nagar, Uttar Pradesh-201308, India (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

AND

2. {*****¹ }, a company incorporated under the provisions of the Companies Act, 2013 with CIN ***** and having its registered office at ***** (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part

The Authority and the Concessionaire shall collectively be referred to as “Parties” and individually be referred to as “Party” as the case may be.

WHEREAS:

- (A) The Government of India (GOI) has entrusted the responsibility of development, operation and maintenance of Multi Modal Logistics Hub (MMLH) at Greater Noida in the state of Uttar Pradesh (U.P.) to National Industrial Corridor Development and Implementation Trust (“**NICDIT**”);
- (B) For the aforesaid purpose, NICDIT and Government of Uttar Pradesh (GOUP) (represented by Greater Noida Development Authority (“**GNIDA**”)), has promoted and incorporated the Authority as a Special Purpose Vehicle (SPV) and the Authority has resolved to establish the MMLH at Greater Noida in the state of U.P. on design, build, finance, operate and transfer (“**DBFOT**”) basis in accordance with the terms and conditions to be set forth in a Concession Agreement to be entered into;
- (C) Based upon the representations and submissions made by the Authority, the applicable permits that are required prior to implementation of the Project were granted to the Authority from the concerned Government Instrumentalities;
- (D) The Authority, had accordingly invited proposals by its Request for Qualification cum Proposal No. ***** dated ***** for selection of bidder to build, operate and maintain the MMLH at Greater Noida in the state of U.P. on PPP basis (“the **Request for Qualification cum Proposal**” or “**RFQ**”

¹ Instruction to Bidders

Note 1: Asterisk are to be retained in the draft Concession Agreement and shall be suitably filled by the selected bidder after the issue of LOA in order to reflect Bid-specific particulars in the Concession Agreement. However, asterisk shall be retained in all the Schedules which contain formats that are to be used after the Concession Agreement is executed.

Note 2: The provisions in curly brackets are to be retained in the draft Concession Agreement forming part of the RFQ cum RFP document and shall be suitably modified by the selected bidder after the issue of LOA in order to reflect the Bid-specific particulars in the Concession Agreement.

Note 3: Footnotes marked “£” are to be retained in the draft Concession Agreement. These footnotes are for guidance of the selected bidder and shall be omitted before executing the Concession Agreement. However, footnotes marked “\$” shall be retained in the Concession Agreement as a part thereof.

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

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

“**Accounting Year**” means the financial year commencing from the 1st (first) day of April of any calendar year and ending on the 31st (thirty-first) day of March of the next calendar year;

“**Additional Auditor**” has the meaning ascribed to it in Clause 29.3;

“**Additional License Fee**” shall have meaning ascribed to it in Clause 25.2;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% based on the written down value method) to reflect the variation occurring in Price Index between the date of procurement thereof and the Transfer Date;

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the 1st (first) day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on the COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in Price Index occurring between COD and the Reference Date;
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.21% (zero point twenty one per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD and the Reference Date.

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of Price Index shall continue to be made;

“**Adverse Impact**” shall have the meaning as set forth in Clause 37.1;

“**Affected Party**” shall have the meaning as set forth in Clause 30.1;

“**Affiliate**” or “**Associate**” means, with respect to any Party and/or with respect to the Bidder and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Bidder and/or member of Consortium. For the purposes of this definition, the term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as applied to any Party or Bidder or a member

of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Bidder or a member of Consortium whether through ownership of 50% (fifty per cent) or more of the voting securities, by contract, or otherwise;

“Agreement” or **“Concession Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Appendix” shall have the meaning as set forth in Clause 10.3.1;

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

“Applicable Permits” means any and all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document;

“Appointed Date” means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

“Approved Valuer” means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding INR 100 crore (Rupees one hundred crore) each in value;

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

“Authority” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Authority Default” shall have the meaning as set forth in Clause 33.2.1;

“Authority Representative” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having Authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

“Average Daily Revenue” means the amount arrived at by dividing the total revenue collected in the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and increasing the quotient thereof by 5%; provided that the Average Daily Revenue for any period prior to completion of the 1st (first) Accounting Year following COD shall be a simple average of the revenue collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the revenue payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Revenue for such period;

“Bank” means a bank incorporated in India and having a minimum net worth of INR 1,000 crore (Rupees one thousand crore);

“Bank Rate” means the average of 1 year MCLR rate of interest of top 5 (five) Scheduled Commercial banks of India

“Bid” means the documents in their entirety comprised in the Bid submitted by the {selected Bidder/Consortium} in response to the Request for Qualification cum Proposal in accordance with the provisions thereof;

“Bid Security” means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Qualification cum Proposal, and which is to remain in force until substituted by the Performance Security;

“COD” or “Commercial Operation Date” shall have the meaning as set forth in Clause 15.1;

“Change in Law” means the occurrence of any of the following after the Bid Date and having Adverse Impact:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law or any international treaty to which GOI is a signatory;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period of phase-1 and 2 (two) years thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period of 2 (two) years after COD, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning as set forth in Clause 16.1.1;

“Change of Scope Notice” shall have the meaning as set forth in Clause 16.1.1;

“Check Point” shall have the meaning as ascribed to it under Schedule M of this Agreement

“Company” means the company acting as the Concessionaire under this Agreement;

“Competing Facility” means an area within which all activities relating to aggregation, dis-aggregation, storage, and distribution of multi commodities, both for national and international transit are carried out. It is an integrated facility developed by the Authority in PPP mode, with a minimum area of 100 (one hundred) acres and necessarily comprises of 1) A railway siding or a river port or an airport, for the intermodal exchange of cargo, 2) custom clearance facilities, 3) Mechanized cargo handling systems, 4) warehouses, cold storages and custom bonded storages;.

“Completion Certificate” shall have the meaning as set forth in Clause 14.2;

“Committee” shall have the meaning assigned to it under Clause 37.1;

“Concession” shall have the meaning as set forth in Clause 3.1.1;

“**Concessionaire**” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“**Concession Fee**” shall have the meaning as set forth in Clause 25.1;

“**Concession Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**Concessionaire Default**” shall have the meaning as set forth in Clause 33.1.1;

“**Conditions Precedent**” shall have the meaning as set forth in Clause 4.1.1;

“**Consortium**” shall have the meaning as set forth in Recital (E);

“**Consortium Member**” means a company specified in Recital (E) as a member of the Consortium;

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD for phase-1 of MMLH development and the Construction Period for subsequent phases (if any) shall be the period from the commencement of construction of the respective phase to the commissioning of the respective phase;

“**Construction Works**” means all works, equipment and things necessary to complete the Project and provide the Project Facilities and Services in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“**CPI (IW)**” means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

“**Damages**” shall have the meaning as set forth in Sub-clause (x) of Clause 1.2.1;

“**Debt Due**” means the aggregate of the following sums representing the amounts advanced by the Senior Lenders towards Total Project Cost, expressed in Indian Rupees as may be outstanding and payable to the Senior Lenders under the Financing Documents on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Documents for financing the Total Project Cost for each phase (“the **Principal**”) but excluding any part of the Principal that had fallen due for repayment two years prior to the Transfer Date;

- (b) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (a) above up to the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Deemed Performance Security” shall have the meaning as set forth in Clause 9.4;

“Development Period” means the period from the date of this Agreement until the Appointed Date;

“Dispute” shall have the meaning as set forth in Clause 40.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 40.1.1;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 34.1;

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-I, and shall include ‘as built’ drawings of the Project;

“EPC Contract” means engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, *inter alia*, engineering and construction of the Project in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Project any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire, and any interest-free funds advanced by any shareholder of the Concessionaire for meeting such equity component, but does not include equity support by the Authority;

“Escrow Account” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and

expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning as set forth in Clause 27.1.2;

“Escrow Bank” shall have the meaning as set forth in Clause 27.1.1;

“Escrow Default” shall have the meaning as set forth in Schedule Q;

“EXIM container traffic” means number of standardized containers used for intermodal freight transport of export and import cargo in Twenty-foot equivalent unit (TEUs);

“Fee” means the charge levied on and payable by a User for provision of any or all of the Services, in accordance with the Schedule of Fees and this Agreement;

“Financial Assistance” means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning as set forth in Schedule Q;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues there from on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Package” means the financing package indicating the phase wise Total Project Cost/Overall Total Project Cost of project completion and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt;

“Financing Agreements” means the agreements executed by the Concessionaire for each phase in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 30.1;

“GOI” or **“Government”** means the Government of India;

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

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

“Gross Revenue” means

All the pre-tax revenues earned from the user for and in respect of Project Facilities and Services provided under or pursuant to this agreement during the relevant period of computation.

Gross Revenue shall be computed based on the Fees charged to the Users and shall include any one-time or upfront revenue, and shall also include any imputed revenue calculated as per Clause 19.1 for and in respect of different Services as under.

- (a) **Revenue from terminal services** – Gross Revenue shall include any revenue earned from the Fees charged to the User(s) in providing terminal services. For avoidance of doubt, the revenue heads will inter alia include Terminal Handling Charges, Container Handling Charges, Cargo Handling Charges, Lift on / Lift off (LOLO) Charges, Terminal Service Charges, Terminal Access Charge, Customs Examination charges, Weighment Charges, Documentation Charges, Documentation & Surveyor Charges, Maintenance & Repair Charges, Data Charges, Infrastructure & Development Charges, Terminal Infra-charge on Loaded Containers, Equipment Imbalance Charge on Loaded Containers, Storage Charges, Ground Rent, or any other charge analogues to charges mentioned herein above.
- (b) **Revenue from warehousing services** – Gross Revenue shall include any revenue earned from
 - (i) Fees earned directly from the User(s) by the Concessionaire or by an associated firm providing warehousing services; and
 - (ii) Fees from sub-licensing, sub-contracting, or other similar contractual arrangements, of Warehousing Zone facility, in full or in part to any third-party agency, if applicable
- (c) **Revenue from transportation services** – Gross Revenue shall include any revenue earned from transportation services.
- (d) **Revenue from value-added services** – Gross Revenue shall include any revenue earned from the Fees charged to the User(s) in providing value-added services
- (e) **Revenue from Commercial Zone services** - Gross Revenue shall include any revenue earned from
 - (i) Fees earned directly from the User(s) by the Concessionaire or by an associated firm providing Commercial Zone services; and
 - (ii) Fees from sub-licensing, sub-contracting, or other similar contractual arrangements, of Commercial Zone, in full or in part to any third-party agency, if applicable
- (f) **Revenue from Allied services** - Gross Revenue shall include any revenue earned from the Fees charged to the User(s) in providing any other services not mentioned herein.

Further, in computing the Gross Revenue, income from interest on investments such as including security deposits, advances, premiums received etc. shall also be included.

Any income receipts from the sale of Movable Assets (sale of Movable Assets for replacement of the same assets or its substitute in the Project and certified by the Independent Engineer), amount received by the Concessionaire by way of damages from third parties (excepting damages received from the Users on account of demurrage or such other related charges in respect of the Project Facilities and Services), taxes and cesses in respect to the Project Facilities and Services, if any, collected and paid to any Government authority shall not be included in computation of Gross Revenue.

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 38;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 38;

“Independent Engineer” means a technical consultancy firm appointed in accordance with Article 22 for supervision and monitoring of compliance by the Concessionaire with the Scope of the Project, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Schedule N;

“Indirect Political Event” shall have the meaning as set forth in Clause 30.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 28, and includes all insurances required to be taken out by the Concessionaire under Clause 28.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration;

“LOA” or “Letter of Award” means the letter of award referred to in Recital (E);

“Lead Member” shall have the meaning as set forth in Recital (E);

“Lenders’ Representative” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes its successors, assigns and substitutes;

“License Fee” shall have meaning ascribed to it in Clause 25.2;

“Maintenance Manual” shall have the meaning as set forth in Clause 17.3.1;

“Maintenance Programme” shall have the meaning as set forth in Clause 17.4.1;

“Maintenance Requirements” shall have the meaning as set forth in Clause 17.2;

“Master Plan” means the master plan set forth in Schedule A for construction, development and operation of the Project in accordance with the provisions of this Agreement, and includes the vacant land earmarked for expansion of the Project;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its rights or perform/discharge any of their obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Memorandum” shall have the meaning as set forth in Clause 10.3.1;

“Minimum Guaranteed Revenue Share” shall have the meaning set forth in Clause 25.5;

“Multi Modal Logistics Hub/MMLH” shall mean an infrastructure facility spread over a minimum area of 100 (one hundred) acres at the Site, with round the clock multi modal freight transport access, enabling inter modal handling and storage of Containers and Cargo, so as to provide a basket of logistics services including value added services and shall include facilities for export and import of cargo/containers.

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“Non-Political Event” shall have the meaning as set forth in Clause 30.2;

“O&M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and revenue generation in accordance with the provisions of this Agreement;

“O&M Contract” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“O&M Contractor” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or an other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning as set forth in Clause 19.3;

“Operation Period” means the period commencing from COD and ending on the Transfer Date;

“Overall Total Project Cost” shall have the meaning as ascribed to it under the definition of Total Project Cost;

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 32.2.1;

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

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

“Price Index” shall comprise: -

(a) 70% (seventy per cent) of WPI; and

(b) 30% (thirty per cent) of CPI (IW),

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“Political Event” shall have the meaning set forth in Clause 30.4;

“Premium” shall have the meaning set forth in Clause 25.3;

“Project” means the design, finance, construction, operation, maintenance and marketing of the MMLH in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Affected Families” means:

(a) a family whose land or other immovable property has been acquired;

(b) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(c) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land of a family

whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

- (d) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition; and
- (e) a family residing on any land in the urban areas for preceding 3 (three) years or more prior to the acquisition of the land or whose primary source of livelihood for 3 (three) years prior to the acquisition of the land is affected by the acquisition of such land

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire for each phase with any person in connection with matters relating to, arising out of or incidental to the Project including Commercial Zone Development, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services during construction period involving a consideration of up to Rs. 5(five) Crore;

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, electrical systems, communication systems and administrative areas, (c) Project Facilities and Services situated on the Site; (d) buildings and immovable fixtures or structures forming part of the Project, including the Commercial Zone (e) all rights of the Concessionaire under the Project Agreements; (f) financial assets, such as receivables, security deposits etc.; (g) insurance proceeds; and (h) Applicable Permits and authorizations relating to or in respect of the Project, including the Commercial Zone;

“Project Completion Date” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule G for completion of the Project on or before the Scheduled Completion Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule C;

“Project Milestones” means the project milestones set forth in Schedule G;

“Provisional Certificate” shall have the meaning set forth in Clause 14.3;

“Punch List” shall have the meaning ascribed to it in Clause 14.3;

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“Realisable Revenue” means all the revenue due and realisable under this Agreement, with or without any discounts or reduction in Fee, but does not include revenue that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Revenue shall be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, which shall truthfully reflect the actual collection of revenue;

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence

of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“**Request for Qualification cum Proposal**” or “**RFQ cum RFP**” shall have the meaning set forth in Recital (D);

“**Revenue Share**” shall have the meaning as set forth in Clause 25.3;

“**Right of Way**” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project and Commercial Zone in accordance with this Agreement;

“**Safety Consultant**” shall have the meaning set forth in Schedule K;

“**Safety Requirements**” shall have the meaning set forth in Clause 18.1.1;

“**Services**” shall mean the services to be provided at the Project as set forth in Schedule B;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.5;

“**Scope of the Project**” shall have the meaning set forth in Clause 2.1;

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“**Site**” shall have the meaning set forth in Clause 10.1;

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

“**Specified Assets**” means and includes all or any of the Project Assets forming part of the Project but shall in no case include any land;

“**State**” means the State of Uttar Pradesh in which the Project is situated and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 29.2.1;

“**Sub-ordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six)-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Substitution Agreement" shall have the meaning as set forth in Clause 36.3.;

"Suspension" shall have the meaning as set forth in Clause 32.1;

"Taxes" means any Indian taxes including GST, excise duties, customs duties, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;

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

"Termination Payment" means the amount payable by the Authority to the Concessionaire, upon Termination; and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost;

"Tests" means the tests to determine the completion of the MMLH in accordance with the provisions of this Agreement and shall, *mutatis mutandis*, include similar Tests to determine completion of the expansion of the MMLH in accordance with the provisions of Clause 12.6 and the Master Plan;

"Total Project Cost" means the capital cost incurred on construction and financing of the Project, and shall be limited to the lowest of:

- (a) the aggregate value of capital cost of the Project, as set forth in the Financial Package at the date of Financial Close; and
- (b) the aggregate value of actual capital cost of the project as set forth in the Financial Package for each phase; and
- (c) Phase 1 a sum of Rs 2,374 Crores (Rupees Two Thousand Three Hundred and Seventy Four Crores Only)
Phase 2 a sum of Rs 1,412 Crores (Rupees One Thousand Four Hundred and Twelve Crores Only)
Phase 3 a sum of Rs 2,095 Crores (Rupees Two Thousand and Ninety Five Crores Only)

Total across all phases a sum of Rs 5,881 Crores (Rupee Five Thousand Eight Hundred and Eighty One Crores Only)

For the avoidance of doubt, Total Project Cost of each phase shall be added to determine the **"Overall Total Project Cost"**.

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event Price Index increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in Price Index, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

“**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**Transaction Documents**” means collectively the Project Contracts and the Financing Documents;

“**Unscheduled Maintenance**” shall have the meaning as set forth in Clause 17.14

“**User**” means a person, who uses or intends to use the Project or any part thereof, including any or all Project Facilities and Services, on payment of User Fee or in accordance with the provisions of this Agreement and Applicable Laws;

“**Vesting Certificate**” shall have the meaning as set forth in Clause 34.4;

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to latest monthly WPI Interpretations

1.1.1 In this Agreement, unless the context otherwise requires:

- (a) references to any legislation or any provision thereof under Union and State Legislature shall include amendment or reenactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law under Union and State Legislature shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;

- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST);
- (i) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to “**day**” shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a 100,000 (hundred thousand) and “**crore**” means 10,000,000 (ten million);
- (r) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (u) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (w) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
 - (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
 - (y) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.1.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or to the Independent Engineer shall be provided free of cost and in 3 (three) copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.
- 1.1.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.1.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.
- 1.2 Measurements and Arithmetic Conventions**
- All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the 3rd (third) digit of 5 (five) or above being rounded up and below 5 (five) being rounded down. The financial figures shall be calculated and rounded off to 50 (fifty) paise with 3rd (third) digit of 5 (five) or above being rounded up and digits below 5 (five) being rounded down.
- 1.3 Priority of agreements, clauses and schedules**
- 1.3.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement; and
 - (b) all other agreements and documents forming part hereof or referred to herein,
- i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b)(b) above.
- 1.3.2 Subject to the provisions of Clause 1.4.11.3.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between 2 (two) or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any 2 (two) Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail

PART - II: THE CONCESSION

ARTICLE 2 - SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:

- (a) planning, designing, financing and construction of Project on the Site set forth in **Schedule A** and as specified in **Schedule B** together with provision of respective Project Facilities as specified in **Schedule C**, and in conformity with the Specifications and Standards set forth in **Schedule D** and other provisions of this Agreement; provided that the additional land for long haul to increase operational efficiency which may be handed over to the Concessionaire during the Term of the Concession shall be deemed to be a part of the Site and Scope of the Project;
- (b) procurement of the equipment and all other material required for development of Project and Project Facilities in conformity with the Specifications and Standards and other provisions of this Agreement;
- (c) procurement and maintenance of software and technology to be used for providing the Services in accordance with the Specifications and Standards, Good Industry Practice and other provisions of this Agreement;
- (d) operation, maintenance and management of Project (including the additional land for long haul to increase operational efficiency which may be handed over to the Concessionaire during the Term of the Concession) in accordance with the provisions of this Agreement; and
- (e) performance and fulfilment of all other obligations of the Concessionaire 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 Concessionaire under this Agreement

ARTICLE 3 - GRANT OF CONCESSION

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, the Applicable Permits and Good Industry Practices, the Authority hereby grants to the Concessionaire, the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (“**Concession**”) for a period of 45 (forty five) years commencing from the Appointed Date and ending on the Transfer Date (the “**Concession Period**”), and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall entitle or oblige (as the case may be) the Concessionaire to:
- (a) Right of Way, access and license to the Site (including the additional land for long haul which may be handed over to the Concessionaire at a later date during the term of this Agreement) for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) design, finance and construct the Project as per the terms and conditions of this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice and transfer the same to the Authority on the Transfer Date;
 - (c) operate, manage and maintain the Project (including the additional land for long haul which may be handed over to the Concessionaire at a later date during the term of this Agreement) and regulate the use thereof by third parties;
 - (d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the Project and/or availing any Services or any part thereof and refuse entry of any User if the Fee due is not paid;
 - (e) perform and fulfill all of the Concessionaire’s obligations in accordance with this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice;
 - (f) provide Services to the Users and/or any other service providers as per the terms and conditions of this Agreement including Specifications and Standards, Good Industry Practice and Applicable Law;
 - (g) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
 - (h) neither assign, transfer or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor sell, transfer, exchange or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.2 Information about Project Site

The information about the Project Site as set out in Schedule A and Schedule B respectively is provided by the Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site, which the Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site.

3.3 Peaceful Occupation

The Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Project Site during the Concession Period.

3.4 Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring undertaken in pursuance of Applicable Laws or in the event the ownership of the Site is transferred from the Authority to any other public entity, substitute itself by any other public entity having the capacity to undertake and discharge the duties and obligations of the Authority with a similar or greater creditworthiness, and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws; provided, however, that prior to any such substitution, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder.

3.5 Commercial Zone and Consumption Led Warehousing Development

Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the:

- (a) commercial office space and allied services; and
- (b) consumption led warehousing,

specified in Schedule A, subject to conditions specified in Schedule B and Schedule E and to exploit such development for commercial and analogous purposes in accordance with the provisions of Article 23 (“**Commercial Zone and Consumption Led Warehousing Development**”) with the right to sub-license any or all parts thereof by means of Project Agreements.

3.6 Extension of Concession Period

In the event that extension of the Concession Period shall have become due under and in accordance with the provisions of this Agreement, the Concessionaire shall apply to the Authority forthwith for extension of the Concession Period in accordance with the provisions of this Agreement. For the sake of clarity, it is understood, agreed, and acknowledged by the Parties that the maximum extension of the Concession Period shall not, under any circumstances, be more than 10% (ten per cent) of the Concession Period in aggregate. The Concessionaire agrees and acknowledges that any and all provisions of this Agreement relating to grant of extension in the Concession Period by the Authority shall always be deemed to be subject to the limitation and restriction prescribed by this Clause 3.6.

ARTICLE 4 - CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 24, 31, 41 and 44, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.
- 4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 90 (ninety) days from the date of this Agreement or any earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all the Conditions Precedent within a period of 180 (one hundred and eighty) days from the date of the notice, and the Conditions Precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:
- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
 - (b) procured Applicable Permits, if any, relating to environmental protection, conservation of the Site and forest clearance². For the sake of clarity, it is understood and acknowledged by the Parties that the Authority shall procure the Applicable Permits in pursuance to this Clause 4.1.2 (b) based on the concept Master Plan provided in Schedule A and Schedule B;
 - (c) caused the execution of contract agreement with the engineering, procurement and construction (EPC) contractor appointed for construction of rail spur line connecting the Project Site with the Dedicated Freight Corridor (DFC) at Dadri and the internal rail siding;
 - (d) procured land use conversion certificate for and in respect of the land forming part of the Site under Clause 10.3.1 and 10.3.2; and
 - (e) caused the execution of the following relevant agreements:
 - (i) Escrow agreement in the form provided in Schedule Q; and
 - (ii) Substitution Agreement in the form provided in Schedule R
 by itself, GOI or other Government Instrumentalities, as the case may be, upon receiving its duly executed copy from the Concessionaire and compliance of all the terms thereunder respectively, which may be necessary for the execution thereof.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 270 (two hundred and seventy) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to the Authority as per Clause 9.1.1.
 - (b) furnished copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;
 - (c) furnished all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a Director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Document;
 - (d) furnished a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;

² Any subsequent changes in requirement of permits will be Concessionaire’s responsibility.

- (e) executed and procured execution of the Escrow Agreement in the form provided in Schedule Q;
- (f) executed and procured execution of the Substitution Agreement in the form provided in Schedule R;
- (g) procured all the Applicable Permits as specified in Schedule E pertaining to Government Authorities and the associated departments unconditionally, or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full, and such Applicable Permits are in full force and effect. The Concessionaire shall intimate to the Authority, within 30 (thirty) days of receiving the LOA, about any clearance or permit required from the Government;
- (h) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (i) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model, which is workable, formulae linked and interactive, in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (j) delivered to the Authority {from the selected bidder/Consortium Members, their/its respective Associates} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
- (k) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

Provided that upon request in writing by the Concessionaire the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once in a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in that Clause, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount of 20% (twenty per cent) of the Performance Security, provided further that such Damages for delay by the Authority for non-fulfilment of Conditions Precedent shall be payable within 30 (thirty) days of achievement of fulfilment of Conditions Precedent. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided that in the event of delay by the Concessionaire in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the

Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.3.

Note: The Authority shall not be liable for any Damages towards the Concessionaire in case the delay is due to reasons beyond the control of the Authority. However, the Authority shall duly notify Concessionaire with explanation and reasons for the delay clearly demarcating the items of delay, reasons and the responsible entity.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount of 20% (twenty per cent) of the Performance Security, provided further that such Damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent, and upon reaching such limit of 20% (twenty per cent), the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement.

Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

Note: The Concessionaire shall not be liable for any Damages towards the Authority in case the delay is due to reasons beyond the control of the Concessionaire. However, the Concessionaire shall duly notify the Authority with explanation and reasons for the delay clearly demarcating the items of delay, reasons and the responsible entity. The decision of the Authority in this matter shall be final and binding.

4.4 Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire shall, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Project.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5 - OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the survey, investigation, design, engineering, procurement, construction, operation and maintenance of the Project, in accordance with the provisions of this Agreement and the Master Plan and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder and transfer the Project to Authority on the Transfer Date in all respect free from all Encumbrances along with all existing permits, licenses, as-built Drawings and records of all design, quality, geo-technical investigations and testing.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 The Concessionaire shall, at all times during the subsistence of this Agreement, comply with all the conditions stipulated in the Applicable Permits/approvals or any substitute and/or consequential approvals necessary to fulfil its obligations under this Agreement.
- 5.1.4 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practices and as a reasonable and prudent person.
- 5.1.5 The Concessionaire shall in accordance with the Key Performance Indicators and Specifications and Standards, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - (a) make, or cause to be made, necessary applications to the relevant Governmental Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (f) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable laws;
 - (g) procure that all facilities and amenities within the Project (including the additional land for long haul which may be handed over to the Concessionaire at a later date during the term of this Agreement) are operated and maintained in accordance with Good Industry Practices and the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and Applicable Laws;
 - (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (i) procure, as required, the appropriate utilities and services required or used at the Project;

- (j) ensure that the Concessionaire and its licensee(s) or Contractor(s)/sub-contractor(s), if any, comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
- (k) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, documents relating to the Project, and Change of Scope Order and other communications given under this Agreement. The Authority and its authorised personnel shall have the right of access to all these documents at all reasonable times;
- (l) cooperate with authorized representative of the Authority and personnel of any public authority;
- (m) not interfere unnecessarily or improperly with the convenience of the public, the Authority and its representatives, employees, agents etc.;
- (n) undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Project Assets;
- (o) construct and make alterations or additions to the building/structure/installations on the Site at its own cost after obtaining prior written approval of the Authority and strictly in accordance with the sanction and approval of the concerned local authority or of any other authority, the approval of whom has been mandated under the law for the time being in force. The Concessionaire shall follow Good Industry Practices in respect of building line and control line;
- (p) at its own cost, provide and install the, furniture equipment, fixtures and things necessary for implementing the Project;
- (q) all the existing and future rates, Taxes, levies, duties (including stamp duties), cess and charges of whatsoever nature in respect of the Project shall be borne and paid by the Concessionaire throughout the term of the Concession Period;
- (r) ensure availability of Project Facilities and Services on round the clock basis and shall maintain and run the Project in accordance with Good Industry Standards and as may be required by the Authority;
- (s) maintain the Site and structure/installations/fixtures in good conditions and order to the satisfaction of the Authority and as per the terms of this Agreement and also abide by the directions given by the relevant departments as may be entrusted with the enforcement of rules and regulations regarding labour safety, health sanitation, cleanliness and hygiene;
- (t) not store any hazardous or explosive substance on the Site. The Concessionaire shall provide and maintain necessary fire-fighting and fire protection systems in the Site as per the Applicable Law;
- (u) observe and perform all the terms, covenants, conditions and stipulations contained herein and shall not do, omit or suffer to be done any act, deed or thing whereby Authority's rights with respect to the Site, the assets therein or any part/portion of the MMLH in any way prejudiced, affected or extinguished;
- (v) use the Site or any premises erected thereupon for the exclusive purpose of providing the Services to the users of the Project Facility (“**Users**”) and bonafide visitors to the Site. Failure to provide the desired level of Project to the Users shall be a sufficient ground for forfeiture of the Performance Security and for Termination of this Agreement;
- (w) maintain a “**Complaint Portal**” on its website which shall be available to all the Users of the Project Facilities and Services who shall be duly informed about availability of the provision for lodging of complaints. The Complaint Portal will also be linked to the Authority website with an alert system for real time access to the complaints;

- (x) comply with the minimum development obligations in terms of capacity / minimum built up area and value / percentage of TPC spent, as specified in Schedule A and Schedule G of this Agreement;
- (y) transfer the Project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof;
- (z) Save and except as expressly provided in this Agreement, the Concessionaire shall, at all times during the subsistence of this Agreement, pay all taxes, levies, duties cesses and all other statutory charges, dues, assessments or outgoings payable in respect of the Project, Services and other services, or in respect of the materials stored therein, which may be levied by any Government Instrumentality. The payment receipt of the same should be submitted with the Quarterly reports; and
- (aa) Take necessary steps and provide requisite support to Authority/MoR to integrate the additional land for long haul, which may be handed over to the Concessionaire on a later date during the term of the Concession, as part of the Site and Scope of Project in terms of Article 2 of this Agreement.

5.1.6 The Authority reserves the right to inspect and conduct checks to observe/witness the fulfilment of the obligations by the Concessionaire under this Agreement. If in the opinion of the Authority, the Project Facilities required to be provided under this Agreement are not being provided or are not being properly maintained or the level of Services is below the standards as provided under the Schedules hereto, the Concessionaire shall take such corrective measures upon being served with a notice to the said effect by the Authority. Failure of the Concessionaire to comply with the requirements of the notice within the Cure Period stipulated therein would be considered a breach of the terms of this Agreement by the Concessionaire.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority, the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any addition, replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for

restructuring or rescheduling of the Debt of the Concessionaire and shall respond to the request for consent no later than 30 (thirty) days from the receipt of such request from the Concessionaire.

- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in the Agreement, the Concessionaire agrees and acknowledges that selection or replacement of all EPC Contractors or O&M Contractors and execution of all EPC Contracts or O&M Contracts shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.
- 5.2.6 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledge that it will not assign any work to any Contractor/sub-contractor/vendor from a country which shares a land border with India unless such Contractor/sub-contractor/vendor is registered with the competent authority. The Concessionaire will ensure that such Contractor/sub-contractor/vendor fulfils all requirements in this regard and is eligible to be considered (where applicable, evidence of valid registration by the competent authority). The competent authority for registration will be the registration committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), India. Political and security clearance from the Ministries of External and Home Affairs respectively will be mandatory for this purpose. For interpretation of this clause, Department of Expenditure, Ministry of Finance, GOI letter no. F.No.6/18/2019-PPD dated 23rd July 2020 or subsequent guidelines issued by the GOI shall be referred.
- 5.3 **Obligations related to Change in Ownership**
- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- i. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or
 - ii. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon no later than 30 (thirty) days from the date of receipt of request for approval appended with all the necessary and required details. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

(a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Security and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

(b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.3.3 Upon the expiry or earlier termination of the Concession Period, the Concessionaire shall handover to the Authority the peaceful and vacant possession of the Site including the structure / installations / fixtures erected or installed on the same. Failure to handover the same within a period of 7 (seven) days of the expiry or earlier termination of the Concession Period would make the Concessionaire liable for payment of damages equivalent to 1% (one per cent) of the last annual Concession Fee including Revenue Share per day up-to a maximum of 15 (fifteen) days, after which the Authority shall be entitled to enter upon and take possession of the Site including the Project on as-is- where-is basis.

5.4 **Obligations relating to Environment Protection**

The Concessionaire shall comply and adhere to the terms and conditions in line with the environment clearance granted to the project by the State Environment Impact Assessment Authority (SEIAA), Uttar Pradesh through the EC identification no. – EC23B039UP118056 dated 24th April 2023.

5.5 **Obligations relating to employment of foreign nationals**

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire

or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.6 Obligations relating to employment of trained personnel

5.6.1 The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions. The Concessionaire shall comply with the Applicable Laws and the Applicable Permits in relation to the hiring of local personnel, and shall endeavour to employ as many local personnel preferably members of Project Affected Families during the implementation, development and operations of the Project.

5.6.2 The Authority's Representative may, under exceptional circumstances due to legal/statutory/administrative requirement and for reasons to be specified in writing, direct the Concessionaire to remove any member of the Concessionaire's personnel engaged by the Concessionaire or any of its agency. Provided that any such direction issued by the Authority's Representative shall specify the reasons for the removal of such person.

5.6.3 The Concessionaire shall on receiving such a direction from the Authority order for the removal of such person or persons with immediate effect. It shall be the duty of the Concessionaire to ensure that such persons are evicted from the Site within 10 (ten) days of any such direction being issued in pursuance of Clause 5.6.2. The Concessionaire shall further ensure that such persons have no further connection with the works or maintenance under this Agreement. The Concessionaire shall then appoint (or cause to be appointed) a replacement within 7 (seven) days. All consequential effects of such removal and appointment, including legal issues, if any, shall be the sole liability of the Concessionaire.

5.7 Obligations relating to branding of the Project

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. Save and except as may be necessary in the normal course of business, the Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at the spots where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of *****. Provided further that the Concessionaire shall not put any advertisement nor collect any revenue from the same until it has received Completion Certificate or the Provisional Certificate from the Independent Engineer.

5.8 Obligations relating to non-discriminatory access

The Concessionaire shall manage and operate the Project on a common user basis and provide non-discriminatory access to all Users in accordance with the provisions of this Agreement and shall refrain from adopting any unfair or discriminatory practice against any User or potential user thereof.

5.9 Obligations relating to security clearance

Notwithstanding anything to the contrary contained in this Agreement, the engagement of employees, staff and personnel of the Concessionaire and of its Contractors and sub-contractors shall always be subject to security clearance by the designated GOI agency and only persons having a valid security clearance shall be permitted on the Site. For the avoidance of doubt, it is agreed that refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its Contractors or sub-contractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement. It is further agreed that the restriction herein shall not apply to Commercial Zone Development forming part of the Site.

5.10 **Obligations relating to aesthetic quality of the Project**

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Project and achieve integration of the Project with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects and structural designers of repute for ensuring that the design of the Project meets the aforesaid aesthetic standards.

5.11 **Obligations relating to noise control**

The Concessionaire shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Project and its impact on Users and the neighbourhood.

5.12 **Obligations relating to medical aid**

5.12.1 For providing emergency medical aid to Users during the Operation Period, the Concessionaire shall set up and operate a medical aid post (the “**Medical Aid Post**”) at the Project Site equipped to render aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

5.12.2 The Concessionaire shall, at its cost and in accordance with the type designs prescribed for such buildings by the relevant statutory authorities, construct a Medical Aid post building, not later than 30 (thirty) days prior to Scheduled Completion Date. The Medical Aid Post shall be deemed to be part of the Site and shall vest in the Authority.

5.13 **Obligations relating to unclaimed cargo**

The Concessionaire may at its cost:

- (a) after obtaining prior written approval of the Commissioner of Customs or other competent Government authority and in accordance with the provisions of Applicable Law, destroy or dispose off by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by Concessionaire under or pursuant to this Agreement, and always subject to relevant Act and other laws in this regard; and
- (b) institute proceedings for recovery of unrealized charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

5.14 **Accidents**

In the event of an accident on the Site, the Concessionaire shall, by most expeditious means, inform the concerned civil and police authorities and also the Authority. The Concessionaire’s responsibilities with regard to the construction and operation of the Project shall in no way be diminished by informing the above officials, and the Concessionaire shall be required to take expeditious action for the medical and legal aspects notwithstanding any delay on the part of the officials to give any instructions. The Concessionaire shall preserve the Site of such accident intact until the completion of all legal formalities. The Concessionaire shall then arrange for the expeditious removal of wreckage or debris, and for cleaning the Site. If any portion of the Project Facilities suffers any damage, the Concessionaire shall, with the consent of the Authority and at its own cost, arrange for the repair and rectification thereof within a reasonable time as may be agreed by the Parties.

The Concessionaire shall, in event of any accident, incur any expenditure or take any other action as necessary, in accordance with Good Industry Practice.

5.15 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein. The Concessionaire shall not be allowed to form a joint venture or subsidiary for any purpose whatsoever.

Maintenance obligation during Development Period - During the period from the date of the Concession Agreement until the Appointed Date (**the “Development Period”**), the Concessionaire shall maintain the existing Site, in such a manner so as to ensure its maintenance and safety and in the event of any material deterioration or damage other than normal wear and tear, the Concessionaire shall undertake repair thereof. The Concessionaire shall be deemed to have made necessary provisions for inclusion of costs related to maintenance during the Development Period in its Bid.

5.16 Facilities for differently abled and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the Project.

5.17 Risks and Responsibility for the Project

The Concessionaire shall bear full risk and take full responsibility for the care of the Project, and of the Materials, goods and equipment for incorporation therein, from the date of signing of this Agreement until the date of handing over the Project to the Authority.

Except as otherwise stated in this Agreement the Concessionaire accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Project.

5.18 Obligations relating to taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges, dues, assessments, or outgoings payable in respect of the Project Facilities.

5.19 Obligations relating to management of the Concessionaire

The management of the Concessionaire shall be carried out as per and in compliance with the Applicable Laws directions issued by the Authority in terms of this Agreement /any regulatory body from time to time and/or in compliance with provisions of the Companies Act, 2013 and its amendment(s) from time to time. It shall be the sole and absolute responsibility and obligation of the Concessionaire to remain in compliance and strict adherence with all the Applicable Laws / directions from the Authority in terms of this Agreement / regulatory body and/or in compliance with provisions of the Companies Act 2013 and its amendments from time to time and the Authority shall not be held responsible or liable for any breach or no compliance of the same by the Concessionaire.

5.20 Intellectual Property Permits

The Concessionaire shall ensure that if any equipment, designated devices, materials or any process are covered by Intellectual Property Rights, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Intellectual Property Rights owner or person empowered to assign the Intellectual Property Rights. A copy of each such agreement shall be filed with the Authority.

5.21 **Water and Electricity**

The Concessionaire shall be responsible to procure power, water, and related back-up systems at the Project to maintain uninterrupted power and water supply at all times, including Construction Period.

The Authority shall provide external power connection to the Site no later than 18 months from Appointed Date but in any event not later than 6 (six) months prior to COD. The Concessionaire shall, on and before the COD, set up a meter at its own cost to measure the power and water consumption. During the Project construction and operation, the Concessionaire shall pay all the invoices relating to water and electricity connections, running charges as and when due. For the avoidance of doubt, it is agreed that the Concessionaire shall install its own sub-station and related utilities for steady supply of electricity and water as may be necessary for construction and operation of the Project.

The Authority shall not be responsible for interruptions and insufficiency of power or water supply and the Concessionaire shall directly deal with the concerned agency responsible for supply of power and water.

5.22 **Obligations relating to information**

Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments to the Authority in the manner and form required by the Authority.

5.23 **Obligations relating to procurement of goods and services**

The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the Project in a fair, transparent, and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall frame a procurement policy specifying the principles and procedures that it shall follow in awarding contracts for supply of goods and services, and shall place the policy on its website for the information of general public and all interested parties. The policy shall also include the principles and procedures to be followed for leasing, sub-licensing or grant or allocation of any space, building, rights, or privileges to private entities.

5.24 **Auditing the Project**

5.24.1 The Concessionaire shall maintain books recording the procedure followed at the Project.

5.24.2 The Concessionaire expressly agrees to furnish to its Statutory Auditor the details of the records maintained in furtherance of Clause 5.24.1.

5.24.3 On or before the thirtieth day of June each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors, giving summarised information on (a) the procedure undertaken at the Project, and (b) details of the Users availing the Services with the type of Service availed.

5.24.4 The Authority shall have the right to inspect the records of the Concessionaire during office hours and obtain copies of such records duly certified by the Statutory Auditors, for verification. The Authority may appoint Additional Auditors or Concurrent Auditors for verification.

- 5.24.5 The Concessionaire acknowledges the Comptroller and Auditor General's (CAG) authority to audit accounts in accordance with Guidance note on- "Compliance audit of Public Private Partnership arrangements" issued on 06th January 2017, and agrees to provide all the documents to CAG accordingly.

ARTICLE 6 - OBLIGATIONS OF THE AUTHORITY

6.1 General obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for construction, operation and management of the Project, at the cost and expense of the Concessionaire;
 - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to similar utility customers receiving substantially equivalent services;
 - (c) procure that no barriers that would have a Material Adverse Effect are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - (d) subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project;
 - (e) assist the Concessionaire in procuring assistance from appropriate GOI agency for removal of trespassers and security on or at the Project;
 - (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (g) support, cooperate with and facilitate the Concessionaire in the construction, operation and maintenance of the Project in accordance with the provisions of this Agreement and in accordance with Applicable Laws;
 - (h) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements;
 - (i) provide to the Concessionaire, upon receiving the Performance Security under Clause 9.1, the Site in accordance with the provisions of Article 10;
 - (j) undertake rehabilitation and resettlement of persons affected by construction of the Project and bear all costs and expense in respect thereof, save and except as otherwise provided in this Agreement; and
 - (k) assist the Concessionaire in procuring at Concessionaire's cost, Right of Way for setting up of water pipes and electric cables to the Site.
 - (l) Provide external power connection to the Site not later than 6 (six) months prior to COD.
 - (m) Authority shall be responsible for the land use conversion of the Site of the Project;

- (n) subject to the Concessionaire complying with Applicable Laws, making requisite applications provide reasonable assistance to the Concessionaire in procuring electricity supply within the Project;
- (o) Develop Boundary wall around the earmarked land for the MMLH to isolate it from the surrounding area;
- (p) Provide rail connectivity to the MMLH location in line with the clause 6.3. Rail connectivity to include approach track along with rail over bridge to connect to Western DFC yard, railway tracks and related infrastructure- Railway lines, loading unloading yards, train examination yards, platform, OHE, Signalling & Telecommunication etc.
- (q) Upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, and subject to the applicable guidelines issued by Government of India, from time to time, facilitate and provide reasonable support to the Concessionaire in procuring statutory approvals for setting up of custom facilities in the MMLH; and
- (r) Hand over the additional land for long haul to the Concessionaire as and when available with the Authority, complete with rail tracks and siding and ready for operations, and to assist the Concessionaire in integrating the same in the Project.

6.2 Obligations relating to Competing Facility

Authority shall procure that during the subsistence of this Agreement, the Authority shall, at any time neither construct nor cause to be constructed any new Competing Facility within a 100 (one hundred) kilometres radius of the MMLH until 10 (ten) years from the Appointed date (“**Exclusivity Period**”). Upon breach of its obligations hereunder, the Authority shall be liable to compensate to the Concessionaire the loss by extending the Concession period by the proportion that can be mitigated by such extension. However, such extension shall not exceed more than 10% (ten per cent) of the Concession Period and such extension shall be the sole remedy of the Concessionaire.

In the eventuality that a Competing Facility is constructed within a 100 (one hundred) kilometres radius of the MMLH in violation of the conditions specified above, the Concessionaire can request written communication from the Authority stating breach of this clause to seek redressal i.e. extension of the Concession Period by the Authority.

6.3 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the GOI or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing to be utilized for the Project purposes only; provided that it shall not have the effect of increase in financial liability or obligations on the Authority and it shall not jeopardize the interest of the Authority in any manner, and shall always be subject to the prior approval of the Authority, which shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

6.4 Connectivity to rail and road network

Save and except as specified in this Agreement, the Authority itself or through related GOI agency shall, no later than the 2nd (second) anniversary of the Appointed Date or 1 (one) month prior to commencement of COD whichever is later, provide or cause to be provided,

- (a) a traffic worthy road with 4 (four) lanes connecting the Project to the nearest National Highway or State Highway, as the case may be, and shall cause to augment/maintain such

road as and when required in accordance with Good Industry Practice. For the avoidance of doubt, the Parties agree that the construction, capacity augmentation and repair & maintenance of such road shall be undertaken by the Authority itself or through related GOI agency and the cost thereof shall be borne solely by the Authority/related GOI agency.

- (b) a railway line/siding connecting the Project to the nearest railway line on the regional railway network/nearest railway station on the regional railway network. For the avoidance of doubt, the Parties agree that the construction and capacity augmentation of such railway line/railway siding shall be undertaken by the Authority itself or through related GOI agency and the cost thereof shall be borne solely by the Authority/related GOI agency. Provided further that cost towards routine and periodic maintenance of railway line/siding (including related supervision charges of Authority itself or through related GOI agency) shall be borne by the Concessionaire.

In the event of delay in providing road and rail connectivity by the Authority itself or through related GOI agency for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, and any such delay adversely affects the commencement of COD, then, the Authority shall consider granting the reasonable extension in the Concession Period at the written request of the Concessionaire. Provided that, in any such case, the extension to the Concession Period shall not be longer than the delayed period in providing road and rail connectivity by the Authority itself or through related GOI agency. The Damages payable in terms of this Clause shall be the sole remedy available to the Concessionaire and the Authority shall not be liable for any consequential loss or damage to the Concessionaire.

ARTICLE 7 - REPRESENTATION AND WARRANTIES

7.1 Representation and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legal binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would have a Material Adverse Effect or adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and the {selected bidder/Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-

listing in response to the Request for Qualification cum Proposal shall hold less than 26% (twenty-six per cent) of Equity during the Construction Period and 2 (two) years thereafter.

Provided further that any such request made under Article 7.1(k), at the option of the Authority, may be required to be accompanied by a suitable no objection letter from lenders;

- (l) {the selected bidder/Consortium Members and its / their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the selected bidder/each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (q) all information provided by the {selected Bidder/Consortium Members} in response to the Request for Qualification cum Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Qualification cum Proposal or otherwise shall be binding on the Concessionaire as if they form part of this Agreement; and
- (s) it shall remain solely liable to perform its obligations under this Agreement as well as ensure performance of obligations by its licensees, Contractors, sub-contractors, designers, consultants or agents and nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and Concessionaires Contractors, sub-contractors, designers, consultants or agents in any manner whatsoever.
- (t) It shall promptly inform the Authority in writing before initiating any of the following (including any matter incidental or consequential thereto) and give due consideration to the recommendations or suggestions, if any, made by the Authority in respect thereof:
 - (i) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy code, 2016;
 - (ii) for various other matters pertaining to the winding up of the Concessionaire;

However, the Authority shall not be liable or responsible or incur any liability of any nature arising out of, directly or indirectly, pursuant to any of the above actions taken by the

Concessionaire.

7.2 Representation and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

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

7.3 Disclosure

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

ARTICLE 8 - DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges on its behalf and on behalf of the selected bidder/Consortium members and their Associates that prior to the execution of this Agreement, the selected bidder/Consortium members and their Associates and the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification cum Proposal, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it herein or under the Applicable Laws and the Concessionaire confirms on its behalf and on behalf of the selected bidder/Consortium that they shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts on its behalf and on behalf of the selected bidder/Consortium members and their Associates, the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the selected bidder/Consortium members and their Associates or any person claiming through or under any of them.
- 8.1.3 The Parties including selected bidder/Consortium members and their Associates agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party including selected bidder/Consortium members and their Associates becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.
- 8.1.6 The Concessionaire acknowledges and hereby accepts to have satisfied itself as to the sufficiency and correctness/acceptability of the Concession Fee.

PART – III: DEVELOPMENT AND OPERATIONS

ARTICLE 9 – PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority no later than 120 (One Hundred Twenty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to INR 72 crore (Rupees Seventy Two crore) in the form set forth in Schedule F (the “Performance Security”) towards phase-1 of the project. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

The Concessionaire is required to submit subsequent Performance Security(ies), prior to commencement of construction for each of the subsequent phase(s), for a sum equivalent to Rs. 43 crore /- (Rupees Forty Three crore) and Rs 63 crore (Rupees Sixty Three crore) for the phase-2 and 3 respectively (to be calculated on actuals @ 3% of the Total Project Cost of the phase for which construction is to be undertaken) for each such phase substantially in the form set forth in Schedule F.

- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 120 (One Hundred Twenty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 34. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 34.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect until the end of 180 (one hundred eighty) days from COD of Phase-I of the Project; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

Further, the Performance Security given for each of the subsequent phase(s) shall remain in force and effect for a period of 180 (one hundred and eighty) days following the completion of each of the subsequent phase(s).

9.4 **Deemed Performance Security**

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 28.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and all amounts due or accrued and payable by the Concessionaire to the Authority, and the Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

9.5 **Appropriation of Deemed Performance Security**

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 **References to Performance Security**

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 10 - RIGHT OF WAY

10.1 The Site

The site of the Project shall comprise the land area described in Schedule A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the “Site”). Provided that the Authority may provide additional land for long haul to increase operational efficiency to the Concessionaire at a later date during the term of this Agreement and such land shall be deemed to be a part of Site for all the purposes under this Agreement.

10.2 Licence, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire, subject to the terms of this Agreement, access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule A hereto, on an “as is where is” basis, free of any Encumbrances and encroachments, to develop, operate and maintain the said Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 The licence, access and Right of Way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the Project is open to Users and there is free flow of traffic at all times during the Concession Period, save and except during the hours for which closure thereof shall have been permitted by the Authority.
- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensee(s)/Contractor(s)/sub-contractor(s), the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site (“**Memorandum**”). Such Memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the Memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire. Provided that as and when the additional land for long haul is handed over to the Concessionaire, the provisions of this Clause 10.3.1 shall be applicable to such handover and the process shall be applied mutatis mutandis for handing over such additional land.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 5% (five per cent) of the total area of the Site required and necessary for the Project, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of any critical element of the Project without which the Completion Certificate or Provisional Certificate may not be granted. The Authority further acknowledges and agrees that prior to the Appointed Date, it shall have procured issuance of the statutory notification under Applicable Laws for vesting of all land comprising phase-1 of the Project. The Parties also acknowledge and agree that the conditions specified in this Clause 10.3.2 shall not be modified or waived by either Party.
- 10.3.3 On and after signing the Memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over such portion of the Site as has been handed over to the Concessionaire and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 180 (one hundred and eighty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix (except additional land for long haul to increase operational efficiency which may be handed over to the Concessionaire during the Term of the Concession) and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, and any such delay adversely affects the Construction Works, then, the Authority shall consider granting the reasonable extension in the Concession Period at the written request of the Concessionaire. Provided that, in any such case, the extension to the Concession Period shall not be longer than the delayed period. Provided that, the occurrence of any such delay in the grant of Right of Way, will not have any impact whatsoever on the rights, interests, entitlements, benefits, etc. of the Authority that it may have under and in accordance with this Agreement. The Damages payable in terms of this Clause shall be the sole remedy available to the Concessionaire and the Authority shall not be liable for any consequential loss or damage to the Concessionaire.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 180 (one hundred and eighty) days of the Appointed Date shall be completed on or before the Scheduled Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.5.2.

10.3.6 The Authority shall procure any additional land that may be required for construction of works specified in Change of Scope Order issued under Article 16, in accordance with the provision of this Agreement, and upon procurement thereof, such land shall form part of the Site; provided that the land to be acquired by the Authority hereunder shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly, save and except that Damages for delay in procurement thereof shall commence after a period of 270 (two hundred and seventy) days from Appointed Date, instead of 180 (one eighty) days as specified in Clause 10.3.4. For the avoidance of doubt, the Parties agree that any land required in addition to the land included in Schedule A, shall be acquired at the sole discretion of the Authority and the Concessionaire shall have no right or claim in the event the Authority declines any such acquisition in whole or in part.

10.4 **Site to be free from Encumbrances**

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances, encroachments and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 **Sub license**

Save and except as otherwise permitted by this Agreement, the Concessionaire may sub-license whole or any part of the Commercial Development and Consumption Led Warehousing component, licensed to it by the Authority, to any person in any form or under any arrangement, device or method, only after the prior written approval of the Authority.

10.6 **Protection of the Site from Encumbrances**

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.7 **Special/temporary right of way**

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such

facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.8 Access to the Authority and Independent Engineer

The license, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under the Agreement.

10.9 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. The Parties further agree as under:

- (i) The Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period and to the extent permissible under the Applicable Law so as to enable the Concessionaire to continue its Construction Works for development of the Project with such modifications as may be deemed necessary;
- (ii) In case any portion of the Site becomes unavailable for development and implementation of the Project on account of archaeological and / or geological finds, at any time during the Concession Period, the Authority and Concessionaire shall mutually discuss the matter to arrive at a mutually acceptable resolution;
- (iii) However, if on account of any archaeological or geological finds:
 - (a) the entire Site, going forward, becomes unavailable for the Project; or
 - (b) the Concessionaire and Authority are unable to arrive at a mutually acceptable resolution pursuant to sub clause 10.9 (ii) above, in spite of all reasonable endeavours

In such an event the Concessionaire shall be under an obligation to forthwith, upon written notice and demand, in this regard, from the Authority to peacefully and unconditionally vacate and handover the Site to the Authority and the Concession Agreement shall be deemed to stand terminated, with mutual consent on and with effect from such date as may be specified by the Authority in the notice. The Concessionaire shall be entitled to receive Termination Payment in accordance with Clause 31.9.1

10.10 Acceptance of Site for Project Development

The Concessionaire accepts possession of the Site for Project development on 'as is where is' basis and confirms having:

- (a) inspected the Site, including all structures there at and its surroundings;
- (b) satisfied itself as to the nature of the climatic and general physical conditions of the Site, the nature of the ground and subsoil, the form and nature of the Site, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement;

and

- (c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances including contingency under Clause 10.8 above, which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

ARTICLE 11 - UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, Right of Way or structures or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake the proceedings for acquisition of any right of way necessary for such diversion. For the avoidance of doubt, it is clarified that the existing utilities of Palla Chithera nallah and Dadri minor nallah and overhead power lines shall be shifted by the Authority or concerned authority.

11.2 Shifting of obstructing utilities

11.2.1 The Authority shall, subject to Applicable Laws, undertake shifting of Electrical utilities, existing water pipes and existing telephone cables to an appropriate location or alignment, within or outside the Site, if and only if such utility causes or shall cause a Material Adverse Effect on the development, operation and maintenance of the Project. The cost of shifting or removing such utilities shall be borne by the Authority. In the event of any delay in shifting thereof beyond a period of 270 (two hundred and seventy) days from the Effective Date, the Concessionaire shall be:

- (a) excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such utility; and
- (b) entitled for a Time Extension in accordance with Clause 12.6 in respect of the part(s) of the Project affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

The Parties expressly agree that all coordination work with concerned agencies including the clearances/permissions for shifting of utilities will be the responsibility of the Authority.

11.2.2 Any unforeseen utilities identified during the construction of the Project shall be shifted by the Concessionaire at its own cost.

11.3 New utilities

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities; provided that the laying of such telephone lines, water pipes, electric cables or other public utilities do not in any way adversely impact the operations of the Project. Where such access or use causes any financial loss to the Concessionaire, it may require the owner of such utility using the Site to pay compensation or Damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the Concessionaire of its obligation to construct and maintain the Project in accordance with this Agreement and any Damage caused by such use shall be restored forthwith.

11.3.2 In the event the construction of any work is affected by a new utility or project undertaken in accordance with this Clause 11.3, the Concessionaire shall be entitled to a reasonable Time Extension as determined by the Independent Engineer.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation and maintenance of the Project. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

ARTICLE 12 – DESIGN AND CONSTRUCTION OF PROJECT

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed architectural and engineering drawings (as required for proper execution and completion of the Project as envisaged by the Authority), construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule G;
- (b) appoint its representative duly authorised to deal with the Authority and the Independent Engineer in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying and procurement of Materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

12.2 Interruption during Construction Period

- 12.2.1 The Concessionaire shall ensure that its Construction Works do not obstruct, interrupt or divert the flow of road traffic on the highway situated adjacent to the Project that would otherwise impede smooth traffic flow on the highway. In the eventuality that the Construction Works on the Project impedes smooth traffic flow on the highway, the Concessionaire shall, at its cost, interrupt and divert the flow of road traffic on the highway if such interruption and diversion is necessary for smooth traffic flow; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld, and subject to approval of the concerned agency in charge of such highway. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall restore the interruption or diversion within the period specified by the Independent Engineer and the concerned agency in charge of such highway.
- 12.2.2 In the event of default by the Concessionaire in discharging the obligations specified in Clause 12.2.1, the Authority may levy and recover Damages equal to 0.2% (zero point two per cent) of the Performance Security for each day of default hereunder.

12.3 Master Plan for the Site

- 12.3.1 The Concessionaire shall at all times procure and ensure that the Project is constructed and developed in accordance with the Master Plan set forth in Schedule A.
- 12.3.2 The Concessionaire may, with prior written consent of the Authority, use any area earmarked for future expansion of the Project as provided in the Annex I of the Schedule A, for other purposes incidental to or associated with the Project, until the same is required for the expansion specified in the Master Plan, subject to the condition that only temporary structures may be constructed in such area and the use thereof shall at all times be in conformity with Applicable Laws and Good Industry Practice.
- 12.3.3 The Concessionaire may, at any time during the Concession Period, seek approval of the Authority for modifications in the Master Plan to improve or augment the Project and upon receipt of any request hereunder, the Authority may grant such approval to the extent reasonably required.

12.4 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project as set forth in Schedule H, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) three hard copies and 1 (one) soft copy each of detailed conceptual plan, layout plan, detailed architectural and structural designs, engineering drawings and construction time schedule (as required for proper execution and completion of the Project as envisaged by the Authority) in relevance to the Master Plan provided by Authority, to the Independent Engineer for review.
- (b) By submitting the aforesaid Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice. In the event, the Concessionaire requires any relaxation in design standards due to restricted land in any section, the alternative design, criteria for such section shall be submitted for review of the Independent Engineer.
- (c) Within 45 (forty five) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 45 (forty five) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review within 7 (seven) days of receipt of observations of the Independent Engineer. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and/or observation of the Independent Engineer and/or Authority and/or its failure to review and/or convey its observations on any Drawings, within the given time period, shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they shall, along with the affected Works, be corrected by the Concessionaire at its own cost, notwithstanding any review under this Article 12.
- (f) Notwithstanding the review by the Independent Engineer, the Concessionaire and Independent Engineer shall be responsible for any defect and/or deficiency in the Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement. The Independent Engineer shall be liable for the defect and/or deficiency to the extent of contract value of the Independent Engineer.
- (g) Without prejudice to the foregoing provisions of this Clause 12.4, the Concessionaire shall submit to the Authority for review and comments, its Drawings including location and layout (as required for proper execution and completion of the Project as envisaged by the Authority) relating to Project, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.4 shall apply *mutatis mutandis* to the review and comments hereunder.

- (h) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.
- (i) The Concessionaire shall at its cost, charges and expenses, prepare the Structural Designs and engineering Drawings in conformity with the Scope of the Project, Specifications and Standards and other provisions of this Agreement, with due approval from Authority (based on IE recommendation)
- (j) Based on the approved detailed conceptual plan (as per Clause 2.1(a)) design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Schedule-D. In the event, the Concessionaire requires any relaxation in design standards due to site conditions, the alternative design, criteria for such section shall be provided for review of the Independent Engineer
- (k) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Authority at its sole discretion may suitably extend the Construction Period or provide other relief to compensate for any such delay not attributable to the Concessionaire.
- (l) Any cost or delay in Construction arising from the time taken for review of Drawings by the Independent Engineer shall be borne by the Concessionaire and the Authority shall not be held liable for the same
- (m) The Project shall be executed in accordance with the Drawings provided by the Concessionaire in accordance with the provisions of this Clause 12.4 and the observations of the Authority or Independent Engineer thereon as communicated pursuant to the provisions of Clause 12.4. Such Drawings shall be amended or altered with approval of the Authority upon recommendation by the Independent Engineer. If a Party becomes aware of an error or Defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or Defect and shall cause Suspension of Construction of such part of the Project.
- (n) In the event that the Independent Engineer has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer with regards its compliance.

12.5 Architectural Design

- 12.5.1 The Concessionaire shall at all times conform to the architectural parameters, controls, building profiles, facades, dimensions, designs and building materials.
- 12.5.2 The Concessionaire shall, prior to commencement of construction of Project, furnish to the Authority and to the Independent Engineer, its architectural drawings in conformity with the Architectural Design. Within 15 (fifteen) days of the receipt of such architectural drawings, the Authority and/ or the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Architectural Design or aesthetic quality thereof and their harmony with the environment. If the aforesaid observations of the Authority or the Independent Engineer indicate that the architectural drawings are not in conformity with the Architectural Design or require improvement in aesthetic quality or harmony with the environment, the relevant drawings shall be revised by the Concessionaire and

resubmitted to the Authority and the Independent Engineer for review. The Authority and/ or the Independent Engineer shall give their observations, if any, within 7 (seven) days of receipt of the revised architectural drawings.

- 12.5.3 The Concessionaire shall not be obliged to await the observations of the Authority on the architectural drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin Construction Works at its own discretion and risk. For the avoidance of doubt, no review and/ or observation of the Authority or the Independent Engineer and/ or their failure to review and/ or convey their observations on the architectural drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority or the Independent Engineer be liable for the same in any manner.

12.6 Construction of the Project

- 12.6.1. On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule A and Schedule B, and in conformity with the Specifications and Standards set forth in Schedule D, Schedule G and the Master Plan. The 730th (Seven Hundred and thirtieth) day from the Appointed Date shall be the scheduled date for completion of phase-1 of the Project (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that construction of the Project shall be completed on or before the Scheduled Completion Date. The Concessionaire shall construct, upgrade, install and establish the Project Facilities, including the basic and detailed design, completion, testing and commissioning in accordance with the provisions of this Agreement, including thee etc. with the design plans and specifications from the proper municipal or other Authority, at its own expenses.
- 12.6.2. Accordingly, the Concessionaire shall undertake the designing, engineering and Construction Works related to the subsequent phases of the Project in adherence to obligations in Schedule-A and achieve the construction completion and commissioning for the respective phases in accordance with the Project Milestones specified under Schedule-G.
- 12.6.3. During the Construction Period of various phases, the Concessionaire shall carry out or cause to be carried out the Construction Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, monitors and Contractors with experience of work similar in scope and nature to that required under this Agreement. The Concessionaire shall design, monitor, and execute the development and implementation of the Construction Works using the best design and monitoring principles and practices. The Concessionaire shall adhere to the Project Completion Schedule and Construction Quality Plan, and the Specifications and Standards set out herein.
- 12.6.4. The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule G and the design handling capacity as specified in Annex II of Schedule A. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.5.4 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.4 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 12.6.5. In the event that the Phase - 1 is not completed and COD does not occur within 270 (two hundred and seventy) days from the Scheduled Completion Date, unless the delay is on account of reasons

attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

In the event, the subsequent phases of Project are not completed within 180 (one hundred and eighty) days from the construction completion date of the respective phases as detailed in the Schedule G, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.7 Extension of Time

12.7.1. Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Concessionaire shall be entitled to extension of time in the Project Completion Schedule (the "**Time Extension**") to the extent that completion of any Project Milestone is or will be delayed by any of the following reasons, namely:

- (a) delay in providing the Right of Way to the Site, land use conversion certificate;
- (b) Change of Scope, unless an adjustment to the Scheduled Completion Date has been agreed under Article 16;
- (c) occurrence of a Force Majeure Event;
- (d) any delay, impediment or prevention caused by or solely attributable to the Authority or the Authority's personnel or the Authority's other licensees on the site but does not include the inspection time/review time by the Authority or its representative/personnel; and
- (e) any other cause or delay which entitles the Concessionaire to Time Extension in accordance with the provisions of this Agreement.

12.7.2. The Concessionaire shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 12.7.1, inform the Authority's Representative by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Concessionaire became aware, or should have become aware, of the occurrence of such an event or circumstance. Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Project Facilities which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Project Facilities which are not affected hereunder.

12.7.3. In the event of the failure of the Concessionaire to issue to the Authority's Representative a notice in accordance with the provisions of Clause 12.7.2 within the time specified therein, the Concessionaire shall not be entitled to any Time Extension and its right for any such claims in future shall be forfeited. For the avoidance of doubt, in the event of failure of the Concessionaire to issue notice as specified in this Clause 12.7.3, the Authority shall be discharged from any and all liabilities in connection with such claim.

12.7.4. The Authority's Representative shall, on receipt of the claim in accordance with the provisions of Clause 12.7.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority's Representative requires any clarifications to examine the claim, the Authority's Representative shall seek the same within 15 (fifteen) days from the date of receiving such claim. The Concessionaire shall, on receipt of the communication of the Authority's Representative requesting for clarification, furnish the same to the Authority's representative within 10 (ten) days thereof. The Authority's Representative shall, within a period of 60 (sixty) days from the date of receipt of such clarifications, forward in writing to the Concessionaire its determination of Time Extension. For the avoidance of doubt, the Parties agree that the Authority's Representative shall, in accordance with the provisions of this Agreement, notify the Concessionaire of the aforesaid Time Extension no later than 30 (thirty) days from the date of receipt of the

Concessionaire's claim for Time Extension or the date of receipt of the clarification from the Concessionaire, as the case may be.

Provided that when determining each extension of time under this Clause 12.7, the Authority's Representative shall review previous determinations and may increase but shall not decrease the total Time Extension.

12.8 Compliance with Applicable Laws

The Concessionaire agrees and undertakes that it shall, in respect of the Project, at all times conform to Applicable Laws and the rules, regulations or by-laws made there under relating to buildings, structures, road works, open spaces, electric supply, water supply, sewerage and other like matters.

12.9 Incomplete Construction

In the event the Concessionaire fails to complete the Project in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Concessionaire shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Clause 15.2 for delay of each day until the Project is completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to Termination under Article 31.

12.10 Expansion of the Project

12.10.1 As and when the existing phase(s) of the Project achieves the traffic trigger (As per Annex II of Schedule A), the Applicable Laws, Good Industry Practice and the provisions of this Agreement, the Concessionaire shall undertake capacity addition and expansion thereof, at its own cost and expense, to meet such shortfall and/or future requirements. Any such expansion thereof shall at all times be in conformity with the Applicable Laws and Good Industry Practice. For the expansion of Project, the Concessionaire may use any area earmarked for future expansion of Project however, the Authority under such circumstances shall not be responsible for acquisition of any additional land.

12.10.2 Without prejudice to the provisions of this Article 12, the Concessionaire shall ensure and procure that expansion of the Project and its surrounding areas shall be in accordance with the architectural design and Master Plan, and in harmony with the overall design and environment of the Project. It shall also ensure and procure that in terms of quality, reliability, efficiency, passenger convenience and aesthetic value, such development is no inferior than the existing Project.

12.10.3 The Concessionaire acknowledges and agrees that the expansion of Project Assets shall be linked to the growth of traffic and that the revenues anticipated from such traffic shall be its compensation and return for the investment made and operational costs incurred on such expansion. The Concessionaire accordingly agrees and undertakes to make all such investments as may be necessary for compliance with the provisions of this Agreement, at its own risk and cost, and shall not seek, or in any manner demand, or claim entitlement from the Authority on account thereof.

12.10.4 The additional assets and facilities required to be constructed in pursuance of the provisions of Clause 12.10.1 shall be completed and placed into operation within a period not exceeding 2 (two) years from the date on which the shortfall specified therein occurred. For the avoidance of doubt, any assets and facilities constructed under this Clause 12.10 shall be deemed to form part of the Project Assets.

12.10.5 The provisions of this Agreement, insofar as they relate to Construction Works, shall apply, *mutatis mutandis*, to the expansion of the Project, save and except where express provisions to the contrary have been made in respect thereof.

12.11 Sub-licensing of the Project

12.11.1 Subject to the provisions of Clause 5.2, 23.6 and this Article 12, Concessionaire may sub-license part of Commercial Development and Consumption Led Warehousing, such that the period and validity of such sub-license shall not extend beyond the Concession Period. The Concessionaire shall ensure that none of the provisions of the sub-license agreements are contrary or inconsistent with the provisions of the Concession Agreement and/or creating any liability, of any nature, upon the Authority.

Moreover, sub-licensing to any foreign person or company shall be subject to prior written consent of the Authority from a national security and public interest perspective.

However, this is clarified that primary responsibility of ensuring that such Project Agreement is not contrary or inconsistent with existing provision of Concession Agreement will rest with Concessionaire.

12.11.2 The Concessionaire agrees and undertakes that in respect of any sub-license on any Project Asset, it is entitled to receive a monthly fee, charge, rent or revenue share, as the case may be.

In addition, if any amount to be accepted or demanded, whether by way of security, deposit, advance or under any other head whatsoever, the same shall be received in the name of the Authority and shall be deposited by the Concessionaire with the Authority only in respect of such sub-license or it should be deposited in the Escrow Account to be kept in separate sub- account which will be utilized only and only as and when the same is required to be returned on conclusion of sub-license period or earlier if the sub-licensee is terminated on account of any reason.

12.12 Rights of sub-licensees after Termination of Concession Agreement

On termination of Concession Agreement, the sub-licensee shall not have any right whatsoever and will be required to immediately vacate and hand over the possession of the premises to the Authority without any claim.

ARTICLE 13 - MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress (both physical and financial) of the Construction Works executed and next month's construction plan along with other relevant information as may be required by the Independent Engineer or the Authority.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project works, at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice, Applicable Laws, Applicable Permits and terms of this Agreement for quality assurance. The size of sample for such test shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed by the agencies operating in the logistic parks / ICDs / CFS / warehouse zones etc. including but not limited to MES/CPWD, DPIIT, IBC, BIS, IRC and/or MoRTH as per Good Industry Practice for the construction works undertaken by the Authority through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that Tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the Tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such Tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.6.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be

completed by the Scheduled Completion Date, notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Authority and the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

13.5 **Suspension of unsafe Construction Works**

- 13.5.1 Upon recommendation of the Independent Engineer on any error or defect of a technical nature in the designs and Drawings without rectification of which the Project cannot be carried out as per this Agreement, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users or any other person on or about the Project. Provided, however, that in case of an emergency, the Authority may *suo moto* issue the notice referred to hereinabove.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. All costs and expenses arising out of or relating to tests and inspections conducted by the Independent Engineer to inspect such remedial measures shall be borne by the Concessionaire. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot be resolved within 30 (thirty) days of the suspension or proposal of the remedial measures thereto, shall be made under and in accordance with the Dispute Resolution Procedure.
- 13.5.3 Subject to the provisions of Clause 31.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”) shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date subject to a maximum of 10% (ten per cent) of the Concession Period.

13.6 **Video recording**

During the Construction, the Concessionaire shall have camera at site and shall provide to the Authority and to the Independent Engineer weblink for monitoring of the Construction works. Further, for every calendar quarter, a video recording / Drone survey, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter. The Authority may require such video recording to be carried out along with the authorized representative(s) of the Authority. Notwithstanding

anything to the contrary contained in this document, the Concessionaire shall also develop a Project specific website which shall be accessible to the public and upload the time stamp pictures of the development of the Project each week.

ARTICLE 14 - COMPLETION CERTIFICATE

14.1 Tests

14.1.1 No later than 60 (sixty) days prior to the likely completion of each phase, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of Concessionaire and Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof. For the avoidance of doubt, it is agreed that the provisions of this Article 14 shall apply to all other subsequent phases of the Project including the Commercial Zone Development.

14.1.2 All Tests shall be conducted in accordance with Schedule-U at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority, copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

14.2 Completion Certificate

Upon completion of the Construction Works, and the Independent Engineer determining the Tests to be successful for each phase, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule I (the "**Completion Certificate**") for Phase -1. Completion certificate shall be issued separately for subsequent phases of the Project upon completion of Construction Works and successful tests and inspection as determined by the Independent Engineer.

14.3 Provisional Certificate

14.3.1 Subject to the provisions of Clause 14.3.2, the Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule I (the "**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if at least 90% (ninety per cent) of phase I of the Project has been completed and it can be safely and reliably placed in commercial operation in accordance with the provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part of the Project, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Project shall be construed accordingly. The Parties further agree that the Provisional Certificate shall be issued separately for the subsequent phases of the Project with above mentioned conditions applicable separately for each phase. The details of the phasing of the Project are mentioned in Schedule A.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 120 (one hundred and twenty) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall conduct Tests, if required and issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.4.3 The Concessionaire undertakes to complete the Punch List items for respective phases of the Project (in respect of those sections of the Project for which the Provisional Certificate has been issued) within a period of 60 (sixty) days of the date of issuance of the Provisional Certificate, and those parts of the Construction Works in respect of which Time Extension has been granted, within the extended period thereof. It is clarified that the Punch List shall include all items for which Time Extension has been granted and shall also include

14.4.4 any minor outstanding items of work forming part of the completed sections, if such works do not materially affect the use of the completed sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed Construction Works cannot be safely and reliably placed in service of the Users thereof.

14.5 Withholding of Provisional or Completion Certificate

14.5.1 If the Independent Engineer determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire within 15 (fifteen) days of conducting such Tests. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the

Project and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3 or Completion Certificate under Clause 14.2, and such direction shall be complied forthwith.

14.6 **Rescheduling of Tests**

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

14.7 **Completion Certificate not a cessation of liability**

The issuance of Completion Certificate shall not in any way alter the liability of the Concessionaire, constitute a waiver of unfulfilled obligations, bar remedy or rectification of defects or constitute an acceptance of the Construction Works.

14.8 **Safety certification prior to COD**

The Concessionaire shall, not later than 30 (thirty) days prior to the likely COD, notify the Authority and the Independent Engineer of the compliance of Safety Requirements and invite them to observe any or all the tests that may be specified by the Independent Engineer in accordance with Applicable Laws and Good Industry Practice to determine and certify that the Project is safe for entering into commercial service, and the costs of such tests shall be shared equally between the Concessionaire and the Authority; provided that in case of failure in any test requiring repetition thereof, the cost of such second or subsequent test shall be borne entirely by the Concessionaire.

ARTICLE 15 - ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

- 15.1.1 In case, a part of Project is completed, and commercial services can be started subject to written approval from the Authority and compliance with the provisions of Clause 14.8, the Concessionaire may enter into commercial services such part of completed Project, whereupon the Concessionaire, its authorized representatives or the sub-licensees, under valid and subsisting sub-licensing agreements, shall be entitled to demand and collect Fee for such completed part of the Project (the “Partial COD”). The obligation of the Concessionaire w.r.t payment of Premium under the provisions of this Concession Agreement shall start from the date of Partial COD and such payment shall be as per the provisions of Clause 25.3. Provided that such declaration of Partial COD shall not cause or result in the COD of the Project to be extended under any circumstances whatsoever including provisions of Clause 12.7. Provided further that in case COD of the Project is not achieved as per the provisions of the Concession Agreement except for reasons solely attributable to Authority, the Partial COD declared shall be withdrawn and all rights of the Concessionaire regarding such Partial COD shall cease to be in effect.
- 15.1.2 The Project shall be deemed to be complete when the Completion Certificate or the Provisional certificate, as the case may be, is issued for the respective phase under the provision of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate for Phase-1 is issued and the Concessionaire shall have obtained the Applicable Permits to operate the Project (“the **COD**”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 25.
- 15.1.3 In the event that the Authority prevents, or causes to be prevented, or in any manner delays the entry of the Project into commercial service after issuance of Completion Certificate or the Provisional Certificate, as the case may be, or where such delay occurs in the issuance of such certificate by the Independent Engineer for any reason attributable to the Independent Engineer or the Authority, as the case may be, the Concessionaire may declare COD and notify the Authority forthwith. In the event of any Dispute relating to the declaration of COD hereunder, the Dispute Resolution Procedure shall apply. For subsequent phases of development after COD, if there is a delay in issuance of Completion Certificate or the Provisional Certificate for reasons specified above, the Concessionaire may commence the commercial operations.

15.2 Damages for delay

Subject to the provisions of Clause 12.6, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16 - CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 16.1.4, require the provision of addition, deletion, and modification of works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.
- 16.1.4 The Concessionaire acknowledges and agrees that any expansion of the Project within the Site which is necessary for compliance of the provisions of this Agreement, shall not form part of Change of Scope and shall be undertaken at the cost and expense of the Concessionaire.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority within a period of 60 (sixty) days, such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope (with specific details on proposed designs, modifications and implementation milestones with payment linked schedule) and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.
- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing

a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

- 16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire as a Change of Scope under this Article 16.

16.3 Payment for Change of Scope

- 16.3.1 Within 30 (thirty) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.
- 16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Concession Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Overall Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Overall Total project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.4 Restrictions on certain works

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Project and issuing the Provisional Certificate.
- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the cumulative cost of implementing all the orders pertaining to Change of Scope shall not exceed 10% (ten per cent) of the Overall Total Project Cost at any time during the Concession Period. The cost of change of scope shall be part of the Overall Total Project Cost of the Project. No Change of Scope shall be executed unless the Authority has issued the Change of Scope Order save and except any works necessary for meeting any Emergency.

16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, and thereupon securing the award of such works or services. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.
- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes disruption in operation and management of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

ARTICLE 17 – OPERATI ON AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project (including the additional land for long haul which may be handed over to the Concessionaire at a later date during the term of this Agreement) in accordance with this Agreement, Applicable Laws and Applicable Permits either by itself, or through O&M Contractors and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice.

The obligations of the Concessionaire regarding O&M (the “O&M”) hereunder shall include:

- (a) ensuring to provide Services, as are required as per the terms of this Agreement and Good Industry Practice;
- (b) permitting safe, smooth and uninterrupted movement of Users and flow of traffic on the Project (including the additional land for long haul which may be handed over to the Concessionaire at a later date during the term of this Agreement), including prevention of loss or damage thereto, during normal operating conditions; provided that the Concessionaire shall adhere to the provisions of prevailing Private Freight Terminal (PFT) / railway siding policy of Indian Railways (IR)/Dedicated Freight Corridor Corporation of India Limited (DFCCIL), as the case may be; provided further that train operations shall be undertaken by the IR/DFCCIL as the case may be;
- (c) collecting and appropriating the Fee;
- (d) minimizing disruption to movement of Users and flow of traffic in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (e) carrying out periodic preventive maintenance of the Project;
- (f) undertaking routine maintenance including prompt repairs of cracks, joints, drainage systems, embankments, structures, buildings, pavement markings, communication systems, lighting, road signs and other equipment;
- (g) undertaking major maintenance such as resurfacing of pavements, repairs to structures, repairs and refurbishment of equipment, signaling and communication system and major overhaul of equipment;
- (h) undertaking routine and periodic maintenance of railway line/siding (including related supervision charges of Authority itself or through related GOI agency) in line with the Indian Railways (IR) and/or Dedicated Freight Corridor Corporation of India Limited (DFCCIL) standards and regulations, as applicable;
- (i) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, unauthorized entry to or unauthorized use of the Project;
- (j) protection and conservation of the environment and provision of equipment and materials thereof in line with the Environment Clearance granted to the project land the by State Environment Impact Assessment Authority (SEIAA), Uttar Pradesh through the EC identification no. – EC23B039UP118056 dated 24th April 2023;
- (k) adhere to the provisions of all laws of the land including municipal laws and by-laws and rules in connection with display of advertisement. The Concessionaire shall also pay/ensure

payment of advertisement tax, service tax, other taxes and levies (if any), in respect of the advertisements displayed;

- (l) maintaining a public relations unit to interface with and attend to suggestions from the Users, Government Instrumentalities, media and other agencies in accordance with the Applicable Laws, for providing the requisite information. The Concessionaire shall develop and maintain a Project website with provisions to integrate with the Authority's website, to display information about the facilities available to the Users, for receiving and publishing User feedback, and mechanism for grievance redressal. The Authority may publish guidelines from time to time related to the website;
- (m) complying with Safety Requirements in accordance with Article 18;
- (n) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (o) maintaining punctuality and reliability in operating the Project;
- (p) not place or create nor permit any worker or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement;
- (q) ensure that Project Site and facilities created are not defaced by any kind of writing / posters;
- (r) follow all labour laws and regulations and pay the wages, deposit Provident Fund (PF) and Employees' State Insurance (ESI) contributions and other dues to its workers in time. The Concessionaire shall indemnify the Authority from any claims in this regard and submit certificates with details of PF and ESI for each of its employees (and employees of its Contractors for which the Authority is likely to be Principal Employer under this Contract) every quarter;
- (s) intimate the Authority/Independent Engineer about any misconduct or misdeeds or any act or incident involving the Concessionaire or any of its personnel or any of its licensee(s), Contractor(s)/sub-contractor(s), agent(s), representative(s) in any criminal or civil case and shall not hold the Authority liable for any of the same of consequences thereof in any manner thereof;
- (t) ensure that the Project is handed over to the Authority in sound condition on the Transfer Date;
- (u) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (v) taking all measures relating to fire precautions in accordance with Applicable Laws, Applicable Permits and Good Industry Practice; and
- (w) providing all the requisite information, data, operating statistics, etc., as may be required by the Authority, Independent Engineer any of the Government Instrumentality, GOUP or GOI, from time to time.

17.1.2 Without prejudice to the provisions of Clause 17.1.1, the obligations of the Concessionaire shall, in respect of handling of Containers (the "**Containers**"), include:

- (a) transfer operations, including lifting of hatch covers and lashing or unlashings of Containers;
- (b) truck-to-truck or rail wagon-to-truck or vice versa ship-to-ship transfer operations for and in respect of Containers;
- (c) stacking and un-stacking of Containers;

- (d) transfer of Containers within the Project;
- (e) delivery and receipt of Containers;
- (f) de-stuffing and delivery of Containers which are LCL (Less than Container Load) or receipt and stuffing of export cargo in Containers;
- (g) operation and maintenance of systems and services for the prevention;
- (h) monitoring and detection of fire, including the appointment of a trained fire officer, and availability of fire alarm appliances and fire fighting equipment in accordance with Applicable Laws and Applicable Permits;
- (i) inventory control of all Containers, chassis and other assets at Project;
- (j) operation and maintenance of communication with and reporting to freight forwarders, transporters, agents and other users;
- (k) garbage and water disposal in accordance with Applicable Laws;
- (l) transit storage of Containers;
- (m) provision of motor transport pool/chassis pool;
- (n) allocation and sequencing of Containers; and
- (o) all other matters and activities incidental to the operations of the Project

17.1.3 The Concessionaire shall promptly remove from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice. For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at the location identified by the Authority and/or Independent Engineer.

17.1.4 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay damages under the provisions of Applicable Laws, such damages shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For the avoidance of doubt, payment of any damages under the provisions of Applicable Laws shall be in addition to, and independent of the Damages payable under this Agreement.

17.1.5 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-bridges/under-bridges, over-passes, under-passes or other structures situated on the Site.

17.2 Maintenance Requirements

The Concessionaire shall procure that all times during the Operations Period, the Project conform to the maintenance requirements set forth in Schedule J (the “**Maintenance Requirements**”).

17.3 Maintenance Manual

17.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair, operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4 **Maintenance Programme**

17.4.1 On or before COD and no later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Project;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply *mutatis mutandis* to such modifications.

17.5 **Safety, breakdowns and accidents**

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, breakdowns and accidents, it shall follow the relevant operating procedures, and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire’s responsibility for rescue operations on the Project shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic and movement of the Users. For this purpose, it shall maintain and operate 2 (two) round-the-clock rescue vehicle with rescue equipment and position the vehicles in a manner that allows prompt access to the accident site.

17.6 **De-commissioning due to Emergency**

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project to Users for so long as such Emergency and the consequences thereof warrant; provided that such decommissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

- 17.6.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Authority of the same without any delay or as and when instructed by the Authority to re-commission.
- 17.6.3 Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.
- 17.6.4 No claim or compensation shall be due and payable to the Concessionaire on account of de-commissioning or restricted use of the Project or any part thereof during an Emergency or for reasons of national security and public interest.

17.7 **Project closure**

- 17.7.1 The Concessionaire shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Programme, except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem reasonable and necessary and a copy of such permission shall be sent to the Authority. However, it shall be noted that the maximum period for such closure, not forming part of the Maintenance Programme, shall not be more than 7 (seven) days in a year. For any unforeseen event / major overhaul required due to technical reasons / machinery breakdown., requiring closure of the facility beyond 7 days, Concessionaire shall seek approval of the Authority in writing detailing out the reasons requiring such closure. However, the Concessionaire may seek further extension to the above project closure period from the Authority on grounds of operations, management, unforeseen event and major overhaul beyond the original period approved under this Clause arising out of exceptional or extraordinary circumstances. The Authority shall provide its decision within 7 (seven) days of such request. For avoidance of doubt, the Authority shall respond within 7 (seven) days of receiving a request from the Concessionaire and if the Authority does not respond within the said period, the request of the Concessionaire shall be deemed to be approved.
- 17.7.2 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in re- opening such part, the Concessionaire shall pay Damages to the Authority calculated at the rate of 1.25 (one point two five) times the daily Revenue Share payable to the Authority from designated part of the Project, as determined by the Independent Engineer, for each day of delay until that part of the Project has been re-opened for use. The payment of Damages shall not affect its obligations of payment of Revenue Share / Minimum Guaranteed Revenue Share as provided under this Agreement.

Explanation: For the purpose of calculating daily revenue, the average of monthly revenue of preceding month shall be used.

17.8 **Damages for breach of maintenance obligations**

- 17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each

day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Revenue, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 Authority's right to take remedial measures

- 17.9.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.

- 17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses under Clause 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

17.10 Overriding powers of the Authority

- 17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

- 17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

- 17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 35.3, the Authority may take over, or authorize any designated GOI agency to take over, the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed

necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 35. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to the Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

17.12 Modifications to the Project

17.12.1 The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the Master Plan, Specifications and Standards, Maintenance Requirements, Good Industry Practice, Applicable Laws and the provisions of this Agreement; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

17.12.2 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to all the Construction Works forming part of modification of the Project.

17.13 Excuse from performance of obligations

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

- (a) an event of Force Majeure in accordance with Article 31;
- (b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project.

Provided that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer without any delay;

Provided further that the Concessionaire shall keep all unaffected parts of the Project open to traffic, provided they can be operated safely.

17.14 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers or obstructions are erected or placed by any Government Instrumentality on the Project except for reasons of Emergency, national security, or law and order. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions, or closing

down of approach roads to the Project that may cause a Material Adverse Effect on the movement to and from the Project.

Any maintenance, repair, or rectification of the Project not forming part of scheduled maintenance shall be deemed to be unscheduled maintenance (the “**Unscheduled Maintenance**”). For the avoidance of doubt, the Parties agree that any forced closure of the whole or any part of the Project under the provisions of Clause 17.6 shall be deemed to be Unscheduled Maintenance.

17.15 Electricity and water supply

17.15.1 The Concessionaire shall procure water and electricity, as may be necessary for operation of the Project, from the respective local utilities upon payment of charges in accordance with Applicable Laws. It is agreed that the Concessionaire shall make its own arrangement for standby supply of electricity as may be necessary for operation of the Project.

17.15.2 The Concessionaire shall comply with the provisions of the Electricity Act, 2003 and the rules and regulations made thereunder for the purposes of the availing, generation or distribution of the electricity, for the purposes of the Project.

17.16 Advertising on the Site

The Concessionaire is eligible to construct hoarding boards for advertisement on the Site and generate revenue, provided such advertising thereon does not, in the opinion of the Authority, distract the Users or violates extant guidelines issued by the Authority. All advertising on the Project shall conform to Good Industry Practice. For avoidance of doubt, it is agreed that the rights of Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time and no compensation shall be claimed on account thereof.

17.17 Surveillance of Common User Operations Area

During the Operation Period, the Concessionaire shall provide access to surveillance cameras of common user operations area to Authority, in accordance with the Surveillance and Safety Manual, Applicable Laws and Good Industry Practice. The access to the surveillance cameras shall be provided to the Authority within 1 (one) month of the COD.

17.18 Monitoring and Maintenance

- (a) With reference to the stipulations of Clause 17.4.1, the Concessionaire shall undertake the maintenance of the Project.
- (b) The Concessionaire shall carry out actions as directed by the Authority in respect of repair of defects, equipment replacement, human resources and other such actions as may be specified;
- (c) The Concessionaire shall maintain appropriate records, documents, data etc. inter alia in relation to the Services provided and Users and submit to the Independent Engineer, the representative(s) of the Authority and the experts appointed by the Authority, the necessary periodic reports evaluating adherence to Specifications and Standards, as outlined in the Schedules to this Agreement;
- (d) The Concessionaire shall provide access to the Project Facilities and the Project records to the Independent Engineer, representative(s) of the Authority and experts appointed by the Authority.
- (e) The Concessionaire shall provide all relevant information and data on Key Performance Indicators on a half yearly basis as detailed under Article 21 of this Agreement.

17.19 Calibration of equipment

The Concessionaire shall undertake calibration of equipment as per the standards of the original equipment manufacturer of such equipment.

17.20 IT System

The Concessionaire shall operate and maintain a robust IT System with round-the-clock connections to the networks of the Authority and other Stakeholders for exchange of data and information. The IT system should be online and shall provide real-time access to the Concessionaire Authority and Senior Lender. For this purpose, it shall follow such protocol for Application Programming Interfaces (APIs) or Electronic Data Interchange (the “EDI”) as the Authority and other government agencies may specify from time to time. The IT system shall at the least provide following features/ functionalities –

- (a) shall be a transaction and process management system that captures operations, revenue, expense of the Project on real-time basis.
- (b) shall be designed such that the business & operation processes for all Services provided by the Concessionaire is mapped in the IT System, and Gross Revenue earned by the Concessionaire should flow from the operational data of Services provided, base tariff and discounts offered.
- (c) shall have real-time connectivity with all government agencies inter alia Indian Railways (FOIS / TMS / eT-RR/ Other System) as per facilities developed by Indian Railways, Customs (ICEGATE / Sea Cargo Manifest and Transshipment Regulations (SCMTR) / Other System) as per facilities developed by the Customs, Port Community System (PCS), Unified Logistics Interface Platform, Logistics Data Bank System (LDB System).
- (d) shall provide real-time Container / Cargo, Vehicle, equipment tracking within the Project from the time they arrive at the Project till the time they exit from the Project. IT System shall also provide the details of operations / value addition performed on these Container / Cargo, Vehicle.
- (e) shall be able to provide all reports and performance dashboards that show the health of the operations (KPIs), revenue & expense at the unit level as the Authority may specify from time to time.
- (f) shall be designed such that its resources are used and accessed as intended under all the circumstances. The IT System shall have sufficient security against malware, ransomware, threats and unauthorized access. The IT System shall be in conformity with ISO/IEC 27001:2022 or to its updated version.
- (g) shall comply with India data and privacy laws.
- (h) shall be SOC 2 compliant.
- (i) shall have audit log. Any changes made in the transaction / data shall have proper reason recorded in the system.
- (j) shall ensure robust processes and methods to ensure data collection and verification at any stage as required by the Authority.

ARTICLE 18 - SAFETY REQUIREMENTS

18.1 Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users and other persons at the Project. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule K (the “**Safety Requirements**”).

The Authority if need be, shall appoint an experienced and qualified firm or organization (the “Safety Consultant”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire and shall be deemed to form part of the works and services included in the Scope of the Project.

ARTICLE 19 - MONITORING OF OPERATION AND MAINTENANCE

19.1 Quarterly and Monthly status reports

- 19.1.1 At all times during the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report, in a form acceptable to the Authority, stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- 19.1.2 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority, Senior Lender and the Independent Engineer a quarterly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- 19.1.3 During the Operation Period, the Concessionaire shall, no later than 21 (twenty-one) days after the close of each calendar quarter, submit to the Authority a statement, duly certified by its Statutory Auditor, confirming compliance with all applicable provisions of the Companies Act, 2013, in respect of Related Party Transactions. The statement shall include a summarized report detailing all Related Party Transactions undertaken during the preceding quarter.
- 19.1.4 The Independent Engineer shall assess that all Related Party Transactions have been done on arm's length basis. In case, any particular revenue item has not been carried out in arm's length basis, the difference between revenue arrived by Independent Engineer considering arm's length basis and actual revenue reported shall become part of Gross Revenue.
- 19.1.5 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Engineer a quarterly management report which shall be a summary of:
- (a) key performance indicators achieved in the quarter, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
 - (b) key operational hurdles and deliverables expected in the succeeding quarter along with strategies for addressing the same and for otherwise improving the Project's operational performance;
 - (c) key financial parameters for the quarter, as benchmarked against the quarterly budget, the reasons for shortfall, if any, and proposals to remedy the same; and
 - (d) quarterly budget for the succeeding quarter, along with strategies for improving the Project's financial performance.

19.2 Reports of unusual occurrence

- 19.2.1. The Concessionaire shall, upon occurrence of accidents or unusual occurrences on the Project, send to the Authority, by facsimile or e-mail, a report, in a mutually agreed form, stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project, as soon as reasonably practicable, and in any event no later than 24 (twenty four) hours after such occurrence. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For

the purposes of this Clause 19.2, accidents and unusual occurrences on the Project shall include:

- (a) death or injury to any person;
- (b) any damage to or obstruction at the Project, which results in a slowdown of the services being provided to the Users;
- (c) outages or failure of electricity supply or water supply at the Project;
- (d) any incident of theft or robbery at the Project;
- (e) any incident of breach of security at the Project;
- (f) smoke or fire;
- (g) flooding of the Project;
- (h) disablement of any equipment during operation;
- (i) communication failure affecting the operation of Project; and
- (j) such other relevant information as may be reasonably required by the Authority or the Independent Engineer

Provided, however, that in the event no report is sent prior to the close of any day as required hereunder, it shall be presumed that no accident or unusual occurrence, as specified in this Clause 19.2.1, has occurred on that day.

19.2.2. In the event of an Emergency, the Concessionaire shall furnish a report, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such Emergency, setting out the details of the same and the measures taken to mitigate the impact thereof.

19.3 Inspection

The Independent Engineer or Authority's officials shall inspect the Project at least once a month. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.4 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the adherence of the Project to Maintenance Requirement shall borne solely by the Concessionaire.

19.5 Remedial measures

19.5.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

- 19.5.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

ARTICLE 20 - SECURITY

20.1 Security

- 20.1.1 The Concessionaire shall provide and maintain boundary wall or other suitable protection around the Project and shall be responsible for the security arrangements for the Project, which also includes providing and maintaining necessary equipment at the entry, exist and within the Project in order to maintain orderly conduct of its business and the security thereof.
- 20.1.2 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the Project. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organization authorised by the Authority other than those resulting from willful or grossly negligent acts or omissions of such organization. The Authority agrees that it shall cause the relevant organizations to take such actions as reasonably deemed necessary by them for the security of the Project, without unduly or unreasonably disrupting the operations of the Project or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organizations authorised by the Authority in discharge of their obligations for and in respect of the security of the Project.
- 20.1.3 Subject to compliance of Clause 20.1.1 and 20.1.2 by the Concessionaire, the Concessionaire may request Authority to provide additional security forces within the limits of the Project for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences. The Authority agrees that it shall, at the request of the Concessionaire, procure and provide the services of security forces. The cost for services of security forces provided by the Authority shall be borne by the Concessionaire at actual on monthly basis.
- 20.1.4 Subject to the rights of the Concessionaire under this Clause 20.1, the Authority or any agency duly authorized by it shall be entitled to inspect and search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the Project.
- 20.1.5 The Authority shall ensure and procure that the personnel of the Concessionaire and all its Contractors, suppliers, sub-contractors and agents are allowed free ingress and egress to the Project without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Authority.

20.2 Insurance premium

The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Project is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise of the risk perception to the Project, the Concessionaire shall accordingly adjust the insurance cover to factor in the enhanced security risk.

ARTICLE 21 - KEY PERFORMANCE INDICATORS

21.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate and maintain the Project such that it achieves or exceeds the performance indicators specified in Schedule P (the “**Key Performance Indicators**”) hereto.

21.2 Half Yearly Report

During the O&M Period, the Concessionaire shall, no later than 7 (seven) days after the close of half-yearly period, furnish a half-yearly report stating in reasonable detail the compliance with the Key Performance Indicators specified in Schedule P along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Project Facility. The half-yearly report shall include a quantification of the Damages to be calculated in accordance with Clause 21.3.

21.3 Damages for shortfall in performance

21.3.1 The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in Schedule P and for any shortfall in average performance during the half-yearly period, it shall pay Damages within the time period mentioned in Clause 21.3.3 for the half year in which the shortfall occurred. The Damages due and payable under this Clause 21.3 shall be determined at the rate of 0.1% (zero point one per cent) of the total revenue from Fee in the respective half yearly period for every shortfall of 10% (ten per cent) in any single Key Performance Indicator specified in Schedule P and in case there is a shortfall in more than one Key Performance Indicator then for each such Key Performance Indicator 1% (one per cent) of total revenue from Fee shall be payable as Damages; provided further that the Authority may fully or partially waive its right to impose Damages, in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and that the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

Provided that no Damages shall be payable in pursuance of this Clause 21.3.1 if the Concessionaire, within a period not exceeding 90 (ninety) days from the date of notice of such shortfall from the Authority is able to identify, rectify and cure the reasons attributable to the shortfall in the performance and demonstrate to the satisfaction of the Authority that all Key Performance Indicators are adhered.

21.3.2 Save and except as expressly provided in this Agreement, the Independent Engineer may:

- (a) within 7 (seven) days of the receipt of the report, conduct an audit based on documents to be made available by the Concessionaire and the Authority, to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators; and
- (b) within fifteen (15) days of the receipt of the report, conduct a physical audit at the Project, to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators

Upon completion of the audit under the provisions of this Clause 21.3.2, the Independent Engineer shall compute and communicate to the Concessionaire and the Authority, by written notice, the Damages payable by the Concessionaire.

21.3.3 The Parties agree that the Damages shall be due and payable within 30 (thirty) days of the date of determination by the Independent Engineer under Clause 21.3.2 and any errors thereof shall be corrected and reconciled within 60 (sixty) days of the close of the relevant Accounting Year.

21.3.4 Any goods and service tax, if applicable, on the Payment of Damages by the Concessionaire to the Authority shall be paid by the Concessionaire.

21.4 ISO certification

- 21.4.1 The Concessionaire shall, within 12 (twelve) months from COD, achieve and thereafter maintain throughout the Concession Period, QMS ISO 9001:2000 certification or a substitute thereof for all the facilities at the Project which are controlled and managed by the Concessionaire, including the facilities which have been sub-licensed, and shall provide a certified copy thereof to the Authority forthwith.
- 21.4.2 In the event of default in obtaining the certification specified in Clause 21.3.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for all facilities at the Project.
- 21.4.3 If the period of default in obtaining the ISO certification under this Clause 21.3 shall exceed a continuous period of 3 (three) months, the Concessionaire shall pay Damages to the Authority in an amount equal to 0.1% (zero point one per cent) of the total monthly revenue from Fee for every 1 (one) month of default beyond the aforesaid period of 3 (three) months.

21.5 User Charter

The Concessionaire shall publish and implement a charter articulating the rights and expectations of the Users (the “**User Charters**”) in accordance with Good Industry Practice and Applicable Laws. The Concessionaire shall at all times be accountable and liable to Users in accordance with the provisions of the User Charter and Applicable Laws.

21.6 Excuse from Key Performance Indicators

The Concessionaire shall be excused for its default in conformity with any Key Performance Indicator if such default is on account of the Authority to discharge its obligations hereunder.

ARTICLE 22 - INDEPENDENT ENGINEER

22.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule N, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 90 (ninety days) days from the date of this Agreement and shall be for a period of 6 (six) months after COD. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule N, and such procedure shall be repeated after expiry of each appointment till the end of Concession Period.

22.2 Duties and functions

- 22.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule O.
- 22.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule O.
- 22.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.
- 22.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

22.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule N, one-half of all of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

22.4 Termination of appointment

- 22.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 22.1.
- 22.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 22.1.

22.5 Authorised signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

22.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure as set out under Clause 41.1.

22.7 Interim arrangement

In the event that the Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 22.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

ARTICLE 23 - COMMERCIAL ZONE AND CONSUMPTION LED WAREHOUSING DEVELOPMENT

23.1 Commercial Zone and Consumption Led Warehousing Development

23.1.1 The Concessionaire shall undertake development and maintenance of Commercial Zone and Consumption Led Warehousing Development in accordance with Schedule A and Schedule B.

23.1.2 The Concessionaire shall undertake or cause to be undertaken at its cost and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the development and maintenance of infrastructure such as roads, electric supply, water supply, sewerage and drainage systems forming part of Commercial Zone and Consumption Led Warehousing Development.

23.2 Operation and maintenance of Commercial Zone and Consumption Led Warehousing

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Good Industry Practice in the operation, maintenance and management of Commercial Zone and Consumption Led Warehousing Development and shall make commercial use thereof subject to the provisions of this Agreement and Applicable Laws.

The Concessionaire acknowledges and agrees that it shall not in any manner create an Encumbrance on any part of Commercial Zone Development and Consumption led warehousing except in accordance with the provisions of Clause 5.2.

23.3 Costs, taxes and revenues

23.3.1 All costs, expenses, taxes, cess, fees and charges relating to Commercial Zone and Consumption Led Warehousing Development other than taxes on property, shall be borne by the Concessionaire. For the avoidance of doubt, any taxes on property payable by the Authority to the extent arising out of any development undertaken by the Concessionaire, shall be paid by the Authority in accordance with Applicable Laws and reimbursed by the Concessionaire to the Authority within a period of 60 (sixty) days of receiving a notice from the Authority along with necessary particulars thereof.

23.3.2 All the revenues accruing from Commercial Zone and Consumption Led Warehousing Development shall be appropriated by the Concessionaire in accordance with the provisions of this Agreement and Applicable Laws.

23.4 Restrictions on Commercial Zone and Consumption Led Warehousing Development

23.4.1 The Concessionaire shall procure that:

- (a) Commercial Zone Development shall at all times be in conformity with Applicable Laws and may include construction and operation of commercial office space, allied services etc. for analogous uses, but shall not include commercial use not related to the Project or Users such as shopping mall, industrial park or entertainment complex; and
- (b) Consumption Led Warehousing shall at all times be in conformity with Applicable Laws and may include construction and operation of brick and mortar warehouses (excluding bonded warehouses and warehouses for bulk and break bulk cargo) and cold storage and allied services for analogous uses, but shall not include commercial use not related to the Project or Users

23.4.2 The Concessionaire acknowledges and agrees that it shall not sub-license, assign or in any manner create an Encumbrance on any part of Commercial Zone and Consumption Led Warehousing Development except in accordance with the provisions of Clause 5.2.

23.5 Restrictions on Floor Space Index (FSI)

Subject to the provisions of the Master Plan, the FSI of Commercial Zone and Consumption Led Warehousing Development shall be the limit specified by local authorities under Applicable Laws. The height of any structure to be built on Commercial Zone and Consumption Led Warehousing Development shall not exceed limit specified by the Authority, as the case may be. For the avoidance of doubt, the FSI referred to hereinabove shall be computed with reference to the total area earmarked in the Master Plan as Commercial Zone and Consumption Led Warehousing Development, but excluding the areas reserved for roads, parks and other common facilities and amenities.

23.6 Sub-licensing of Commercial Zone and Consumption Led Warehousing

23.6.1 Subject to the provisions of Clause 5.2 and this Article 23, the Concessionaire may sub-license the Project Assets forming part of Commercial Zone and Consumption Led Warehousing Development such that the period and validity of such sub-license shall not extend beyond the period specified in Clause 23.7.

The Concessionaire shall ensure that none of the provisions of the sub-license agreements are contrary or inconsistent with the provisions of the Concession Agreement and/or creating any liability, of any nature, upon the Authority.

Moreover, sub-licensing to any foreign person or company shall be subject to prior written consent of the Authority from a national security and public interest perspective. However, this is clarified that primary responsibility of ensuring that such Project Agreement is not contrary or inconsistent with existing provision of Concession Agreement will rest with Concessionaire.

23.6.2 Notwithstanding anything to the contrary contained in Clause 23.7.1, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of Commercial Zone and Consumption Led Warehousing Development at any time prior to the Appointed Date. Provided, however, that the restraint hereunder shall not apply to advertising or to any other Encumbrance created for a period not exceeding 6 (six) months. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.

23.6.3 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 23.6.2, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of Commercial Zone and Consumption Led Warehousing Development without prior written approval of the Authority, which approval the Authority may, in its discretion, deny only if such sub-licence, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement; provided that the provisions of this Clause 23.6.3 shall not apply where the Concessionaire grants a sub-licence for a cumulative period, including any renewals thereof, not exceeding 11 (eleven) months. For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 23.6.3 within a period of 30 (thirty) days from the date of receiving a notice with full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-licence, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.

23.6.4 The Concessionaire agrees and undertakes that in respect of any sub-licence, assignment or other Encumbrance on any Project Asset forming part of Commercial Zone and Consumption Led Warehousing Development, it is entitled to receive a monthly fee, charge, rent or revenue share, as the case may be, and shall not accept any other amount, whether by way of security, deposit, loan, advance or under any other head whatsoever, that exceeds the payment due to the Concessionaire for and in respect of the following year by way of fee, charge, rent or revenue share in respect of such sub-licence, assignment or other Encumbrance. For the avoidance of doubt, the Concessionaire agrees to procure that the consideration payable to it for any sub-licence, assignment or other Encumbrance shall accrue evenly over the Concession Period and shall be payable no less frequently than once every quarter; provided that nothing in this Article 23 shall prohibit the Concessionaire from adjusting the whole or

any part of the consideration in proportion to the fluctuations in the grantee's revenues or profits over the Concession Period or from specifying an annual increase not exceeding 12% (twelve per cent) per annum in such consideration.

23.6.5 In the event of any difference or disagreement between the Parties in matters arising out of the provisions of this Clause 23.6, the Dispute Resolution Procedure shall apply.

23.7 Rights of sub-licensees after Termination

The Parties expressly acknowledge and agree that the Concessionaire may, in its discretion, grant sub-licences for Commercial Zone and Consumption Led Warehousing Development up to the maximum period permissible under Clause 3.1.1. The Parties further agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the sub-licences and the rights of the sub-licensees shall automatically and forthwith terminate without the need for any action to be taken by the Authority upon the Termination of the Agreement.

23.8 Compliance with Applicable Laws

The Concessionaire agrees and undertakes that it shall, in respect of Commercial Zone and Consumption Led Warehousing Development, at all times conform to Applicable Laws and the rules, regulations or by-laws made thereunder relating to buildings, structures, road works, open spaces, electric supply, water supply, sewerage and other like matters.

23.9 Commercial advertisement or display

The Concessionaire may undertake or cause to be undertaken commercial advertising or display on Commercial Zone and Consumption Led Warehousing Development in conformity with Applicable Laws and the provisions of this Agreement.

PART – IV: FINANCIAL COVENANTS

ARTICLE 24 - FINANCIAL CLOSE

24.1 Financial Close

- 24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 270 (two hundred and seventy) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 90 (ninety) days, subject to the submission of a written request describing the reasons for seeking such extension at least 15 (fifteen) days in advance and payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 270 (two hundred and seventy) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.
- 24.1.3 In the event the Concessionaire proposes to keep separate Financial Close for each phase of development, it shall at least 30 (thirty) days prior to the scheduled date of commencement of construction for the relevant phase, provide to the Authority all the information as required under Clause 24.1.2. However, it shall be the responsibility of the Concessionaire to ensure that Financing Agreements for the respective phase(s) do not contain anything contrary to the terms of this Agreement or proposes or is likely to impose any financial obligation or liability on the Authority beyond the terms of this Agreement.

24.2 Termination due to failure to achieve Financial Close

- 24.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 30.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 or the extended period provided thereunder or unless otherwise agreed between the Parties, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 24.2.2 Upon Termination under Clause 24.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure or solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, release the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the Bid Security.

ARTICLE 25 - CONCESSION FEE

25.1 Concession Fee

- 25.1.1 In consideration of the grant of Concession the Concessionaire shall pay to the Authority, by way of concession fee a sum of INR 1 (Rupee one) per annum, and the License Fee and Premium specified in Clause 25.2 and Clause 25.3 respectively (the “**Concession Fee**”).
- 25.1.2 The Concession Fee specified herein is exclusive of Goods and Services Tax (GST) or any other applicable taxes. Applicability of GST or other statutory levies applicable under prevailing laws shall be charged over and above the Concession Fee.

25.2 License Fee

- 25.2.1 Upon execution of the Concession Agreement and in further consideration of the Authority providing license rights for the Site for the Project to the Concessionaire and granting the rights and access set forth in this Agreement, the Concessionaire shall pay to the Authority, an annual License Fee of INR 90 crore (Rupees Ninety Crores) (“**License Fee**”). The License Fee would be increased by 6% (six per cent) after every 3 (three) years post COD.
- 25.2.2 The License Fee shall be due and payable on an annual basis at the end of every year. For avoidance of doubt, the 1st (first) License Fee shall be paid by the Concessionaire after completion of 1st year of COD, subject to 20% (twenty per cent) of the License Fee as defined in Clause 25.2.1. For the 2nd (second), 3rd (third) and 4th (fourth) years after the COD, the License Fee to be paid by the Concessionaire shall be 40% (forty per cent), 60% (sixty per cent) and 80% (eighty per cent) of the License Fee respectively. The License Fee for the 5th (fifth) year post COD and for the remaining years of the Concession Period, would be 100% (hundred per cent) of the License Fee.
- 25.2.3 For avoidance of doubt, the License Fee would be applicable to be paid annually by the Concessionaire for the entire Concession Period as per the provisions of the clause 25.2.1 and 25.2.2 above.
- 25.2.4 Further, the Concessionaire shall pay to the Authority an additional annual License Fee calculated @INR 28,50,000/ hectare (Indian Rupees Twenty Eight Lakhs Fifty Thousand per hectare) (“**Additional License Fee**”) for any additional land for long haul which may be handed over to the Concessionaire. The rate specified herein for the Additional License Fee is as of the COD. The actual annual Additional License Fee payable, after additional land area for long haul has been handed over to the Concessionaire, shall be subject to an escalation factor of six percent (6%) applied every three (3) years following the COD. The Additional License Fee shall be due and payable on an annual basis after completion of 1st year from the date of such handover. For avoidance of doubt, if the additional land is handed over the course of a year, the Additional License Fee payable for that year shall be prorated accordingly.
- 25.2.5 The Authority shall not be obliged to demand payment of License Fee and Additional License Fee by notice or otherwise, and it shall be incumbent upon the Concessionaire to pay the License Fee and Additional License Fee as and when it falls due. The License Fee and Additional License Fee (as and when applicable) shall be payable by the Concessionaire during the term of this Concession Agreement.
- 25.2.6 The Concessionaire shall pay the License Fee and Additional License Fee into such account as may be designated by the Authority from time to time.
- 25.2.7 The License Fee under the provisions of this Article 25 shall be due and payable annually within 7 (seven) days of the close of each year after COD and Additional License Fee shall be due and payable within 7 (seven) days of the close of every year after additional land area for long haul has been handed over to the Concessionaire. Any delay in payment of the License Fee and Additional License Fee shall incur an interest of SBI PLR + 3% from the date such payment becomes due till the date of actual payment.

25.2.8 In the event the Concessionaire fails to pay the outstanding License Fee and Additional License Fee for the relevant year together with the delayed interest payment on or before the expiry of the 60 (sixty) days period, the same shall constitute a Concessionaire's event of default.

25.3 Premium (Revenue Share)

25.3.1 Without prejudice to the provisions of Clause 25.1, the Concessionaire agrees to pay to the Authority for the year commencing from the date of occurrence of Partial COD or COD, as the case maybe, till the end of Concession Period, a premium (the "**Premium**") in the form and manner detailed below:

- a) From the date of occurrence of the COD, the Premium (Revenue share as quoted by the Concessionaire in the Bid excel sheet submitted along with the bid) at the rate of [**] % of the Gross Revenue shall become payable during the remaining Concession Period in terms of this Agreement.

In case the COD falls between the quarters of the relevant Accounting Year, the Premium shall be computed on the Gross Revenue for the subsequent months in the quarter in which the COD falls. For avoidance of doubt, in case the COD falls on 17th (seventeenth) October, the Premium for the 1st (first) quarter shall be payable on the Gross Revenue for the months of November and December.

- b) During the last Accounting Year of the Concession Period, the Premium shall not be due and payable for the period after expiry of the Concession Period. The last quarterly payment for the last Accounting Year of the Concession Period shall be payable by the Concessionaire based on actual Gross Revenue accrued from the 1st (first) day of the relevant quarter till the date of the end of Concession Period in that quarter.

25.3.2 The Premium payable under this Clause 25.3 and 25.4 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

25.4 Payment of Premium

The Premium under the provisions of this Article 25 shall be due and payable in 4 (four) quarterly instalments per annum. For the Premium payable in accordance to with the Clause 25.3, within 7 (seven) days of the close of each quarter, the Concessionaire shall pay to the Authority, a provisional amount calculated on the basis of total Gross Revenue of the immediately preceding quarter, and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year except for the last Accounting Year of the Concession Period. The quarterly payment, or part thereof, as the case may be, of last Accounting Year of the Concession Period shall be payable by the Concessionaire based on the actual Gross Revenue received during the particular quarter(s), or part thereof, within 7 (seven) days of the close of such quarter or part thereof.

In the event, the Premium is not paid within the period specified above from the close of each quarter, the amount of outstanding Premium for the relevant quarter shall attract delayed interest payment at the rate equal to 3% (three percent) above the Bank Rate to be computed on the outstanding Premium from the end of the 7 (seven) days period till the date of actual payment subject to a maximum period of 60 (sixty) days after the expiry of the initial 7 (seven) days period mentioned above.

In the event the Concessionaire fails to pay the outstanding Premium for the relevant quarter together with the delayed interest payment on or before the expiry of the 60 (sixty) days period, the same shall constitute a Concessionaire's event of default.

25.5 Minimum Guaranteed Revenue Share

25.5.1 The Minimum Guaranteed Revenue Share payable by the Concessionaire against respective Check Point(s) to the Authority shall be as per Schedule M of this Agreement.

25.5.2 The sum of the 'present value on "XNPV" basis' of the Premium, payable to the Authority during the Concession Period, as per Clause 25.3 and 25.4, up to the periodic Check Point(s) shall be greater than

or equal to the minimum guaranteed Revenue Share (“Minimum Guaranteed Revenue Share”) as detailed in Schedule M of this Agreement.

Note: For determining the sum of the ‘present value on “XNPV” basis’ of Premium paid by the Concessionaire to the Authority up to the respective Check Point(s) detailed in Schedule M of this agreement, the actual quantum of Premium paid by the Concessionaire for each period, as per Clause 25.3 and 25.4, up to the respective Check Point(s), shall be discounted at the annual rate of 08% for the number of quarters from the date of payment to the Appointed Date and summed arithmetically thereafter.

- 25.5.3 If the sum of ‘present value on “XNPV” basis’ of the Premium, payable to the Authority during the Concession Period, as per Clause 25.3 and 25.4, up to the periodic Check Point(s) (as detailed in Schedule M) is less than the ‘Minimum Guaranteed Revenue Share’, then the difference between the Minimum Guaranteed Revenue Share for the respective Check Point(s) as detailed in Schedule M and the sum of present value on “XNPV” basis of the Premium paid by the Concessionaire up to the respective Check Point(s) shall be the ‘present value on “XNPV” basis’ of the shortfall amount at the Appointed Date.

For the purpose of the payment of shortfall amount by the Concessionaire to the Authority, the ‘present value on “XNPV” basis’ of the shortfall amount, as determined in this Sub-clause above, shall be compounded at the rate of 08% annual rate for the number of quarters, counted from the Appointed Date till the date of the respective Check Point at which the shortfall was determined.

- 25.5.4 In case of a shortfall, as determined above in 25.5.3, at any given Check Point as specified in Schedule M, the Concessionaire shall be entitled to a Cure period of 120 (one hundred and twenty) days from the period as specified in Schedule – M for the respective Check Point(s) to pay the shortfall amount as determined in Sub-clause 25.5.3 above.
- 25.5.5 In case the Concessionaire is unable to pay the shortfall amount, referred in 25.5.3 above, fully within the Cure Period, Damages at the rate of 0.1% (zero point one per cent) of shortfall amount, determined in 25.5.3 above, shall be applicable for each day of delay, after the Cure Period, subject to a maximum delay of 90 (ninety) days, post which the Concessionaire shall be deemed to be in material breach of the Concession Agreement and further action shall be taken as per the provisions of this Agreement.
- 25.5.6 For avoidance of doubt, it is clarified that if the sum of present value on “XNPV” basis of Premium payable to the Authority in terms of Clause 25.3 and 25.4 exceeds the Minimum Guaranteed Revenue Share, calculated as per stipulation of this Clause 25.5 and Schedule M, the excess amount shall be the revenue to the Authority as a part of consideration to concession over and above Minimum Guaranteed Revenue Share.

25.6 Verification of Gross Revenue

- 25.6.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue honestly and faithfully, depute its representatives to the MMLH, centralised controls of automatic revenue collection system and the offices of the Concessionaire/its representative / sublicensee and undertake such other measures and actions as it may deem necessary, to ascertain the actual revenue.
- 25.6.2 If the verification of Gross Revenue pursuant to this Clause 25.5 demonstrates that the Gross Revenue is more than the amount reported by the Concessionaire or its sub-licensees, the Concessionaire shall pay Damages, to the Authority, at the rate equal to 30 (thirty) times the difference in daily Gross Revenue determined by the Authority or its representative.

ARTICLE 26 – COMMISSIONING OF COMPETING FACILITY

26.1 Restricting on commissioning of Competing Facility

- 26.1.1 Notwithstanding anything to the contrary contained in this Agreement but subject always to Clause 26.2, the Authority shall not construct or cause to be constructed any new Competing Facility within a 100 (one hundred) kilometres radius of the MMLH until 10 (ten) years from the Appointed date
- 26.1.2 If the Authority shall be in breach of the provisions of Clause 26.1.1, the Concessionaire shall be entitled to remedies specified in Clause 26.2 only.

26.2 Modification in the Concession Period

In the event of the Authority commissioning or operating, or causing the commissioning or operation of any Competing Facility within 100 (one hundred) kilometres radius at any time until the 10th (tenth) anniversary of the Appointed Date, the following shall apply:

- (a) The Authority shall be liable to compensate to the Concessionaire the loss by extending the Concession Period by the proportion that can be mitigated by such extension. However, such extension shall not exceed more than 10% (ten per cent) of the Concession Period and such compensation shall be the sole remedy of the Concessionaire
- (b) If the Concession Period is to be increased in accordance with the provisions of this Clause 26.2, the same shall be added to the Concession Period under and in accordance with all other provisions of this Agreement, save and except the provisions relating to Termination.

ARTICLE 27 - USER FEE

27.1 Collection of Fee by the Concessionaire

27.1.1 On and from COD, and till the Transfer Date, the Concessionaire or its authorised representatives or the sub-licensees (under valid and subsisting sub-license agreement's) shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users (the "**Fee**") as deemed appropriate as per market conditions and fair market practices. The schedule of fees to comply with guidelines and provisions specified in Schedule-V (the "**Schedule of Fee**"). The Concessionaire shall publish the applicable fees for various Services offered at the Project on the website of the Project and specify in respect of all or any category of Users.

27.1.2 The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the specified facility at the Project, and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement.

27.1.3 The Concessionaire shall be entitled to recover User Fee from the Users of the Project Facilities and Services as per the User Fee set by the Concessionaire as per Clause 27.1.1.

27.2 Revision of Fee

27.2.1 The Concessionaire may at any time during operation period modify the fees. The revision of Fee shall not be applicable retrospectively

27.3 Damages for evasion of Fee

In the event that any person uses the Project without payment of Fee due to the Concessionaire, the Concessionaire shall, subject to Applicable Laws and Applicable Permits, be entitled to determine and collect from such person the Fee due and twice the amount thereof towards predetermined liquidated damages for attempt to make unauthorized use of the Project; provided that the determination and collection of such Fee and liquidated damages hereunder shall be at the risk and cost of the Concessionaire and the Authority shall not be liable on this account in any manner whatsoever.

27.4 Display of Fee

27.4.1 The Concessionaire shall, at all entry points of the Project and near the Fee counters at the Project, prominently display the applicable rates of Fee for information of the Users.

27.4.2 The Concessionaire shall, from time to time, inform the Authority and Independent Engineer of the applicable Fee, in respect of the Services, facilities and amenities rendered by the Concessionaire or its authorised representatives or the sub-licensees (under valid and subsisting sub-license agreement's) at the Project and the detailed calculation thereof. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Fee under and in accordance with the Schedule of Fee and will not be applicable retrospectively

27.4.3 The Concessionaire shall not collect any amounts in excess of the rates of Fee payable as displayed on the Concessionaire's website and at the Project site. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Authority, refund such excess amounts to the Authority along with Damages equal to 25% (twenty five per cent) thereof.

27.5 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 15 (fifteen) days of completion of each month, a statement of Fee in respect of the Services, facilities and amenities rendered by the Concessionaire or its authorised representatives or the sub-licensees (under valid and subsisting sub-license agreement's) at the Project substantially in the form set forth in Schedule-L (the "Monthly Fee Statement"). The Concessionaire shall also furnish to the Authority such other

information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

27.6 Fee contractor

The Concessionaire may appoint a fee contractor or any other person to collect the Fee for and on behalf of the Concessionaire in respect of the Services, facilities and amenities rendered by the Concessionaire, or its authorised representatives or the sub-licensees (under valid and subsisting sub-license agreement's) at the Project, provided that notwithstanding such appointment, the Concessionaire shall be and remain solely liable and responsible for the collection of Fee in accordance with this Agreement and its deposit into the Escrow Account and for compliance with the provisions of this Agreement.

ARTICLE 28 - ESCROW ACCOUNT

28.1 Escrow Account

- 28.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.
- 28.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule Q.

28.2 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts, damages or insurance claims; and
- (c) all payment by the Authority, after deduction of any outstanding Concession Fee:

28.3 Withdrawals during Concession Period

- 28.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
 - (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements, in accordance with the Applicable Laws, Applicable Permits and Good Industry Practice;
 - (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
 - (e) Concession Fee due and payable to the Authority;
 - (f) Monthly proportionate provision of debt service due in an Accounting Year;
 - (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses.
 - (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
 - (i) any reserve requirements set forth in the Financing Agreements; and
 - (j) balance, if any, in accordance with the instructions of the Concessionaire.
- 28.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 28.3.1, except with the prior written approval of the Authority.

28.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due; excluding Subordinated Debt;
- (c) outstanding Concession Fee and other payments
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses.
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 36;
- (f) outstanding debt service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 28.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 35.

The provisions of this Article 28 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 28.4.1 have been discharged.

28.5 Withdrawals upon end of Concession Period

28.5.1 All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 31 and 32 of the Concession Agreement shall be appropriated in the following order of priority:

- (a) towards taxes and statutory dues payable by the Concessionaire;
- (b) compensation to Senior Lenders in terms of the Financing Agreements towards discharge of the Concessionaire's liability under such Financing Agreements;
- (c) all amounts due to the Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:
 - (i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Authority;
 - (ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Authority; and
 - (iii) Vesting Certificate has been issued by the Authority under the provisions of Clause 35.4.

ARTICLE 29 - INSURANCE

29.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

29.2 Insurance Cover

Without prejudice to the provisions contained in Clause 29.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above

29.3 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 29. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure as set forth in Article 40 shall apply.

29.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 29 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

29.5 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire, or in the event of computation

of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

29.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 29 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurances.

29.7 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employee, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

29.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 28.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

29.9 Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

ARTICLE 30 - ACCOUNTS AND AUDIT

30.1 Audited Accounts

- 30.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement, Profit and loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right either through itself or through any of its authorised representatives, to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of Accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either party under this Agreement.
- 30.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, giving summarized information on the traffic count for each category of Users using the Project and liable for payment of Fee therefore, and any other information, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 30.1.3 On or before the 31st (thirty-first) day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the traffic and liable for payment of User Fee thereof; (b) User Fee charged and received, and other revenues derived from the Project and any other asset associated with the Project and earned directly by the Concessionaire; and (c) such other information as the Authority may reasonably require.

30.2 Appointment of Auditors

- 30.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors (the “**Statutory Auditors**”), a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule S. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 30.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 30.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants as may be decided by the Authority to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.
- 30.2.4 The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

30.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto

shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Concession Fee as per Clause 25.1.

30.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 30.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

30.5 Dispute Resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure as set out under Clause 41.1.

PART – V: FORCE MAJEURE AND TERMINATION

ARTICLE 31 - FORCE MAJEURE

31.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 31.2, 31.3 and 31.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) prevents the Affected Party from performing or discharging its obligations under this Agreement and thereby has Material Adverse Effect on the Affected Party.

31.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 31.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

31.3 Indirect Political Event

An Indirect Political Events shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or state-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents operations by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event;
- (f) any event or circumstance of a nature analogous to any of the foregoing;

31.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequence thereof cannot be dealt which under and in accordance with the provision of Article 38 and its effect, in financial terms, exceeds the sum specified in Clause 38.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any the foregoing.

31.5 Duty to report Force Majeure Events

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 31 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measurement which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Events; and
- (d) any other information relevant to the Affected Party's claim.

31.5.2 The Affected party shall not be entitled to any relief for or in respect of a Force majeure Events unless it shall have notified the other Party of the occurrence of the Force Majeure Events as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

31.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing

information as required by Clause 31.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

31.6 **Effect of Force Majeure Event on the Concession**

31.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent and in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

31.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Events subsists; or
- (b) after COD, whereupon the Concessionaire is unable to generate revenue despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the activities thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of revenue on account thereof; provided that in the event of reduction in revenue on account of partial inability or suspension, as the case may be, which causes the daily revenue to decline below 90% (ninety per cent) of the Average Daily Revenue, the Authority shall extend the Concession Period in proportion to the loss of revenue on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of revenue as compared to the Average Daily Revenue for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period. However, the maximum extension in the Concession Period, shall be limited only up to 10% of the Concession Period.

31.7 **Allocation of costs arising out of Force Majeure**

31.7.1 Upon occurrence of any Force Majeure Events prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

31.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Events, shall be borne by the Concessionaire, and to the extent Force Majeure Cost exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire

For the avoidance of doubt, Force Majeure Costs may include payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of revenues, costs which are expressly covered under any provision of this Agreement or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent such information is relevant.

31.7.3 Save and except as expressly provided in this Article 31, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

31.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 31, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

31.9 Termination Payment for Force Majeure Event

31.9.1 If Termination is on account of Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

31.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make Termination Payment to the Concessionaire in an amount equal:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity;

Note: For the avoidance of doubt, Debt Due and Adjusted Equity payable shall be in proportion to the value of work done, as determined by the Independent Engineer.

The Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements

31.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 34.3.2 as if it were an Authority Default.

31.10 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as set out under Clause 41.1; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

31.11 Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 32 - COMPENSATION FOR BREACH OF AGREEMENT

32.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 32.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 32.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

32.2 Compensation for default by the Authority

Subject to the provisions of Clause 32.4, in the event of the Authority, being in material breach or default of this Agreement at any time after the Appointed Date, shall compensate the Concessionaire for the loss suffered by extending the Concession Period in the proportion that can be mitigate the loss suffered by such extension. However, any such extension of the Concession Period shall not exceed more than 10% (ten per cent) of the Concession Period and such extension shall be the sole remedy of the Concessionaire and no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement.

32.3 Compensation to be in addition

Compensation payable under this Article 32 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

32.4 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 33 - SUSPENSION OF CONCESSIONAIRE'S RIGHTS

33.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire's Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to generate income, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

33.2 Authority to act on behalf of Concessionaire

33.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 28.3.

33.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 33.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its designs, engineering (as required for proper execution and completion of the Project as envisaged by the Authority), construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

33.3 Revocation of Suspension

33.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

33.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

33.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 33.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

33.5 Termination

- 33.5.1 At any time during the period of Suspension under this Article 33, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 33.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 34.
- 33.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 33.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 34 - TERMINATION

34.1 Termination for Concessionaire Default

34.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire’s Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 90 (ninety) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) COD does not occur within the period specified in Clause 12.5.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated defaults in conforming to the Key Performance Indicators;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) a resolution for insolvency of the Concessionaire is passed, or any petition for insolvency of the Concessionaire is initiated before a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 and such application has not been withdrawn within 30 (thirty) days of the date thereof
- (r) if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (s) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (t) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 or Companies Act, 2013 and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (u) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (v) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (w) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (x) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement;
- (y) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- (z) the Concessionaire fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority's Representative.

34.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to

terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 34.1.3.

- 34.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 34.1.2 to inform the Lenders' Representative and grant 30 (thirty) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

34.2 Termination for Authority Default

- 34.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) the Authority commits a default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

- 34.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

34.3 Termination Payment

- 34.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of the Debt Due less Insurance Cover;
provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

For avoidance of doubt, in case the termination occurs during development of subsequent phases, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

1. 90% (ninety per cent) of the Debt Due till already completed phase (determined in accordance with Schedule G) less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
2. Lowest of the following:
 - (a) 90% (ninety per cent) of Debt Due less Insurance Cover for the phase under construction; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.
 - (b) 70% (seventy per cent) of value of work done for the phase under construction as determined by the Independent Engineer

The Termination Payment in case of Concessionaire Default shall be due only after completion of Project Milestone-1 as per Schedule G. Notwithstanding to the provisions of Clause 34.3.1 upon Termination on account of Concessionaire Default during the Construction Period (prior to occurrence of COD), the Termination Payment shall be based on the Project Milestone achieved for phase-1 as per Schedule G and the Termination Payment corresponding to the achieved Project Milestone shall be as follows:

Project Milestone achieved for phase-1	Termination Payment
Project Milestone -1 as per Schedule G	The Termination payment shall be calculated as lowest of the following: (a) 20% (twenty per cent) of Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due or (b) 70% (seventy per cent) of value of work done ³ , as determined by Independent Engineer.
Project Milestone2 as per Schedule G	The Termination payment shall be calculated as lowest of the following: (c) 35% (thirty five per cent) of Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due or (d) 70% (seventy per cent) of value of work done, as determined by Independent Engineer.
Project Milestone -3 as per Schedule G	The Termination payment shall be calculated as lowest of the following: (a) 60% (sixty per cent) of Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover

³ The value of work done means the physical progress made on the site by the Concessionaire

	are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due or
(b)	70% (seventy per cent) of value of work done, as determined by Independent Engineer.

34.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 100% (one hundred percent) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 150% (one hundred and fifty percent) of the Adjusted Equity;

34.3.3 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

34.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 34 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

34.4 Certain limitations on Termination Payment

34.4.1 The Termination Payment, due and payable under this Agreement shall be computed with reference to the Debt Due and Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that within a period of 60 (sixty) days from COD and issue of completion/provisional certificate for subsequent phases, the Concessionaire shall notify to the Authority, the Total Project Cost of phase-1 as on COD and as on the date of issue of completion/provisional certificate for subsequent phases and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. The Parties further agree that in the event such disaggregation is not notified to the Authority, the Equity shall be deemed to be the amount arrived at by subtracting Debt Due from the Total Project Cost. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70% (seventy per cent) of the Total Project Cost

34.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 34.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment

34.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;

- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 35.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

34.6 **Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.3.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

34.7 **Limitation of Liability**

Neither Party shall be liable to the other for any loss of profit, loss of business, loss of production, loss of contracts or for any indirect or other consequential loss or damage whatsoever that may be suffered by the other Party, except to the extent that such consequential loss or damage is attributable to gross negligence, deliberate default, fraud, fraudulent misrepresentation or willful misconduct by the defaulting Party, its personnel or agents.

The aggregate liability of either Party, under or in connection with the Agreement other than those provided under Clause 34.3, 34.7, and 34.8 of this Agreement, shall not exceed 100% (one hundred percent) of the Total Project Cost.

34.8 **Mutual Foreclosure**

34.8.1 Without prejudice to any provision of this Agreement, the Authority and Concessionaire may terminate this Agreement by mutual consent in circumstances which does not constitute Authority's Default, Concessionaire's Default or Force Majeure. Such a foreclosure can occur in any of the following 2 possible position as per the mutual consent of the Authority and the Concessionaire:

1. Type A Foreclosure: Foreclosure with mutual consent *without any liability or consequential future liability* for either Party.
2. Type B Foreclosure: Foreclosure with mutual consent with compensation to the Concessionaire including any pending settlements / claims as per the provisions under

Clause 34.8.3.

- 34.8.2 Should a Party intend to foreclose this Agreement by mutual consent, the intending Party shall issue a Notice to the other Party and upon issuance of such Notice, the other Party may within a reasonable time-frame either agree to such foreclosure or raise objection(s) to the same by intimating either of the two possible positions to the intending Party in writing.
- 34.8.3 In either case of the other Party agreeing to the proposed termination and with prior written approval of the Lender's Representative or otherwise, the Parties may negotiate the terms and conditions of the mutual foreclosure agreement and this Agreement shall stand terminated upon execution of mutual foreclosure agreement. Any payment under the Type B Foreclosure shall not exceed the termination payment as specified in case of Concessionaire event of default.
- 34.8.4 In the event the Parties mutually agree to terminate this Agreement under this Clause, the Authority shall be liable to compensate the Concessionaire as per the provisions under Clause 34.8.3
- 34.8.5 Any attempt or endeavour for foreclosure by mutual agreement under this Clause shall, subject to the rights and obligations of the Parties surviving under this Clause, be without prejudice to the rights and obligations of the Parties herein and the factum of such an attempt or exercise shall not stop either of the Parties from discharging their contractual obligations under this Agreement. For the avoidance of doubt, it is agreed that all the rights, claims, and obligations of either party arising under this Agreement shall cease upon execution of the Mutual Foreclosure Agreement hereunder.
- 34.8.6 For the avoidance of doubt, it is clarified that such foreclosure shall not affect the Concessionaire in any way if it wishes to bid in future projects of the Authority.

34.9 Continuity upon Termination

In case of Termination under Article 34 and notwithstanding pendency of any judicial/quasi-judicial proceeding, the Authority, shall be entitled to appoint/engage the services of another contractor to execute or complete the Project with or without appropriate changes or modifications and the same shall be without prejudice to the Concessioner's liabilities and obligations under Article 39 and similar such Articles. In case termination of this Agreement is set aside pursuant to legal or quasi-judicial proceedings, the Concessionaire shall be put to the same position as if such termination had never happened.

ARTICLE 35 - DIVESTMENT OF RIGHTS AND INTEREST

35.1 Divestment Requirements

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive, peaceful and vacant possession of the Site and Project Assets, including but not limited to the structure/installations/fixtures erected or installed within a period of 7 (seven) days of the expiry or earlier determination of the Concession Period, failing which the Concessionaire shall be liable for payment of Damages equivalent to 1% (one per cent) of the last annual Concession Fee per day up-to a maximum of 15 (fifteen) days, after which the Authority shall be entitled to enter upon and take possession of the Site including the Project on 'as-is- where-is' basis;
- (c) cure all Project Assets, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets except items not considered in Total Project Cost, shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering (as required for proper execution and completion of the project as envisaged by the Authority), construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering (as required for proper execution and completion of the project as envisaged by the Authority), construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

35.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

35.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer or any of its nominee shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required,

cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 36 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 35.

35.3 Cooperation and assistance on transfer of Project

- 35.3.1 The Parties shall cooperate on a best efforts basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 35.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation, management and development of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 35.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 35.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure as set out under Clause 41.1 shall apply.
- 35.3.4 The Authority reserves the right to invite bids for the Site at an appropriate time before expiry of Concession Period to enable smooth transition. The Concessionaire reserves the right to bid. The Authority reserves the right to amend the bid conditions, scope of work etc. while inviting fresh bids. The Concessionaire shall allow the core team (consisting of maximum of 4 (four) persons) of such successful bidder to enter the premises 7 (seven) days before expiry of Concession Period to monitor work and take charge at the appointed hour.
- 35.3.5 During re-bidding of the Project, the Concessionaire shall have the first right of refusal, subject to the following:
- (a) The Concessionaire shall participate in the re-bid of the Project;
 - (b) The Authority shall reserve the right to modify existing or introduce new terms and conditions and bid parameters; and
- The Concessionaire shall have a right to match the highest bid to exercise the first right of refusal if its bid is within the range of 10% (ten per cent) of the most competitive bid received

35.4 Vesting Certificate

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

35.5 Divestment costs etc.

- 35.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 35.5.2 In the event of any Dispute relating to matters covered by and under this Article 35, the Dispute Resolution Procedure as set out under Clause 41.1 shall apply.

ARTICLE 36 - DEFECTS LIABILITY AFTER TERMINATION

36.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority/Independent Engineer in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 36 shall not apply if Termination occurs prior to COD.

36.2 Retention of Escrow Account

- 36.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 36.2.3, a sum equal to 5% (five per cent) of the total Concession Fee for the year immediately preceding the Transfer Date, shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 36.1.
- 36.2.2 Without prejudice to the provisions of Clause 36.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and Eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 36.2.1, should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 36.2.3 The Concessionaire may, for the performance of its obligations under this Article 36, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 36.2.1 or 36.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 36. Upon furnishing of a Performance Guarantee under this Clause 36.2.3, the retention of funds in the Escrow Account in terms of Clause 36.2.1 or 36.2.2, as the case may be, shall be dispensed with.

PART - VI: OTHER PROVISIONS

ARTICLE 37 - ASSIGNMENT AND CHARGES

37.1 Restrictions on assignment and charges

- 37.1.1 Subject to Clauses 37.2 and 37.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 37.1.2 Subject to the provisions of Clause 37.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

37.2 Permitted assignment and charges

The restraints set forth in Clause 37.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

37.3 Substitution Agreement

- 37.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule R.
- 37.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

37.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

Any assignment under this Article 37 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

ARTICLE 38 - CHANGE IN LAW

38.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of INR 10 crore (Rupees ten crore) or 2% (two per cent) of the Realisable Revenue in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

38.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of INR 10 crore (Rupees ten crore) or 2% (two per cent) of the Realisable Revenue in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

38.3 Protection of NPV

Pursuant to the provisions of Clauses 38.1 and 38.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination

of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

38.4 **Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 38 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such Accounting Year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

38.5 **No claim in the event of recovery from Users**

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.

38.6 **Unforeseen Events**

38.6.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 38.6.

38.6.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

38.6.3 The conciliation tribunal referred to in Clause 38.6.2 shall conduct its proceedings in accordance with the provisions of Article 41 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 38.6.

38.6.4 The conciliation tribunal referred to in this Clause 38.6 shall conduct preliminary proceedings to satisfy itself that:

- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission on its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 38.6.

38.6.5 Upon completion of the conciliation proceedings referred to in this Clause 38.6, the conciliation tribunal may by a reasoned order make recommendations and setting out the terms of reference which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and

(d) quantified and restricted in terms of relief or remedy.

38.6.6 Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 38.7.6, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.

ARTICLE 39 - LIABILITY AND INDEMNITY

39.1 General indemnity

39.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities, designated GOI agencies and Authority owned and/or controlled entities/enterprises, (the “**Government Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or any User or from any negligence of the Concessionaire under contract or tort or, on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.

39.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceedings, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

39.2 Indemnity by the Concessionaire

39.2.1 Without limiting the generality of Clause 39.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire, its subsidiaries, assigns or affiliates in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

39.2.2 Without limiting the generality of the provisions of this Article 39, the Concessionaire shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire’s Contractors in performing the Concessionaire’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire

shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

39.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 39 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 30 (thirty) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

39.4 Defence of claims

- 39.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 39, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intension to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 39.4.2 If the Indemnifying Party has exercised its rights under Clause 39.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 39.4.3 If the Indemnifying Party exercises its rights under Clause 39.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 39.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

39.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 39, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

39.6 Survival on Termination

The provisions of this Article 39 shall survive Termination.

ARTICLE 40 - RIGHTS AND TITLE OVER THE SITE

40.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as a licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

40.2 Access rights of the Authority and others

40.1.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of the Authority, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

40.1.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility or road.

40.3 Property taxes

40.3.1 All property taxes on the Site shall be payable by the Concessionaire. Property tax shall include specific terms such as Municipal Tax, Non- Agricultural Tax, or any other tax levied by a local body in relation to the Site on which it is established and Project Assets.

40.3.2 In the event the Concessionaire fails to pay property tax within the time specified therein, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.

40.3.3 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right to recover the costs and Damages specified in Clause 40.3.2 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow bank to make payment from the Escrow Account in accordance with the instruction of the Authority under this Clause 40.3.3 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

40.4 Restriction on sub-letting

Save and except as may be expressly set forth in this Agreement, the Concessionaire shall not sub-license the whole or any part of the land comprising the Project Site, licensed to it by the Authority under this Agreement, to any person in any form or under any arrangement, device or method, provided that the Concessionaire shall be entitled to:

- (a) enter into contractual arrangements, including the subletting, sub-licensing, franchising or similar arrangements in respect of the built up area subject to the provisions of Clause of 5.2, which, however, shall not involve the transfer of the license rights therein or thereof; and
- (b) appoint sub-contractors for the implementation of the Project at the Project Site in accordance with the provisions of the Concession Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint

Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

40.5 Rights of the sub-licencees after Termination

The Parties expressly acknowledge and agree that the Concessionaire may, in its discretion, grant sub-licencees for Commercial Development and Consumer Led Warehousing in the Project up to the maximum period permissible under Clause 3.1.1. The Parties further agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the sub-licences and the rights of the sub-licencees shall automatically and forthwith terminate without the need for any action to be taken by the Authority upon the Termination of the Agreement

ARTICLE 41 - DISPUTE RESOLUTION

41.1 Dispute resolution

- 41.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 41.2.
- 41.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

41.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman and Managing Director of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 41.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 41.3.

41.3 Arbitration

- 41.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 41.2, shall be finally decided by reference to arbitration by an arbitral tribunal appointed in accordance with Clause 41.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for New Delhi International Arbitration Centre (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent amendment or re-enactment thereof (“**Act**”). The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 41.3.2 There shall be an arbitral tribunal comprising 3 (three) arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Rules.
- 41.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 41 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 41.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated. The Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 41.3.5 The expenses incurred by each Party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each Party itself.

41.4 Adjudication by Regulatory Commission or Authority

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 41.3, be adjudicated upon by such tribunal or other forum in accordance with the Applicable Law and all references to Dispute Resolution Procedure as set out under Clause 41 shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 42 - DISCLOSURE

42.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and at the Project. The Concessionaire shall prominently display at the Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

42.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

42.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 42.1 and 42.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation: The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 42.1 and 42.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 43 - REDRESSAL OF PUBLIC GRIEVANCES

43.1 **Complaints Register**

- 43.1.1 The Concessionaire shall maintain a “**Complaint Portal**” on its website which shall be available to all Users of the Project Facilities and Services (the “**Complainant**”) who shall be duly informed about availability of the provision for lodging of complaints. The Complaint Portal will also be linked to the Authority website with an alert system for real time access to the complaints.
- 43.1.2 The Concessionaire shall take action for just and fair redressal of the grievance and submit a reply to the Complainant within 30 (thirty) days from the date of receipt with a copy to Authority and maintain a proof of reply.
- 43.1.3 If Concessionaire fails to address the grievance and the Complainant makes a reference to Authority, it will issue directions which shall be complied by the Concessionaire. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

43.2 **Redressal of complaints**

The Concessionaire shall inspect the Complaint Portal every day and take prompt and reasonable action for redressal of each complaint.

ARTICLE 44 - MISCELLANEOUS

44.1 Governing law and jurisdiction

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

44.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

44.3 Depreciation and Interest

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rate.

44.4 Delayed payments

44.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

44.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

44.5 Waiver

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

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

44.6 **Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the MMLH nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

44.7 **Exclusion of implied warranties etc.**

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

44.8 **Survival**

44.8.1 Termination shall:

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

44.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

44.9 **Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification cum Proposals, shall be deemed to form part of this Agreement and treated as such.

44.10 **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 will negotiate in good faith with a

view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement under Clause 41.1 or otherwise.

44.11 No partnership

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

44.12 Third parties

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

44.13 Successors and assigns

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

44.14 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

{Attention:

Designation:

Address: Fax No: Email: }

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in the same city as the Authority, it may send such notice by facsimile or email and by registered acknowledgement due, air mail or by courier;

{Attention:

Designation:

Address: Fax No: Email: }; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual

date and time of delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working day following the date of its delivery.

44.15 Language

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

44.16 Counterparts

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN

Signed for and on behalf of:

The AUTHORITY

Signed for and on behalf of:

CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary/Authorised Officer who has countersigned the same in token thereof

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

Signature of the Witness:

(Name)

(Designation)

Signature of the Witness:

(Name)

(Designation)

SCHEDULES

SCHEDULE – A

PROJECT SITE

1. The Site

- 1.1. The Site (geo- co-ordinates provided in Annex -I) of the Project shall include the land, buildings and structures as described in Annex-I of this Schedule A.
- 1.2. An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the Memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3. Any additional land required for service areas, ancillary buildings or for construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

2. Master Plan or the Site

- 2.1. The Master Plan to be developed for the Site is described in Annex-II of this Schedule-A.
- 2.2. The concept master plan has been provided in Map 1 as a reference. The Master Plan for the site shall be as per the provision of this Agreement, and shall specify the location and land use in respect of the Railway facilities, container yard, bonded area, Customs and other administrative offices, Warehouses, Commercial buildings, and utilities like STP, WTP, Sub – station etc.

Annex-I

(Schedule A)

SITE FOR THE PROJECT

1. Location of the Site

- 1.1. The Site for the Project is located south of Dadri village, in Gutam Buddh Nagar district of Uttar Pradesh (latitude 28°31'08.95"N - 28°32'28.03"N and longitude 77°32'45.87"E- 77°34'27.91"E) in western region of the state. The site is comprised of land acquired form 5 villages including Dadri, Katehra, Pali, Palla and Chitehra.
- 1.2. The coordinates for the Site are given in the table below, subject to marginal variation as per Site demarcation:

Vertex	Latitude	Longitude
1	28° 31' 4.042" N	77° 33' 49.503" E
2	28° 31' 4.675" N	77° 33' 48.574" E
3	28° 31' 7.417" N	77° 33' 48.194" E
4	28° 31' 10.682" N	77° 33' 46.944" E
5	28° 31' 12.750" N	77° 33' 43.341" E
6	28° 31' 14.812" N	77° 33' 43.582" E
7	28° 31' 16.236" N	77° 33' 42.905" E
8	28° 31' 17.061" N	77° 33' 41.293" E
9	28° 31' 17.463" N	77° 33' 41.462" E
10	28° 31' 19.245" N	77° 33' 38.680" E
11	28° 31' 15.932" N	77° 33' 35.908" E
12	28° 31' 21.346" N	77° 33' 27.527" E
13	28° 31' 17.902" N	77° 33' 24.652" E
14	28° 31' 17.156" N	77° 33' 24.682" E
15	28° 31' 16.840" N	77° 33' 23.943" E
16	28° 31' 14.086" N	77° 33' 21.598" E
17	28° 31' 15.433" N	77° 33' 19.101" E
18	28° 31' 16.288" N	77° 33' 19.385" E
19	28° 31' 46.969" N	77° 33' 2.353" E
20	28° 31' 46.179" N	77° 33' 3.539" E
21	28° 31' 47.300" N	77° 33' 4.526" E
22	28° 31' 45.260" N	77° 33' 7.615" E
23	28° 31' 44.114" N	77° 33' 6.640" E
24	28° 31' 41.269" N	77° 33' 10.913" E
25	28° 31' 45.534" N	77° 33' 14.696" E
26	28° 31' 45.242" N	77° 33' 15.016" E
27	28° 31' 48.104" N	77° 33' 17.649" E
28	28° 31' 48.373" N	77° 33' 18.203" E
29	28° 31' 49.625" N	77° 33' 19.329" E
30	28° 31' 50.065" N	77° 33' 18.559" E
31	28° 31' 55.448" N	77° 33' 23.035" E
32	28° 31' 58.391" N	77° 33' 25.512" E
33	28° 32' 1.573" N	77° 33' 22.704" E
34	28° 32' 5.562" N	77° 33' 17.669" E
35	28° 32' 6.357" N	77° 33' 17.746" E

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36	28° 32' 11.282" N	77° 33' 21.018" E
37	28° 32' 14.369" N	77° 33' 23.512" E
38	28° 32' 14.909" N	77° 33' 24.014" E
39	28° 32' 17.911" N	77° 33' 24.682" E
40	28° 32' 20.139" N	77° 33' 25.956" E
41	28° 32' 20.974" N	77° 33' 26.717" E
42	28° 32' 21.743" N	77° 33' 27.372" E
43	28° 32' 22.116" N	77° 33' 27.713" E
44	28° 32' 22.662" N	77° 33' 28.046" E
45	28° 32' 23.862" N	77° 33' 28.776" E
46	28° 32' 24.533" N	77° 33' 29.483" E
47	28° 32' 25.873" N	77° 33' 30.514" E
48	28° 32' 27.698" N	77° 33' 32.236" E
49	28° 32' 26.309" N	77° 33' 34.735" E
50	28° 32' 25.983" N	77° 33' 35.549" E
51	28° 32' 25.699" N	77° 33' 36.577" E
52	28° 32' 25.870" N	77° 33' 36.740" E
53	28° 32' 23.056" N	77° 33' 40.829" E
54	28° 32' 20.610" N	77° 33' 38.803" E
55	28° 32' 18.779" N	77° 33' 41.724" E
56	28° 32' 18.238" N	77° 33' 41.117" E
57	28° 32' 17.120" N	77° 33' 42.364" E
58	28° 32' 17.629" N	77° 33' 43.085" E
59	28° 32' 10.597" N	77° 33' 52.723" E
60	28° 32' 8.560" N	77° 33' 51.852" E
61	28° 32' 6.728" N	77° 33' 55.604" E
62	28° 32' 4.331" N	77° 33' 54.876" E
63	28° 32' 3.987" N	77° 33' 55.258" E
64	28° 32' 2.582" N	77° 33' 53.677" E
65	28° 32' 1.008" N	77° 33' 56.235" E
66	28° 32' 0.713" N	77° 33' 55.958" E
67	28° 32' 0.259" N	77° 33' 57.120" E
68	28° 31' 58.053" N	77° 33' 54.865" E
69	28° 31' 57.145" N	77° 33' 55.959" E
70	28° 31' 55.677" N	77° 33' 54.883" E
71	28° 31' 54.116" N	77° 33' 57.429" E
72	28° 31' 52.153" N	77° 33' 56.895" E
73	28° 31' 50.782" N	77° 33' 59.173" E
74	28° 31' 49.778" N	77° 33' 58.007" E
75	28° 31' 49.333" N	77° 33' 58.713" E
76	28° 32' 6.218" N	77° 34' 15.999" E
77	28° 32' 5.512" N	77° 34' 16.877" E
78	28° 32' 4.331" N	77° 34' 15.971" E
79	28° 32' 2.251" N	77° 34' 19.447" E
80	28° 31' 59.977" N	77° 34' 19.013" E
81	28° 31' 59.489" N	77° 34' 19.956" E
82	28° 32' 1.472" N	77° 34' 22.138" E
83	28° 32' 1.718" N	77° 34' 21.827" E
84	28° 32' 3.087" N	77° 34' 23.030" E
85	28° 32' 6.815" N	77° 34' 26.045" E
86	28° 32' 3.844" N	77° 34' 30.687" E

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87	28° 32' 1.554" N	77° 34' 29.165" E
88	28° 31' 56.577" N	77° 34' 24.750" E
89	28° 31' 53.573" N	77° 34' 21.598" E
90	28° 31' 52.791" N	77° 34' 22.503" E
91	28° 31' 51.229" N	77° 34' 21.980" E
92	28° 31' 51.049" N	77° 34' 22.361" E
93	28° 31' 48.383" N	77° 34' 20.180" E
94	28° 31' 48.688" N	77° 34' 19.600" E
95	28° 31' 46.757" N	77° 34' 17.706" E
96	28° 31' 43.266" N	77° 34' 18.688" E
97	28° 31' 41.600" N	77° 34' 17.304" E
98	28° 31' 37.818" N	77° 34' 15.862" E
99	28° 31' 29.709" N	77° 34' 11.480" E
100	28° 31' 28.985" N	77° 34' 12.377" E
101	28° 31' 26.908" N	77° 34' 11.197" E
102	28° 31' 25.983" N	77° 34' 9.231" E
103	28° 31' 22.515" N	77° 34' 7.781" E
104	28° 31' 19.771" N	77° 34' 4.915" E
105	28° 31' 19.084" N	77° 34' 6.464" E
106	28° 31' 17.278" N	77° 34' 5.425" E
107	28° 31' 16.909" N	77° 34' 6.194" E
108	28° 31' 12.641" N	77° 34' 10.876" E
109	28° 31' 12.331" N	77° 34' 10.628" E
110	28° 31' 9.601" N	77° 34' 8.403" E
111	28° 31' 9.383" N	77° 34' 8.245" E
112	28° 31' 8.615" N	77° 34' 7.754" E
113	28° 31' 5.022" N	77° 34' 14.289" E
114	28° 31' 4.909" N	77° 34' 14.237" E
115	28° 30' 54.527" N	77° 34' 10.085" E
116	28° 30' 56.977" N	77° 34' 5.058" E
117	28° 31' 13.364" N	77° 34' 9.770" E
118	28° 31' 14.689" N	77° 34' 8.593" E
119	28° 31' 16.337" N	77° 34' 6.848" E

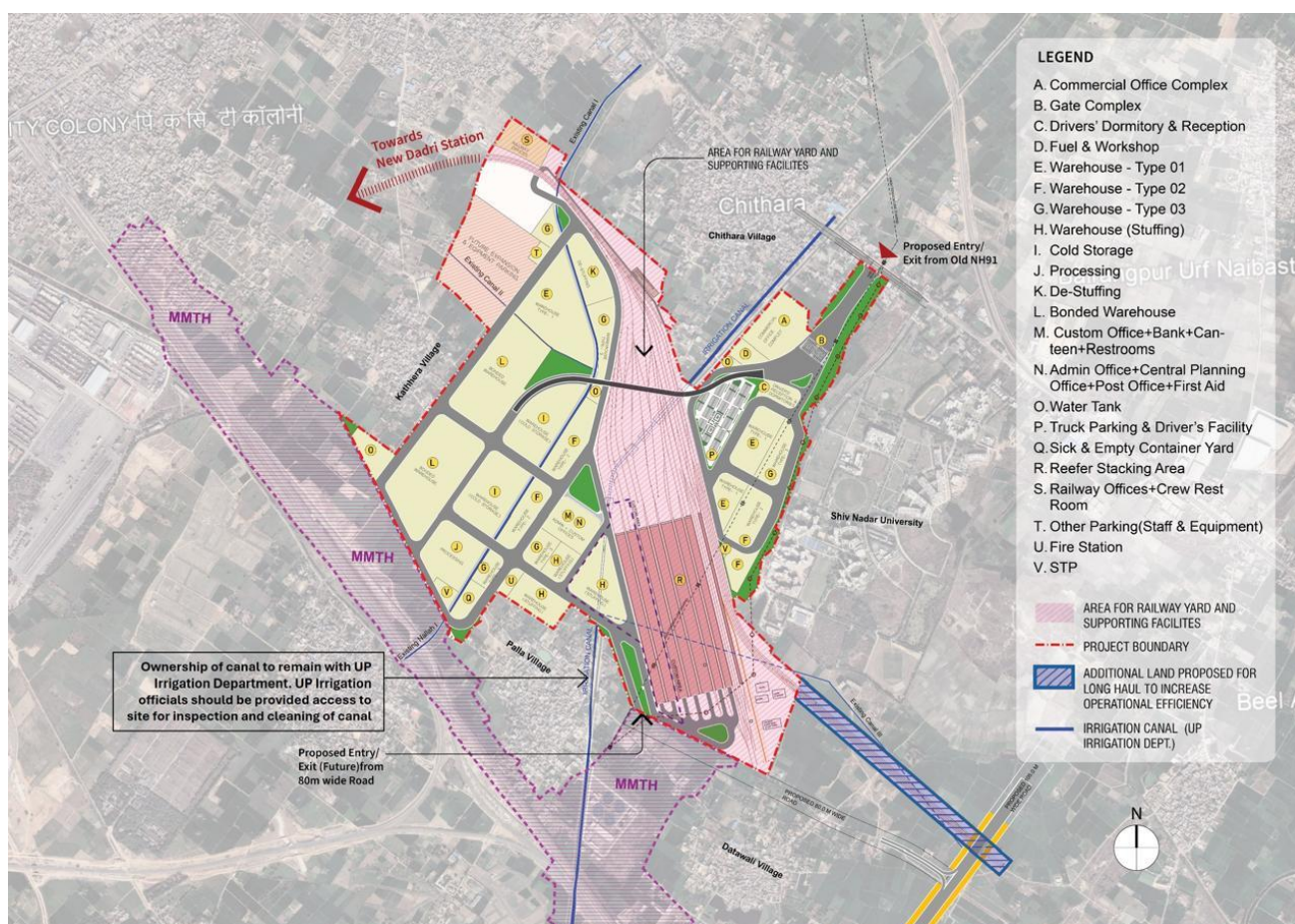
- 1.3. The Project site (as shown in Map 1 Concept Master Plan) encompasses approximately 311 hectares (three hundred eleven hectares) as per revenue records, excluding the railway approach track. This site includes land allocated for internal siding and associated railway works.
- 1.4. Additionally, an extra parcel of land is proposed to be developed for track infrastructure to accommodate long-haul trains (as shown in Map 1 Concept Master Plan), aiming to enhance operational efficiency. This additional land parcel may be made available to the Concessionaire during the tenure of the Concession.
- 1.5. Given the Site is located far from sea shore (beyond 500 meters from high tide line), Coastal Regulation Rules does not apply.
- 1.6. The site can be accessed from old NH 91 (Ghaziabad – Bulandshahr road) which merges with the NH 34 and Eastern Peripheral Expressway (EPE) towards the south of the Project Site. The Site is also well connected with NCR (National Capital Region) as well as various other districts in western U.P. Further, Noida-Greater Noida expressway, a 6 (six) lane highway,

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connects twin cities of Gautam Buddha Nagar i.e. Noida and Greater Noida. The expressway is at a distance of ~9 (nine) km from the Project Site. Yamuna expressway, a 6 (six) lane highway, connects Greater Noida with Agra and passes through Jewar. The expressway is at a distance of ~10 (ten) km from the Project Site. Apart from the highway connectivity, the internal roads in Greater Noida are well developed making the Project Site easily accessible from various locations in Greater Noida.

- 1.7. The Concept master plan has an area (~14 ha) earmarked for future expansion of the project.
- 1.8. A reference drawing is provided herein below showing the Concept master plan (including location of the Site) and approach roads to the Site under Map 1 and 2. The concept master plan (Schematic eye view) is provided under Map 3.

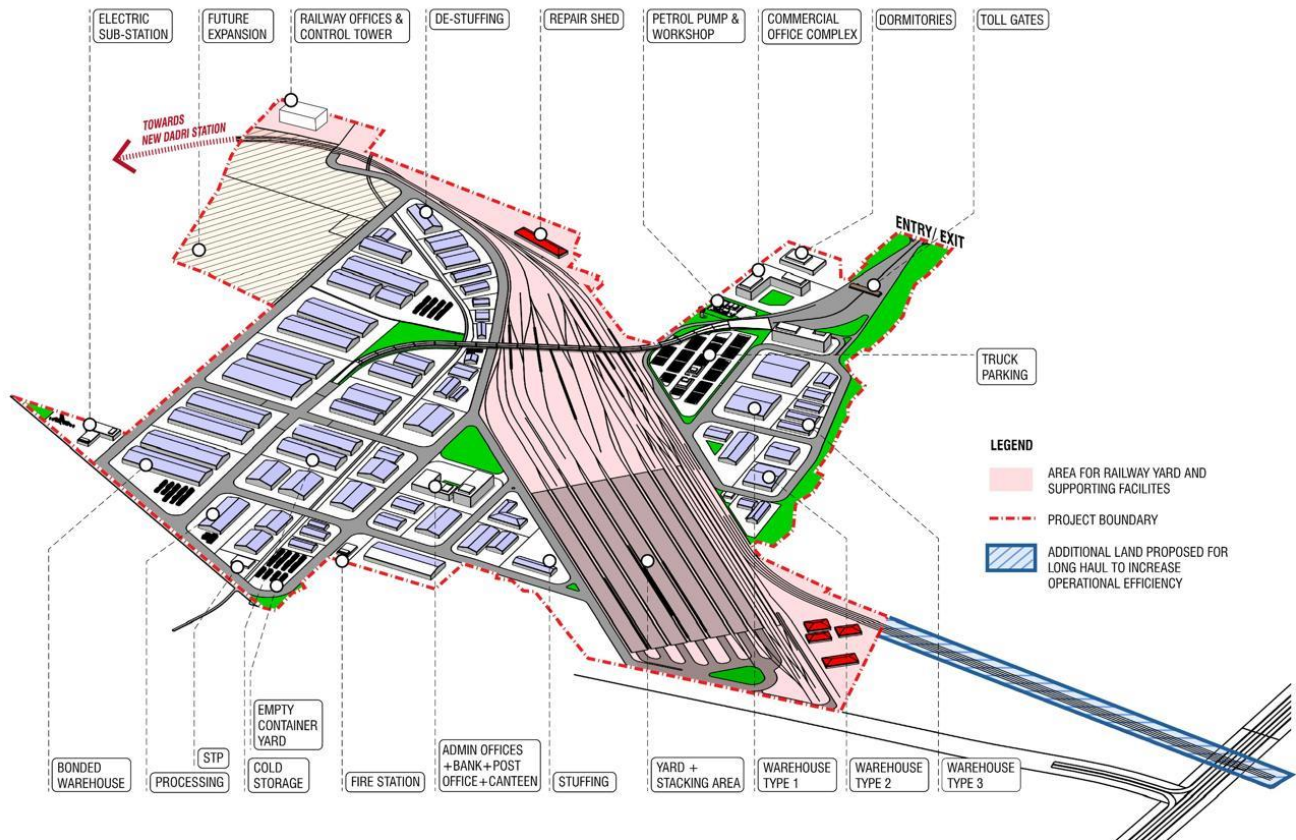
Map 1: Concept Master plan (including location of the Site)



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**DEVELOPMENT OF GREENFIELD MMLH ON
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Map 3: Schematic eye view (Concept master plan)



Annex-II
(Schedule A)
(See Clause 12.2.1)
MASTER PLAN FOR THE SITE

1. The Project is envisaged to be developed as world class multi – modal logistics park with facilities for storage, aggregation and export/import of industrial freight in the region, alongside other logistics value added services including facility to provide commercial space to host freight companies within the identified location.
2. It is proposed to develop the Project in a phase-wise manner over the Concession Period. In the phase I, the Concessionaire needs to build the Project with design handling capacity of 0.74 (zero point seven four) million TEUs Container traffic and 6.7 Million tons Non-Containerized traffic per annum.
3. The subsequent phases would be based on the achievement of traffic trigger mentioned in the table below.

Table 1: Design Capacity and Traffic Triggers for Phasing

Phasing	Estimated Cargo Traffic at MMLH		Trigger for Phasing
	Container (Million TEUs)	Non – Containerized Cargo (MTPA)	
PHASE I	0.74	6.7	-
PHASE II	1.12	7.2	5 th year after COD or 80% of Phase I container capacity, whichever is earlier
PHASE III	1.44	7.8	10 th year after COD or 80% of Phase II container capacity, whichever is earlier

The traffic computation for the purpose of construction of subsequent phases will be on the basis of the cargo traffic in the immediately preceding 12 (twelve) month period. Within 30 (thirty) days from the completion of a calendar month, the Concessionaire will submit to the Authority the traffic in that month and the traffic in the immediately preceding 12 (twelve) month period.

4. In addition to facilities required to support above mentioned capacities, the Project is proposed to provide modern warehousing and cold storage facilities in a phase-wise manner over the Concession Period. In the phase I, the Concessionaire needs to create built up area of 3 (three) million square feet for modern warehouse and 0.3 (zero point three) million square feet for cold storage. For phase II and phase III, indicative warehousing capacity and cold storage has been provided in table below, however, the Concessionaire may develop these facilities as per actual market demand over the Concession Period.

Phasing	Warehousing and Cold Storage Capacity		Trigger for Phasing
	Warehousing (Million square feet) (cumulative)	Cold Storage (Million square feet) (cumulative)	
PHASE I	3.0	0.3	-
PHASE II	4.0	0.4	actual market demand
PHASE III	5.5	0.5	actual market demand

5. The Concessionaire will prepare the Master Plan with the following provisions:
 - 5.1. The Concessionaire shall plan and construct the facilities as per the minimum cargo capacity defined in the above points. The Concessionaire has the flexibility to plan and design the facilities subject to the provisions of this Agreement.
 - 5.2. The Project design must be capable of incremental expansion with minimum impact on current operations.
6. The Concessionaire will, based on the above-mentioned guidelines and the provisions mentioned in this Schedule A, B, C and D, prepare the Master Plan. The Master Plan shall include following:
 - 6.1. a statement of the overall development strategy and philosophy;
 - 6.2. details of traffic forecasts and the traffic trigger for development of each of the Project Facilities, which are linked to traffic growth;
 - 6.3. vision of how the Project and each of its precincts will look at each phase and the ultimate vision of the Project, at the end of the period when it reaches capacity;
 - 6.4. provide graphic presentation of the development of the Project in a phased manner;
 - 6.5. proposed development through the technical, economic, and environmental investigation of concepts and alternatives;
 - 6.6. such other matters that may be specified by the Authority.
7. The Master Plan is to be submitted to the Authority in 60 (sixty) days from the date of this Agreement. Within 30 (thirty) days of the receipt of the Master Plan, the Authority shall provide to the Concessionaire, any comments or changes that the Authority may have on the Master Plan. If the Authority provides any comments and/or suggestions to the Master Plan, then the Concessionaire shall within 30 (thirty) days of receipt thereof, suitably incorporating such comments and/or changes suggested by the Authority in the Master Plan. This Master Plan will become a part of the Concession Agreement.
8. The Concessionaire will, within 90 (ninety) days from the date of acceptance of the Master Plan, submit development plan for phase I. The development plan for subsequent phases shall be prepared and submitted within 90 (ninety) days from the date of achieving the trigger for the respective phases as mentioned in the Table 1 of this Annex II of Schedule A. The Authority shall within 30 (thirty) days of the receipt of development plan provide its comments. The Concessionaire shall incorporate the comments of Authority and submit the development plan within 30 (thirty) days from the receipt of comments from the Authority.
9. The development plan for each phase shall be prepared considering the following:
 - 9.1. The development plan shall be in compliance with the:
 - 9.1.1. Master Plan; and

- 9.1.2. requirements set forth in Schedule A, Schedule B, Schedule C and Schedule D hereof;
- 9.2. The development plan shall include:
 - 9.2.1. engineering design and drawings for each of the identified Project Facilities;
 - 9.2.2. quantity and cost estimates;
 - 9.2.3. specifications and standards;
 - 9.2.4. completion schedule; and
 - 9.2.5. indicative financing plan; and
 - 9.2.6. Any other criteria, as may be specified by the Authority or any concerned Governmental Instrumentality, from time to time.
10. The Concessionaire shall update and resubmit the Master Plan every 5 (five) years starting from the COD to the Authority for its review and comments.
11. The Concessionaire may, at any time during the Concession Period, seek approval of the Authority for modifications in the Master Plan to improve or augment the logistics services or to expand any part of the Project to minimize or eliminate the congestion, and upon receipt of any request hereunder, the Authority may grant approval to the extent reasonably required herein within a period of 30 (thirty) days
12. The development plans for subsequent phases shall inter-alia provide for undertaking specific capital expenditure projects linked to traffic triggers. The Concessionaire shall submit the development plan for subsequent phases after phase I, at least 3 (three) months prior to the planned date of start of Construction Works for such phase, as defined in the Master Plan.
13. The construction of phases, subsequent to phase I will be in line with the requirements mentioned in Article 12 of the Agreement.

Annex-III
(Schedule A)
(See Clause 23)

Commercial Zone and Consumption led Warehousing Development

The total land estimated for Commercial Zone Development in the concept master plan is ~4.5 hectare. However, the Concessionaire is allowed to use the maximum of 2.0% of the total land area of MMLH for the purpose of Commercial Zone Development subject to prior approval from the Authority.

Annex-IV
(Schedule A)
(See Clause 23)

Commercial Zone and Consumption led Warehousing Development

The below provides an indicative list of the components to be covered under the Commercial Zone and Consumption led Warehousing Development

A. Commercial Zone Development

1. Office space
2. Government offices
3. Logistics operator office
4. Conference area
5. Food court
6. Car Parking
7. Public utilities

B. Consumption Led Warehousing Development (excluding bonded warehouses and warehouses for bulk and break bulk cargo of the Project)

1. Brick and mortar warehousing
2. Cold Storage

SCHEDULE – B

DEVELOPMENT OF THE PROJECT

1. Development of the Project

- 1.1. Development of the Project shall include construction of the Project as described in this Schedule B and in Schedule C.

2. Project Completion

- 2.1. The Project Completion should include the Project as described in Annex I of this Schedule B and Annex I of Schedule C
- 2.2. The Project shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex I of Schedule D

3. Commercial Zone and Consumption Led Warehousing Development

- 3.1. Commercial Zone and Consumption Led Warehousing Development shall be undertaken in accordance with and subject to the terms and conditions specified in Annex II of this Schedule B.
- 3.2. Commercial Zone and Consumption Led Warehousing Development shall be undertaken and completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule D.

Annexure I
(Schedule B)
DESCRIPTION OF PROJECT

1. Description

- 1.1. The Project will be executed through Public Private Partnership (PPP). The scope of Project for the Concessionaire will broadly include designing, engineering, financing, construction and development of the storage yards for various types of containers (empty, import export and those requiring refrigeration facility), container freight station (CFS) with stuffing and de-stuffing facility and custom examination of loose goods, track-side warehouses for bulk goods, yard for repairing of sick containers, customs office, office for operators and general administration, weigh bridges and other services like fuel stations, canteens, banking etc., parking space for handling equipment used for loading / unloading of rakes, spaces for parking of trucks and other vehicles, bonded warehouses, cold storage, processing units for providing value added services, commercial buildings for meeting the needs of various Project operators, utilities like sewage treatment plant (STP), water treatment plant (WTP), sub-station etc. for the Project and the operation and maintenance thereof.
- 1.2. An area of approximately 93 hectares (ninety-three hectares) has been designated by the Authority for the development of a railway siding at the Project. Additionally, an extra parcel of land is proposed to be developed for track infrastructure to accommodate long-haul trains, aiming to enhance operational efficiency. This additional parcel may be made available to the Concessionaire during the tenure of the Concession.
- 1.3. List of Potential Facilities at Project
 - A. Multi – modal/ Integrated Transport facilities
 - Road : Truck parking, Agent offices and Driver facilities/ Dormitories
 - Rail : Rail Sidings for rakes handling bulk, break bulk, liquid, container etc.
 - B. Facilities for Container/ Inland Container Depot (ICD)
 - Container stacking area
 - Container Repair yard
 - Stuffing/ De – stuffing warehouses
 - Custom bonded warehouses for EXIM container
 - C. Facilities for Bulk and Break bulk cargo
 - Warehouses
 - Storage yards and Stacking area
 - Custom bonded warehouses for EXIM cargo, if required
 - D. Warehousing and Cold Storage
 - Modern Warehouses for Retail, E-commerce etc.
 - Cold Storage
 - E. Commercial Facilities
 - Commercial building for offices of Agents, 3PLs, etc.
 - F. Others
 - Security associated facilities including boundary walls (fencing), lighting through high masts gatehouse, CCTV systems and access control systems.

- Administrative Buildings including Customs control and offices, Security, Police, Fire Station, First Aid etc.
 - Restaurants, rest rooms etc.
 - Roads, bridges, footpaths, foot over bridges
 - Utilities including Sewage Treatment Plant (STP), Water Treatment Plant (WTP), Electric Sub – Station, etc.
 - IT and Telecom Infrastructure
 - Green area and land scaping
- 1.4. The Concessionaire may develop additional infrastructure within the Project Site for providing logistics related services. However, the Concessionaire shall take approval from Authority for development of any infrastructure additional to the above list and which is not related to logistics.
- 1.5. **Key services and benefits to be provided at the Project (“Services”)**
- The Project is expected to provide the following key services and benefits:
- (a) Freight aggregation and distribution
 - (b) Multimodal freight transportation
 - (c) Storage and Warehousing
 - (d) Value added services such as customs clearance with bonded storage yards, quarantine zones, testing facilities, warehousing management services, etc
 - (e) Reduction in inventory holding costs
 - (f) Reduction in freight transportation lead times

Annexure II

(Schedule B)

DESCRIPTION OF COMMERCIAL ZONE AND CONSUMPTION LED WAREHOUSING
DEVELOPMENT

1. Commercial Zone and Consumption Led Warehousing Development

- 1.1. The Concessionaire may undertake Commercial Zone and Consumption Led Warehousing Development on the Site. The land may be used for commercial purposes, in a manner such that the operations of the Project are not affected.
- 1.2. Commercial Zone and Consumption Led Warehousing Development to be undertaken by the Concessionaire shall be in conformity with Applicable Laws including the Greater Noida Industrial Development Area Building Regulation, 2010.
- 1.3. Commercial Zone and Consumption Led Warehousing Development shall be undertaken in conformity with the terms and conditions specified in Paragraph 2 below.

2. Terms and conditions of Commercial Zone and Consumption Led Warehousing Development

The Concessionaire shall comply with the percentage of land coverage, FAR, height restrictions and other regulations of the Greater Noida Industrial Development Authority.

3. Open Spaces, green area, parking etc

The Concessionaire shall, for and in respect of creating open space, green area, parking etc., comply with the Applicable Laws including, the Greater Noida Industrial Development Area Building Regulation, 2011.

SCHEDULE – C
PROJECT EQUIPMENT

1. Project Equipment

The Concessionaire shall construct and/or install the Project Equipment in accordance with the provisions of this Agreement. Such Project Equipment shall include:

- (a) Equipment having the rated capacity to handle containers/cargo equivalent to 110% (one hundred and ten per cent) of the daily capacity of the Project; and
- (b) All ancillary equipment or any facility and equipment incidental or necessary for operation of the Project.

2. Description of Project Equipment

Project equipment forming part of the Project and to be installed on or before COD has been described in Annexure - I of this Schedule C.

Annexure - I
(Schedule-C)
PROJECT EQUIPMENT

1. Project Equipment

The Concessionaire shall construct and/or install the Project Equipment as per the approved Master Plan.

2. Description of Project Equipment

Each of the Project Equipment to be procured and installed by the Concessionaire is briefly described below but shall not be limited to the following.:

- (a) Rubber Tired Gantry Crane (RTG)
- (b) Reach Stacker
- (c) Forklift
- (d) Hydra
- (e) Conveyor Belt
- (f) Trucks and Trailers
- (g) Weigh Bridge
- (h) Crane
- (i) Empty Handler
- (j) Firefighting
- (k) CCTV, etc.
- (l) Truck loading equipment

Concessionaire should independently evaluate the requisite equipment required for the purpose of meeting the obligations set out in this Agreement for different types of cargo handling. The details of equipment to be part of the approved Master Plan

SCHEDULE - D

SPECIFICATIONS AND STANDARDS

The Concessionaire shall ensure compliance as per industry best practices, as may become applicable from time to time including but not limited to the Specifications and Standards set forth herein for development of the Project.

Levelling & Grading

- Prior to the start of any activity of earthwork, the area under construction shall be cleared of shrubs, vegetation, grass, brushwood, trees, and saplings
- The unsuitable soil shall be removed prior to the start of any construction work
- Site levelling and grading works are to be done considering balanced cut & fill up to possible extent to minimize the borrow earth from the outside of site
- Appropriate cutting and filling are to be done to make the site with a developable slope. Slope to be maintained in embankments at considerable level difference areas using slope protection measures or toe retaining structure
- IS 3764-Safety code for excavation works to be adhered during earthwork activities
- Methods of test for soils shall be as per IS: 2720
- Mechanical compaction for buildings (warehousing), rail yard & container yard, road works & open areas etc.

Container Yard/Paved Area/Truck Parking Area/Railway Platform and Handling Area

- The Container Yard/Paved Area/Truck Parking Area/Railway Platform and Handling Area to be designed and constructed as per SP 63. The subgrade, whether in cut or fill, shall meet the requirements specified in MORTH Specifications for roads and IRC:SP:63 and ICPI Manual for yard pavements
- If Paver blocks are used, they need to be as per IS:15658
- Provision of reefer charging points for reefer containers for at least 10% of the total ground slots
- Adequate numbers of 30 meters high mast lighting tower with LED flood light should be installed. The LED should have minimum lumen level of 20 lux in the ground up to 50 meters from center of high mast
- Provision for RTG/RMG shall be made in the Master Plan both for the railway yard and container yard
- Runways for cranes shall be reinforced concrete beams supported on compacted ground or on piles
- Concrete Beams shall be designed and constructed as per the specifications of IS: 456
- Design life of the yard pavements shall be as specified in ICPI manual and BS: 7533
- Adequate drainage system to be provided in the yard area.

Boundary wall

- Earthwork in excavation
- PCC 1:4:8 levelling course recommended
- RCC for footing/Piles as per site condition, columns, plinth beams and tie beams
- Plinth beams shall be constructed such that half of the height shall be above FGL and half below FGL
- RCC columns every 3 - 4 m interval and fly ash brick work above the plinth beam
- Angle iron & Concertina coil fencing throughout above the boundary wall
- Plaster in CM 1:6 and finishing coat on both side with cement-based paint

Warehouse

- Earth work in excavation for foundation

- Filling with mechanical compaction with minimum 95% dry density and minimum loading requirement of [2 T/m²] or higher based on cargo requirements
- Food grain / agri warehouses shall be designed and constructed as per guidelines of FCI / CWC
- For multipurpose warehouses, the following specifications shall be applicable:
 - PCC 1:4:8 levelling course
 - RCC work /piles for footing, pedestal, Beams & Column and is required for other structures such as mezzanine slabs etc.
 - Damp proof course at FFL 50 mm thick
 - For food grain warehouses the minimum height shall be [5 m] and for other warehouses it shall be [11 m]
 - Pre-Engineered building with structural design vetted by IIT/NIT
 - Flooring 100 mm thick PCC 1:4:8, 200 mm RCC M30 Vacuum dewatered flooring with hardener at the top. Epoxy as per requirement
 - External Painting-Weather-shield / Premium Acrylic smooth exterior finish with additive of silicone on external brick / block works
 - Internal Painting-Acrylic /oil bound distemper on brick / block works. Synthetic enamel paint on all steel structure works
 - Docking System/Rolling Shutters at 1.25 m above the finished ground level
 - Double side docking to be provided if width of Warehouse is more than 35m
- Lessee/sub lessee has to deploy Warehouse Management System

Silos

- The design of the food grain silo should be based on Singapore Standard SS EN 1993-4- 1:2011 which is an adaption of the European Standard code EN 1993-4-1: 2007, IDT. This standard has all the references of the individual components of silo. The concrete foundations are as per EN 1992 and EN 1997. As the steel structure and civil foundations with retaining walls are based on prevailing seismic zone and wind velocity as per norms of the particular site. Seismic design RC columns and wall section IS: 5503 (Part – I & Part – II) -1969 and IS: 9178 (Part – II) -1979 could also be referred
- For Cement/Fly ash Silos Technical Standards and relevant codes of IS 9178 (Part I to Part III) are to be followed. All silo components shall have Zinc coating. ISO 12944 shall be followed for carrying out the painting job for taking care of Cleaning, Protective Coating and Painting designed for service life of 15 yrs
- The Silos are to be top loading and bottom discharge. The intake capacity of each Silo shall be minimum 40 Tons per Hour (TPH) and discharge capacity is about 200 Tons per Hour (TPH)
- Design for pneumatic system shall be as per IS: 8647

Cold Storage

- For Cold Storage-NHB Technical Standards for Cold Storages for Fruits and Vegetables and relevant codes of ASME/ ASHRAE/ IIAR are to be followed

Building & Other Structures

- Buildings as per CPWD specifications and as per the applicable development and regulatory norms
- Firefighting arrangement as per National Building Code

Internal Roads

- Rigid Pavements are to be developed as per IRC 15

- Flexible Pavements to be developed as per IRC 37
- Road Over Bridges to be designed as per IRC 05
- Rail Under Bridges to be designed as per Railway norms and as per IR
- Utility corridors shall be provided along the road
- Storm water drain shall be provided along the road based on the storm water requirements as per design
- Lighting shall be as per National Highway norms within city limit
- Road markings are to be as per IRC 35
- Road signages are to be as per IRC 67
- All roads have to be designed for turning radius as per IRC 106 for trailers with a length of 18 metres

Equipment

- Major Equipment
 - Provision for installation and operations major equipment such as RTG, RMG, Truck Mounted Cranes (min. 30 tonnes), Mobile Cranes (min. 30 tonnes), as required shall be made in the Master Plan
 - RTG/RMG should be run on electricity
 - The Concessionaire shall construct and/or install the Project equipment in accordance with the relevant Specifications and Standards and the manufacturer's guidelines for the equipment
 - All equipment to be procured shall be accompanied by relevant efficient energy usage certificate and/or emission under control certificate from relevant Authority
 - Conveyor system shall be used for handling of bulk and break-bulk cargo. **Conveyor Systems shall be designed and constructed as per IS: 11592, 8597** for Bulk materials and **IS: 6834** for bagged materials, along with applicable relevant Indian standards for belting, idlers, pulley mechanism, belt weighers etc
- Minor equipment
Refer to Circular No. 50/2020 published by Department of Revenue Anti-Smuggling Unit (CBIC), Ministry of Finance, dated 5th Nov, 2020.

Landscaping & Rainwater harvesting

- General landscaping shall be done as per IRC SP 21
- Rainwater harvesting works shall be done as per Rainwater Harvesting and Conservation Manual by CPWD

Gate Complex and Parking Spaces

- Traffic markings are to be as per IRC 35
- Traffic signages are to be as per IRC 67
- Parking spaces are to be as per IRC SP:12
- Weighbridges- The specifications for weigh bridges shall comply with guidelines given in IS: 1436. The weighbridge shall preferably be of "weigh in motion" type. Weighbridges shall conform to the provisions of the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Package Commodities) Rules, 1977 or any substitute thereof

Utilities

Electrical Distribution System

- Design specification and selection of power cable is to be as per IS 7098
- Guideline for Cable Laying, installation testing commissioning is to be as per IS: 1255

- Earthing work is to be as per IS 3043
- Power transformer design and selection is to as per IS 2026
- IS:1180 is to be followed for outdoor distribution transformer
- IS: 10118 is to be followed for selection, installation & maintenance of switchgear and control gear
- All the Power Cable shall be laid directly buried in ground and in case of crossing HDPE pipe may be used
- The detailed design documents/drawings are to be approved from State Electricity Board/Chief Electrical Inspector before execution.

Road lighting

- The lighting shall comply with the standards, requirements, illumination level and specifications given in Indian Standard 'Code of Practice for Lighting of Public Throughfare' IS: 1944 Part I & II
- GI conical Poles and LED luminaries are to be considered for Road Lighting system
- Power supply to Road lighting pole is to be fed through underground 1.1 kV XLPE insulated, armored, Aluminum conductor cables. Distribution of power be through 415V, 3 phase, 4 wire system
- The streetlights shall be controlled from outdoor street light Panel with 4Pole MCCB incomer, energy meter, automatic timers switch and power contactor for switching ON/ OFF the lights and MCB outgoings for distribution

Data Networking

- Ethernet IP networks as per IEEE 802.11 including both wireline and wireless components and redundancy for high reliability and availability shall be designed and maintained across the MMLH for data transmission between different equipment, control centres, administration and gate systems
- Fast Ethernet/Ethernet Network –LAN and WAN cables as per ISO/IEC 8802-3

Telephone System

- The telephone system shall conform to applicable ITU-T standards
- A Centralized Voice Mail System (CVMS) shall be provided and integrated with the switch to enable PABX users to leave, retrieve and broadcast voice messages to and from this single message centre

Closed Circuit Television

- The Closed-Circuit Television (CCTV) System shall be provided for video surveillance and recording function for the operators to monitor all the sensitive areas
- Two types of cameras shall be provided:
 - Fixed cameras with fixed focal length lens and fixed orientation
 - Pan/Tilt/Zoom (PTZ) cameras with variable focal length lens with adjustable orientation in both the vertical and horizontal directions

Public Address System

- The equipment shall be in accordance with IS 1881
- All PA equipment shall be rack-mounted

Fire Fighting System

- The firefighting system is to be designed in accordance with IS 3218 and National Building Code
- The design of the fire mains shall comply with the Local Fire Authorities' Regulations, National Building Code

- Fire norms for POL cargo to be specifically defined

Water Supply System

- The water supply system shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO) “Manual on Water Supply and Treatment and other relevant manual. Appropriate rainwater harvesting system needs to be implemented as per applicable manual
- The incoming water supplies and the system they supply shall be designed and constructed as per National Building Code
- Distribution system for potable and recycled water shall comply with IS:4984

Drainage System

- The storm water and sewerage system shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO) “Manual on Sewerage and Sewage Treatment

General standards

In the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:

- (a) Bureau of Indian Standards (BIS), Indian Standards, CPWD, MoRTH, IRC, Indian Railways Standards;
- (b) Relevant International Standards or codes as applicable in the United States of America or the European Union or Singapore; and
- (c) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Engineer.

In case of any conflict or inconsistency in the provisions of the applicable Indian Standards or codes and International Standards or codes, the Indian Standards or codes shall apply.

The latest version of the specified codes and standards which were notified/published at least 60 (sixty) days prior to the bid date in respect of this Agreement shall apply. For subsequent phases, updated codes and specifications in force at the time of actual execution shall be considered.

For ICD and CFS operations the Concessionaire shall refer and comply to Policy and Guidelines for setting up of Inland Container Depots (ICD) and Container Freight Stations and Air freight Station and as updated time to time.

Annex - I (Schedule-D)**SERVICES – SPECIFICATIONS AND STANDARDS**

The Concessionaire and their sublessee/ sublicensee shall ensure compliance as per industry best practices, as may become applicable from time to time including but not limited to the Specifications and Standards set forth herein for development of the Project.

Core Logistics Services

- ISO -3874- Handling of Containers
- ISO-15069-Handling and securing — Rationale for ISO 3874:2017, Annexes A to E
- EXIM services as per Customs Manual 2018-India
- ISO 21262:2020-Industrial trucks -Safety rules for application, operation and maintenance

Value Added Services

- ISO/TS 18625 -Freight containers -Container Tracking and Monitoring Systems (CTMS)
- ISO-55- Packaging and Distribution of Goods
- ISO 26683-3:2019 - Intelligent transport systems
- ISO 23412:2020-Indirect, temperature-controlled refrigerated delivery services- Land transport of parcels with intermediate transfer
- ISO/IEC 27001 -Information technology -Security techniques -Information security management systems

Supporting services

- IRC: SP:12-2015-Guidelines for Parking facilities in Urban Areas

General provisions

- ISO 9001:2015-Quality management systems
- ISO 14001:2015-Environmental management systems
- ISO 22301:2019-Security and resilience-Business continuity management systems

Annex – II (Schedule-D)

COMMERCIAL ZONE DEVELOPMENT – SPECIFICATIONS AND STANDARDS

The Concessionaire shall ensure compliance as per industry best practices, as may become applicable from time to time including but not limited to the Specifications and Standards set forth herein for development of the Project.

- Petrol pumps in commercial zone to comply with The Petroleum Rules 2002 and its subsequent amendment/(s) (2021)
- The commercial complex shall be developed as per National Building Code and CPWD specifications
- Parking/MLCP (Multi Level Car Parking)
 - The Parking/MLCP shall be designed in conformance with NBC and Zonal regulations
 - The building shall be designed in accordance with the latest Indian Standard Codes
 - RCC Structures shall be designed as per IS 456:2000
 - Steel Structures shall be designed in accordance with the provision of IS 531-1984 and IS 800:1984. Structural steel shall conform to IS 2062. Tubular section shall conform to IS 4923
 - Architectural design norms as per NBC (National Building Code – 2016)
 - Structural Design norms, Fire safety measures as per NBC and BIS (Bureau of Indian Standards)
 - Proper ventilation should be provided for all parking floors.
 - Adequate lighting system in parking facility area shall be provided to achieve a minimum lux level of 70 for ramps, parking and pedestrian movement area and a minimum lux level of 100 for stairways, toilets, entrance and exit areas of parking as per relevant building norms
 - Power back-up adequate for 100% of the designed power load of the Parking Facility shall be provided
 - The MLCP facility shall have a parking tracking system based on sensors at Entry/ Exit Boom-barriers to keep track of parking occupancy count.

SCHEDULE - E

APPLICABLE PERMITS

The Concessionaire shall obtain, as required under Applicable Laws, all the Applicable Permits for Construction, Operation and Maintenance of MMLH Facility, as and when required, save and except to the extent of a waiver granted by the Authority in Clause 4.1.3 of the Agreement.

PART A – PERMITS PRIOR TO APPOINTED DATE

- 1.1 The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in Clause 4.1.3 of the Agreement.
 - i. Consent to Establish from state pollution control board
 - ii. Permission of the State Government for drawing water from river / reservoir
 - iii. Licence from inspector of factories or other competent authority
 - iv. NOC from Director of Town and Country Planning - (DTCP)/ Gram Panchayat
 - v. Permission of village panchayat and State Government or any other Government body for borrow earth
 - vi. Clearance of Pollution Control Board for setting up Batching Plant;
 - vii. Clearance of Pollution Control Board for Asphalt Plant;
 - viii. Clearance of Pollution Control board for installation of diesel generator sets
 - ix. Any other clearances as per applicable law.

PART B – PERMITS AND CLEARANCES REQUIRED UNDER APPLICABLE LAWS

Below is the list of approvals which is required to be obtained by the Concessionaire after Appointed Date:

S. No.	Approval	Relevant Authority
Rail Operation		
1.	Commercial Notification of Private Siding (Green Field)	Ministry of Railways
2.	Consent to Operate: Category 1/2/3/4	Ministry of Railways
3.	Tripartite Agreement – E payment between PCTO/ IR/ SBI	Railway – Nodal Office
4.	No objection certificate/ Co-user agreement for access to private siding	Respective zones
DTA Warehouse (State government approvals) – as applicable		
5.	Warehouse	Chief town planner cum chairman (Building Plan Approval Committee)
6.	Shop and establishment certificate	Shop and Establishment Department
7.	Building insurance	Any insurance company
8.	Structural Stability Certificate	Architect and Structural Engineer
9.	Drug License (pharmaceuticals)	State Pharma office
10.	Gram Panchayat no objection	Local village Pradhan

	certificate	
11.	Weighment License	Weights and Measures Department
12.	Department Permission Certificate	District Town Planner
13.	Structure Design	Structural Engineer
14.	Rainwater harvesting	Central Ground Water Authority
15.	Storage of Hazardous Goods	Chief Controller of Explosives and Ministry of Environment
16.	Setback and height specification	Chief town planner cum chairman (Building Plan Approval Committee)
Inland Container Depot operations		
17.	In principal approval	Jurisdictional Commissioner of Customs
18.	License from customs and bonding	Jurisdictional Commissioner of Customs
19.	Building plan approval	Jurisdictional Commissioner of Customs
20.	Inland Container Depot Notification	Jurisdictional Commissioner of Customs
21.	Inland Container Depot Bond	Jurisdictional Commissioner of Customs
22.	Transit Bond	Jurisdictional Commissioner of Customs
23.	Location/ port code	Jurisdictional Commissioner of Customs
24.	Posting of customs staff	Jurisdictional Commissioner of Customs
25.	EDI interface implementation	Jurisdictional Commissioner of Customs
26.	Commencement notification	Jurisdictional Commissioner of Customs
27.	Approval of virtual warehousing	Jurisdictional Commissioner of Customs
28.	Declaration of Customs Notified Area under Section 8 of Customs Act, 1962	Ministry of Finance – Excise and Customs
29.	Appointment of Custodianship as per Handling of Cargo in Customs Areas Regulations, 2009	Ministry of Finance – Excise and Customs
HR/ admin/ safety and security/ firefighting/ pollution control		
30.	Fire No Objection Certificate	State Fire Department
31.	Water level monitoring	Central Ground Water Authority
32.	Approval for hazardous materials	As per the requirement/ Pollution Department
33.	Weight and measures (100 T weighbridge)	State Weight and Measurement Department
34.	Factory License – DTA	State Government
35.	Registration Certificate of shop or commercial establishment – DTA warehouse	State Government
36.	Registration Certificate of shop or commercial establishment – Inland Container Depot	State Government

37.	Environmental Monitoring Report	Noise, water, air assessment state department
38.	Environmental statement (Form V)/ Audit report	Noise, water, air assessment, state department
Other approvals		
39.	Permission for engaging contract labour	State Labour Commissioner
40.	Electric load sanction and connection	State Power Board
41.	Electricity Supply	State DISCOM

SCHEDULE - F
PERFORMANCE SECURITY

To,

[Authority]

WHEREAS:

- (A) ***** (the “**Concessionaire**”) and the ***** (the “**Authority**”) have entered into a Concession Agreement dated ***** (“**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the construction, operation, maintenance and management of Multi Modal Logistics Hub (MMLH) at Greater Noida in the State of Uttar Pradesh on design, build, finance, operate and transfer (“**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of INR *****crore (Rupees *****crore) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, ***** through our Branch at ***** (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful performance of all or any of the Concessionaire’s obligations during the Construction Period, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence,

act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security, subject to the Claim Period mentioned in Clause (7) above, shall cease to be in force and effect when the Commercial Operation Date under the Agreement has occurred. Upon request made by the Concessionaire, after the expiry of the Claim Period, for release of the Performance Security along with the particulars required hereunder including that the Commercial Operation Date under the Agreement has occurred, duly certified by a statutory auditor of the Concessionaire, and the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the **BANK** by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE - G

PROJECT COMPLETION SCHEDULE

1. **Project Completion Schedule**

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof. The development of the Project is anticipated in phases. For the purpose of achieving COD, the milestones I to IV are considered part of the Project phase 1 development.

Phase -1: Pre – COD milestones (Project milestones I to IV)

Phase-1 of the project mandates an investment of 30% (thirty per cent) or more of the Overall Total Project Cost.

2. **Project Milestone-I**

- 2.1 Project Milestone-I shall occur on the date falling on the 180th (one hundred and eightieth) day from the Appointed Date (the “**Project Milestone-I**”).
- 2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced development of the Project and expended not less than 20% (twenty per cent) of the minimum investment required in phase -1 set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonable commensurate with the expenditure incurred.

3. **Project Milestone-II**

- 3.1 Project Milestone-II shall occur on the date falling on the 365th (three hundred and sixty fifth) day from the Appointed Date (the “**Project Milestone-II**”).
- 3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have expended not less than 40% (Forty per cent) of the minimum investment required in phase-1 set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonable commensurate with the expenditure incurred.

4. **Project Milestone-III**

- 4.1 Project Milestone-III shall occur on the date falling on the 550th (five hundred and fiftieth) day from the Appointed Date (the “**Project Milestone-III**”).
- 4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have expended not less than 70% (seventy per cent) of the minimum investment required in phase-1 set forth in the Financial Package and conveyed to the Independent Engineer the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred.

5. **Project Milestone-IV**

- 5.1 Project Milestone-IV shall occur on the date falling on the 730th (seven hundred and thirtieth) day from the Appointed Date (the “**Project Milestone-IV**”).
- 5.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced installation of equipment at the Project Facilities and expended not less than 100% (one hundred per cent) of the minimum investment required in phase-1 set forth in the Financial Package and conveyed to the Independent Engineer the nature and extent of physical progress comprising such expenditure so as to

enable the Independent Engineer to determine that the physical progress is achieved. Concessionaire shall have commenced trial running of the Project.

6. Project Milestones after completion of COD – subsequent phases of development

- 6.1 Project Milestone for phase-2 shall be completed on or before the date falling on the 10th (tenth) anniversary from the Appointed Date (the “Project Milestone- phase-2”).
- 6.2 After occurrence of Project Milestone- phase-2, the Concessionaire shall have expended 60% of the Overall Total Project Cost.
- 6.3 Project Milestone for phase-3 shall be completed on or before the date falling on the 15th (fifteenth) anniversary from the Appointed Date (the “Project Milestone- phase-3”).
- 6.4 After occurrence of Project Milestone- phase-3, the Concessionaire shall have expended 100 (one hundred)% of the Overall Total Project Cost.

7. Scheduled Completion Date

- 7.1 The Scheduled Completion Date shall occur on the 730th (seven hundred and thirtieth) day from the Appointed Date.
- 7.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the MMLH in accordance with this Agreement.

8. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE - H

DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 12.3 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2. Additional Drawings

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule H.

Annex – I

(Schedule - H)

LIST OF DRAWINGS

The Concessionaire shall furnish following list of drawings but shall not be limited to these:

1. Master Plan across the proposed development phases
2. Architectural design for all buildings and allied facilities including parking facilities
3. Structural drawings for all buildings and allied facilities including parking facilities
4. MEP drawings for all the buildings and allied facilities including parking facilities
5. Civil Design for all facilities including Ground improvement works, internal roads, Storm water drainage, Sewage systems etc.
6. As-built drawings of all the structures.

SCHEDULE - I

COMPLETION CERTIFICATE

1. I/We, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for development and operation of Multi Modal Logistics Hub (MMLH) at Greater Noida on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the MMLH with the provisions of the Agreement, and I/We am/are satisfied that the MMLH can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of MMLH have been completed, and the MMLH is hereby declared fit for entry into commercial operation on this the.....day of 20...

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

1. I/We, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for development and operation of Multi Modal Logistics Hub (MMLH) at Greater Noida on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the MMLH to determine compliance thereof with the provisions of the Agreement.
2. Construction Works forming part of the MMLH that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,]⁴ I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the MMLH, pending completion thereof.
3. In view of the foregoing, I/We am/are satisfied that the phase [*] of the MMLH can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the phase [*] of the MMLH is hereby provisionally declared fit for entry into commercial operation on this the day of 20...

ACCEPTED, SIGNED, SEALED AND
DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

For and on behalf of INDEPENDENT ENGINEER
by:

(Signature)

(Signature)

(Name and Designation)

(Name and Designation)

(Address)

(Address)

⁴ May be struck out if not applicable. Also strike out other parts which are not applicable

SCHEDULE - J

MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-J (the “**Maintenance Requirements**”).
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-J within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.
- 1.3 The Concessionaire shall operate and maintain the roads forming part of the Project in accordance with Good Industry Practice. For the avoidance of doubt, Good Industry Practice shall, for the purposes hereof, mean the maintenance requirements specified for National Highway projects undertaken through Public Private Partnership.

2. Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Applicable Laws, Applicable Permits and Good Industry Practice or renew, replace and upgrade to the extent reasonably necessary, the Project. All maintenance, repair and other works shall be carried out in such a way as to minimize inconvenience to Users of the Project.
- 2.2 The Concessionaire shall furnish the Maintenance Manual to the Independent Engineer in reference to but not limited to the following standards -
 - Building maintenance as per CPWD Maintenance Manual-2019.
 - Equipment maintenance as per Good Industry Practices. Equipment fitness certificates are to be submitted to the Independent Engineer.
 - Maintenance history book is to be maintained for all the equipment.
 - Maintenance for rigid pavement as per IRC :SP : 83:2018
 - Maintenance for flexible pavement as per IRC : SP: 82: 2015
 - Maintenance for interlocking concrete block pavement as per IRC: SP: 63:2018.
 - Construction of grade separators/ elevated structures as per IRC:SP:90-2010, RDSO guidelines and SOD of DFCCIL
 - Railway siding and track maintenance as per Indian Railway Permanent Way Manual (IRPWM).
 - Road Lighting maintenance as per IS: 1944:1970/1981.
 - Firefighting system-Maintenance of Piping systems as per maintenance manual by CPHEEO and fire hydrants as per NBC.
 - Fire safety extinguishers maintenance as per IS 2190:2010 & IS 1648:1961.
 - Water supply, Sewerage and storm water drainage system maintenance shall be as per CPHEEO - “Manual on Operation & Maintenance of water supply”, “Manual on Sewerage and Sewage Treatment Systems Part B Operation & Maintenance”, “Manual on Storm Water Drainage System-Volume II-Part B: Operation & Maintenance” and IS 2065 :1983.
 - Painting works as per IS 2395:1994.
 - The Concessionaire shall use all possible and updated technology in sanitation, solid waste management and disposal and rainwater harvesting for better upkeep and maintaining the best hygienic conditions in the MMLH

The Maintenance Manual shall cover all the activities required for maintenance of all the Project Assets. A reference of various activities and their prescribed maintenance frequency is provided below:

S. No.	Activity	Frequency
Railway Siding and Road		
1	Sweeping/cleaning of platforms, washable apron & track in railway siding area	At least daily & as and when required
2	Sweeping/Cleaning of roads and pavements including concrete /bituminous surface, pavement/ circulating area, kerb stone etc.	At least daily & as and when required
3	Sweeping/cleaning of cargo movement areas	At least daily & as and when required
4	Damage of pavement	Damage to the edge of the pavement to be repaired within 7 days Partial repair to be completed within 15 days. Complete repair to be completed within 30 days
Compound Wall		
1	Damage to the Compound Wall	To be permanently rectified within 3 days of detection of breach. In case of any opening, the same should be closed at least by temporary means immediately after notice of the same.
2	Painting of Compound Wall	At least once in 5 years.
Landscaping Areas		
1	Watering of landscaped areas to be done with proper permanent water supply arrangements like sprinklers etc.	At least once daily/As per requirement
2	Damaged trees and bushes	To be replaced within 3 days and incase of any hinderance to traffic or pedestrian movement, the same is to be cleared immediately.
3	Obstructions caused by landscaping obstructing the minimum headroom of 5 m above the driveway or obstructing the visibility of road signs	To be removed within 1 day
Wet Utilities		
1	Damage to related to water supply	Restoration through temporary measures within 4 hours Restoration through permanent measures within 3 days.
2	Damage of drainage system	Restoration through temporary measures within 4 hours Restoration through permanent measures within 1 day
3	Damage of sanitary installations	Leakages to be repaired within 24 hours Damage to septic tank to be repaired within 1 day after detection
4	Damage to rainwater harvesting system	Restoration through temporary measures within 1 days Restoration through permanent measures within 7 days Periodically desilting and particularly prior to pre-monsoon & monsoon
Solid Waste Management		

1	Refuse or solid waste to be disposed of to the secondary collection centres or designated disposal sites	Daily
Electrical Utilities		
1	Functioning of power supply, electrical installations and electrical equipment for buildings and external	Power supply to common areas to be restored within 30 seconds during the night and within 5 minutes during the day, in the event of a power shortage, using the DG set. 24 hours back up is required for cold storage as well as common operating areas. Safety audit as per requirement / once in a year whichever is minimum
2	Electrical fittings like bulbs, lamp shades, wiring etc. to be operational at all times	Replacement/restoration through temporary measure within 4 hours Restoration through permanent measure within 2 days
3	Damage to internal lighting (Illumination of MMLH)	Restoration through temporary measures within 4 hours Restoration through permanent measures within 2 days Lighting level falling below the Standards and Specifications to be rectified within 4 hours
4	Damage to exterior lighting	Faults and minor failures to be repaired within 4 hours Any major failure of the system to be repaired within 1 day
5	Safety audit	At least once in a year.
Telecom, Data, PA & CCTV system		
1	Telecommunication and networking system incl. WiFi	Restoration through temporary measures within 6 hours Restoration through permanent measures within 3 days
2	Functioning of public address system	Restoration through temporary measure within 1 hour Restoration through permanent measure within 2 days
3	Damage to CCTV & security system	To be repaired within 7 days
Other Services		
1	Functioning of Air Conditioning (HVAC) System	Temporary repair and rectification within 8 hours Permanent repair and rectification within 2 days
Fire Fighting System		
1	Cleaning of firefighting equipment including portable fire extinguishers, smoke detectors/fire detectors, fire pump panels, valves, hydrants, piping of all types etc.	At least once in a fortnight & as and when required
2	Check working of fire extinguishers including powder checking	At least once in every 3 months
3	Check working and functioning of automatic analogous addressable fire detection, fire alarm, and firefighting system periodically	At least once in every 3 months
4	Replacement of fire extinguisher	Prior to the expiry date or once in every 3 years whichever is minimum.

5	Defective or damaged fire fighting Equipment	Defective detectors to be replaced within 1 day.
6	Fire mock drill	Every month/ as per requirement of Chief Fire officers of area in which MMLH is located whichever is minimum.
7	Safety audit	At least once in a year.
Miscellaneous		
1	Regular pest and rodent control treatment for all buildings and landscaped areas	At least once every month
2	Cleaning of any other equipment/Misc. items	As and when required

2.3 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

3.1 In respect of any defect or deficiency not specified in any of the above documents or standards, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

3.2 The Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

4. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-J, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with the Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-J, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

6. Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7. Divestment Requirements

All defects and deficiencies shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

8. The Concessionaire shall display a copy of this Schedule-J at the Project Facility along with the Complaint Register stipulated in Annex – I (Schedule-J) - SERVICE QUALITY MANUAL

Display of Schedule – J

The Concessionaire shall furnish the Service Quality Manual for all the Services undertaken under Schedule C of this Agreement but not limited to the major Services to the Independent Engineer:

- i Core Logistics Services
- ii Value Added Services

- iii Supporting Services
- iv Security Services
- v Other Services as prescribed by the Authority

The Service Quality Manual shall adhere to ISO 9001:2015-Quality management systems which shall include, but not limited to the following:

- i Customer focus
- ii Leadership
- iii Involvement of people
- iv Process approach
- v System approach to management
- vi Continuous improvement
- vii Factual approach to decision making
- viii Mutually beneficial supplier relationships

The Service Quality Manual shall be revised on an annual basis based on the quantum and type of the Services at the MMLH and as approved by the Independent Engineer

Annex – I (Schedule-J) - SERVICE QUALITY MANUAL

The Concessionaire shall furnish the Service Quality Manual for all the Services undertaken under Schedule C of this Agreement but not limited to the major Services to the Independent Engineer:

- i Core Logistics Services
- ii Value Added Services
- iii Supporting Services
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- v Other Services as prescribed by the Authority

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The Service Quality Manual shall be revised on an annual basis based on the quantum and type of the Services at the MMLH and as approved by the Independent Engineer.

SCHEDULE - K

SAFETY REQUIREMENTS

1. **Guiding principles**

- (a) Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- (b) Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- (c) Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response.

2. **Obligations of the Concessionaire**

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety, if any, issued by the Authority or any designated GOI agency;
- (c) provisions of this Agreement;
- (d) relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice

3. **Appointment of Safety Consultant**

For carrying out safety audit of the MMLH under and in accordance with this Schedule-K, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “**Safety Consultant**”). The Safety Consultant shall employ a team comprising, without limitation, one safety expert and one logistics services expert to undertake safety audit of the Project Facility.

Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant. It shall review, compile, and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Project Facility. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a safety report (the “**Safety Report**”) recommending specific improvements, if any, required to be made to the Project Facility. The Safety Report shall be submitted to the Authority in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.

4. **Safety measures during Construction Period**

- 4.1 A Safety Consultant shall be appointed by the Authority, no later than 4 (four) months prior to the expected COD, for carrying out a safety audit of the completed Construction Works.
- 4.2 The Safety Consultant shall carry out a safety audit of the completed Construction Works
- 4.3 The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the MMLH. Such recommendations shall be processed, *mutatis mutandis*, and acted upon accordingly.
- 4.4 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and Users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Authority and the Independent Engineer about such arrangements. The Concessionaire shall comply with various instructions related to work site safety, as compiled in

compendium of Instruction issued by the Authority and any other instruction pertaining to work site safety, as may be issued from time to time.

5. Safety measures during Operation Period

- 5.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users and persons, and property belonging to the Users, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 5.2 The Concessionaire shall establish an Safety Management Unit (the “**SMU**”) to be functional on and after COD, and designate one of its officers to be in-charge of the SMU. Such officer shall have specialist knowledge and training in Project safety by having attended a course conducted by a reputed organisation on the subject.
- 5.3 The Concessionaire shall keep a copy of every first information report (the “**FIR**”) recorded by the Police with respect to any accident occurring on the MMLH. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised properly. The Concessionaire shall also record the exact location of each accident on a map of the MMLH. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.
- 5.4 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 10 (ten) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 5.1 of this Schedule-K for averting or minimising such accidents in future.
- 5.5 Once in every Accounting Year, a safety audit shall be carried out by a Safety Consultant to be appointed by the Authority. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Project. Within 15 (fifteen) days of receipt of such communication from the Authority, the Concessionaire and the Independent Engineer shall send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same and by notice direct the Concessionaire to carry out any or all of the recommendations with such modifications as the Authority may specify.

6. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-K, shall be met in accordance with Article 18, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met by the Concessionaire.

Annex- I (Schedule-L) SAFETY GUIDELINES

1. System integrity

In the design of the Project Facility, particular care shall be taken to minimise the likely incidence of failure.

2. Safety management

A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project Facility and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the “**Disaster Management Manual**”) to be prepared and published by the Concessionaire prior to COD and subsequently prior to completion of each of the other phases. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Independent Engineer no later than 30 (thirty) days prior to COD and subsequently prior to completion of each of the other phases.

4. Fire safety

4.1 The Concessionaire shall conform to the standards specified by the US National Fire Protection Association (NFPA) in NFPA-61-B.

4.2 To prevent fire in the Project Facility, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

4.3 To deal with incidents of fire, the Concessionaire shall provide a hydrant-based fire-fighting system.

5. Surveillance and Safety Manual

The Concessionaire shall, no later than 60 (sixty) days prior to COD and subsequently prior to completion of each of the other phases, evolve and adopt a manual for surveillance and safety of the Project Facility (the “**Surveillance and Safety Manual**”), in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project Facility, including its gate control, sanitation, fire prevention, environment protection. The Concessionaire shall provide 5 (five) copies each of the Surveillance and Safety Manual to the

Authority and the Independent Engineer no later than 30 (thirty) days prior to COD and subsequently prior to completion of each of the other phases.

6. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety and security of the Project Facility and all persons affected by it.

SCHEDULE - L
MONTHLY FEE STATEMENT

[Values to be inserted]

Type and purpose of Fee	For corresponding month of previous year		For preceding month		For the month reported upon	
	No. of Users	Fee collected (in INR)	No. of Users	Fee collected (in INR)	No. of Users	Fee collected (in INR)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Core Logistics Services						
Leasing of Storage Warehousing Area						
Value Added Services						
Parking Services						
Leasing of Commercial Area						
Supporting Services						
Total						

SCHEDULE – M

{Revenue Share % and the Minimum Guaranteed Revenue Share to be filled as per the Appendix- VII of the RFP cum RFQ submitted by the successful bidder}

Revenue Share at the rate of ____ % (_____ percent in words), quoted up to two decimal places of the Gross Revenue.

As per Article 25, the Concessionaire shall pay to the Authority each year a Premium (Revenue Share) such that:

- a) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 5th (fifth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 1(“Check Point 1”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 1 as per bid excel sheet submitted by the Concessionaire.
- b) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 8th (eighth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 2(“Check Point 2”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 2 as per bid excel sheet submitted by the Concessionaire.
- c) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 11th (eleventh) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 3(“Check Point 3”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 3 as per bid excel sheet submitted by the Concessionaire.
- d) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 14th (fourteenth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 4(“Check Point 4”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 4 as per bid excel sheet submitted by the Concessionaire.
- e) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 17th (seventeenth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 5(“Check Point 5”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 5 as per bid excel sheet submitted by the Concessionaire.
- f) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 20th (twentieth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 6(“Check Point 6”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 6 as per bid excel sheet submitted by the Concessionaire.
- g) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 23rd (twenty third) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 7(“Check Point 7”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 7 as per bid excel sheet submitted by the Concessionaire.
- h) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 26th (twenty sixth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 8(“Check Point 8”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 8 as per bid excel sheet submitted by the Concessionaire.
- i) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 29rd (twenty ninth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 9(“Check Point 9”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 9 as per bid excel sheet submitted by the Concessionaire.

- j) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 32nd (thirty second) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 10(“Check Point 10”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 10 as per bid excel sheet submitted by the Concessionaire.
- k) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 35th (thirty fifth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 11(“Check Point 11”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 11 as per bid excel sheet submitted by the Concessionaire.
- l) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 38th (thirty eight) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 12(“Check Point 12”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 12 as per bid excel sheet submitted by the Concessionaire.
- m) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 41st (forty one) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 13(“Check Point 13”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 13 as per bid excel sheet submitted by the Concessionaire.
- n) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 44th (forty fourth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 14(“Check Point 14”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 14 as per bid excel sheet submitted by the Concessionaire.
- o) The sum of present value on “XNPV” basis of the Premium payable to the Authority, commencing from the month falling immediately after the COD to the 45th (forty fifth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 15(“Check Point 15”), and to ensure the compliance of Clause 25.5, shall be minimum INR [.], in line with the computation of value for Check Point 15 as per bid excel sheet submitted by the Concessionaire.

Note: For determining the sum of the ‘present value on “XNPV” basis’ of Premium paid by the Concessionaire to the Authority up to the respective Check Point(s) detailed in Schedule M of this agreement, the actual quantum of Premium paid by the Concessionaire for each period, as per Clause 25.3 and 25.4, up to the respective Check Point(s), shall be discounted at the annual rate of 08% for the number of quarters from the date of payment to the Appointed Date and summed arithmetically thereafter

- In case, the Concession Period is extended, and such extension occurs solely and purely as a result of default attributable to the Authority under the terms of this Concession Agreement, the Check Points stipulated above shall be increased in the same proportion as the extension of Concession Period granted to the Concessionaire.
- *Illustration: In case the Concessionaire is provided an extension of Concession Period by 1 year between the COD and the 5th(fifth) anniversary from the Appointed Date, then the stipulated requirement for check on Premium payments made to the Authority by the Concessionaire shall be increased by 1 year. i.e. “the cumulative sum of present value of Premium on “XNPV” basis payable by the Concessionaire from the month falling immediately after COD to the 5th (fifth) year from the Appointed Date” shall be changed to “the cumulative sum of present value of Revenue Share on “XNPV” basis payable by the Concessionaire from the month falling immediately after the COD to the 06th (sixth) year from the Appointed Date”. Consequently, the stipulated requirement for check on Premium payments made to the Authority by the Concessionaire till the 08th (eighth) year of Appointed Date shall be increased by one year to 09th (ninth) year of Appointed Date and so on.*

The following table to be filled as per the Appendix- VII of the RFP cum RFQ and in line with the Bid excel sheet submitted by the successful bidder:

Operational Years	Quarters in the Operation year	Projected Gross Revenue (in INR Crores, up to 2 (two) decimal places)	Minimum Guaranteed Revenue Share (INR Crores, up to 2 (two) decimal places)
Year 1	Quarter 1		
	Quarter 2		
	Quarter 3		
	Quarter 4		
Year 2	Quarter 1		
	Quarter 2		
	Quarter 3		
	Quarter 4		
And so on for all quarters till the end of the Concession Period			

SCHEDULE - N

SELECTION OF INDEPENDENT ENGINEER

1. Selection of Independent Engineer

- 1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.
- 1.2 In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a Government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-N.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-N.

2. Terms of Reference

The Terms of Reference for the Independent Engineer shall substantially conform with Schedule-O.

3. Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 2% (two per cent) of the Overall Total Project Cost. Payments not exceeding such 2% (two per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, shall be borne equally by the Authority and the Concessionaire.

4. Selection every 3 (three) years

No later than 3 (three) years from the date of appointment of Independent Engineer pursuant to the provisions of Paragraph 1 of this Schedule-N, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-N.

5. Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a Government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a Government-owned entity which is owned or controlled by the State Government shall not be eligible for appointment as Independent Engineer.

SCHEDULE - O

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated (the “**Agreement**”), which has been entered into between the Authority and (the “**Concessionaire**”) for the MMLH at Greater Noida in the state of Uttar Pradesh on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
 - (a) review of the Drawings and Documents as set forth in Paragraph 4;
 - (b) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (c) conducting Tests on completion of construction and issuing Completion/Provisional Certificate as set forth in Paragraph 5;
 - (d) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (e) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (f) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (g) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (h) assisting the Parties in resolution of Disputes as set forth in Paragraph 9;
 - (i) certifying minimum development obligations in terms of capacity / minimum built up area and value / percentage of TPC spent; and
 - (j) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Development Period

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Master Plan and Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 30 (thirty) days of receipt of such Master Plan and Drawings. In particular, such comments shall specify the

conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

- 4.2 The Independent Engineer shall review any Drawing or modified Drawings or supporting documents sent to it by the Concessionaire in accordance with Schedule-M and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings or Documents. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.3 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.4 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5. **Construction Period**

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the MMLH. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Government in relation to structures, buildings and equipment (the “**Quality Control Manuals**”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The

tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the MMLH is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users in the zone of construction, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users in the zone of construction, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6. Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.

- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall conduct audits to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators in accordance with the terms of the Concession Agreement.
- 6.5 The Independent Engineer shall ensure periodic calibration of Equipment as well as periodic check of all scientific testing equipment.
- 6.6 The Independent Engineer shall assess the amount of Damages, if any, payable or recoverable, as the case may be, under Schedule P and notify the Concessionaire and the Authority of such amounts, in accordance with the terms of the Concession Agreement.
- 6.7 The Independent Engineer shall inspect the Project, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.8 The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.9 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.10 In respect of any defect or deficiency in the Project poses a hazard to safety or risk of damages to property, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.11 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.12 The Independent Engineer shall examine the request of the Concessionaire for closure of the MMLH for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such section of the Project, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.
- 6.13 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.5.
- 6.14 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the MMLH, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.
- 6.15 The Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with Schedule-M.

7. Termination

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 35.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 36.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 7.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 33, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8. Determination of costs and time

- 8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. 2 (two) copies of the said Documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.

- 11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

SCHEDULE - P

KEY PERFORMANCE INDICATORS

S. No.	Item	Description	Frequency for evaluation	Target
1.	Total Turn-around Time of freight train	"Total Turn-around Time" in relation to any freight train calling at the Terminal at MMLH, means the time that elapses between: (i) the time of its arrival into the terminal; and (ii) the time of its departure from the terminal,.	Half yearly	Not exceed 8 hours
2.	Vehicle service time	Vehicle service time shall mean the time required to collect a Container/ Bulk Cargo/ Break Bulk cargo from the terminal yard or to deliver one. It shall be calculated as the interval between the vehicle's arrival at the entry gate of the terminal of MMLH and its departure from the exit gate thereof. The vehicle service time shall be the total vehicle service time of all vehicles carrying cargo to or from the terminal of MMLH during the period of a calendar month divided by the total number of such vehicles during the same period	Half yearly	6 Hours
3.	Moves by Crane	"Crane Rate" in the case of containers, shall be measured by dividing total number of containers lifted on/off or number of tonnes moved from freight train/ vessel by the Elapsed Crane Time. "Elapsed Crane Time" in the case of containers, is the total allocated crane hours less operational and non-operational delays	Half yearly	The Concessionaire shall ensure that the equipment deployed are capable to allow the Crane Rate at a minimum be 25 (twenty-five) moves per hour for container and 25 (twenty-five) moves per hour for bulk and 15 (fifteen) moves per hour for break bulk commodities

S. No.	Item	Description	Frequency for evaluation	Target
4.	Warehousing / cold storage / any other ancillaries	Operational KPIs such as Warehouse space utilization, storage productivity and efficiency, Inventory accuracy etc. should be as per Good Industry Practices		

SCHEDULE – Q

ESCROW AGREEMENT

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

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. (insert name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (“**Concession Agreement**”) for the MMLH at Greater Noida in the state of Uttar Pradesh (“**Project**”) on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

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

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the [•] (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

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

2.5 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

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

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

- 3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the

Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (d) all payments by the Authority, after deduction of any outstanding Concession Fee.

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

3.2 Deposits by the Authority

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

- (a) Any other monies disbursed by the Authority to the Concessionaire;
- (b) All Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments.

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire under the Concession Agreement, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

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

3.4 Interest on deposits

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

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

- 4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):
- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
 - (b) all payments relating to construction of the Project payable to the Authority in accordance with the terms of the Concession Agreement, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
 - (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
 - (e) Concession Fee due and payable to the Authority;
 - (f) monthly proportionate provision of Debt Service due in an Accounting Year;
 - (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
 - (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
 - (i) any reserve requirements set forth in the Financing Agreements; and
 - (j) balance, if any, in accordance with the instructions of the Concessionaire.

- 4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee and other payments;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 38 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

4.3 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 30 of the Concession Agreement shall be appropriated in the following order of priority:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) compensation to Senior Lenders in terms of the Financing Agreements towards discharge of the Concessionaire's liability under such Financing Agreements;
- (c) all amount due to the Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the

Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:

1. all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Authority;
2. the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Authority; and
3. Vesting Certificate has been issued by the Authority under the provisions of Clause 34.4

4.4 Application of insufficient funds

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

4.5 Application of insurance proceeds

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

4.6 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 32 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instruction were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

property of the Escrow Bank.

5.2 Notification of balances

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

5.3 Communications and notices

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

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

5.4 No set off

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

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The

Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

- 6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:
- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
 - (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
 - (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.
- 6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative for transfer of amounts

deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

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

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

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

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

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

9.2 Notice and contest of claims

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

10. DISPUTE RESOLUTION

10.1 Dispute Resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with be the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions

of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.

- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3 Priority of agreements

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

11.4 Alteration of terms

All additions, amendments, modifications, and variations to this Agreement shall be

effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

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

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

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

11.6 No third-party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

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

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

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

11.11 Language

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

11.12 Authorised representative

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

representative by similar notice.

11.13 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary/Authorised Officer who has countersigned the same in token thereof

SIGNED, SEALED AND DELIVERED
For and on behalf of SENIOR LENDERS by
the Lenders' Representative:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

(Email Address)

(Email Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by
the ESCROW BANK:

For and on behalf of SENIOR LENDERS by
the AUTHORITY:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

(Email Address)

(Email Address)

In presence of:

(1)

(2)

SCHEDULE – R

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of, 20....

AMONGST

1. and having its principal offices at (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors, permitted assigns and substitutes);
3. (*insert name and particulars of Lenders’ Representative*) and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for MMLH at Greater Noida in the state of Uttar Pradesh (“**Project**”) on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956/2013 including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders’ Representative shall not be entitled to operate and maintain the MMLH as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the MMLH in accordance with the provisions of Article 41 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.
- 3.3 **Substitution upon occurrence of Concessionaire Default**
- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Concessionaire may terminate this Agreement in accordance with the provisions hereof.
- 3.4 **Procedure for substitution**

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the MMLH including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the MMLH in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.
- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy-five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.5 Selection to be binding**
- The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior

Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 31 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

5.3.1 The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

6.1.1 This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements

7. INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

- 8.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.
- 8.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

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

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

9.6 No third-party beneficiaries

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

9.7 Survival

9.7.1 Termination of this Agreement:

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

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

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary/Authorised Officer who has countersigned the same in token thereof

SIGNED, SEALED AND DELIVERED
For and on behalf of SENIOR LENDERS by
the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by
the AUTHORITY:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(Email Address)

In presence of:

(1)

(2)

SCHEDULE - S

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel of Chartered Accountants and the procedure to be adopted in this behalf shall be as set forth in this Schedule-S.

2. Invitation for empanelment

2.1 The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least 100 (one hundred) companies registered under the Companies Act, 1956/2013, including any re-enactment or amendment thereof, of which at least 10 (ten) should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding INR 25,00,00,000 (Rupees Twenty-five crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the

prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 10 (ten) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-S.

SCHEDULE - T
VESTING CERTIFICATE

1. The (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for the MMLH at Greater Noida in the state of Uttar Pradesh on design, build, finance, operate and transfer (the “**DBFOT**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 35.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the MMLH shall be deemed to have vested unto the Authority, free from any Encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20... at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

For and on behalf of the AUTHORITY by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In presence of:

(1)

(2)

SCHEDULE-U

TESTS

1. Schedule for Tests

- 1.1 The Concessionaire shall, no later than 90 (ninety) days prior to the likely completion of the Project Facility, notify the Independent Engineer and the Authority of its intent to subject the Project Facility to Tests, and no later than 15 (fifteen) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Project Facility.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project Facility to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this **Schedule-U**.

2. Tests

- 2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

2.2 Visual and Physical Test

The Independent Engineer shall conduct a visual and physical check of the Project Facility, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3 Trial run

The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out a trial run to determine that the Project Facility construction is in conformity with the Specifications and Standards, especially with respect to the capacity of each of its systems and equipment.

2.4 Tests for equipment

The Independent Engineer shall conduct or cause to be conducted Tests, in accordance

with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Project Facility and described in **Schedule-B** and **Schedule D**

2.5 Tests for Project:

The Independent Engineer shall conduct or cause to be conducted Tests for determining the compliance of the Project with the Specifications and Standards, Applicable Laws, Applicable Permits, Good Industry Practice, and the calibration certificate issued by the manufacturers.

2.6 Environmental audit:

The Independent Engineer shall carry out a check to determine conformity of the Project Facility with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.7 Safety review:

The Independent Engineer shall carry out a safety audit of the Project Facility to determine its compliance with the provisions of **Schedule-L** and this Agreement.

2.8 Air compression and diesel generator sets:

The Independent Engineer shall conduct or cause to be conducted Tests to determine that the air compression units of all utilities conform with their rated capacities; and the diesel generator sets are capable of being operated for 48 hours in full load and no-load conditions.

3. Agency for conducting Tests

All Tests set forth in this **Schedule-I** shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

4. Tests for Safety Certification

Tests for determining the conformity of the Project Facility with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws and Applicable Permits.

5. Completion Certificate/ Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

6. Tests during construction

Without prejudice to the provisions of this **Schedule-U**, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE-V
SCHEDULE OF FEE

1. Levy and collection of Fee

The Concessionaire or its authorized representative shall be entitled to levy and collect Fee from Users as per market economics. Indicative fees applicable for various services are specified in this Schedule- V, subject to the general principles and terms and conditions specified herein.

2. General principles

- 2.1 Pursuant to the principles set out below, the Concessionaire or its authorized representative shall be entitled to levy and collect Fee from Users.
- 2.2 This Schedule-V shall be valid and effective for the entire Concession Period and may be revised in accordance with the express provisions of Concession Agreement in this behalf.
- 2.3 In the event that any person uses the Project without payment of Fee due, the Concessionaire shall be entitled to take recourse in terms of Clause 29.4 of the Concession Agreement.

3. Indicative Fees for services at Project

Fee for Core Logistics Services	Fee for Value Added Services	Fee from other services
Handling charges for Bulk INR [] / ton Handling charges for Container: INR [] / TEU Handling charges for Break bulk: INR [] / ton	[•]	Truck parking charges: INR [] per truck / day Driver resting: INR [] / day Office space rental: INR [] per Sq.ft / month

DEVELOPMENT OF GREENFIELD MMLH ON
DBFOT BASIS AT GREATER NOIDA, GAUTAM BUDDH NAGAR, UTTAR PRADESH

Stuffing charges per container: INR [] / TEU De-stuffing charges per container: INR [] / TEU Storage charges: INR [] per Sq.ft / day Out of cycle movement charges: INR [] / TEU Warehousing rental: INR [] per Sq.ft / month [.]		[.]
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SCHEDULE-W

USER CHARTER

1. Service with safety

It is our aim to provide safety and quality in the Project through state-of-the-art infrastructure for total customer satisfaction. This Charter explains our commitments to the users of our Project and what they can expect from us.

2. Contents

- i. Introduction
- ii. Our standards for User service
- iii. Availability of information
- iv. Lost property
- v. Listening to your views
- vi. Our promised response time

2.1. Introduction

Users' satisfaction is our motto! It is the intention of the Project management to provide quality service to the users of this Project through its trained manpower and contractors. We aim to provide:

- a. Safety and security for the Users of Project with clean and hygienic environment
- b. Reliable and easy to understand information
- c. Polite, customer friendly and helpful staff
- d. Availability of essential facilities

2.2. Our standards for User Service

We will continue to toil hard at improving our performance to provide you with a reliable and comfortable service at our Project.

2.2.1 Approach to the Project

We will make all out efforts to make approach within the Project smooth and comfortable. Our traffic plans will be so oriented as to enable easy entry into and exit from the Project. To make your approach comfortable we will tow away the vehicles parked in an unauthorised manner on the approach roads within the Project. Entry in to the Project will be non-discriminatory basis.

2.2.2 Parking of vehicles

It will be our endeavour to provide adequate parking space for parking of various vehicles like trucks, car etc. The usage of parking facilities will be available [on payment of prescribed fees which may vary according to the vehicles and the type of parking used].

2.2.3 Display of Capacity availability

The Project is developed as a common user terminal.

We at Project aim to avoid unfair trade practices and thus have displayed our Fees at designated places at the Project and also the availability of capacity at the Project, so that any User willing to avail the Services at the Project after payment of the prescribed Fees is entitled to and there will be no discretion in the use of the Project by any User.

2.3. Availability of information

Information is power.

We will provide clear and easy to understand universally accepted signages inside the Project so that you can avail all the facilities without asking for anybody's help. However, if you need any help, our trained staff will be there to lend you a helping hand.

2.4. Lost Property

Lost something at the Project? You may get it back from the lost property office at the Project.

All the lost and found items will be sent to the lost property officer in-charge. You may get in touch with him for recovery of your lost items. He can be reached at his

email address i.e. [•].

2.5. Listening to your views

Customer is always right. Customer satisfaction is our motto. Continuous improvement is our aim.

To record your suggestions/ complaints, suggestion books have been made available at various locations. You can also contact us through correspondence or our phone lines or through our website.

2.6. Our promised response times

When you write to us, you should hear from us within 7 (seven) working days.

- a. In case it needs a longer time to provide a full reply, we will send you an acknowledgement within 7 (seven) working days and reply within 25 (twenty five) working days.
- b. If a full reply cannot be made within 25 (twenty five) working days, we will contact and update you.
- c. There are several agencies involved in providing the various services at the Project. Some of the services we have promised above may involve interaction and coordination with these agencies who are primarily responsible for the provision of the service. In this case, we shall make best efforts to address your concerns.

If you are unhappy with our reply, we will make all our efforts to make you satisfied with our response. Kindly let us know. This will help us identify weak spots and continually improve our performance.