

Dt. 07th October 2021

OFFICE MEMORANDUM

Subject: Model Concessionaire Agreement for Multi-modal Logistics Parks (MMLPs) being developed under the Bharatmala Pariyojana - reg.

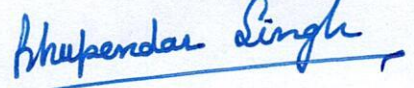
The undersigned is directed to refer to the draft Model Concessionaire Agreement (MCA) for MMLPs received from NHAI vide File No. H-39011/09/2020-P&P(Log) dt. 29.09.21 incorporating the inputs received during the VC presentation to Hon'ble Minister, RT&H dt. 20.07.21, the Inter-Ministerial Consultation meetings (IMC) held on 24.12.20 & 09.03.21 and the comments received from NITI Aayog.

2. It is to mention to that the Model Concessionaire Agreement (MCA) for Multi modal Logistics Parks (MMLPs) being implemented under the Bharatmala Pariyojana has been accorded approval by the Hon'ble Minister, RT&H. The final approved MCA is enclosed as **Annexure- A** for further necessary action of NHLML/NHAI and NHIDCL in respect of the MMLPs as part of Bharatmala Pariyojana.

3. This issues with the approval of the Hon'ble Minister (RT&H).

Encl. as above.

Yours Sincerely,



(Bhupendar Singh)

Deputy Secretary to the Govt. of India

To:

1. Chairman, NHAI
2. Managing Director, NHIDCL
3. Chairman, NHLML & Member, NHAI (Attn: Shri Manoj Kumar)

Copy to:

1. PS to Hon'ble Minister, RT&H
2. APS to Hon'ble Minister of State, RT&H
3. Sr. PPS to Secretary, MoRT&H
4. Sr. PPS to Additional Secretary (Highways), MoRT&H
5. Sr. PPS to Joint Secretary (Logistics), MoRT&H
6. Sh. Mansoorul Haque, Director - NIC, MoRT&H -with a request to upload the annexed Model Concessionaire Agreement for MMLPs along with this OM on the 'What's New' and Publication section of the MoRT&H website.



(Ministry of Road, Transport & Highways)

Public Private Partnership

In

Setting Up and Operating

Multi Modal Logistics Park

MODEL CONCESSION AGREEMENT

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**Part I
Preliminary**

CONCESSION AGREEMENT

THIS AGREEMENT¹ is entered into on this the *****day of*****, 20*****

BETWEEN

1 **THE [•](name of the authority granting concession for the purposes of the Project), represented by [•], and having its 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) of One Part;

AND

2 ***** a company² 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) In order to establish an efficient, seamless and integrated logistics network for the purposes of enabling inter modal transfer of domestic and export-import cargo, the Government has entrusted to National Highway Logistics Management Limited (“**NHLML**”) through the National Highways Authority of India (“**NHAI**”), to set up Multi Modal Logistics Parks in India with private sector participation at various locations across the Country.
- (B) In furtherance to this, the Authority has resolved to establish one such multi modal logistics park³ at [•] in district [•] in the State of [•] on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis in accordance with the terms and conditions set forth in this Agreement.
- (C) The Authority had accordingly invited proposals by its Request for Proposal dated ***** (the “**Request for Proposal**” or “**RFP**”) for selection of bidder to build, operate and maintain the Project in the identified district on a PPP basis.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/Consortium} comprising*****and***** (collectively the “**Consortium**”) with*****as its lead member (the “**Lead Member**”)}and

¹ Serially numbered footnotes in this Model Concession Agreement are for guidance of the Authority and should be omitted from the draft Concession Agreement forming part of Bid Documents.

² The provisions in curly parenthesis and the blank spaces shall be retained in the draft Concession Agreement and shall be suitably modified filled after completion of the bid process to reflect the particulars relating to the selected bidder.

³ All asterisks, if any, in this Model Concession Agreement should be substituted by project-specific particulars in the draft Concession Agreement forming part of Bid Documents. All project-specific provisions in this Model Concession Agreement have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Concession Agreement forming part of Bid Documents.

issued the Letter of Award No. *****dated***** (hereinafter called the “LOA”) to the {selected bidder/Consortium} requiring, *inter alia*, the execution of this Concession Agreement within 45 (forty five) days of the date of issue thereof.

- (E) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a company under the Companies Act 2013 with CIN*****, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (F) {By its letter dated ***** the Concessionaire has also joined in the said request of the selected bidder/Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/Consortium, only for the purposes hereof}.
- (G) The Authority has {agreed to the said request of the selected bidder/Consortium and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 47) 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.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (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, developing, 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, up-gradation 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;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references 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;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

- (l) references to any date, period or Project Milestones shall mean and include such date, period or Project Milestones as may be extended pursuant to this Agreement;
- (m) 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;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**Lakh**” means a hundred thousand (100,000) and “**Cröre**” means ten million (10,000,000);
- (q) “**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;
- (r) 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;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) 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 Expert shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Expert, as the case may be, in this behalf and not otherwise;
- (u) 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;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) 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
- (x) 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;

- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Expert shall be provided free of cost and in three copies, and if the Authority and/or the Independent Expert is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

- 1.4.1 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;
 - (c) i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.
- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any 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

- 2.1.1 The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:
- (a) Planning, design, financing and construction of the Project on the Site set forth in **Schedule-A** and as specified in **Schedule-B** together with provision of the Project Assets in conformity with the Specifications and Standards and other provisions of this Agreement;
 - (b) procurement of the equipment and all other material required for construction, operation, maintenance of the Project 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 and other provisions of this Agreement;
 - (d) operation and maintenance of the MMLP in conformity with the Specifications and Standards and other provisions of this Agreement;
 - (e) provide Services in conformity with the Specifications and Standards and other provisions of this Agreement;
 - (f) Development, operation, and maintenance of Commercial Zone at the Site as specified in **Schedule-B and D** and in accordance with the provisions of this Agreement; and
 - (g) 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 Practice, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the exclusive right, license and Authority to design, finance, construct, operate and maintain the Project at the Site (the “**Concession**”) and provide Services for a period of 30 years, commencing from the Appointed Date and ending on the Transfer Date (the “**Concession Period**”), which includes construction of the Project Assets and to exercise and/or enjoy the rights, power, privileges and entitlements as set forth in this Agreement 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 the Concessionaire to undertake the following in accordance with the provisions of Applicable Laws and Applicable Permits, during the Concession Period to:
- (a) Right of Way, access, and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) plan, design, develop, procure, construct, finance, upgrade, equip, operate, maintain and manage 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 or designated Government agency on the Transfer Date;
 - (c) operate, manage, and maintain the MMLP and regulate the use thereof by third parties;
 - (d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the MMLP and/ or availing any Services or any part thereof and refuse entry to any User if the Fee due is not paid;
 - (e) perform and fulfil all of the Concessionaire’s obligations under and 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) 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) access the common areas, facilities, and infrastructure at the Site, as long as such right to access is limited to the extent that it is required for operating and maintaining the MMLP and/ or providing Services;
 - (i) neither assign, transfer, or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the MMLP nor sell, transfer, exchange, lease, sub-license part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

- 3.1.3 Upon the termination of this Agreement, either due to expiry of the Concession Period or due to any other reason, the Concessionaire shall comply with obligations provided in Article 37.

3.2 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.

3.3 Commercial Zone 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 entire facilities as specified in **Schedule-B**, subject to conditions specified in **Schedule-D** and to exploit such development for commercial purposes in accordance with the provisions of Article 24 (“**Commercial Zone Development**”) with the right to sub-license/lease any or all parts thereof by means of Project Agreements.

3.4 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 3.4.

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, 25, 33, 43 and 46, 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**”).

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 on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, 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) provided to the Concessionaire the Right of Way, access, leave and license rights 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 clearance⁴;
- (c) 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.

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, grant extension of time, not exceeding 120 (one hundred and twenty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 180 (one hundred and eighty) 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 which is in full force and effect. For the avoidance of doubt, it is expressly clarified that should the Performance Security have been encashed in accordance with Clause 4.3.1, the Concessionaire shall ensure that the Performance Security has been replenished and such Performance Security is in full force and effect on the Appointed Date;
- (b) executed and procured execution of the Substitution Agreement;
- (c) procured all the Applicable Permits specified in Part-A of Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (d) executed and procured execution of the Escrow Agreement;
- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

⁴ Any subsequent change in requirement of permits will be Concessionaire’s responsibility.

- (f) achieved Financial Close and 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;
- (g) delivered to the Authority from {the Consortium Members} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
- (h) 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;
- (i) Furnishing a copy of the Consortium Agreement;

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.

- 4.1.4 Each Party shall make all reasonable endeavours 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 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 of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, 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.

4.3 Damages for delay by the Concessionaire

- 4.3.1 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 a period of 180 (one hundred and eighty) days from the date of this Agreement, 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 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. Provided that 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

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. However, the Concessionaire may prior to the Appointed Date, subject to prior written approval from the Authority, undertake shifting of obstructing utilities at the Site and/or cutting of trees as set forth in Article 11.

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 9.3, 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.

ARTICLE 5 - OBLIGATIONS OF THE CONCESSIONAIRE

5.1 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, design, engineering, procurement, construction, operation and maintenance of the Project in accordance with the provisions of this Agreement and take reference to the concept Master Plan as specified under Schedule – B, Annexure - II and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 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 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, from time to time, undertake expansion or augmentation of the Project Assets in accordance with the provisions of this Agreement and Good Industry Practice
- 5.1.5 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 except property tax 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.
- 5.1.6 The Concessionaire shall, 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 all the Financing Agreements executed for phased development of the Project.
 - (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 are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and Applicable Laws;
- (h) ensure that Users are treated with due courtesy and consideration and provided with ready access to Services and information;
- (i) provide, or cause to be provided, Services in accordance with the provisions of this Agreement and Applicable Laws;
- (j) procure the temporary supply of electricity during the Construction Period to the Project from the grid, including procuring standby arrangements for supply of electricity for maintenance of Services in the event of outages or failure of electricity supply from the grid;
- (k) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (l) ensure that the equipment used in the Project are in good condition and conform to the international specifications and efficiency standards;
- (m) ensure procurement of the latest and the most efficient technology and comply with provisions of Article 21;
- (n) transfer the Project Assets to the Authority upon Termination/Expiry of this Agreement, in accordance with the provisions thereof,
- (o) procure, as required, the appropriate utilities and Services required or used for the Project
- (p) 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's representative and its authorised personnel shall have the right of access to all these documents at all reasonable times;
- (q) cooperate with authorized representative of the Authority and personnel of any public Authority;
- (r) not interfere unnecessarily or improperly with the convenience of the public, the Authority and its representatives, employees, agents etc.;
- (s) undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Project Assets;
- (t) construct and make alterations or additions to the building/structure/installations on the Site at its own cost after 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. Such alterations shall not compromise the safety aspects. The cost of alterations shall not be part of the Total Project Cost;

However, the Concessionaire shall be at liberty, after giving prior written intimation to the Independent Expert to undertake minor modifications / alterations within the industrial structure / building (for the sake of clarity, no structural modifications / alterations shall be undertaken without prior written approval of the Authority) subject to approvals and permissions as may be required as applicable.

- (u) at its own cost, provide and install the, furniture equipment, fixtures and things necessary for implementing the Project;
- (v) at its own cost bear the cost of maintaining rail connectivity⁵ to MMLP, rail terminal inside MMLP boundary, develop roads inside MMLP boundary to achieve seamless connectivity of MMLP with external road connectivity; The Concessionaire shall develop the rail terminal and the rail handling area in commensuration with the development of rail siding, being provided by the Authority as per Clause 6.1.2 (k).
- (w) bear and pay all the existing and future rates, Taxes, levies, duties, cess and charges of whatsoever nature in respect of the Project throughout the term or the extended term of the Concession Period, if any;
- (x) provide the Project security arrangements on round the clock basis and shall maintain and run the Project in accordance with Good Industry Practice and as may be required by the Authority;
- (y) 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 rule and regulation regarding labour safety, health sanitation, cleanliness and hygiene;
- (z) not store any hazardous or explosive substance on the Site unless specific license is obtained from the regulatory body after taking prior consent from the Authority. The Concessionaire shall provide and maintain necessary fire-fighting and fire protection systems in the Site as per the Applicable Law
- (aa) 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 MMLP, the assets therein or any part/portion of the MMLP in any way prejudiced, affected or extinguished;
- (bb) use the Site or any premises erected thereupon for the exclusive purpose of providing the Services to the users of the MMLP (“Users”) and bonafide visitors to the Site.
- (cc) The Authority/Authority Representative 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 MMLP is not being maintained and operated as per the Specifications and Standards as required to be provided under this Agreement or 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 or cause to be taken 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 time period stipulated therein would be considered a breach of the terms of this Agreement by the Concessionaire;
- (dd) Maintain a complaints register at a conspicuous place in the Site for recording complaints, if any, of the Users of the MMLP and maintain a website for registering of complaints, if any, online, with access to the Authority. Within one week following the close of each calendar month, the Concessionaire shall send to the Authority a true photocopy of such pages of the complaints register on which any entries have been recorded of any complaint during the course of such month along with detail, of the action

⁵ Maintenance of rail connectivity would include maintaining the rail siding from takeoff point to inside MMLP

taken by the Concessionaire on such complaints. The Concessionaire expressly agrees that the Authority may in its discretion direct the Concessionaire to take such further reasonable action as the Authority may deem appropriate for a fair and just redressal of any grievance;

5.1.7 The Concessionaire shall, at its own cost and expense, adhere to green principles in accordance with Green Rating for Integrated Habitat Assessment Version 3, and ensure sustainable operations in the MMLP *inter alia* by means of:

- (a) extensive horticulture and plantation along with adequate sewage treatment;
- (b) recycling water for landscaping and horticulture;
- (c) ensuring use of natural materials such as dry-stone cladding for exteriors;
- (d) ensuring use of bio-methanation for treatment of bio waste and for generation of cooking gas;
- (e) rainwater harvesting;
- (f) installing roof-top solar panels;
- (g) procuring use of single/ double glazed windows with matched u-factor for increased energy efficiency in the Project Facility; and
- (h) ensuring adequate ventilation and natural day light in the Project Facility.

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 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 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 Due 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. This Clause 5.2.3 is applicable for Financing Agreements executed by the Concessionaire for each phase of development of the Project.

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 an O&M Contractor and execution of the O&M Contract 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 no later than 30 (thirty) days from the date receipt of request in this regard appended with all necessary and supporting documents. 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.

5.3 Obligations relating 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 penalty 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 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 prior written approval of the Authority from national security point of view for requisite regulatory permits and approvals including employment / residential visas and work permits, if any required, and the obligation to apply for and obtaining 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.

5.5 Employment of trained personnel

The Concessionaire shall recruit and manage all the personnel required to perform each step of the Services.

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 in accordance with the Applicable Laws.

The Concessionaire shall adopt an effective human resources policy in accordance with the Applicable Laws.

The Concessionaire shall appoint suitable officers/staff/representative to work and supervise the Project and to deal with the Authority.

The Concessionaire shall be responsible to provide requisite training to its personnel at the Project, time to time.

The Concessionaire shall ensure:

- (a) the compliance of all Applicable Laws and Specifications and Standards by all the Contractors and sub-contractors;
- (b) the staff and attendants employed at the Project are trained as per the requirements of the Applicable Laws in performing the Services;
- (c) that its personnel is courteous and helpful to the Users.

5.6 Branding of the MMLP

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the MMLP through both appropriate design and sensitive management of all visible elements.

The area near entrance & exit gates of MMLP or any part thereof are permitted to advertise, display or reflect the name or identity of the Concessionaire or any other entity along with the 'name or brand'. The Concessionaire shall ensure that the branding of MMLP shall not trigger any 'political sentiments' and / or 'religious sentiments' and shall abide by the extant policy in this regard.

5.7 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 MMLP.

5.8 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.

5.9 Personnel engaged by the Concessionaire

The Concessionaire shall ensure that the personnel engaged by the Concessionaire or any of its agency in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled, and experienced in their respective functions in conformity with Good Industry Practice

5.10 Authority's observation on Personnel

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.

5.11 Removal of Personnel engaged

The Concessionaire shall on receiving such a direction from the Authority's Representative 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 removed from the Site within 10 (ten) days of or earlier as per legal/statutory/administrative requirement any such direction being issued in pursuance of Clause 5.10. The Concessionaire shall further ensure that such persons have no further connection with the works, maintenance, or operations under this Agreement. The Concessionaire shall then appoint (or cause to be appointed) a replacement within 7 (seven) days but not later than 30 (thirty) days. All consequential effects of such removal and appointment or replacement, including legal/statutory/administrative issues, if any, shall be the sole liability of the Concessionaire

5.12 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.

5.13 Obligations relating to non-discriminatory access

5.13.1 The Concessionaire shall manage and operate the MMLP 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.

5.14 Obligations relating to competition

The Concessionaire shall not, either directly or through Associated Firms, or in any other manner acquire control or interest in the operations or services of any other multi modal logistics park within a radius of [100 (one hundred) kilometers] from the MMLP such that its share exceeds 25% (twenty five per cent) of such control or interest in the operations or services of such multi modal logistics park. The Concessionaire shall also with proper due diligence ensure and procure that no person who controls or operates any other multi modal logistics park within a radius of 100 (one hundred) kilometers from the MMLP shall acquire control or interest in the operations or services of the MMLP such that the share of such person exceeds 25% (twenty five per cent) of such control or interest in the operations or services of the MMLP leading to Change in Ownership in terms of Clause 5.3.

Provided that this Clause 5.14 shall not apply if such share is the direct consequence of the decisions or directions of the Authority.

5.15 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 subcontractors shall always be subject to security clearance by the Designated Government 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.

5.16 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.

5.17 Auditing the Project

- 5.17.1 The Concessionaire shall maintain books recording the procedure followed at the Project.
- 5.17.2 The Concessionaire expressly agrees to furnish to its Statutory Auditor the details of the records maintained in furtherance of Clause 5.17.1.
- 5.17.3 On or before the 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 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.
- 5.17.4 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.

5.18 Accidents

In the event of an accident on the Site, the Concessionaire shall, by most expeditious means, inform the concerned civil & police authorities and 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 Assets suffers any damage, the Concessionaire shall, with the consent of the Authority, 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.

Any communication to the news media made by the Concessionaire shall provide only enough information to satisfy public concern and the Concessionaire shall neither make any admissions nor accept any liability in any such communications.

5.19 Obligations relating to aesthetic quality of the MMLP

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the MMLP and achieve integration of the MMLP 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 town planners of repute for ensuring that the design of the MMLP meets the aforesaid aesthetic standards.

5.20 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 MMLP and its impact on Users and the neighbourhood.

5.21 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.

5.22 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.

5.23 Water and Electricity

5.23.1 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 [and external water supply⁶] connection to the Site no later than [•] 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.

5.23.2 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.

⁶ The provision of external water supply shall apply on project to project basis.

5.24 Obligations relating to information

- 5.24.1 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.
- 5.24.2 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.

5.25 Obligations relating to procurement of goods and services

- 5.25.1 The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the MMLP 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.

5.26 Obligations relating to medical aid

For providing emergency medical aid to Users, the Concessionaire shall set up and operate a medical aid post at the MMLP equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

ARTICLE 6 - OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertakes, 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 implementation and operation of the Project;
 - (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 commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
 - (d) pay property tax in relation to the Site (except Commercial Zone Development) on which it is established;
 - (e) subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project;
 - (f) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project;
 - (g) 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;
 - (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (i) 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 by Concessionaire or its Contractors their respective obligations under this Agreement and the Project Agreements;
 - (j) provide to the Concessionaire, upon receiving the Performance Security under Clause 9.1, the Site in accordance with the provisions of Article 10;
 - (k) Provide access to, at minimum, 4 (four)-lane paved road, and single line rail siding to the MMLP and [2] handling rail track[s] inside the MMLP shown in the project map attached in the Schedule A;

- (l) the Authority shall maintain, in conformity with Good Industry Practice, all stretches of the external Roads provided / constructed by the Authority connecting the Site;
- (m) 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;
- (n) Authority shall be responsible for the land use conversion of the Site of the Project;
- (o) subject to the Concessionaire complying with Applicable Laws, making requisite applications provide reasonable assistance to the Concessionaire in procuring electricity supply within the Project;
- (p) provide to the Concessionaire the Right of Way, access, leave and license rights to the Site in accordance with the provisions of Article 10;
- (q) provide complete access to the Site free of encumbrance, including right to use for the purpose of maintaining telephone lines, electricity lines, water piping or for such other public purpose as the Concessionaire may require, but the charges for the use of such utilities shall be incurred by the Concessionaire;
- (r) Provide external power [and external water supply⁷] connection⁸ to the Site no later than [•] months from Appointed Date but in any event not later than 6 (six) months prior to COD.

Upon breach of its obligations as set forth in Clause 6.1.2(k) for rail connectivity and Clause 6.1.2 (r) for power supply, 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.

6.2 Obligations relating to Competing Facility

Authority shall procure that during the subsistence of this Agreement, neither the Authority nor any Government Instrumentality shall, at any time construct or cause to be constructed any new Competing Facility within a distance of a 100 (one hundred) km radius of the MMLP 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 distance of a 100 (one hundred) km radius of the MMLP 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 Government 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

⁷ The provision of external water supply shall apply on project to project basis.

⁸ Tapping and distribution will be in the scope of the Concessionaire

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 purpose 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 Authority, but the repayment thereof shall be completed no later than 2 (two) years prior to expiry of the Concession Period.

6.4 Connectivity to rail, road and port/ airport network

- 6.4.1 The Authority shall, no later than “2 (two) years from the Appointed date” or “by the COD” whichever is later, provide or cause to be provided, a traffic worthy connecting road as indicated in the Master Plan mentioned in Schedule B and shall augment/ maintain such road as and when required in accordance with Good Industry Practice.
- 6.4.2 The Authority shall, no later than the expiry of 4 (four) years from the Appointed Date, provide or cause to be provided, rail connectivity as indicated in the Master Plan provided in Schedule B.

ARTICLE 7 - REPRESENTATIONS AND WARRANTIES

7.1 Representations 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 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 that 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 short-listing in response to the RFP shall during the Construction Period of phase-1, and 6 (six) months from the COD , hold not less than 26% (twenty six per cent) of such Equity.
- (l) the {selected bidder/ Consortium Members and its/ their} and its 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 Letter of Award, 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) The Concessionaire shall procure and furnish to the Authority the confirmation from the “ selected bidder/Consortium Members” to the effect that all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposal or otherwise, is to the best of their knowledge and belief, if true and accurate in all material respects.
- (r) all undertakings and obligations of the Concessionaire arising from the RFP or otherwise shall be binding on the Concessionaire as if they form part of this Agreement
- (s) it shall remain solely liable to perform its obligations under this Agreement as well as ensure performance of obligations by its sub-licensees, lessees, Contractors/Sub-Contractors, designers, consultants or agents and nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and Concessionaire’s 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 Representations 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 the right, power and authority to manage and operate the MMLP up to the Appointed Date; and
- (h) it shall procure good and valid title of the land 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 that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of construction material and resources, railway connectivity, availability of electricity and water, business potential 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 and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts 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 Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3 The Parties 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 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 during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. *****/-(Rupees *****)⁹ 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), the Concessionaire shall be liable to furnish the Performance Security for a sum equivalent to Rs. *****/-(Rupees *****) ([•]% 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 180 (one hundred and eighty) 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 the relevant amounts from the Performance Security as Damages for such Concessionaire Default or for failure to meet any Conditions 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 its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 36. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default 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 36.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of 180 (one hundred and eighty) days following COD, 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

⁹ Calculated @ approximately [3% (three per cent)] of the estimated amount specified in the definition of Total Project Cost of phase-1

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 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.

ARTICLE 10 - SITE & RIGHT OF WAY

10.1 The Site

The site of the Project shall comprise of 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**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land area required for the Project as set forth in **Schedule-A, Schedule B** and shall include use of the Site for Commercial Zone Development.

10.2 License, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire 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 license 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 (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination/expiry 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), agent(s), representative(s) the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.4 The Concessionaire hereby irrevocably appoints the Authority (or its 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.

10.2.5 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.

10.2.6 The license, 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 existing roads within the Site or an alternative thereof are open to traffic at all times 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, the Independent Expert 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, trees and any other immovable property on or attached to the Site. 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 authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license 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 license 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.
- 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 such that the Appendix shall not include more than [5% (five per cent)] of the land area required as per the planned phase-1 development as specified in Schedule G and as mentioned in the Master Plan provided in Schedule B, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access, 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. Authority further acknowledges the land required for phases beyond phase-1 shall be provided within “2 (two) years from the Appointed Date” or “COD” whichever is later. 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 the Site 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, required for development of phase-1 as per Master Plan provided in Schedule B, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 100 (Rupees one hundred) per day for every 1000 (one thousand) square meters or part thereof, commencing from the [181st (one hundred eighty-first)] day of the Appointed Date and until such Right of Way of the balance land is procured. 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.

For subsequent phases, the Authority shall make best efforts to procure and grant, no later than “2 (two) years from the Appointed Date” or “COD” whichever is later and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 100 (Rupees one hundred) per day for every 1000 (one thousand) square meters or part thereof, commencing from the [1098th (one thousand ninety eighth)] day of the Appointed Date and until such Right of Way is procured.

10.3.5 Upon receiving the site and 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 Expert 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 the Right of Way is granted within 120 (one hundred twenty) days of the Appointed Date shall be completed before the Scheduled Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Expert 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 12.6.3.

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 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 Licensed Premises 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 Lease/ sub license

Save and except as otherwise permitted by this Agreement, the Concessionaire may lease/sub-license the whole or any part of the Site, 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 Site from encroachments

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 MMLP and the performance of its obligations under this Agreement.

10.8 Access to the Authority, Authority Representative and Independent Expert

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, Authority Representative and the Independent Expert and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.9 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license 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 Government 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 MMLP 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, inspite 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 33.9.1

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 10.9 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 utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such construction.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of shifting or removing such utilities shall be borne by the Concessionaire.

11.3 Utilities required for Project

11.3.1 The Concessionaire shall, subject to applicable laws and with assistance of the Authority, undertake construction of any utilities required for construction, maintenance and operation of Project, including electrical lines, water pipelines, telephone lines, waste disposal lines, etc. at his own cost. These utilities shall also include any external connections except water and power.

11.3.2 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 user of 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 maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

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 material adverse effect on construction, operation, and maintenance of the Project. The Concessionaire shall be responsible for cutting of the trees along with transplant / replantation as per the applicable law. The cost of felling of trees and transplant / plantation shall be borne by the Authority. 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 Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

ARTICLE 12 - DESIGN AND CONSTRUCTION OF [THE PROJECT]

12.1 Construction of the Project

- (a) The Concessionaire shall undertake construction of the Project in phases as per the Project Completion Schedule specified in Schedule-G, on the land specified in Schedule-A, subject to the conditions stipulated in Schedule-B and Schedule-D, and to exploit such development for commercial purposes with the right to sub-license/lease any or all parts thereof by means of Project Agreements in accordance with the Concessionaire's scope of work under and in accordance with the terms of this Agreement.
- (b) 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 internal roads, electric supply, water supply, sewerage and drainage system etc. in the site and to the site, forming part of the Project.

12.2 Obligations prior to commencement of construction

12.2.1 In addition to obligations and conditions specified, prior to commencement of Construction Works for each phase, the Concessionaire shall:

- (a) submit to the Authority and the Independent Expert its detailed conceptual plan, layout plan,, detailed design, engineering drawings, 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 authorized to deal with the Authority 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 procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

12.3 Master Plan for the Site

12.3.1 The Concessionaire shall construct the Project by taking due references to the concept Master Plan set forth in Schedule- B.

12.3.2 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 Core Logistics Services or to expand any part of the Project, and upon request hereunder, the Authority shall grant approval to the extent reasonably required in pursuant of this Clause 12.3.2. For the avoidance of doubt, the Parties expressly agree that the Master Plan shall not be amended for and in respect of Value Added Services and Commercial Zone, beyond the range of percentage of the area allocated for the Site under Annex – I (Schedule – B), save and except when required to deal with the effects of Force Majeure or for providing facilities or amenities to Users without payment of any Fee or charge.

The Concessionaire shall ensure that its Construction Works do not obstruct, interrupt, or divert the flow of traffic on the Highway on which the Project is situated that would otherwise impede smooth

traffic flow on the Highway. For the avoidance of doubt, it is agreed that the Concessionaire shall at times be responsible for ensuring safe operation of the Project.

12.4 Drawings

12.4.1 In respect of the 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, three copies each of detailed conceptual plan, layout plan, detailed architectural and structural designs, engineering drawings, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule (as required for proper execution and completion of the Project as envisaged by the Authority) in relevance to layout provided by Authority and all Drawings to the Independent Expert for review;
- (b) By submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified that the site specific design and engineering, including the field construction criteria related thereto, are in conformity with the Specifications and Standards; Applicable Laws and Good Industry Practice
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert 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 Expert on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Expert 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 Expert for review. The Independent Expert 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 Expert and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Expert or the Authority be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 12.4.1, 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 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 the Clause 12.4.1 shall apply mutatis mutandis to the review and comments hereunder.
- (g) Within 90 (ninety) days of Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Expert a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed and developed, including an as-built survey illustrating the layout of the and setback lines, if any, of the buildings and structures forming part of Project Facilities.

- (h) 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)
- (i) 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 Expert
- (j) 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.
- (k) Any cost or delay in Construction arising from the time taken for review of Drawings by the Independent Expert shall be borne by the Concessionaire and the Authority shall not be held liable for the same
- (l) 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 Expert thereon as communicated pursuant to the provisions of Clause 12.4. Such Drawings shall not be amended or altered without prior written notice to the Authority's Representative. 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.
- (m) In the event that the Independent Expert 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 Expert 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 Expert, 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 Expert 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 Expert 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 Expert for review. The Authority and/ or the Independent Expert 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 Expert 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 Expert be liable for the same in any manner.

12.6 Construction of the MMLP

12.6.1 On or after the Appointed Date, the Concessionaire shall undertake the Construction Works as specified in Schedule-B and in conformity with the Specifications and Standards set forth in Schedule-D and Good Industry Practice. The 24th (twenty fourth) month from the Appointed Date shall be the scheduled date for completion of the Construction Works for phase-1 (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the phase-1 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 the Project Completion Schedule, the Specifications and Standards, Applicable Laws including the applicable architectural controls, building byelaws and zoning requirements, terms of Applicable Permit and Good Industry Practice and after obtaining sanction to the building plans etc. with the design plans and specifications from the proper municipal or other Authority, at its own expenses.

Accordingly, the Concessionaire shall undertake the designing, engineering and Construction Works related to the subsequent phases of the Project in adherence to Schedule-G and achieve the construction completion and commissioning for the respective phases in accordance to the Project Milestones specified under Schedule-G.

12.6.2 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.

12.6.3 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in **Schedule-G**. 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 solely 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 Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.6.3 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 12.6.3 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof

12.6.4 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.

- 12.6.5 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 to access the Site, land use conversion certificate
- (b) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 12)
- (c) occurrence of a Force Majeure event
- (d) any delay, impediment or prevention caused by or attributable to the Authority, 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
- (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 Milestone 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 Milestone 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.

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 Sub-licensing / Leasing of the Project

12.8.1 Subject to the provisions of Clause 5.2, 24.5 and this Article 12, Concessionaire may sub-license / lease part of the Project Assets comprising the Project, 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 / lease 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 / leasing 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.

12.8.2 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 12.8.1, the Concessionaire or the sub licensee/lessee shall not assign or in any manner create an Encumbrance on any Project Asset forming part of the Project without prior written approval of the Authority, which approval the Authority may, in its discretion, deny only if such sub-license/lease, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws; For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 12.8.2 within a period of 60 (sixty) days from the date of receiving a notice with required particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-license/lease, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.

12.8.3 The Concessionaire agrees and undertakes that in respect of any sub-license/lease, or assignment 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/lease 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/lease period or earlier if the sub-licensee/lessee is terminated on account of any reason.

12.9 Rights of sub-licensees / lessees after Termination of Concession Agreement

On termination of Concession Agreement, the sub-licensee/lessee (or any occupancy rights by whatever term referred to) 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.

12.10 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.

12.11 Advertisement on the Site

- (a) The Concessionaire may undertake or permit to undertake any form of commercial advertising at the Site. All advertising on the Site shall also conform to Good Industry Practice. It is further agreed that the Project shall be known, promoted, displayed, and advertised by the name of the Concessionaire.
- (b) For the avoidance of doubt, it is agreed that the right of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time.
- (c) 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 Expert.

12.12 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 are 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 36.

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 Expert a monthly report on physical and financial progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Expert.

13.2 Inspection

During the Construction Period, the Independent Expert shall inspect the Project 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. The Independent Expert 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 Expert 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 Expert 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 Expert from time to time, in accordance with Good Industry Practice 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, 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 test in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert 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 Expert in this behalf. The Independent Expert 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 Expert forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.6.1, if the Concessionaire does not achieve any of the Project Milestones or the Independent Expert shall have reasonably determined that the rate of progress of Construction Works is such that completion of the Project is not likely to be achieved by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Expert in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Milestone or Project Completion Date, as the case may be.

13.5 Suspension of unsafe Construction Works

13.5.1 Upon recommendation of the Independent Expert on any error or defect of a technical nature in the designs and Drawing 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 any equipment, maintenance or any individual 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 there upon carry out remedial measures to secure the safety of suspended works and or any individual on or about the Project. The Concessionaire may by notice require the Independent Expert 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 Expert to inspect such remedial measures shall be borne by the Concessionaire. Upon receiving the recommendations of the Independent Expert, 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.

13.5.3 Subject to the provisions of Clause 33.7, 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 Expert 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 Expert. 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 Expert 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 Expert 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 Expert may reasonably require for conducting the Tests. In the event of Concessionaire and Independent Expert 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 Expert, and in the event the Independent Expert delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Expert and shall ensure that Tests are completed in time either by the Independent Expert 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-I at the cost and expense of the Concessionaire. The Independent Expert 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 Expert 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 Expert 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 Expert 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 Construction Works and the Independent Expert 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-J (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 Expert.

14.3 Provisional Certificate

14.3.1 Subject to the provisions of Clause 14.3.2, the Independent Expert may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (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 Expert and the Concessionaire (the "**Punch List**"); provided that Independent Expert 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 the phase-1 of the Project has been completed and it can be safely and reliably be

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 Project. 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 G.

14.4 Completion of Punch List Items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) 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 Expert. 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 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 Expert 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 Expert shall 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, reasons beyond the control of the concessionaire 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 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 Expert 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 Expert 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 30 (thirty) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Expert 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 at its own cost and thereupon Test 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 Expert under that Clause, direct the Independent Expert to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Inspection & Tests

If the Independent Expert 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 circumstance 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 Expert of the compliance of Safety Requirements and invite them to observe any or all the tests that may be specified by the Independent Expert 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 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 provisions 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 (the “COD”). The Project shall enter into commercial service on COD whereupon the Concessionaire, its authorised representatives or the sub-licensees/lessee, under valid and subsisting sub-licensing agreements, shall be entitled to demand and collect Fee, provided however, that the entry of Project into commercial service shall always be subject to compliance with the provisions of Clause 14.8.
- 15.1.2 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, or where such delay occurs in the issuance of the Completion Certificate or the Provisional Certificate by the Independent Expert for any reason attributable to the Independent Expert 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 solely 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, 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, 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 or without modifications, if any, and initiate proceedings therefore 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.

16.2 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 there under (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 such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, including Material Adverse Effect with reasonable justification and evidence, 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 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 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 Expert 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 Expert, 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, in so far as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire 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 Expert. 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 Expert 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 by the Authority 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

Note: For Clause 16.3.2, the overall Total Project Cost shall be the Value in INR as set forth by the Authority under Article 47.

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.

Note: For Clause 16.4.2, the overall Total Project Cost shall be the Value in INR as set forth by the Authority under Article 47.

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 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 - OPERATION AND MAINTENANCE

17.1 O&M obligation of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project, the rail line and provide Services to the Users in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvement 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 Concessionaire shall be inter alia at its own cost, expense, and consequences responsible and liable for / to:

- (a) Investigate, study, design, construct as per specifications, operate and maintain the Project in accordance with the provisions of this Agreement, Good Industry Practices and Applicable Laws;
- (b) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- (c) Ensure that services of water supply, sewerage, drainage, electricity, telephone, etc. at the Site or in the vicinity, encountered during the period of construction / operation / maintenance of the Project and rail line are not damaged. In case of any shifting of utilities required during construction, the Concessionaire will have to bear the upfront charges of such shifting. All the coordination work with concerned Agencies including the clearances / permissions for shifting of utilities will be the responsibility of the Concessionaire);
- (d) Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, Agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (e) Provide all assistance to the Independent Expert/Authority as they may reasonably require for the performance of their duties and services under this Agreement ;
- (f) Provide to the Authority/Independent Expert the reports on a regular basis during the Implementation Period and Operations Period in accordance with the provisions of this Agreement;
- (g) Adhere to the provisions of all laws of the land including municipal laws and bylaws and rules in connection with display of advertisements. The Concessionaire shall also pay / ensure payment of advertisement tax, service tax, other taxes & levies if any, in respect of the advertisements displayed.
- (h) 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;
- (i) Develop, implement and administer a surveillance and safety program for the Project and the Users thereof including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (j) 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;
- (k) Notwithstanding any provision in this Agreement be solely responsible for safety, stability, soundness and durability of the Project including all structures forming part thereof and their compliance with the

Specifications and Standards as per Agreement during Construction as well as Operation and Maintenance Period and be liable for any claims arising there from.

- (l) Ensure that the Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (m) Operate and maintain the Project at all times during the Operation Period in conformity with this Agreement including but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (n) Ensure that Site and facilities created are not defaced by any kind of writings/posters
- (o) Follow all labour laws and regulations and pay the wages, deposit PF& ESI contributions and other dues to its workers in time. Concessionaire shall indemnify the Authority from any claims in this regard and submit certificates with details of PF and ESI deposited for each of its employees (and employees of its contractors for which Authority is likely to be Principal Employer under this Contract) every quarter.
- (p) Intimate the Authority and the Independent Expert about any misconduct or misdeeds or any act or incident involving the Concessionaire or any of its personnel or any of its sub-licensee(s), lessee(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 or consequences thereof in any manner whatsoever.
- (q) Ensure that the Project Assets are handed over to Authority in sound condition on the Transfer Date;
- (r) Minimize disruption 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;
- (s) Prevent with the assistance of concerned law enforcement agencies, any unauthorized use of the Project
- (t) Prevent, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized entry to the Site by any Third Party;
- (u) Protect the environment and provision of equipment and materials thereof;
- (v) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- (w) Maintain a public relations unit to interface with and attend to suggestions from the Users, government agencies, media, and other agencies. The Concessionaire may develop and maintain a project website with provisions to integrate with the Authority website, to display information about the facilities available to the users, for receiving and publishing user feedback, and mechanism for grievance redressal. Authority may publish guidelines from time to time related to the website.
- (x) operate and maintain all rail infrastructure and associated facilities in compliance with the applicable guidelines issued by the Government agency and including amendments if any, as specified in Schedule X.
- (y) permitting safe, smooth, and uninterrupted use by the Users of the Project to avail the [Services], including prevention of loss or damage thereto, during normal operating conditions;

- (z) meet the requirements of Key Performance Indicators and provide a [half-yearly status report] of compliance with the Key Performance Indicators;
- (aa) carrying out periodic preventive maintenance of the Project;
- (bb) taking all measures relating to fire precautions in accordance with Applicable Laws, Applicable Permits and Good Industry Practice;

17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, water 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 at all times during the concession period, 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 Expert.

17.1.3 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 a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to, and independent of the Damages payable under this Agreement.

17.1.4 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of roads, over-bridges/ under-bridges, over-passes, under-passes or other structures constructed by the Concessionaire, even if used by general traffic other than MMLP¹⁰.

17.2 Maintenance and Service Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements and service requirements set forth in Schedule-K (the “**Maintenance Manual, Service 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 Independent Expert, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project and rail connectivity 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 Expert. 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.

¹⁰ The above clause shall apply on case to case basis and in accordance to Schedule - B.

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 Expert, 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.
- (h) Routine maintenance schedule;
- (i) Frequency of carrying out intermediate and periodic overhaul of the equipment

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Expert 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 provision of Services, and in the event of unsafe conditions, damage, breakdowns, and accidents, it shall follow the relevant operating procedures and undertake or direct the 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 Facility shall include safe evacuation of all Users and persons 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 safe operations of the Project Facility and movement of the Users. For this purpose, it shall maintain and operate [2 (two)] round-the-clock rescue vehicles with rescue equipment [, ambulance] 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 de-commissioning 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 same without any delay or as and when instructed by the Authority.
- 17.6.3 Any de-commissioning 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.

17.7 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 Expert. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Expert, 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 Expert 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 Expert, 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 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Expert

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 Expert; provided that 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 and rail connectivity 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 Expert, 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 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 instruction of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses under para 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 or their property or to any person or their property, 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 of 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 33.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the MMLP and rail connectivity 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 33. 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

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 Specifications and Standards, Maintenance Requirement, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Expert 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 Expert 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 Requirement, Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

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 duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the MMLP 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 MMLP:

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the MMLP open to users provided they can be operated safely.

17.14 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 violate instructions issued by Authority. All advertising on the Site shall conform to Good Industry Practice. The Concessionaire shall erect and reserve two hoarding boards for exclusive use by Authority. For avoidance of doubt, it is agreed that the rights of Concessionaire here under shall be subject to Applicable Laws, as in force and effect from time to time and no compensation shall be claimed on account thereof.

17.15 Surveillance of Common User Operations Area

During the operations 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.

17.16 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 Expert, 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 Expert, 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 23 of this Agreement.

17.17 Calibration of equipment

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

17.18 Barriers and Diversion

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the approach to or exit from the Project Facility 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 Facility that may cause a material adverse effect on the movement to and from the Project Facility.

Any maintenance, repair, or rectification of the MMLP 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 MMLP under the provisions of Clause 17.6 shall be deemed to be Unscheduled Maintenance.

ARTICLE 18 - SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with 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 present at the MMLP. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the MMLP, and shall comply with the safety requirements set forth in Schedule-L (the “**Safety Requirements**”).
- 18.1.2 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.

ARTICLE 19 - MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Expert, a monthly report stating in reasonable detail the condition of the MMLP including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Service Quality Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Expert or the Authority. In particular such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

During the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly management report to the Authority which shall include a summary of:

- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
- (c) key financial parameters for the month i.e. monthly revenue statement in the form set forth in Schedule O and as benchmarked against the monthly budget and the reasons for shortfall, if any, and proposals to remedy the same.

19.2 Quarterly status reports

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 Expert a quarterly report stating in reasonable detail the condition of the MMLP 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 Expert or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.3 Inspection

The Independent Expert shall inspect the MMLP 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. It is expressly agreed between the Parties that any inspection carried out by Independent Expert or the submission of the O&M Inspection Report shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

19.4 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Expert 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 Expert and furnish the results of such tests forthwith to the Independent expert. One half of the costs incurred on

such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to 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 Schedule I and furnish a report in respect thereof to the Independent Expert 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 Expert 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 MMLP into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the MMLP 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

19.6 Reports of unusual occurrence

19.6.1 The Concessionaire shall, prior to the close of each week or on the day of the occurrence of an accident/untoward incident, send to the Authority and the Independent Expert, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project. A monthly summary of such reports shall also be sent with-in 3 (three) days of closing of each month, as the case may be. For the purposes of this Article 19, accidents and unusual occurrences on the Site shall include:

- a. death or injury to any person;
- b. damaged or dislodged fixed equipment;
- c. any damage or obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;
- d. any damage or obstruction to the Users or the property of the Users;
- e. disablement of any equipment during operation;
- f. communication failure affecting the operation of the Project;
- g. smoke, fire, theft, trespass, or other breach of security of the Project;
- h. flooding of the Project; and
- i. such other relevant information as may be required by the Authority or the Independent Expert.

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 19.6.1, has occurred on that day.

19.6.2 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.

ARTICLE 20 - SECURITY

20.1 Security

- 20.1.1 Without prejudice to the obligations of the Concessionaire to obtain insurance for the MMLP in accordance with the provisions of this Agreement, the Concessionaire acknowledges and agrees that unless otherwise specified in this Agreement, it shall, at its own cost and expense, procure or cause to be procured security of the MMLP for the prevention of terrorism, hijacking, sabotage, major accident and/or similar acts or occurrences in such manner and to such extent as it may reasonably determine.
- 20.1.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the MMLP and shall be responsible for the security arrangements for the MMLP in order to maintain orderly conduct of its business and the security thereof.
- 20.1.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the MMLP. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of the Government or of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them for the security of the MMLP, without unduly or unreasonably disrupting the operations of the MMLP 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 organisations authorised by the Government in discharge of their obligations for and in respect of the security of the MMLP.
- 20.1.4 The Authority agrees that it shall, at the request of the Concessionaire, cause the Government to procure and provide the services of security forces of the Government on a best effort basis. Cost of providing such services by security forces is to be borne by the Concessionaire.
- 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 access to the MMLP without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Government.

20.2 Insurance Premium

The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the MMLP 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 - CHANGE IN SPECIFICATION AND TEHNOLOGICAL UPGRADATION

21.1 Modification of Specifications

Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree and acknowledge that the Authority may, from time to time, introduce technical improvements or new specifications for the MMLP (the “**Modified Specifications**”).

21.2 Effect of modification in Specifications

In the event that the Authority introduces any Modified Specifications which require material alterations in the MMLP, the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16, provided, however, that in the event that such Change in Scope causes any increase or decrease, as the case may be, in the O&M Expenses of the Concessionaire, the Fee, in respect of the Services provided by the Concessionaire or by any of its authorised representatives acting on its behalf, shall be modified in accordance with the principles of Change in Law under and in accordance with the provisions of Article 40.

21.3 Technology upgradation

21.3.1 The Concessionaire shall implement at its own cost, a technology watch throughout the Concession Period so as to allow the Project to benefit from technical advancement and/or technology upgrades in connection with the equipment at the MMLP for rendering the Services. The technology upgradation shall include information about any offers to buy back and replace or upgrade the equipment that the Concessionaire may receive from any third party and that would apply during the Concession Period or within [• (•)] days of the expiry of the Concession Period or early termination of this Agreement. The Concessionaire shall present the findings of the technological upgradation to the Authority in the form of a written report for review at least once every [24 (twenty-four)] months. For the avoidance of doubt, it is clarified that the cost of providing the benefit of technology watch to the Authority shall be at the sole cost and expense of the Concessionaire.

21.3.2 In the event that any Party believes that the replacement and/or upgrade of any equipment is likely to have a positive impact on the quality of the Services or the cost of performing the Services (a “**Replacement**”), the Concessionaire shall submit either on its own initiative or within [30 (thirty)] days of the Authority’s request for the same, a written memorandum equivalent to that referred to in Clause 16.2.3 and the resulting process shall comply with the provisions of Article 16.

ARTICLE 22 - INDEPENDENT EXPERT

22.1 Appointment of Independent Expert

The Authority shall appoint a consulting firm in accordance with the selection criteria set forth in Schedule-M, to be the independent consultant under this Agreement (the “**Independent Expert**”). The appointment shall be made no later than 90 (ninety) days from the date of the Agreement and shall be for a period of [5 (five) years] extendable for another [3 (three) years]. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-M to be the Independent expert for a term of [5 (five)] years, and such procedure shall be repeated after expiry of each appointment.

22.2 Duties and functions

22.2.1 The Independent Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-N.

22.2.2 A true copy of all communications sent by the Authority to the Independent Expert and by the Independent Expert to the Authority shall be sent forthwith by the Independent Expert to the Concessionaire.

22.2.3 A true copy of all communications sent by the Independent Expert to the Concessionaire and by the Concessionaire to the Independent Expert shall be sent forthwith by the Independent Expert to the Authority.

22.2.4 Independent Expert shall periodically submit data on the progress / status of Construction Works, financial progress and other requisite details at such interval, as mentioned in the TOR, which shall enable the Authority for updating the project specific website.

22.2.5 Independent Expert shall periodically submit data on operation and maintenance status and other requisite details at such interval, as mentioned in the TOR.

22.3 Remuneration

The remuneration, cost and expenses of the Independent Expert shall be paid by the Authority and subject to the limits set forth in Schedule-M, one-half 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 Expert at any time, but only after appointment of another Independent Expert in accordance with Clause 22.1.

22.4.2 If the Concessionaire has reason to believe that the Independent Expert 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 Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Expert 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 Dispute Resolution Procedure. In the event that the appointment of the Independent Expert is

terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 22.1.

22.5 Authorised signatories

The Authority shall require the Independent Expert 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 Expert, and any communication or document required to be signed by the Independent expert shall be valid and effective only if signed by any of the designated persons; provided that the Independent Expert 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 Expert, 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 43.1.

22.7 Interim arrangement

In the event that the Authority does not appoint an Independent Expert, or the Independent Expert so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Expert 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 Expert, and such functions shall be discharged as and when an Independent Expert 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 - KEY PERFORMANCE INDICATORS

23.1 Key Performance Indicators

I. Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the MMLP and provide the Services as per international best practices. The Concessionaire shall operate the freight terminal (rail / inland waterway / airport) inside Site as per international best practices and shall meet the KPIs specified in this Article 23.

II. Total Turn-around Time of freight train and vessel

- (a) "Total Turn-around Time" in relation to any freight train or vessel calling at the Terminal at MMLP, 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,
- (b) The Concessionaire shall ensure that the Total Turn-around Time of any vessel shall not exceed [•] hours.
- (c) The Concessionaire shall ensure that the Total Turn-around Time of any freight train shall not exceed [•] hours.

III. Moves by Crane

- (a) "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.
- (b) "Elapsed Crane Time" in the case of containers, is the total allocated crane hours less operational and non-operational delays
- (c) The Concessionaire shall ensure that the Crane Rate shall at a minimum be [25 (twenty-five) moves per hour] for container and [.....] moves per hour for bulk and [....] moves per hour for break bulk commodities

IV. Vehicle service time

The average vehicle service time at the terminal of MMLP¹¹ shall not exceed [6 (six)] hours. 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 MMLP 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 MMLP during the period of a calendar month divided by the total number of such vehicles during the same period

V. KPIs for Warehousing / cold storage / any other ancillaries

¹¹ Vehicle service time is applicable for terminal operation only and is not applicable on warehouses operated and leased out to the third party.

- (a) Operational KPIs such as Warehouse space utilization, storage productivity and efficiency, Inventory accuracy etc. should be as per global best practices.

23.2 Half-Yearly Report

- 23.2.1 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 this Article 23 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 MMLP. The half-yearly report shall include a quantification of the Damages to be calculated in accordance with Clause 23.3.

23.3 Damages for shortfall in performance

- 23.3.1 The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 23 and for any shortfall in average performance during a 6 (six)-month period, it shall, subject to the proviso below, pay Damages within the time period mentioned in Clause 23.3.3 for the half year in which the shortfall occurred. The Damages due and payable under this Clause 23.3 shall be determined at the rate of [0.1% (zero point one per cent) of the total revenue from Fee in the respective 6 (six) month period for every shortfall of 10% (ten per cent)] in any single Key Performance Indicator specified in this Article 23 and in case there is a shortfall in more than one Key Performance Indicator then for each such Key Performance Indicator [0.1% (zero point one per cent) of total revenue from Fee] shall be payable as Damages;

Provided that no Damages shall be payable in pursuance of this Clause 23.3.1 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.

- 23.3.2 Save and except as expressly provided in this Agreement, the Independent Expert shall:

- (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 15 (fifteen) days of the receipt of the report, conduct a physical audit at the MMLP, 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 Clause 23.3.2, the Independent Expert shall compute and communicate to the Concessionaire and the Authority, by written notice, the Damages payable by the Concessionaire.

- 23.3.3 The Parties agree that the Damages shall be due and payable within 30 (thirty) days of the date of their determination by the Independent Expert under Clause 23.3.2 and any errors thereof shall be corrected and reconciled within 60 (sixty) days of the close of the relevant Accounting Year.
- 23.3.4 Any goods and services tax, if applicable, on the payment of Damages by the Concessionaire to the Authority shall be paid by the Concessionaire.

23.4 User Charter

The Concessionaire shall publish and implement a charter articulating the rights and expectations of Users (the “**User Charter**”) substantially in the form specified in **Schedule V**. The Concessionaire shall at all times be accountable and liable to Users in accordance with the provisions of the User Charter and Applicable Laws.

ARTICLE 24 - COMMERCIAL ZONE DEVELOPMENT

24.1 Development of Commercial Zone

- 24.1.1 The Concessionaire shall undertake Commercial Zone Development inside MMLP as specified in Schedule-B.
- 24.1.2 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 Development.

24.2 Operation and maintenance of Commercial Zone Development

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 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 except in accordance with the provisions of Clause 5.2.

24.3 Costs, taxes and revenues

- 24.3.1 All costs, expenses, taxes, cess, fees, and charges relating to Commercial Zone Development, 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.
- 24.3.2 All the revenues accruing from Commercial Zone Development shall be appropriated by the Concessionaire in accordance with the provisions of this Agreement and Applicable Laws.

24.4 Restrictions on Commercial Zone Development and land use

- 24.4.1 The Concessionaire shall procure that Commercial Zone Development and its land use shall at all times be in conformity with Applicable Laws and may include construction and operation of Motels restaurants, conference room retail shops, convenience stores and amenities for analogous uses, but shall not include commercial use not related to the users of MMLP. The area for commercial zone development including administrative facilities shall not be more than 10 % (ten per cent) of the total project area.

24.5 Sub-licensing of Commercial Zone Development

- 24.5.1 Subject to the provisions of Clause 5.2 and this Article 24, the Concessionaire may sub-license/lease the Project Assets comprising Commercial Zone Development such that the period and validity of such sub-license/lease shall not extend beyond the period specified in Clause 24.6.

- 24.5.2 Notwithstanding anything to the contrary contained in Clause 24.5.1, the Concessionaire shall not sub-license/lease, or in any manner create an Encumbrance on any Project Asset forming part of Commercial Zone Development at any time prior to the COD. 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.
- 24.5.3 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 24.5.2, the Concessionaire shall not sub-license/lease, assign or in any manner create an Encumbrance on any Project Asset forming part of Commercial Zone Development without prior written approval of the Authority, which approval the Authority may, in its discretion, deny only if such sub-license/lease, 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 24.5.3 shall not apply where the Concessionaire grants a sub-license/lease 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 24.5.3 within a period of 60 (sixty) days from the date of receiving a notice with required particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-license/lease, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.
- 24.5.4 The Concessionaire agrees and undertakes that in respect of any sub-license/lease, assignment or other Encumbrance on any Project Asset forming part of Commercial Zone 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-license/lease, assignment or other Encumbrance. For the avoidance of doubt, the Concessionaire agrees to procure that the consideration payable to it for any sub-license/lease, 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 24 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.
- 24.5.5 In the event of any difference or disagreement between the Parties in matters arising out of the provisions of this Clause 24.5, the Dispute Resolution Procedure shall apply.

24.6 Rights of sub-licensees after Termination

The Parties expressly acknowledge and agree that the Concessionaire may but subject to the provisions of this Article 24, and Clause 42.4, in its discretion, grant sub-licenses for Commercial Zone Development up to the maximum period permissible under Clause 3.1.1, [which shall include the extended period specified in the first Proviso of that Clause]. The Parties further agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the sub-licenses 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.

24.7 Compliance with Applicable Laws

The Concessionaire agrees and undertakes that it shall, in respect of Commercial Zone 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.

24.8 Commercial advertisement or display

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

Part IV
Financial Covenants

ARTICLE 25 - FINANCIAL CLOSE

25.1 Financial Close

25.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [120 (one hundred and twenty)] days, subject to 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, or for a further period not exceeding 200 (two hundred) days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) 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.

25.1.2 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.

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 this Clause 25.1.2. 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.

25.2 Termination due to failure to achieve Financial Close

25.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 33.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.1 or the extended period provided thereunder, 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. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 25.2.1 shall not apply.

25.2.2 Upon Termination under Clause 25.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if the Financial Close has not occurred solely as a result of Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return 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 Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 26 – GRANT -NOT USED

ARTICLE 27 - CONCESSION FEE

27.1 Concession Fee

27.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee, a sum of Re. 1 (Rupee one) per annum and the Revenue Share specified in Clause 27.2, payable in 4 (four) quarters per annum, both collectively referred to as the “**Concession Fee**”. However, the above Concession fee shall be equal to or more than the minimum guaranteed revenue share as stipulated in Article 27.4.

27.2 Revenue Share

27.2.1 Without prejudice to the provisions of Clause 27.1, the Concessionaire agrees to pay to the Authority after moratorium period of 3 (three) years i.e. commencing from the month falling immediately after the 03rd(third) anniversary of the COD, a revenue share¹² (the “**Revenue Share**”) in the manner detailed below:

- (a) For the first year commencing after the 3rd (third) anniversary of COD, the Revenue Share at the rate of [N¹³] % of the Gross Revenue shall be payable and would be computed on proportionate basis commencing from the calendar month falling immediately after the 03rd (third) anniversary of the COD till the 31st (thirty first) March of the succeeding calendar year and thereafter during the remaining Concession Period in terms of this Agreement.
- (b) During the last Accounting Year of the Concession Period, the Revenue Share shall not be due and payable for the period after expiry of the Concession Period and only the amount due on a proportionate basis shall be payable for the period prior to expiry of the Concession Period.

27.2.2 The Revenue Share payable under this Clause 27.2 read with Clause 27.4, shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

27.3 Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 27 shall be due and payable in 4 (four) quarterly instalments per annum. For the Revenue Share payable in accordance with Clause 27.2, within 7 (seven) days of 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 the last Accounting Year of the Concession Period shall be payable by the Concessionaire based on 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.

27.4 Minimum guaranteed Revenue Share

- (a) The minimum guaranteed Revenue Share payable by the Concessionaire against respective Check Point(s) to the Authority has been provided in Schedule Q of the Agreement.

¹² Revenue Share shall be the bidding parameter and shall be quoted up to 2 decimal places

¹³ N is the % share of Gross Revenue applicable from month falling immediately after 3rd anniversary of COD

- (b) The sum of the ‘present value’ of the Revenue Share, payable to the Authority during the Concession Period, as per Clause 27.2 and 27.3, up to the periodic Check Point(s) (as stipulated in Schedule Q) shall be greater than or equal to the ‘minimum guaranteed Revenue Share’.

Note: For determining the sum of the ‘present value’ of Revenue Share paid by the Concessionaire to the Authority up to the respective Check Point(s) stipulated in Schedule Q of this Agreement, the actual quantum of Revenue Share paid by the Concessionaire for each period, as per Clause 27.2 and 27.3, up to the respective Check Point(s), shall be discounted at the rate of [(...)% quarterly rate] for the number of quarters from the date of payment to the Appointed Date and summed arithmetically thereafter.

- (c) If the sum of ‘present value’ of the Revenue Share, payable to the Authority during the Concession Period, as per Clause 27.2 and 27.3, up to the periodic Check Point(s) (as stipulated in Schedule Q) is less than the ‘minimum guaranteed Revenue Share’, then the difference between the minimum guaranteed Revenue Share for the respective Check Point(s) as stipulated in Schedule Q and the sum of present value of the Revenue Share paid by the Concessionaire up to the respective Check Point(s) shall be the ‘present value’ 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’ of the shortfall amount, as determined in this Sub-clause above, shall be compounded at the rate of [(...)% quarterly 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.

- (d) In case of a shortfall, as determined above in sub-Clause (c), at any given check point as specified in Schedule Q, the Concessionaire shall be entitled to a Cure period of [120 (one hundred and twenty)] days from the period as specified in Schedule – Q for the respective Check Point(s) to repay the shortfall amount as determined in Sub-clause (c) above.
- (e) In case the Concessionaire is unable to pay the shortfall amount, referred in Sub-clause (c) above, fully within the Cure Period, Damages at the rate of [0.1% (zero point one per cent)] of shortfall amount, determined in Sub-clause (c) 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 in material breach of the Concession Agreement and further action shall be taken as per the stipulation of this Agreement.
- (f) For avoidance of doubt, it is clarified that if the sum of present value of Revenue Share payable to the Authority in terms of Clause 27.2 and 27.3 exceeds the minimum guaranteed Revenue Share, calculated as per stipulation of this Clause 27.4 and Schedule Q, the excess amount shall be the revenue to the Authority as a part of consideration to concession over and above minimum guaranteed Revenue Share.

27.5 Verification of Gross Revenue

27.5.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue honestly and faithfully, depute its representatives to the MMLP, centralised controls of automatic revenue collection system and the offices of the Concessionaire/its representative / sublicensee/lessee and undertake such other measures and actions as it may deem necessary, to ascertain the actual revenue.

27.5.2 If the verification of Gross Revenue pursuant to this Clause 27.5 demonstrates that the Gross Revenue is more than the amount reported by the Concessionaire or its sub-licensees / lessees, 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 28 - USER FEE

28.1 Collection of Fee by the Concessionaire

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

28.1.2 The Concessionaire acknowledges and agrees that upon payment of Fee in terms of this Article 28, any User shall be entitled to use the specified facility at the MMLP, 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.

28.2 Revision of Fee

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

28.3 Penalty for evasion of Fee

In the event that any person uses the MMLP 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 MMLP; 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.

28.4 Display of Fee

28.4.1 The Concessionaire shall, at a suitable location in the MMLP and on the website of Concessionaire prominently display the applicable rates of Fee for information of the Users.

28.4.2 The Concessionaire shall, from time to time, inform the Authority and Independent Expert of the applicable Fee, in respect of the Services , facilities and amenities rendered by the Concessionaire or its authorised representatives or the sub-licensees/lessee (under valid and subsisting sub-license/lease agreement's) at the MMLP 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

28.4.3 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 MMLP. 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.

28.5 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) 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/lessee (under valid and subsisting sub-license/lease agreement's) at the MMLP substantially in the form set forth in **Schedule-O** (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.

28.6 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/lessee (under valid and subsisting sub-license/lease agreement's) at the MMLP; 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 29 - COMMISSIONING OF COMPETING FACILITY

29.1 Restrictions on commissioning of Competing Facility

- 29.1.1 Notwithstanding anything to the contrary contained in this Agreement but subject always to Clause 29.2, the Authority shall not construct and shall procure that no Government Instrumentality shall construct or cause to be constructed any new Competing Facility within a distance of a 100 (one hundred) km radius of the MMLP until 10 (ten) years from the Appointed date (“**Exclusivity Period**”).
- 29.1.2 If the Authority shall be in breach of the provisions of Clause 29.1.1, the Concessionaire shall be entitled to remedies specified in Clause 29.2 only.

29.2 Modification in the Concession Period

In the event of the Authority or any Government Instrumentality commissioning or operating, or causing the commissioning or operation of any Competing Facility within 100 (one hundred) km 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 29.2, 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 30 - ESCROW ACCOUNT

30.1 Escrow Account

- 30.1.1 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.
- 30.1.2 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-R.

30.2 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:

30.3 Withdrawals during Concession Period

- 30.3.1 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 constructions 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 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.

30.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 30.3.1, except with the prior written approval of the Authority.

30.4 Withdrawals upon Termination

30.4.1 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 38;
- (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 30.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 37.

30.4.2 The provisions of this Article 30 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 30.4.1 have been discharged.

ARTICLE 31 - INSURANCE

31.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation 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 during the Construction Period. 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.

31.2 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 31. 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 shall apply.

31.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 31 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 premia 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.

31.4 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 premia 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.

31.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 31 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 insurance.

31.6 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.

31.7 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 30.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the MMLP, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

31.8 Insurance Cover

Without prejudice to the provisions contained in Clause 31.1, the Concessionaire shall, during the Operation 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

31.9 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 affected in accordance with this Agreement.

ARTICLE 32 - ACCOUNTS AND AUDIT

32.1 Audited Accounts

- 32.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues recovered, Gross Revenue including Realisable Fee, and all incomes derived/collected by it from or on account of the MMLP 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 180 (one hundred and eighty) 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 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.
- 32.1.2 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, 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.
- 32.1.3 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 revenues derived from the Project, and such other information as the Authority may reasonably require.

32.2 Appointment of Auditors

- 32.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its 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.
- 32.2.2 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.
- 32.2.3 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.
- 32.2.4 The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Concession Period, another firm (the “**Concurrent Auditors**”) as may be decided by the Authority to undertake concurrent audit of the Concessionaire’s accounts.

32.3 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 any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided.

32.4 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 shall without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

32.5 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 43.1.

Part V
Force Majeure and Termination

ARTICLE 33 - FORCE MAJEURE

33.1 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 33.2, 33.3 and 33.4 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 (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

33.2 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 MMLP 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 33.3;
- (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.

33.3 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, rebellion, revolution, insurrection, terrorist or military action, usurped power, 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, or
- (f) Any event or circumstance of a nature analogous to any of the foregoing.

33.4 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 with under and in accordance with the provision of Article 40 and its effect, in financial terms, exceeds the sum specified in Clause 40.1;
- (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 of the foregoing.

33.5 Duty to report Force majeure Events

33.5.1 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 33 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 measures 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.

33.5.2 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 events 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.

33.5.3 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 33.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

33.6 Effect of Force Majeure Event on the Concession

33.6.1 Upon the occurrence of any Force Majeure Events prior to the Appointed Date, the period set forth for fulfilment of Conditions Precedent in Clause 4.1.3 and in Clause 25.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

33.6.2 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 perform the Services and consequently collect the Fees despite making best efforts or it is directed by the Authority to suspend the Services and for collection of Fee 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 providing the Services and collecting the Fee on account thereof; provided that in the event of reduction in Fee on account of partial inability or suspension of Services, as the case may be, which causes the daily collection of Fee to decline below 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily average basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Fee as compared to the Average Daily Fee 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% (ten per cent) of the Concession Period.

33.7 Allocation of costs arising out of Force Majeure

33.7.1 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.

33.7.2 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 Events, but shall not include loss of Fee revenues, 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.

- 33.7.3 Save and except as expressly provided in this Article 33, 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.

33.8 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 33, 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.

33.9 Termination Payment for Force Majeure Event

- 33.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clauses 36.3.1 as if it were a Concessionaire Default.

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

- (a) 100% (one hundred per cent) of Debt Due; less any insurance proceeds and
- (b) 110% (one hundred and ten percent) 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 Expert.

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

- 33.9.3 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 36.3.2 as if it were an Authority Default.

33.10 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 43.1, 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.

33.11 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 34 - COMPENSATION FOR BREACH OF AGREEMENT

34.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 34.4, 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 34.1 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.

34.2 Compensation for default by the Authority

Subject to the provisions of Clause 34.4, 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.

34.3. Compensation to be in addition

Compensation payable under this Article 34 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

34.4 Mitigation of costs and damage

The Party not in breach 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 35 - SUSPENSION OF CONCESSIONAIRE'S RIGHTS

35.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire 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 collect Fee, 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.

35.2 Authority to act on behalf of Concessionaire

35.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, provide the Services and operate the MMLP and collect all Fee and revenue under and in accordance with this Agreement, and the Fee shall be deposited 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 30.3.

35.2.2 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 sub-licenses respectively, the Authority or any other person authorized by it under Clause 35.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project Facility 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.

35.3 Revocation of Suspension

35.3.1 In the event that the Authority, acting in accordance with the provisions of Article 35, 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.

35.3.2 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.

35.4 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 35.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

35.5 Termination

- 35.5.1 At any time during the period of Suspension under this Article 35, 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 35.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 36.
- 35.5.2 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 35.1, 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 36 - TERMINATION

36.1 Termination for Concessionaire Default

36.1.1 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 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 30 (thirty) days;
- (b) Subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (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 12.6.4;
- (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;
- (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 14 (fourteen) 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(including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 or Companies Act, 2013 and a liquidator (including 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:
 - a. 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;
 - b. 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
 - c. 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 issues a Termination Notice in violation of this Agreement
- (x) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; OR

- (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.

36.1.2 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 36.1.3.

36.1.3 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 36.1.2 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.

36.2 Termination for Authority Default

36.2.1 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 material 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

36.2.2 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.

36.3 Termination Payment

36.3.1 Upon Termination on account of a **Concessionaire Default** during the Operation Period, (post occurrence of COD) the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 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 Expert

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 36.3.1 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 ¹⁴ , as determined by Independent Expert.
Project Milestone2 as per Schedule G	The Termination payment shall be calculated as lowest of the following: (a) 35% (thirty five per cent) of Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are

¹⁴ The value of work done means the physical progress made on the site by the Concessionaire

	<p>not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due or</p> <p>(b) 70% (seventy per cent) of value of work done, as determined by Independent Expert.</p>
Project Milestone -3 as per Schedule G	<p>The Termination payment shall be calculated as lowest of the following:</p> <p>(a) 60% (sixty 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</p> <p>(b) 70% (seventy per cent) of value of work done, as determined by Independent Expert.</p>

36.3.2 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 per cent) of Debt Due; less any insurance proceeds and
- (b) 150% (one hundred and fifty percent) 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 Expert.

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

36.3.3 The Concessionaire expressly agrees that upon expiry of the Concession Period or the extended Concession Period in accordance with Clause 36.9, no Termination Payment shall be due and payable by the Authority to the Concessionaire.

36.3.4 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.

36.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 36 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.

36.3.6 The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 80% (eighty per cent) of the Total Project Cost.

36.4 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 MMLP 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 37.1; 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 and the Concessionaire shall keep the Authority and its officers protected and indemnified against any such claim or action by any third party in terms of Article 41 hereof. 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.

36.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 36.3.4, 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, Divestment Requirements, and Indemnity shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

36.6 Certain limitations on Termination Payment

- 36.6.1 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 and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 80% (eighty per cent) of the Total Project Cost.
- 36.6.2 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 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. It is clarified that the rate of conversion of such foreign currency shall be calculated on the date on which the Agreement is terminated.

36.7 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 36.3, 36.7, and 36.8 of this Agreement, shall not exceed [100% (one hundred percent)] of the Total Project Cost.

36.8 Mutual Foreclosure

36.8.1 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 positions as per the mutual consent of the Authority and the Concessionaire:

a. Type A Foreclosure: Foreclosure with mutual consent *without any liability or consequential future liability* for either Party.

b. Type B Foreclosure: Foreclosure with mutual consent with compensation to the Concessionaire including any pending settlements / claims as per the provisions under Clause 36.8.2.

36.8.2 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.

36.8.3 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.

36.8.4 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 36.8.3

36.8.5 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.

36.8.6 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.

36.9 Continuity upon Termination

In case of Termination under Article 36 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 38 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 37 - DIVESTMENT OF RIGHTS AND INTEREST

37.1 Divestment Requirements

37.1.1 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 possession of the MMLP free and clear of all Encumbrances,
- (c) cure all Project Assets, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Safety Requirements, and Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets 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, in accordance with this Agreement. 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, construction and proper execution and completion of the Project, construction and its operation and maintenance of the Project, as and shall be assigned to the Authority free of any Encumbrance;
- (e) the staff recruited by the Concessionaire shall not be transferred to the Authority upon termination of this Agreement;
- (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (g) 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 , 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
- (h) 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 Facilities, free from all Encumbrances, absolutely unto the Authority or to its nominee.

37.1.2 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.

37.2 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 Expert shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, 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 38 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 37.

37.3 Cooperation and assistance on transfer of Project

37.3.1 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.

37.3.2 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 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.

37.3.3 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 37.1.1 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 43.1 shall apply.

37.3.4 The Authority reserves the right to invite bids for the Project 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 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.

37.3.5 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
- (c) 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.

37.4 Vesting Certificate

The divestment of all rights, title and interest in the MMLP 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 MMLP, 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 MMLP on the footing that all Divestment Requirements have been complied with by the Concessionaire.

37.5 Divestment costs etc.

37.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the MMLP 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.

37.5.2 In the event of any Dispute relating to matters covered by and under this Article 37, the Dispute Resolution Procedure as set out under Clause 43.1 shall apply.

ARTICLE 38 - DEFECTS LIABILITY AFTER TERMINATION

38.1 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 Expert 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 Expert 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 38 shall not apply if Termination occurs prior to COD.

38.2 Retention of Escrow Account

38.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 38.2.3, a sum equal to 5% (five per cent) of the Concession Fee including Revenue Share 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 38.1.

38.2.2 Without prejudice to the provisions of Clause 38.2.1, the Independent Expert shall carry out an inspection of the MMLP 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 MMLP is such that a sum larger than the amount stipulated in Clause 38.2.1, 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 Expert shall be retained in the Escrow Account for the period specified by it.

38.2.3 The Concessionaire may, for the performance of its obligations under this Article 38, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 38.2.1 or 38.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule F (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 38. Upon furnishing of a Performance Guarantee under this Clause 38.2.3, the retention of funds in the Escrow Account in terms of Clause 38.2.1 or 38.2.2, as the case may be, shall be dispensed with.

Part VI
Other Provisions

ARTICLE 39 - ASSIGNMENT AND CHARGES

39.1 Restrictions on assignment and charges

- 39.1.1 Subject to Clauses 39.2 and 39.3, 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 the Authority shall be entitled to decline without assigning any reason.
- 39.1.2 Subject to the provisions of Clause 39.2, 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.

39.2 Permitted assignment and charges

The restraints set forth in Clause 39.1 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, a charge on the Escrow account arising or created in the ordinary course of business of the Project, and a 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.

39.3 Substitution Agreement

- 39.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire or the Selected Bidder/Consortium Members of 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-U.
- 39.3.2 Upon substitution of the Concessionaire or the Selected Bidder/Consortium Members 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.

39.4 Assignment by the Authority

39.4.1 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.

39.4.2 Any assignment under this Article 39 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 40 - CHANGE IN LAW

40.1 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 Rs.1 Crore (Rupees one Crore)¹⁵ or 2% (two per cent) of the Realisable Fee 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 arrangements:

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 as set out under Clause 43.1. For the avoidance of doubt, it is agreed that this Clause 40.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

40.2 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 Rs. 1 Crore (Rupees one Crore) or 2% (two per cent) of the Realisable Fee 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 as set out under Clause 43.1. For the avoidance of doubt, it is agreed that this Clause 40.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

40.3 Protection of NPV

¹⁵ This amount may, in the discretion of the Authority, be suitably increased, but in no case exceeding a ratio of 1 Cr for every Rs 500 Cr of Total Project Cost.

Pursuant to the provisions of Clauses 40.1 and 40.2 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.

40.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 40 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 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.

ARTICLE 41 - LIABILITY AND INDEMNITY

41. General indemnity

41.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority 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 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 Authority Indemnified Persons.

41.1.2 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, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

41.2 Indemnity by the Concessionaire

41.2.1 Without limiting the generality of Clause 41.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority 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 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.

41.2.2 Without limiting the generality of the provisions of this Article 41, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority 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, confidentiality 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.

41.3 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 41 (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.

41.4 Defence of claims

- 41.4.1 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 41, 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 intention 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.
- 41.4.2 If the Indemnifying Party has exercised its rights under Clause 41.3, 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).
- 41.4.3 If the Indemnifying Party exercises its rights under Clause 41.3, 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 41.4.3 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.

41.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 41, 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.

41.6 Survival on Termination

The provisions of this Article 41 shall survive Termination.

ARTICLE 42 - RIGHTS AND TITLE OVER THE SITE

42.1 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.

42.2 Access rights of the Authority and others

42.2.1 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 Expert, 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.

42.2.2 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.

42.3 Property taxes

All property taxes on the Site (except Commercial Zone Development) shall be payable by the Authority as owner of the Site.

42.4 Restriction on sub-licensing / leasing

The Concessionaire shall not sub- license or lease the whole or any part of the land comprising the Site, licensed to it by the Authority under this Deed, 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 leasing, sub-licensing, franchising or similar arrangements in respect of the built up area subject to the provisions of Clause of 5.1, which, however, shall not involve the transfer of the leasehold rights therein or thereof;
- (b) Appoint Sub-contractors for the implementation of the Project at the 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.

42.5 Rights of sub-licensees / lessees after Termination

The Parties further agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the sub-licensees / lessees and the rights of the sub-licensees / lessees shall automatically and forthwith terminate without the need for any action to be taken by the Authority upon the Termination of the Agreement.

ARTICLE 43 - DISPUTE RESOLUTION

43.1 Dispute resolution

43.1.1 In the event 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**”), either party may call upon the Independent Expert, to mediate and assist the Parties in arriving at an amicable settlement thereof..

43.1.2 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.

43.1.3 Dispute Resolution Board (DRB)

Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either party may require such Dispute to be referred to the **Dispute Resolution Board** (“DRB”) In accordance with the procedure set forth in the Schedule W to the Concession Agreement. The decision(s) of the Dispute Resolution Board shall be binding on both Parties, who shall promptly give effect to unless and until the same is revised / modified, as hereinafter provided, in a conciliation / Arbitral Tribunal.

43.2 Conciliation

If either Party is dissatisfied with any decision of the DRB, and/ or if the DRB is unable to resolve the Dispute, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 43.3 but before resorting to such arbitration, the Parties agree to explore conciliation by the Conciliation Committees of Independent Experts set up by the Authority in accordance with the procedure decided by the panel of such experts and notified by the Authority on its website including its subsequent amendments. In the event of the conciliation proceedings being successful, the parties to the Dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the Parties in terms of Section 73 of the Arbitration Act. In case of failure of the conciliation process even at the level of the Conciliation Committee, either party may refer the Dispute to arbitration in accordance with the provisions of Clause 43.3.

43.3 Arbitration

43.3.1 Any Dispute which is not resolved amicably by conciliation as provided in Clause 43.2 shall be finally settled by arbitration as set forth below:

(a) The Dispute shall be finally referred to Society for Affordable Resolution of Disputes (hereinafter called as SAROD), a Society registered under Society's Act, 1860 vide Registration no. S/RS/SW1049/2013 duly represented by Authority and National Highways Builders Federation (NHBF). The Dispute shall be dealt with in terms of Rules of SAROD. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by Substantive Law of India.

- (b) The appointment of Tribunal, code of conduct for Arbitrators and fees and expenses of SAROD and Arbitral Tribunal shall also be governed by the Rules of SAROD as amended from time to time. The rules of SAROD are placed at Appendix-I
- (c) Subject to the provisions of THE LIMITATION ACT, 1963, as amended from time to time, Arbitration may be commenced during or after the Concession Period, provided that the obligations of Authority and the Concessionaire shall not be altered by reason of the Arbitration being conducted during the Concession Period.
- (d) The seat of arbitration shall be New Delhi, or a place selected by governing body of SAROD and the language for all documents and communications between the parties shall be English.
- (e) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.

43.3.2 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 43 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.

43.3.3 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.

43.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the Parties unconditionally acknowledge and agree that notwithstanding any Dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

43.5 Adjudication by Regulatory Commission or Authority

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be 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 43.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure 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 court or competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 44 - DISCLOSURE

44.1 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 office on all working days at the Site and the Concessionaire’s registered office. 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

44.2 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 MMLP, 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.

44.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 44.1 and 44.2, 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 44.1 and 44.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 45 - REDRESSAL OF PUBLIC GRIEVANCES

45.1 Complaints Register

- 45.1.1 The Concessionaire shall maintain a public relations office at the Project where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Further, the website / IT platform of the Concessionaire shall allow registration of complaints. The Concessionaire shall provide the Authority with a login ID through which the Authority can monitor the complaints. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Project so as to bring it to the attention of all Users.
- 45.1.2 The Complaint Register shall be securely bound, and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 45.1.3 Without prejudice to the provisions of Clauses 45.1.1 and 45.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

45.2 Redressal of complaints

- 45.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 45.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Expert a true photocopy each of all the pages of the Complaint Register and complaints received on IT platform including the action taken thereof on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. 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.

ARTICLE 46 - MISCELLANEOUS

46.1 Governing law and jurisdiction

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

46.2 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).

46.3 Depreciation and Interest

46.3.1 For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project 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.

46.3.2 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 rate.

46.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars, 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.

46.5 Waiver

46.5.1 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.

46.5.2 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.

46.6 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 Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project 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.

46.7 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.

46.8 Survival

46.8.1 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.

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

46.9 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 Proposal, shall be deemed to form part of this Agreement and treated as such.

46.10 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 43.1 or otherwise.

46.11 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.

46.12 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.

46.13 Successors and assigns

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

46.14 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 Name] 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;

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman of the Authority 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 [City Name] it may send such notice by facsimile or email and by registered acknowledgement due, air mail or by courier; 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.

46.15 Supplementary Agreement

The Parties agree that the Parties may execute a Supplementary Agreement novating any terms and conditions of this Agreement.

46.16 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.

46.17 Counterparts

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

ARTICLE 47 - DEFINITIONS

47.1 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:

“**Access Road**” means road connecting the Site to the carriageway of Highway alongside which the Project is located;

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

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the 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 WPI, 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 WPI 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 WPI 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 0.29% (zero point twenty nine per cent)¹⁶ 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 WPI occurring between COD and the Reference Date.

[and the aforesaid shall apply, mutatis mutandis, to the Equity funded in Indian Rupee. 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 WPI shall continue to be made;

“**Affected Party**” shall have the meaning as set forth in Clause 33.1;

“**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;

¹⁶ This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 30 year Concession Period shall be $100/360 = 0.2873$ rounded off to decimal points i.e. 0.29.

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

“**Applicable Permits**” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;

“**Appointed Date**” means the date on which Financial Close is achieved 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;

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

“**Associate**” or “**Affiliate**” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Associated Firm**” shall have the same meaning as ascribed to the expression “Associate”, provided that the reference to 50% (fifty per cent) of voting shares in respect of an Associate shall be read as more than **25% (twenty five per cent)** of voting shares in the case of an Associated Firm.

“**Authority Default**” shall have the meaning as set forth in Clause 36.2.1;

“**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 fulfil any obligations of the Authority under this Agreement;

“**Average Daily Fee**” means the amount arrived at by dividing the total Realisable Fee of the immediately preceding Accounting Year by 365 (three hundred and sixty five), [and increasing the quotient thereof by 5% (five per cent)]; provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fee 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 Fee payable by any of the Users has not been realized for any reason, an assessment thereof shall be made by the Independent Expert to form part of the Average Daily Fee for such period;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 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 Proposals in accordance with the provisions thereof

“**Bid Security**” means the security provided by the [Concessionaire/ {selected bidder/Consortium}]to the Authority along with the Bid in a sum of Rs. ***** crore (Rupees ***** crore)¹⁷, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“**Business Day**” means day (other than a Sunday) on which banks in the State where the Project is situated are generally open for business;

“**Change in Law**” means the occurrence of any of the following after the Bid Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification, or re-enactment of any existing Indian law;
- (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 6 (six) months 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 6 (six) months after COD, shall constitute Change in Ownership;

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

“**COD**” or “**Commercial Operation Date**” shall have the meaning as set forth in Clause 15.1.1;

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

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

“**Commercial Zone**” shall mean the real estate forming part of the Site and earmarked as Commercial Zone in Schedule-B;

¹⁷ To be calculated @ [•] % of the amount specified in the definition of Total Project Cost of phase-1.

“**Commercial Zone Development**” shall have the meaning ascribed to it in Clause 3.3;

“**Competing Facility**” the competing facility is defined as 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 Government of India or one of the many state or territorial governments or by central public sector enterprises (CPSUs, CPSEs) or state-level public enterprises (SLPEs) 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 3) warehouses, cold storages and custom bonded storages;

“**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 27.1;

“**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 36.1.1;

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

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

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

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD for phase-1 of MMLP 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 and things necessary to complete the MMLP 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 MMLP or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“**Core Logistics Services**” shall mean warehousing, specialized storage solutions, freight transportation, intermodal transfers, cargo aggregation and distribution, container terminals and/ or bulk/ break-bulk cargo terminals and such other services as may be specified by the Authority from time to time as per Applicable Law;

“**Covenant**” shall have the meaning set forth in Clause 5.2.4;

“**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 Expert hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Expert to accord their approval;

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

“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date for each phase:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements 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 under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements 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;

“**Debt Service**” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

“**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 43.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 43.1.1;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 37.1;

“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 MMLP as set forth in Schedule-H, and shall include ‘as built’ drawings of the MMLP;

“EPC Contract” means the 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 MMLP, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the MMLP 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 MMLP, 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 30.1.2;

“Escrow Bank” shall have the meaning as set forth in Clause 30.1.1;

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

“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 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-U;

“**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 total capital 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 33.1.

“**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 MMLP or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“**Gross Revenue**” means

(i) all the pre-tax revenues chargeable by the Concessionaire from the Project / Project Facilities and Services provided at MMLP. Gross Revenue shall be computed on the basis of the Fees paid by the User leviable for and in respect of the Project Facilities and Services provided during the relevant period of computation.

(ii) It is clarified that deferments (other than those offered in normal course of business), if any, offered by the Concessionaire to the Users ; or amounts, if any, not collected by the Concessionaire for any reason whatsoever (provided the Concessionaire has demonstrated to the satisfaction of the Authority that all available legal recovery remedies have been exhausted and the same is certified as non-recoverable by statutory auditors) in respect of the Project Facilities and Services, shall be ignored for the purpose of computing Gross Revenue.

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

Any income receipts from the sale of assets (provided the proceeds are utilised for replacement of the same assets or its substitute in the Project and certified by the Independent Expert), 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.

It is clarified that for the purpose of Gross Revenue, the same shall include revenue from terminal access charges, all types of cargo handling, weighment, parking, cargo inspection, documentation, warehouse management services or any IT management service, revenue from leasing / sub-licensing of warehouses/ commercial area (including charges for Common Area Maintenance (CAM)), advertising, etc. from the Users

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 41;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 41;

“Independent Expert” shall have the meaning as set forth in Clause 22.1;

“Indirect Political Event” shall have the meaning as set forth in Clause 33.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 31, and includes all insurances required to be taken out by the Concessionaire under Clause 31.1 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, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Key Performance Indicators” shall have the meaning set forth in Article 23;

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

“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;

“Licensed Premises” shall have the meaning as set forth in Clause 10.2.2;

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

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

“Master Plan” means the master plan set forth in Schedule-B for construction, development and operation of the Multimodal Logistics Park (MMLP) in accordance with the provisions of this Agreement, and includes the vacant land earmarked for expansion of the MMLP;

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

“Monthly Fee Statement” shall have the meaning ascribed to it in Clause 28.5;

“MoRTH” means the Ministry of Road Transport and Highways or any substitute thereof;

“Multi-Modal Logistics Park” / “MMLP” shall mean whole of the physical assets and other assets created for the construction, operation, maintenance and management of a multi modal logistic park with a minimum area of [100 (one hundred)] acres at the Site, including any expansion, modification, upgradation thereof, wherein Services relating to aggregation, dis-aggregation, processing, assembling, storage and distribution of multi commodities, both for national and international transit are carried out in an integrated facility in accordance with the Scope of Work and Standards & Specifications detailed in this Agreement having rail siding and connectivity to port / airport and shall include all works, services and equipment relating to and in respect of Scope of Work and Project Assets.

“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 33.2;

“O&M” means the operation and maintenance of the MMLP 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;

“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.;

“**Political Event**” shall have the meaning set forth in Clause 33.4;

“**Preservation Costs**” shall have the meaning as set forth in Clause 13.5.3;

“**Project**” means the construction, operation and maintenance of the MMLP 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 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, (b) tangible assets such as civil works and equipment including foundations, embankments, electrical systems, communication systems, rest areas, (c) Project Facilities situated on the Site; (d) buildings and immovable fixtures (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 MMLP.

“**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 phase-1 of MMLP on or before the Scheduled Completion Date;

“**Project Capacity**” means the throughput capacity for various activities carried out inside MMLP

“**Project Facilities**” means all the amenities and facilities situated on the Site, as described in Schedule-B under MMLP;

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

“**Protected Documents**” shall have the meaning ascribed to it in the Explanation to Clause 44.3;

“**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 Fee**” means all the Fee due and realisable under this Agreement, with or without any discounts or reduction in Fee, but does not include Fee that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee 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 Fee, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply

“**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;

“**Reference Index Date**” means, in respect of a specified date, the last date of the preceding month with reference to which the Construction Price Index or the O&M Price Index is revised.

“**Request for Proposals**” or “**RFP**” shall have the meaning set forth in Recital (D);

“**Revenue Share**” shall have the meaning as set forth in Clause 27.2;

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

“**Safety Consultant**” shall have the meaning set forth in Clause 18.1.2;

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

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.6;

“**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;

“**Services**” shall mean the Core Logistics Services and Value-Added Services and shall include the services as outlined in **Schedule-C**;

“**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 MMLP, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the engineering for the MMLP 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 ***** in which the MMLP 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 32.2.1;

“**Subordinated 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 39.3;

“**Supplementary Agreement**” shall mean the agreement executed between the Parties novating any term and/or condition of the Agreement, upon the execution of which all rights and claims of the Concessionaire in respect of the novated terms and conditions shall cease;

“**Suspension**” shall have the meaning as set forth in Clause 35.1;

“**Taxes**” means any Indian taxes including excise duties, customs duties, goods and services tax, 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 MMLP 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 and Inspection**” means the tests set forth Schedule-I to determine the completion of the MMLP in accordance with the provisions of this Agreement and shall, mutatis mutandis,

“**Total Project Cost**” means the capital cost incurred on construction and financing of the Project for each phase, 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 for each phase; and

(b) the aggregate value of actual capital cost of the Project upon completion of each phase; and

(c) phase-1 a sum of [Rs. _____ (Rupees _____)],
phase-2 a sum of [Rs. _____ (Rupees _____)]
phase-3 a sum of [Rs. _____ (Rupees _____)]

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 WPI 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 WPI 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 WPI, 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;

“**Unscheduled Maintenance**” shall have the meaning as set forth in Clause 17.18;

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

Explanation: For avoidance of doubt, it is clarified that the term “person” referred in the definition of “User” above shall also include any company, corporation, unincorporated organisation, or any other legal entity or their agents etc. using the Services of MMLP.

“**User Charter**” shall have the meaning as set forth in Clause 23.4;

“**Value Added Services**” shall mean services in addition to core logistics services that are likely to be provided at MMLP as outlined in Schedule C

“**Vesting Certificate**” shall have the meaning as set forth in Clause 37.4;

“**WPI**” means the Wholesale WPI 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 the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder; and

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

SIGNED, SEALED AND DELIVERED

For and on behalf of THE Authority by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

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 thereof¹⁸;

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

2.

¹⁸ To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

SCHEDULES

SCHEDULE-A - SITE OF THE PROJECT

1. The Site

- a) The Site (geo- co-ordinates provided in Annex -I) of the Project Facility shall include the land, buildings and structures as described in Annex-I of this Schedule A; and
- b) An inventory of the Licensed Premises including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Licensed Premises 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.
- c) The Site of the Project Facility includes all the land earmarked for the MMLP and specifies the location and land use. [The Site of the Project Facility also includes the additional land earmarked for future expansion of the MMLP that shall take place in accordance with the provisions of this Agreement.]

2. Land area for railway connectivity

The area required for railway line connectivity commencing from the battery limits of the Site, referred to in 1 above, up to the take off point of the serving station shall be acquired by the Authority and after securing the applicable clearances, permits, permissions, no objection's in respect thereof from the concerned Government agencies and construction of the railway line connectivity to the MMLP shall be handed over to the Concessionaire by the Authority and with effect from such date, the said area (RoW of the Rail line) shall form part of and stand subsumed in the Site, referred to in 1 above, and all references to the term Site shall on and effect from such date be construed accordingly to also include the area (RoW of the Rail line) covered by the railway line connectivity.

In terms of Clause 6.4.2 of the Agreement, the Authority shall use its best endeavors to procure the land and construct the railway line connectivity to the MMLP and handover the same to the Concessionaire within a period of four years (4) from the Appointed Date.

Annex - I (Schedule-A)

SITE FOR THE PROJECT FACILITY

[Note: Through suitable drawings and description in words, the land comprising the Site along with the proposed contour of the railway line (from the MMLP boundary to the take off point with the serving station) shall be specified briefly but precisely in this Annex-I including geo- co-ordinates of the site. In the event there are any buildings or structures on the Site, the same shall be marked in the drawings and briefly described in words.

Description of the land shall include reference to the relevant land acquisition notification(s) for and in respect of the Site.]

SCHEDULE-B - DEVELOPMENT OF THE MMLP

1. Development of the MMLP

Development of the MMLP shall include construction of the MMLP as described in this Schedule-B and in conjunction with Schedule A

2. MMLP

Notwithstanding anything contrary to facilities mentioned of Schedule A, the development of the MMLP shall include:

- (a) Rail Terminal for cargo handling and any additional rail siding required for meeting up Service requirements during the Concession Period.
- (b) Cargo related facilities - handling etc.
- (c) Warehouses
- (d) Custom bonded area and custom bonded storage facilities
- (e) Equipment
 - i. all the equipment on the Site required to operate the Project Facility;
 - ii. equipment required to provide the Services including rubber tire gantry, rail mounted gantry, forklifts, reach stacker, etc.
- (f) Commodity storage
- (g) International freight transfer
- (h) Internal roads, Internal and external utilities, open landscape area, etc & all other facilities for the operation of MMLP
- (i) IT Infrastructure (hardware and Software) required for maintenance of cargo entry records, and the records for Core Logistics Services, Value Added Services, and such other services as set forth.
- (j) Parking facilities for parking of the vehicles of Users who come to avail the Services of the MMLP
- (k) Commercial Zone including administrative office and commercial zone consisting of facilities such as bank, ATM, retail spaces, convention centers for holding meetings having details of MMLP including a physical 3D model of appropriate size (in consultation with the Authority), etc,
- (l) Recreational facilities for drivers and other staff
- (m) Office spaces
- (n) Facilities for providing O&M services for trucks

- (o) Any other facilities or balance work or Services required on case to case basis for smooth functioning and operations of MMLP.

3. Commercial Zone Development

- 3.1 Commercial Zone 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 Development shall be undertaken in conformity with the Specifications and Standards set forth in Schedule-D.

4. Railway line connectivity and rail terminal

While developing the rail terminal inside MMLP, the Concessionaire shall not deviate from the alignment of rail siding provided in the concept master plan

Annex – I (Schedule-B)

CONCEPT MASTER PLAN FOR THE SITE

[Note 1: The Concept Master Plan shall be specified here with appropriate drawings and description in words, including the addition of capacity that shall be undertaken by the Concessionaire in accordance with predetermined schedule, as specified in Schedule G of this Agreement.]

[Note 2: The Concept Master Plan shall indicate the land use for the entire MMLP, including Commercial Zone Development, and such land shall form part of the Site.]

[Note 3: Through suitable drawings and description in words, that part of the Site on which the Project Assets shall be constructed by the Concessionaire shall be specified precisely in this Concept Master Plan.]

[Note 4: Through suitable drawings and description in words, that part of the Site on which Commercial Zone Development may be undertaken by the Concessionaire shall be specified precisely in this Concept Master Plan.]

[Note 5: The purposes for which any and all the land may be developed by the Concessionaire shall be specified precisely in conformity with Applicable Laws and the provisions of this Agreement.]

[Note 6: This Annex-I may have one or more drawings, as necessary, and shall contain explanatory notes thereto.]

Range in terms of percentage of the area allocated for the Site

Facilities	
Core Logistics Services and Value-Added Services	[•]
Warehousing Zone / Storage Yard	[•]
Rail Terminal	[•]
Container Terminal and Custom Bonded Area	[•]
Utility Area such as Electrical Sub-station, Water Distribution (Overhead tank, Pump House), Waste Treatment Zone,	[•]
Supporting facilities such as O&M services for trucks, recreational facilities for drivers and other staff, office space	[•]
Internal Roads and Truck parking	[•]
Administrative facilities and commercial zone (Administration Block, Custom Office, facilities such as bank, ATM, retail spaces, convention centers etc.)	[•]
Landscaping	[•]
Any other facility	[•]

Note:

1. Concessionaire shall demarcate space as Customs notified area, and separate entry and exit gates to be provided and covered under 24x7 CCTV surveillance and having strict access control.
2. Facilities for auction, including by e-auction, for disposal of uncleared, unclaimed, or abandoned cargo.
3. Space for PGA office and testing laboratory, fumigation, and post fumigation storage sites to enable Plant Quarantine authorities to carry necessary checks for both imported/ export goods.
4. Designated lanes/ Priority at entry/exit gates, prioritized cargo handling and warehousing operations for Authorized Economic Operators (AEO).
5. Any other such facilities or equipment as the Board or Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may specify with regard to the screening, examination, custody, and handling of imported or export goods in a customs area.

Annex – II (Schedule-B)

COMMERCIAL ZONE DEVELOPMENT

[Note 1: Through suitable drawings and description in words, that part of the Site on which the Commercial Zone Development may be undertaken by the Concessionaire shall be specified precisely.]

[Note 2: The land use and the purposes for which such land may be developed by the Concessionaire shall be specified precisely in conformity with Applicable Laws and the provisions of this Agreement, Describe the land use, floor area, floor space index, height, restrictions, open spaces, parking and other terms of Commercial Zone Development in conformity with local laws and municipal regulations.]

[Note 3: Describe the terms and conditions of Commercial Zone Development.]

SCHEDULE-C - SERVICES

The Concessionaire shall provide the following Services in accordance with the provisions of this Agreement and Applicable Laws:

Part-A Core Logistics Services

Core Logistics Services shall mean:

- i. Warehousing Services;
- ii. Specialized storage solutions Services;
- iii. Freight transportation Services;
- iv. Intermodal transfer Services;
- v. Cargo aggregation and distribution Services;
- vi. Services at Container terminals and/ or bulk/ break-bulk cargo terminals; and

Such other services as may be specified by the Authority from time to time as per Applicable Law.

- vii. Services in relation to Customs Electronic Data Interchange (EDI) Service Centre, with required amenities and facilities.
- viii. Services from Cargo scanning facilities along with provision of container scanners.
- ix. Any other services on case to case basis

[Note: The scope of Services to be finalized at the time of bidding.]

Part-B
Value Added Services

Value Added Services shall mean:

- i. Customs clearance Services and management of customs requirements;
- ii. Services relating to preserving operations to ensure that the products remain in good condition during transport and storage such as aeration, drying, refrigeration, immersion in salty or sulphured water or in water added with other substances, extraction of damaged parts and similar operations;
- iii. Services relating to dilution in water or in any other substance which does not substantially alter the product characteristics;
- iv. Operational Services such as removal of dust, sifting, screening, sorting, classifying, grading, matching, washing, painting, husking, stoning of seeds, slicing and cutting;
- v. Services relating to change of package and breaking-up and assembly of packages;
- vi. Services relating to packing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- vii. Services relating to affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- viii. Services related to simple cleaning, including removal of oxide, oil, paint or other coverings;
- ix. Services related to assembling of parts to constitute a complete article or disassembly of products into parts;
- x. Services related to mixing of products, provided the characteristics of the obtained product are not essentially different from those of the mixed products;
- xi. Oil application Services; and
- xii. State of the Art information technology (IT) services to provide convenience and visibility to customer through services such as online booking of services, track & trace, documentation etc. for efficient management of services
- xiii. A combination of two or more of the above services or operations.

[Note: To be finalized at the time of bidding documents finalization.]

Part-C
Supporting services

Supporting facilities shall mean to include:

- i. Services relating to Parking space and O&M services for trucks;
- ii. Services relating to Recreational facilities for drivers and other staff;
- iii. Services relating to Office space; and
- iv. Services relating to Parking facility for trucks and other vehicles of the Users with sufficient turning and movement space.

[Note: To be finalized at the time of bidding documents finalization.]

Part-D
General provisions

- i. Conduct of all the Services as required by the Applicable Law and the provisions of this Agreement;
- ii. Provision of such other services as may be specified by the Authority.

[Note: To be finalized at the time of bidding documents finalization.]

SCHEDULE-D - SPECIFICATIONS AND STANDARDS

[Note: Specific details to be included at the time of bidding. If required, separate standards for warehouses, cold storage, cargo terminals etc. may be specified.]

The Concessionaire shall comply with the Specifications and Standards set forth herein for construction, operation and maintenance of the Project.

I. MMLP

1. Construction standard, including Construction Quality Plan

(a) Building Code:

The National Building Code of India

[•]

(b) Design Specifications:

[•]

(c) Construction Specifications:

[•]

2. Supply, Installation, Commissioning/Calibration of equipment

The Concessionaire shall undertake Supply, Installation, Testing, Commissioning/Calibration of equipment as per the standards of the original equipment manufacturer of such equipment.

[•]

3. Staffing and manpower training

[•]

II. Services

Services shall be provided in conformity with Annex-I of this Schedule-D

III. Commercial Zone Development

Commercial Zone Development shall be undertaken in accordance with and subject to the terms and conditions specified in Annex-II of this Schedule, Applicable Laws, Good Industry Practice and the provisions of building construction codes widely followed in India, UK or USA, as the case may be.

IV. 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 or any other country providing equivalent facilities; and
- (c) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Expert.]

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.

[•]

4. Equipment

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. Equipment with stricter emission control shall be preferred even if the same over-satisfies the present Indian Emission Control norms.

All equipment handling loaded containers shall be capable of running on electric energy. All non-electric equipment shall meet the top world standard for emission control and fuel efficiency.

The Concessionaire shall deploy the best in class equipment for providing Services at the MMLP as per the international best practices

The following equipment may be deployed for achieving efficiencies in operations at MMLP :

- (i) Rail Mounted Quay Crane (RMQC),
- (ii) Rubber Tyre Gantry Crane (RTGC),
- (iii) Empty Container Handlers, such as
- (iv) Medium-duty forklift trucks;
- (v) Side-pick cranes;
- (vi) Top-pick cranes;
- (vii) Reach-stacker cranes.
- (viii) Tractor trailers,
- (ix) Internal Transfer Vehicles (ITV)
- (x) The equipment required for Storage of Perishables/Cold Storage
- (xi) The equipment related to valued added services like sorting, grading, cleaning,
- (xii) All ancillary equipment or any facility and equipment incidental or necessary for operation of the MMLP.

[•] any other technologically superior equipment / machinery

5. Specifications and Standards for MMLP Facility

List of Standards as per Appendix-II

[•]

[Note: To be finalized at the time of bidding documents finalization.]

[Note: The Authority shall describe all the Drawings that the Concessionaire is required to furnish under Clause 12.4 of the Concession Agreement.]

6. Warehousing Standards for MMLP Facility

1. Higher load bearing capacity for heavy industrial flooring having [G+9 or G+10] levels of industrial racking.
2. Standardised maintenance and serviceability program for flooring, related to flatness levels, shrinkage at joints, cracks above specified millimetres of size etc.
3. Detailed roofing standards providing for material with high solar reflective index, roof design with no leakage, permitting skylight illumination, provision of turbo-ventilators as applicable, floor to roof height for existing and future vertical expansion etc.
4. Security and sustainability practices.
5. Operational efficiency and quality enhancement through implementation of Warehouse Management Systems.

List of Standards as per Appendix-II

[•]

[Note: To be finalized at the time of bidding documents finalization.]

[Note: The Authority may add relevant standards at the time of bidding]

Annex - I (Schedule-D)

SERVICES – SPECIFICATIONS AND STANDARDS

[Note: Specific details to be included at the time of bidding.]

The Concessionaire shall undertake the Services in accordance with the following Specifications and Standards:

[•]

Annex – II (Schedule-D) COMMERCIAL ZONE DEVELOPMENT – SPECIFICATIONS AND STANDARDS

[Note: Specific details to be included at the time of bidding.]

The Concessionaire shall comply with the Specifications and Standards set forth herein for construction, operation and maintenance of the Commercial Zone Development:

[•]

SCHEDULE-E- APPLICABLE PERMITS

PART I

1. Applicable Permits

- 1.1 The Concessionaire shall obtain, as required under Applicable Laws, the PART A of the following Applicable Permits, as detailed under PART-A below, 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.

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 required¹⁹ to be obtained by the Concessionaire after appointed date:

S. No.	Approval	Relevant Authority
Rail Operation²⁰		
1.	Commercial Notification of Private Siding (Green Field)	Ministry of Railways
2.	Consent to Operate: Category 1/2/3/4	Ministry of Railways
3.	Concession Agreement ²¹	Railway Administration, Ministry of Railways, Government of India
4.	Tripartite Agreement ¹⁸ – E payment between PCTO/ IR/ SBI	Railway – Nodal Office
5.	No objection certificate/ Co-user agreement for access to private siding	Respective zones
DTA Warehouse (State government approvals)		
6.	Warehouse	Chief town planner cum chairman (Building

¹⁹ Permits and approvals, and its responsibility, applicable may vary from project to project

²⁰ To be included if the railway siding is to be operated by the Concessionaire – to be confirmed in the bidding documents.

²¹ Applicability will depend on case to case basis

		Plan Approval Committee)
7.	Shop and establishment certificate	Shop and Establishment Department
8.	Building insurance	Any insurance company
9.	Structural Stability Certificate	Architect and Structural Engineer
10.	Drug License (pharmaceuticals)	State Pharma office
11.	Gram Panchayat no objection certificate	Local village Pradhan
12.	Weighment License	Weights and Measures Department
13.	Department Permission Certificate	District Town Planner
14.	Structure Design	Structural Engineer
15.	Rainwater harvesting	Central Ground Water Authority
16.	Storage of Hazardous Goods	Chief Controller of Explosives and Ministry of Environment
17.	Setback and height specification	Chief town planner cum chairman (Building Plan Approval Committee)

Inland Container Depot operations		
18.	In principal approval	Jurisdictional Commissioner of Customs
19.	License from customs and bonding	Jurisdictional Commissioner of Customs
20.	Building plan approval	Jurisdictional Commissioner of Customs
21.	Inland Container Depot Notification	Jurisdictional Commissioner of Customs
22.	Inland Container Depot Bond	Jurisdictional Commissioner of Customs
23.	Transit Bond	Jurisdictional Commissioner of Customs
24.	Location/ port code	Jurisdictional Commissioner of Customs
25.	Posting of customs staff	Jurisdictional Commissioner of Customs
26.	EDI interface implementation	Jurisdictional Commissioner of Customs
27.	Commencement notification	Jurisdictional Commissioner of Customs
28.	Approval of virtual warehousing	Jurisdictional Commissioner of Customs
29.	Declaration of Customs Notified Area under Section 8 of Customs Act, 1962	Ministry of Finance – Excise and Customs
30.	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		
31.	Fire No Objection Certificate	State Fire Department
32.	Water level monitoring	Central Ground Water Authority
33.	Approval for hazardous materials	As per the requirement/ Pollution Department
34.	Weight and measures (100 T weighbridge)	State Weight and Measurement Department
35.	Factory License – DTA	State Government
36.	Registration Certificate of shop or commercial establishment – DTA warehouse	State Government
37.	Registration Certificate of shop or commercial establishment – Inland	State Government

	Container Depot	
38.	Environmental Monitoring Report	Noise, water, air assessment state department
39.	Environmental statement (Form V)/ Audit report	Noise, water, air assessment, state department
Other approvals		
41.	Permission for engaging contract labour	State Labour Commissioner
42.	Electric load sanction and connection	State Power Board
43.	Electricity Supply	State DISCOM

SCHEDULE-F - PERFORMANCE SECURITY

[•]
[•]
[•]

WHEREAS:

- (A) [•] (the “**Concessionaire**”) and the [•] (“**Authority**”) have entered into a Concession Agreement dated [•] (the “**Agreement**”) whereby the Authority has resolved to establish a Multi Modal Logistics Park (MMLP) at [•] in district [•] in the State of [•] 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 [•] (Rupees [•])] (3% (three per cent) of the Total Project Cost of phase [•]) assessed by the Authority mentioned in the Agreement) (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 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 its authorized representative, 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 180 (one hundred and eighty) days from the date of expiry of this Guarantee (“**Claim Period**”), 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 until the date which is 180 (one hundred and eighty) days after the occurrence of [Commercial Operation Date] of phase [*] under the Concession Agreement as notified to the Bank by the Authority.

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 (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 MMLP is anticipated in phases. For the purpose of achieving COD, the milestones I to IV are considered part of MMLP 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 Expert, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Expert 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-I** set forth in the Financial Package and conveyed to the Independent Expert, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Expert 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**”).

5. 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-I** set forth in the Financial Package and conveyed to the Independent Expert the nature and extent of physical progress comprising such expenditure so as to enable the Independent Expert to determine that the physical progress is reasonably commensurate with the expenditure incurred.

6. Project Milestone-IV

- 6.1 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**”).
- 6.2 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 Expert the nature and extent of physical progress comprising such expenditure so as to enable the Independent Expert to determine that the physical progress is achieved. Concessionaire shall have commenced trial running of the MMLP.

7. Project Milestones after completion of COD – subsequent phases of development

- 7.1 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**”).
- 7.2 After occurrence of Project Milestone- phase-2, the Concessionaire shall have expended Rs [.....]²² set forth in the Financial Package for Total Project Cost of phase-2
- 7.3 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**”).
- 7.4 After occurrence of Project Milestone- phase-3, the Concessionaire shall have expended [100 (one hundred)]% of the overall Total Project Cost of Rs [.....].

8. Scheduled Completion Date

- 8.1 The Scheduled Completion Date shall be [730th (seven hundred and thirtieth)] day from the Appointed Date.
- 8.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Construction Works in accordance with this Agreement.

9. Extension of period

Upon extension of any or all of the aforesaid Project Milestones, 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.

²² Equal to [60 (sixty)] % of overall Total Project Cost.

SCHEDULE-H - DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 12.4 of this Agreement, the Concessionaire shall furnish to the Independent Expert and Authority, free of cost, all Drawings related to MMLP

2. Additional drawings

If the Independent Expert determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed herein, 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 Expert.

SCHEDULE-I - 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 Expert 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 Expert 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 Expert 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 Expert 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 Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this **Schedule-I**.

2. Tests

2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Expert shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

2.2 Visual and Physical Test

The Independent Expert 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 Expert 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 Expert 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 MMLP:

The Independent Expert shall conduct or cause to be conducted Tests for determining the compliance of the MMLP 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 Expert 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 Expert 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 Expert 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 Expert 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 Expert 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-I**, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE-J - COMPLETION CERTIFICATE

1. I, [Name of the Independent Expert, acting as Independent Expert, under and in accordance with the Concession Agreement dated [•] (the “**Agreement**”), for procuring the Project on Design, Build, Finance, Operate and transfer (“**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 phase [.] of the Project²³ with the provisions of the Agreement, and I am satisfied that the Project can safely and reliably provide Services to Users.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project Facility for phase [.] have been completed, and the phase [.] of the Project 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 EXPERT by:

(Signature)

(Name)

(Designation)

(Address)

²³ Completion certificate shall be issued for all phases.

PROVISIONAL CERTIFICATE

1. I, [Name of the Independent Expert, acting as Independent Expert, under and in accordance with the Concession Agreement dated [•] (the “**Agreement**”), for procuring the Project on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis, through [Name of Concessionaire], hereby certify that the Tests specified in Article 14 and **Schedule-I** of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

2. Construction Works 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,]²⁴ I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.

3. In view of the foregoing, I am satisfied that the phase [.] of the Project can safely and reliably provide Services to Users, and in terms of the Agreement, the phase [.] of the Project 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

For and on behalf of

INDEPENDENT EXPERT by:
(Signature)
(Name and Designation)
(Address)

CONCESSIONAIRE by:
(Signature)
(Name and Designation)
(Address)

²⁴ May be deleted if not applicable.

SCHEDULE-K- MAINTENANCE MANUAL, SERVICE MAINTENANCE REQUIREMENTS

[Note: The Maintenance Manual, Service Quality Manual and Maintenance Requirement for the MMLP as provided by the Authority or other authorized agency to be specified in this Schedule-K]

1. Service Requirements

[To be included.]

2. Maintenance Requirements

- 2.1. The Concessionaire shall, at all times, operate and maintain the Project Facility 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-K**.
- 2.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2.3 and 2.4 of this **Schedule-K** 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.

Repair/rectification of defects and deficiencies

- 2.3. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies of Project Assets in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.
- 2.4. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.
- 2.5. In respect of any defect or deficiency, the Independent Expert 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 Expert.

Extension of time limit.

- 2.6. Notwithstanding anything to the contrary specified in this **Schedule-K**, 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 Good Industry Practice. Such additional time shall be determined by the Independent Expert and conveyed to the Concessionaire and the Authority with reasons thereof.

Emergency repairs/restoration

- 2.7. Notwithstanding anything to the contrary contained in this **Schedule-K**, if any defect, deficiency or deterioration in the Project Facility poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimising such danger.

Inspection by the Concessionaire

- 2.8. The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project Facility 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 Expert 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 Expert at any time during office hours.

Divestment Requirements

- 2.9. All defects and deficiencies specified in this **Schedule-K** shall be repaired and rectified by the Concessionaire so that the Project Facility conforms to the Maintenance Requirements on the Transfer Date.

Display of Schedule – K

- 2.10. The Concessionaire shall display a copy of this **Schedule-K** at the Project Facility along with the Complaint Register stipulated in Clause 45.1.

Annex - I (Schedule-K) - SERVICE QUALITY MANUAL

[[Note: To be finalized at the time of bidding document finalization)

[To be attached.]

SCHEDULE-L - SAFETY REQUIREMENTS

([Note: To be finalized at the time of bidding document finalization])

1. Guiding principles

- 1.1 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.
- 1.2 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.
- 1.3 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement, and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this **Schedule -L**.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Agreement;
- (c) Manuals, if any, issued by the Authority or any Designated GOI Agency;
- (d) relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3. Appointment of Safety Consultant

- 3.1 For carrying out safety audit of the Project Facility under and in accordance with this Schedule L, 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.
- 3.2 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 Expert forthwith.

4. Safety measures during Operation Period

- 4.1 The Concessionaire shall develop, implement and administer a safety programme for the Project Facility, staff, 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.

- 4.2 The Concessionaire shall keep a copy of every first information report recorded by the Police / or details of the accidents resulting equipment malfunctions or failure or human error with respect to any accident occurring on or about the Project Facility. 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 and submitted to the Authority at the conclusion of every quarter.
- 4.3 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in three 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 4.1 of this **Schedule-L** for averting or minimising such accidents in future.
- 4.4 Once in every Accounting Year, the Authority shall cause a safety audit to be carried out for review and analysis of the annual report and accident data of the preceding year. The recommendations of such safety audit shall be communicated to the Concessionaire and the Independent Expert. Within 15 (fifteen) days of receipt of such communication from the Authority, the Concessionaire and the Independent Expert 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.

5. 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-L**, shall be borne 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 Expert 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 Expert 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 Expert 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-M - SELECTION OF INDEPENDENT EXPERT

1. Selection of Independent Expert

- 1.1 The provisions of the [Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance vide OM No. 24(23)/PF-II/2008 dated 21 May, 2009], or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Expert. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Expert hereunder.
- 1.2 In the event of termination of an Independent Expert 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-M**.
- 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-M**.

2. Terms of Reference

The Terms of Reference for the Independent Expert shall substantially conform with **Schedule-N**.

3. Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Expert during the Concession Period, the Authority shall endeavour that payments to the Independent Expert on account of fee and expenses do not exceed 2% (two per cent) of the overall Total Project Cost, including Equity Support. 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 entirely by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Expert 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 Expert on account of fee and expenses during the Operation Period shall be borne equally by the Authority and the Concessionaire.

4. Selection every Five years

No later than [5 (five)] years from the date of appointment of Independent Expert pursuant to the provisions of Paragraph 1 of this **Schedule-M**, and every [5 (five)] years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this **Schedule-M**.

5. Appointment of government entity as Independent Expert

- 5.1 Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Expert; 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 Authority shall not be eligible for appointment as Independent Expert.

SCHEDULE-N - TERMS OF REFERENCE FOR INDEPENDENT EXPERT

1. Scope

- 1.1 These Terms of Reference for the Independent Expert (the “**TOR**”) are being specified pursuant to the Concession Agreement dated [•] (the “**Agreement**”), which has been entered into between the Authority and [•] (the “**Concessionaire**”) to establish a Multi Modal Logistics Park (“**MMLP**”) at [•] in district [•] in the State of [•] on Design, Build, Finance, Operate and Transfer (“**DBFOT**”)basis, [and a copy of which is annexed hereto and marked as Annex-I to form part of this TOR].
- 1.2 This TOR shall apply to construction, designing, operation and maintenance of the Project Facility.

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 Expert

- 3.1 The role and functions of the Independent Expert shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
 - (iii) review, inspection and testing of Project Facility as set forth in Paragraph 4;
 - (iv) conducting Tests on completion of construction and issuing Completion Certificate/ Provisional Certificate as set forth in Paragraph 4;
 - (v) review, inspection and monitoring of O&M as set forth in Paragraph 5;
 - (vi) review, inspection, and monitoring of Divestment Requirements as set forth in Paragraph 6;
 - (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (viii) determining, as required under the Agreement, the period, or any extension thereof, for performing any duty or obligation;
 - (ix) assisting the Parties in resolution of Disputes as set forth in Paragraph 8; and
 - (x) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Independent Expert shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Construction Period

- 4.1 The Independent Expert shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, topographical surveys and other surveys conducted as part of the feasibility report and any further

revision thereof. The Independent Expert shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such 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 Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days (or such other shorter period, if any, as specified in the Agreement) of receiving such Drawings or Documents.
- 4.3 The Independent Expert shall review the business plan, 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 The Independent Expert shall review the detailed design and the manufacturing, installation, testing and commissioning plans for the Project Facility sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Expert shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project Facility, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.
- 4.6 The Independent Expert 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.
- 4.7 The Independent Expert shall inspect the Construction Works and equipment (if any) 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 and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Facility or in the equipment. The Inspection Report shall also contain a review of the maintenance of the existing roads inside MMLP and rail siding (inside and outside) MMLP in conformity with the provisions of the Agreement. The Independent Expert shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 4.8 The Independent Expert may inspect the Project Facility more than once in a month if any lapses, defects, or deficiencies require such inspections.
- 4.9 For determining that the Construction Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Expert in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests prescribed in the relevant Manuals specified by the Government in relation to structures, buildings, lines, equipment and electrical systems (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 Expert 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.

- 4.10 The sample size of the tests, to be specified by the Independent Expert under Paragraph 4.9, 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 Expert 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.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Expert 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.
- 4.12 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert 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 4 shall apply to such tests.
- 4.13 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Expert shall determine that completion of the MMLP Facility 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 Expert shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 4.14 If at any time during the Construction Period, the Independent Expert determines that the Concessionaire has not made adequate arrangements for the safety of workers or any other persons in the zone of construction, or that any work is being carried out in a manner that threatens the safety of the workers or any other persons 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.
- 4.15 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and other persons in the zone of construction, it may, by notice in writing, require the Independent Expert to inspect such works, and within 3 (three) days of receiving such notice, the Independent Expert 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.
- 4.16 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert 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.
- 4.17 The Independent Expert shall carry out, or cause to be carried out, all the Tests specified in **Schedule-I** and issue a Completion Certificate or Provisional Certificate. For carrying out its functions under this Paragraph 4.17 and all matters incidental thereto, the Independent Expert shall act under and in accordance with the provisions of Article 14 and **Schedule-I**.
- 4.18 Upon reference from the Authority, the Independent Expert 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.

4.19 The Independent Expert shall aid and advise the Concessionaire in preparing the Maintenance Manual.

5. Operation Period

5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

5.2 The Independent Expert 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.

5.3 The Independent Expert 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.

5.4 The Independent Expert 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.

5.5 The Independent Expert shall ensure periodic calibration of equipment as well as periodic check of all scientific testing equipment.

5.6 The Independent Expert shall inspect the MMLP, at least once every month and verify the Gross Revenue on periodic basis and shall report the discrepancies, if any, observed between the verified Gross Revenue and the reported Gross Revenue and the time period for which such mis-reporting occurred to the Authority. The Independent Expert shall submit a detailed reported on the services for which the Gross Revenue was mis-reported by the Concessionaire.

5.7 The Independent Expert shall assess the amount of Damages, if any, payable or recoverable, as the case may be, under Clause 23.3, Clause 27.4 and notify the Concessionaire and the Authority of such amounts, in accordance with the terms of the Concession Agreement.

5.8 The Independent Expert shall inspect the MMLP Facility, at least once every month, preferably after receipt of the last status report in the relevant quarter from the Concessionaire, but before the 20th (twentieth) day after the close 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 Programme, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Facility. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

5.9 The Independent Expert may inspect the Project Facility more than once in a month, if any lapses, defects, or deficiencies require such inspections.

5.10 The Independent Expert 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 Facility 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.

- 5.11 In respect of any defect or deficiency referred to in Paragraph 2 of **Schedule-K**, the Independent Expert 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.
- 5.12 The Independent Expert 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.
- 5.13 The Independent Expert shall examine the request of the Concessionaire for closure of any section of the Project Facility for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in Project Facilities 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 Expert shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.
- 5.14 The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.5.
- 5.15 In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Project Facility, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6. Termination

- 6.1 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 Expert shall, in the presence of a representative of the Concessionaire, inspect the Project Facility for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 37.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Expert determines that the status of the Project Facility is such that its repair and rectification would require a larger amount than the sum set forth in Clause 38.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 6.2 The Independent Expert shall inspect the Project Facility once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 38, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Expert, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

7. Determination of costs and time

- 7.1 The Independent Expert shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Independent Expert shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8. Assistance in Dispute resolution

- 8.1 When called upon by either Party in the event of any Dispute, the Independent Expert 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 Expert shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9. Other duties and functions

The Independent Expert shall perform all other duties and functions specified in the Agreement.

10. Miscellaneous

- 10.1 The Independent Expert 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.
- 10.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Expert to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.
- 10.3 The Independent Expert 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 Expert, whereupon the Independent Expert shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 10.4 The Independent Expert 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.
- 10.5 Upon completion of its assignment hereunder, the Independent Expert 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.
- 10.6 Wherever no period has been specified for delivery of services by the Independent Expert, the Independent Expert shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.
- 10.7 The terms of reference may also include other roles and responsibilities of the Independent Expert as decided by the Authority on case to case basis while issuing the RFP for Independent Expert.

SCHEDULE-O - 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 / tonnes / TEU per month / Sq ft	Fee collected (in Rs.)	No. of Users / tonnes / TEU per month / Sq ft	Fee collected (in Rs.)	No. of Users / tonnes / TEU per month / Sq ft	Fee collected (in Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Core Logistics Services						
Handling of containers	[] TEUs		[] TEUs		[] TEUs	
Handling of break bulk cargo	[] tonnes		[] tonnes		[] tonnes	
Handling of [.]	[] tonnes		[] tonnes		[] tonnes	
Storage of containers						
Storage of [.....]						
Warehousing Area leased	[.] sq. ft		[.] sq. ft		[.] sq. ft	
[.]						
Value Added Services						
[.]						
[.]						
Support services						
Parking services	[.] Trucks [] cars		[.] Trucks [] cars		[.] Trucks [] cars	
Office space leased	[] sq. Ft		[] sq. Ft		[] sq. Ft	
Leasing of other Commercial Area	[] sq. Ft		[] sq. Ft		[] sq. Ft	
Other supporting services						
[.]	[.]		[.]		[.]	
Total						

SCHEDULE-P - 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-P, 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-P 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 MMLP without payment of Fee due, the Concessionaire shall be entitled to take recourse in terms of Clause 28.4 of the Concession Agreement.

3. Indicative Fees for services at MMLP²⁵

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 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 [•]	[•]	Truck parking charges: INR [] per truck / day Driver resting: INR [] / day Office space rental: INR [] per Sq.ft / month [•]

²⁵ The amount may be indicated in the bidding documents and be included herein accordingly.

SCHEDULE-Q - MINIMUM GUARANTEED REVENUE SHARE²⁶

As per the Article 27, the Concessionaire shall pay to the Authority each year a Concession Fee including Revenue Share such that:

- (a) The sum of present value²⁷ of the Revenue Share payable to the Authority, commencing from the month falling immediately after the 03rd (third) anniversary of the COD to the 10th (tenth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 1 (“**Check Point 1**”), and to ensure the compliance of Clause 27.4, shall be minimum INR [.] and
- (b) The sum of present value²⁶ of the Revenue Share payable to the Authority, commencing from the month falling immediately after the 03rd (third) anniversary of the COD to the 15th (fifteenth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 2 (“**Check Point 2**”), and to ensure the compliance of Clause 27.4, shall be minimum INR [.] and
- (c) The sum of present value²⁶ of the Revenue Share payable to the Authority, commencing from the month falling immediately after the 03rd (third) anniversary of the COD to the 20th (twentieth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 3 (“**Check Point 3**”), and to ensure the compliance of Clause 27.4, shall be minimum INR [.] and
- (d) The sum of present value²⁶ of the Revenue Share payable to the Authority, commencing from the month falling immediately after the 03rd (third) anniversary of the COD to the 25th (twenty-fifth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 4 (“**Check Point 4**”), and to ensure the compliance of Clause 27.4, shall be minimum INR [.] and
- (e) The sum of present value²⁶ of the Revenue Share payable to the Authority, commencing from the month falling immediately after the 03rd (third) anniversary of the COD to the 29th (twenty-ninth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 5 (“**Check Point 5**”), and to ensure the compliance of Clause 27.4, shall be minimum INR [.] and

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 10th anniversary from the Appointed Date, then the stipulated requirement for check on Revenue Share payments made to the Authority by the Concessionaire in the 10th year shall be increased by 1 year. i.e. “the cumulative sum of present value of Revenue Share payable by the Concessionaire from the month falling immediately after the 03rd (third) anniversary of the COD to the 10th (tenth) year from the Appointed Date” shall be changed to “the cumulative sum of present value of Revenue Share payable by the Concessionaire from the month falling immediately after the 03rd (third) anniversary of the COD to the 11th (eleventh) year from the Appointed Date”. Consequently, the stipulated requirement for check on Revenue Share payments made to the Authority by the Concessionaire till the 15th year of Appointed Date shall be increased by one year to 16th year of Appointed Date and so on.

²⁶ Note: The ‘Principle and Methodology’ of evaluating the minimum guaranteed Revenue Share shall be decided on project specific and case-to-case basis while approving the particular MMLP by the Competent Authority.

²⁷- The ‘present value’ of the Revenue Share shall be determined as per stipulations of Clause 27.4.

SCHEDULE-R - ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [•] day of [•] 20 [•]

AMONGST

1. [•], a company incorporated under the provisions of the [•] 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..... and 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 permitted substitutes); and
4. **THE [•]**, represented by [•], and having its 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).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated [•] with the Concessionaire (the “**Concession Agreement**”) for procuring a Multi Modal Logistics Park (“MMLP”) at [•] in district [•] in the State of [•] (“**Project**”) on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis, [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 Application of insufficient funds

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

4.4 Application of insurance proceeds

Notwithstanding anything in this 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.

4.5 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 35 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 referred to the Dispute Resolution Board as set forth in Clause 43.2. The matters which cannot be resolved through Dispute Resolution Board shall be decided finally by reference to arbitration as set forth in Clause 43.3.

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 Delhi 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
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the 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.

SIGNED, SEALED AND DELIVERED

For and on behalf of **CONCESSIONAIRE** by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of **SENIOR LENDERS** by the
Lenders' Representative

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of **ESCROW BANK** by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of

1. [•]

2. [•] Fax No.

SIGNED, SEALED AND DELIVERED

For and on behalf of [•] by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of

1. [•]

2. [•]

SCHEDULE-S - PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 32.2.1 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

The Authority shall invite offers from all reputable 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, 2013, 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 of or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

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 Rs. 25,00,00,000 (Rupees twenty five crore) 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, 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 “**Project**”) on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 37.1 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 MMLP 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 **THE Authority** by: For and on behalf of **CONCESSIONAIRE** by

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

In the presence of:

1. [●] 2. [●]

SCHEDULE-U - SUBSTITUTION AGREEMENT

This SUBSTITUTION AGREEMENT is entered into on this the [●] day of [●] 20[●].

AMONGST

1. **THE [●]**, represented by [●], and having its 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. [●], a [●] incorporated under the provisions of the [●] 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);
3. [●] [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 procuring a Multi Modal Logistics Park (“MMLP”) at [●] in district [●] in the State of [●] (“**Project**”) on Design, Build, Finance, Operate and Transfer (“**DBFOT**”)basis, [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 IT IS HEREBY AGREED 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 90 (ninety) days;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, within the meaning of the Companies Act, 2013, 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”** means 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 assigns 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 Project 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 Article 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 Project in accordance with the provisions of Article 35 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 Authority 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 Project 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 develop, operate and maintain the Project 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 thereupon shall 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 36 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

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

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 Concession Agreement; or
- (b) no sum remains to be advanced, or 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 Dispute Resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be referred to the Dispute Resolution Board as set forth in Clause 43.2. The matters which cannot be resolved through Dispute Resolution board shall be decided finally by reference to arbitration as set forth in Clause 43.3.

- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi 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 Article 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. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on 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. 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.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
CONCESSIONAIRE by:

For and on behalf of THE Authority by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of **SENIOR LENDERS**
by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of:

1. [•]

2. [•]

.

SCHEDULE-V - USER CHARTER

[Note: To be reviewed and finalized at the time of bidding for specific MMLP requirements.]

1. Service with safety

It is our aim to provide safety and quality in the MMLP through state-of-the-art infrastructure for total customer satisfaction. This Charter explains our commitments to the users of our MMLP 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 MMLP management to provide quality service to the users of this MMLP through its trained manpower and contractors. We aim to provide:

- a. Safety and security for the Users of MMLP 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 MMLP.

2.2.1 Approach to the MMLP

We will make all out efforts to make approach within the MMLP smooth and comfortable. Our traffic plans will be so oriented as to enable easy entry into and exit from the MMLP. To make your approach comfortable we will tow away the vehicles parked in an unauthorised manner on the approach roads within the MMLP. Entry in to the MMLP 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 MMLP is developed as a common user terminal.

We at MMLP aim to avoid unfair trade practices and thus have displayed our Fees at designated places at the MMLP and also the availability of capacity at the MMLP, so that any User willing to avail the Services at the MMLP after payment of the prescribed Fees is entitled to and there will be no discretion in the use of the MMLP by any User.

2.3. Availability of information

Information is power.

We will provide clear and easy to understand universally accepted signages inside the MMLP 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 MMLP? You may get it back from the lost property office at the MMLP.

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 MMLP. 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.

SCHEDULE-W - DISPUTE RESOLUTION BOARD

Procedure for Dispute Resolution Board

The parties to the Concession Agreement mutually agree as follows:

- (1) The Board shall comprise of 03 (three) members having experience in the field of construction or have been involved in the works related to construction and with the interpretation of contractual documents. 01 (one) member shall be selected by each of the Authority and the Concessionaire from the list maintained by Authority hosted on its website [www.nhai.gov.in].

In the event the Parties fail to select the member within 28 (twenty eight) days of the date of the signing of the Concession Agreement, in that eventuality, upon the request of either or both Parties such member shall be selected by SAROD within 14 (fourteen) days. The third member shall be selected by the other two members from the same list. If the two members selected by or on behalf of the Parties fail to select the third member within 14 (fourteen) days after the later of their selections, then upon the request of either or both parties such third member shall be selected by SAROD within 14 (fourteen) days. The third member shall serve as chairman of the board.

- (2) The board shall be constituted when each of the three board members has signed a board member's declaration of acceptance as required by the DRB's rules and procedures (which, along with the declaration of acceptance form, are attached as Annexure herewith).
- (3) In the event of death, disability, or resignation of any member, such member shall be replaced in the same manner as the member being replaced was selected. If for any other reason, a member fails or is unable to serve, the chairman (or failing the action of the chairman then either of the other members) shall inform the Parties and such non-serving member shall be replaced in the same manner as the member being replaced was selected. Any replacement made by the parties shall be completed within 28 (twenty eight) days after the event giving rise to the vacancy on the board, failing which the replacement shall be made by SAROD in same manner as described above. Replacement shall be considered complete when the new member signs the board member's declaration of acceptance. Throughout any replacement process, the members not being replaced shall continue to serve and the board shall continue to function and its activities shall have the same force and effect as if the vacancy had not occurred, provided, however, that the board shall not conduct a hearing nor issue a decision until the replacement is completed.
- (4) If either the Authority or the Concessionaire is dissatisfied with any decision of the board, and/or if the board fails to issue its decision within 56 (fifty six) days after receipt of all the pleadings (along with the supporting documents) of the parties by the chairman of the board or any extension mutually agreed upon by the Authority and the Concessionaire, in such a case, either the Authority or the Concessionaire may, within 28 (twenty eight) days after his receipt of the decision, or within 28 (twenty eight) days after the expiry of the said period, as the case may be, give notice to the other party, with a copy for information to the Independent Expert, of his intention to refer the matter to the Conciliation Committee of Independent Experts (CCIE) of the Authority for conciliation/amicable settlement.
- (5) It is mandatory to refer all the Disputes to DRB before issuance of completion certificate and satisfactory completion of punch list items. No Dispute shall be entertained after completion of aforementioned date.
- (6) If the board has issued a decision to the Authority and the Concessionaire within the said 56 (fifty six) days or any extension mutually agreed upon by the Authority and the Concessionaire and no

notice of intention to commence Conciliation by the Conciliation Committee of Independent Experts (CCIE) of the Authority for conciliation/ amicable settlement as to such dispute has been given by either the Authority or the Concessionaire within 28 (twenty eight) days after the Parties received such decision from the board, the decision shall become final and binding upon the Authority and Concessionaire.

- (7) Whether or not it has become final and binding upon the Authority and the Concessionaire, a decision shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the Dispute to which the decision relates.
- (8) All decision of DRB which have become final and binding or till they have been reversed in subsequent conciliation/arbitration process shall be implemented by the Parties forthwith. Such implementation shall also include any relevant action of the Independent Expert.
- (9) If during the Concession Period, the Authority and the Concessionaire are of the opinion that the Disputes Resolution Board is not performing its functions properly, the Authority and the Concessionaire may together disband the Disputes Resolution Board and reconstitute it. In that case, a new board shall be selected in accordance with the provisions applying to the selection of the original board as specified above, except that words "within 28 (twenty eight) days after the signing of this Concession Agreement" shall be replaced by the words "within 28 (twenty eight) days after the date on which the notice disbanding the original board became effective".
- (10) The Authority and the Concessionaire shall jointly sign a notice specifying that the board shall stand disbanded with effect from the date specified in the notice. The notice shall be posted by email to each member of the board. A member shall be deemed to have received the email even he refuses to have received the same.
- (11) All other terms and conditions of the original Concession Agreement shall remain unaltered/unaffected and the parties shall remain bound by terms and conditions as contained therein.

Annexure to Schedule [W]

Disputes Resolution Board's Rules and Procedures

1. Except for providing the services required hereunder, the board members shall not give any advice to either Party or to the Independent Expert concerning conduct of the works. The board members:
 - a) Shall have no financial interest in any Party to the Concession Agreement, or the Independent Expert, or a financial interest in the contract, except for payment for services on the Board.
 - b) Shall have had no previous employment by, or financial ties to, any party to the Concession Agreement, or the Independent Expert, except for fee based consulting services/advisers on other projects, and/or be retired Government officers (not connected in whole or part with the Project), all of which must be disclosed in writing to both Parties prior to appointment to the board.
 - c) Shall have disclosed in writing to both Parties prior to appointment to the board any and all recent or close professional or personal relationships with any director, officer, or employee of Party to the Concession Agreement, or the Independent Expert, and any and all prior involvement in the Project to which the Concession Agreement relates;
 - d) Shall not, while board member, be employed whether as a consultant or adviser or otherwise by either Party to the Concession Agreement, or the Independent Expert, except as a board member, without the prior consent of the Parties and the other board members;
 - e) Shall not, while a board member, engage in discussion or make any agreement with any Party to the Concession Agreement, or with the Independent Expert, regarding employment whether as a consultant or otherwise whether after the Concession Agreement is completed or after service as a board member is completed.
 - f) Shall remain and be impartial and independent of the Parties and shall disclose in writing to the Authority, the Concessionaire and one another any fact or circumstance which might be such as cause to either the Authority or the Concessionaire to question the continued existence of the impartiality and independence required of board members; and
 - g) Shall be fluent in the language of the Concession Agreement.
2. Except for its participation in the board's activities as provided in the Concession Agreement and in this Agreement none of the Authority, the Concessionaire, and or the Independent Expert shall solicit advice or consultation from the board or the board members on matters dealing with the conduct of the works.
3. The Concessionaire shall:
 - (a) Furnish to each Board member one copy of all documents which the board may request including Concession Agreement, progress reports and other documents pertinent to the performance of the Concession Agreement.
 - (b) In cooperation with the Authority, coordinate the site visits of the board, including conference facilities, and secretarial and copying service.
4. The board shall begin its activities following the signing of a board member's declaration of

acceptance by all three board members, and it shall terminate these activities as set forth below:

- (a) The board shall terminate its regular activities when either (i) issuance of completion certificate and completion of punch list items or (ii) the Parties have terminated the Concession Agreement and when, in either case, the board has communicated to the Parties and the Independent Expert its decision on all Disputes previously referred to it.
 - (b) Once the board has terminated its regular activities as provided by the previous paragraph, the board shall remain available to process any dispute referred to it by either Party. In case of such a referral, board members shall receive payments as provided in paragraphs 7(a) (ii), (iii) and (iv).
5. Board members shall not assign or subcontract any of their work under these rules and procedures.
6. The board members are independent and not employees or agents of either the Authority or the Concessionaire.
7. Payments to the board members for their services shall be governed by the following provisions:
- (a) Each board member will receive payments as follows:
 - i. A retainer fee per calendar month as specified in the schedule of fee made part of this Schedule and its revision from time to time. This retainer fee shall be considered as payment in full for:
 - (A) Being available, on 7 (seven) days' notice, for all hearings, Site visits, and other meetings of the board.
 - (B) Being conversant with all project developments and maintaining relevant files.
 - (C) All offices and overhead expenses such as secretarial services, photocopying and office supplies (but not include telephone calls, faxes and telexes) incurred in connection with the duties as a board member.
 - ii. A daily fee as specified in the schedule of fee in respect of fee for site visit & meeting, fee for meeting/ hearing not at site and extra charges for days (maximum. of 2 (two) days for travel on each occasion) other than hearing / meeting days.
 - iii. Expenses, in addition to the above, all reasonable and necessary travel expenses (including economy class air fare, subsistence, and other direct travel expenses). Receipts for all expenses in excess of [Rs. 2000/- (Rupees two thousand only)] shall be provided.
 - iv. Reimbursement of any taxes that may be levied on payments made to the board member pursuant to this paragraph 7.
 - (a) The retainer fee and other fees shall remain fixed for the period of each board member's term until revised by Authority.
 - (b) Phasing out of monthly retainer fee, beginning with the next month after the completion certificate (or, if there are more than one, the one issued last) has been issued, the board members shall receive only one-third of the monthly retainer fee till next one year. Beginning with the next month after the board has terminated its regular activities pursuant to paragraph 4(a) above, the board members shall no longer receive any monthly retainer fee.

- (c) Payments to the board members shall be shared equally by the Authority and the Concessionaire. The concerned Project Implementation Unit (PIU) of Authority shall pay members' invoices within 30 (thirty) calendar days after receipt of such invoices and shall invoice the Concessionaire for one-half of the amounts of such invoices. The Concessionaire shall pay such invoices within 30 (thirty) days' time period after receipt of such invoices.

8. Board Site visits:

- (a) The board shall visit the Site and meet the representatives of the Authority, the Concessionaire and the Independent Expert at regular intervals, at times of critical construction events, at the written request of either Party, and in any case not less than 6 (six) times in any period of 12 (twelve) months. The timing of Site visits shall be as agreed among the Authority, the Concessionaire and the board, but failing agreement shall be fixed by the board.
- (b) Site visits shall include an informal discussion of the status of the construction of the works. Site visits shall be attended by personnel from the Authority, the Concessionaire and the Independent Expert.
- (c) At the conclusion of each Site visit, the board shall prepare a report covering its activities during the visit and shall send copies to the Parties and to the Independent Expert.

9. Procedure for Dispute Referral to the Board:

- (a) If either Party objects to any action or inaction of the other Party or the Independent Expert, the objecting Party may file a written notice of Dispute to the other Party with a copy to the Independent Expert stating that it is given pursuant to the Agreement and state clearly and in details the basis of the Dispute.
- (b) The Party receiving the notice of Dispute will consider it and respond to it in writing within 14 (fourteen) days after receipt.
- (c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within 10 (ten) days after receiving the response and call upon Independent Expert to mediate and assist the Parties in arriving an amicable settlement thereof. Both Parties are encouraged to pursue the matter further to attempt to settle the Dispute.
- (d) If the Independent Expert receiving the notice of Dispute fails to provide a written response within 14 (fourteen) days after receipt of such notice or failing mediation by Independent Expert, either Party may require such Dispute to be referred to the board, either Party may refer the Dispute to the board by written request to the board. The request for decision shall state clearly and in full detail the specific issues of the Dispute (s) to be considered by board and shall be addressed to the chairman of the board, with copies to the other board members, the other Party and the Independent Expert, and it shall state that it is made pursuant to this Agreement.
- (e) When a Dispute is referred to the board, and the board is satisfied that the Dispute requires the board's assistance, the board decide when to conduct a hearing on the Dispute. The board may request that written documentation and arguments from both Parties be submitted to each board member before the hearing begins. The Parties shall submit insofar as possible agreed statements of the relevant facts.
- (f) During the hearing, the Concessionaire, the Authority, and the Independent Expert shall each have ample opportunity to be heard and to offer evidence. The board's decision for resolution of the

Dispute will be given in writing to the Authority, the Concessionaire and the Independent Expert as soon as possible, and in any event not more than 56 (fifty six) days or any mutually extended period between the Authority and the Concessionaire. The time period of 56 (fifty six) days of issuance of DRB decision will reckon/start from the day of first hearing that begins after submission of complete pleadings (including supporting documents, if any) by the parties.

10. Conduct of Hearings:
 - (a) Normally hearings will be conducted at the Site, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the board. Private session of the board may be held at any cost-effective location convenient to the board. Video recordings of all hearings shall invariably be made.
 - (b) The Authority, the Independent Expert and the Concessionaire shall be given opportunity to have representatives at all hearings. Parties should restrain to bring any Advocate/Law Firm during DRB hearings.
 - (c) During the hearings, no board member shall express any opinion concerning the merit of the respective arguments of the parties.
 - (d) After the hearings are concluded, the board shall meet privately to formulate its decision. The private meeting (s) of the board shall not exceed 3 (three) sittings. All board deliberations shall be conducted in private, with all members' individual views kept strictly confidential. The board's decisions, together with an explanation of its reasoning shall be submitted in writing to both Parties and to the Independent Expert. The decision shall be based on the pertinent contract provisions, applicable laws and regulations and the facts and circumstances involved in the dispute.
 - (c) The Board shall make every effort to reach a unanimous decision. If this proves impossible the majority shall decide and the dissenting member may prepare a written minority report together with an explanation of its reasoning for submission to both Parties and to the Independent Expert.
11. In all procedural matters, including the furnishing of written documents and arguments relating to Disputes, Site visits and conduct of hearings, the board shall have full and the final authority. If a unanimous decision on any such matter proves impossible, the majority shall prevail.
12. After having been selected and where necessary approved each board member shall sign two copies of the following declaration and make one copy available each to the Authority and to the Concessionaire

"BOARD MEMBER'S DECLARATION OF ACCEPTANCE"

WHEREAS

- (a) A Concession Agreement (the Concession) for the _____ Project [fill in the name of Project] has been signed on _____ [fill in date) between _____ [name of Authority) and _____ [name of Concessionaire] (the Concessionaire).;
- (b) The provisions of Agreement and Dispute Resolution Board's rules and procedure provided for establishment and operation of Dispute Resolution Board (DRB).
- (c) The undersigned has been selected to serve as a board member on said board;

NOW THEREFORE, the undersigned board member hereby declares as follows:

- 1. I accept the selection as a board member and agree to serve on the board and to be bound by the provisions of Concession Agreement and rules and procedure provided for establishment and operation of Dispute Resolution Board (DRB).
- 2. With respect to paragraph 1 of Dispute Resolution Board's rules and procedure. said Annex A, I declare:
 - (a) that I have no financial interest of the kind referred to in subparagraph (a):
 - (b) that I have had no previous employment nor financial ties of the kind referred to in subparagraph (b); and
 - (c) that I have made to both Parties any disclosures that may be required by sub- paragraphs (b) and (c).
- 3. I declare that I have ____ no. of Arbitrations (list enclosed) and ____ no of DRBs (list enclosed) in progress and that I will give sufficient time for the current assignment.

BOARD MEMBER

_____ (insert name of board member)

Date:

Schedule of expenses and fees payable to the member (s) of Dispute Resolution Board

The fee and other expenses payable to the members of DRB shall be as under: -

S. No.	PARTICULAR	AMOUNT PAYABLE
1	Retainer-ship fee, secretarial assistance and incidental charges (telephone, fax, postage etc.)	[Rs. 50, 000/- per month]
2 (i)	Fee for site visit or meetings at site	[Rs. 25, 000/- per day]
(ii)	Fee for meetings/hearings not at site	[Rs. 10,000 /- per day]
3	Traveling expenses	Economy class by air, AC first class by train and AC taxi by road
4	Lodging & Boarding	[Rs 15,000/- per day (Metro Cities); or Rs. 10,000 /- per day (in other cities); or Rs. 5,000/- per day (own arrangement)]
5	Extra charges for days other than hearing/meeting days (travel days maximum of 2 (two) days on each occasion)	[Rs.5,000/-]
6	Local conveyance	[Rs.2,000/-]

Notes:

- i. Lodging, boarding and travelling expenses will be allowed only for those members who are residing 100 (one hundred) kms away from the place of meeting.
- ii. Delhi, Mumbai, Chennai, Kolkata, Bangalore, and Hyderabad shall be considered as metro cities.
- iii. The above schedule of fee and expenses shall be applicable on or after the date of issue of this circular.
- iv. The expenses are to be shared equally by the parties i.e. Authority and Concessionaire.

**Appendix-I: Arbitration Rules of the Society for Affordable Redressal of Disputes
(SAROD) (SAROD'ARBITRATION RULES) Under Clause 43.3.1
ARBITRATION RULES OF SAROD**

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PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between NHAI/Authority and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Redressal of Disputes (SAROD) has been formed as a Society under Societies Registration Act, 1860 with registration No.S/RS/SW/1044/2013. It has been formed by National Highways Authority of India (NHAI) and National Highways Builders Federation (NHBF) with founding members as mentioned in the Memorandum of Association of SAROD.

SAROD ARBITRATION RULES

Rule 1 - Scope of Application

- 1.1. Where any agreement, submission or reference provides for arbitration at the Society for Affordable Redressal of Disputes ("SAROD"), or under the Arbitration Rules of the SAROD and where the case is a domestic arbitration shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD where the amendments take effect before the commencement of the Arbitration. Parties may adopt following clause for inclusion in the contract: -

"Any dispute or difference whatsoever arising between the Parties and of or relating to the construction, interpretation, application, meaning, scope, operation or effect of this contract or the validity or the breach thereof, shall be settled by arbitration in accordance with the rules of arbitration of the "SAROD" and the award made in pursuance thereof shall be final and binding on the Parties subject to Provisions of The Arbitration and Conciliation Act, 1996-.

- 1.2. These rules shall come into effect from the day of approval by Governing Body of SAROD.

Rule 2 – Definitions

- 2.1 These rules shall be referred to as "the SAROD Arbitration Rules".

- 2.2 In these rules:

“Act” means the ‘Arbitration and Conciliation Act 1996’ of India and any statutory modifications or re-enactments thereof.

“SAROD” means the Society for Affordable Redressal of Disputes.

“SAROD Arbitrator Panel” means the list of persons admitted to serve as arbitrators under these rules.

“NHAI” means National Highways Authority of India.

“NHBF” means the National Highways Builders Federation.

“GOVERNING BODY” means Governing Body of SAROD as defined in Article 9 of Memorandum of Association.

“PRESIDENT” means President of Governing Body of SAROD as defined in Rules & Regulation of SAROD.

“**SECRETARY**” means Secretary of SAROD as defined in Rules & Regulation of SAROD.

“**TRIBUNAL**” means either a Sole Arbitrator or all arbitrators when more than one is appointed.

“**PARTY**” means a party to an arbitration agreement,

“**E-Arbitration**” means submission of pleadings, defence statement etc by E-mail and holding of proceedings via video conferencing.

Rule 3 - Notice, Calculation of periods of Time

- 3.1 For the purposes of these rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication, or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address, or site of a party.
- 3.4 The transmission is deemed to have been received on the day of transmission

Rule 4 - Commencement of Arbitration

- 4.1 Any Party wishing to commence an arbitration under these rules ("the Claimant") shall file with the Secretary and serve on the other Party ("the Respondent"), a written notice of Arbitration ("the Notice of Arbitration") which shall include the following:
 - a. a request that the Dispute be referred to arbitration;
 - b. the names, addresses, telephone numbers, fax numbers and email addresses of the Parties to the Dispute;
 - c. a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
 - d. a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
 - e. a brief statement describing the nature and circumstances of the dispute;
 - f. the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice or Arbitration is filed;
 - g. a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
 - h. the name of the Claimant's nominated arbitrator.
- 4.2 A filing fee of Rs. 10,000/- (Rupees ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of Arbitration.

- 4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these rules.

Rule 5 - Response by Respondent

- 5.1 Within 14 (fourteen) days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including
- a. A confirmation or denial of all or part of the claims;
 - b. Brief statement of the nature and circumstances of any envisaged counterclaims;
 - c. A comment in response to any proposals contained in the Notice of Arbitration; and
 - d. The name of the respondent's nominated arbitrator.
- 5.2 A filing fee of Rs. 10,000/- (Rupees ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Response.
- 5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 (fifteen) days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

Rule 6. Filing of Case Statements

- 6.1 Within 30 (thirty) days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case along with all documents to be relied upon by the Claimant.
- 6.2 Within 30 (thirty) days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defence and counterclaim (if any) along with all documents to be relied upon by the Respondent.
- 6.3 Within 30 (thirty) days after the service of the statement of Respondent's defence, if the Claimant intends to challenge anything in the statement of Respondent's defence and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defence to counterclaim.
- 6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.
- 6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary may upon the written application of a party, extend the time limits provided under this Rule.
- 6.6 The party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

Role 7 - Contents of Case Statements

- 7.1 The case statements must contain the detailed particulars of the party's claim, defence or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the Party's position.

- 7.2 It must:
- a) Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
 - b) State fully its reasons for denying any allegation or statement of the other Party.
 - c) State fully its own version of events if a Party intends to put forward a version of events different from that given by the other party.

7.3 A case statement must be signed by or on behalf of the Party making it.

Rule 8 - Default in Filing and Serving Case Statements

- 8.1 If the Claimant fails within the time specified under these rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.
- 8.2 If the Respondent fails to submit a Statement of Respondent's Defence, the Tribunal may nevertheless proceed with the arbitration and make the award.

Rule 9 - Further Written Statements

- 9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the Parties and shall fix the periods of time for giving, filing and serving such statements.
- 9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

Rule 10 - SAROD to Provide Assistance

- 10.1 At the request of the Tribunal or either Party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.
- 10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

Rule 11 - Appointment of Tribunal

- 11.1 The Disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 (Three) Crores or less.
- 11.2 In all cases of Disputes claimed for more than Rs. 3 (Three) Crores, the Tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the parties. The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.
- 11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 (twenty one) days from the date the Respondent's Statement of Defence and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots.

- 11.4 An Arbitrator/Presiding Arbitrator to be appointed under these rules shall be a person on the SAROD Arbitration Panel as at the date of the appointment.
- 11.5 In the event of any Party failing to appoint Arbitrator within 30 (thirty) days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

Rule 12 - Multiparty appointment of the Tribunal

- 12.1 If there are more than 2 (two) Parties in the arbitration, the Parties shall agree on the procedure for appointing the Tribunal within 21 (twenty one) days of the receipt of the Notice of Arbitration.
- 12.2 If the Parties are unable to do so, upon the lapse of the 21 (twenty one) day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

Rule 13 - Appointment of Substitute Arbitrator

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

Rule 14 - Independence and Impartiality of the Tribunal

- 14.1 The Tribunal conducting arbitration under these rules shall be and remain at all times independent and impartial, and shall not act as advocate for any Party.
- 14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- 14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

Rule 15 - Code of Ethics for Arbitrators

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

Appointment

- 15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.
- 15.2 In this code, the masculine includes the feminine.

Disclosure

- 15.3 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances,

- 15.4 A prospective arbitrator shall disclose to the Secretary and any Party who approaches him for a possible appointment:
- a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any Party to the Dispute, or any representative of a Party, or any person known to be a potentially important witness in the arbitration;
 - b) The extent of any prior knowledge he may have of the Dispute.

Bias

- 15.5 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the Parties or where he is prejudiced in relation to the subject matter of the Dispute. Dependence arises from relationships between an arbitrator and one of the Parties, or with someone closely connected with one of the Parties.
- 15.6 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a Party, or any representative of a Party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

Communications

- 15.7 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the Parties and the expected time period required for the arbitration.
- 15.8 No arbitrator shall confer with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.
- 15.9 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

Trees

- 15.10 In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD, and he shall make no unilateral arrangements with any of the Parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD.

Conduct

- 15.11 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

Confidentiality

- 15.12 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the

course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

15.13 This Code is not intended to provide grounds for the setting aside of any award.

Rule 16 - Challenge of Arbitrators

- 16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he or she has committed any misconduct,
- 16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the Parties,
- 16.3 A Party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.
- 16.4 A Party who intends to challenge an arbitrator shall file with the Secretary and serve on the other Party or all other Parties, whichever is applicable, a Notice of Challenge.
- 16.5 The Notice of challenge must be filed and served within 14 (fourteen) days from the appointment of the arbitrator or within 14 (fourteen) days after the circumstances mentioned in Rule 15.1 became known to that Party.
- 16.6 The Notice of Challenge must state the reasons for the challenge.
- 16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.
- 16.8 When an arbitrator has been challenged by one Party, the other Party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

Rule 17 - Decision on Challenge

- 17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.
- 17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

Rule 18 - Removal of the Tribunal

- 18.1 The Governing Body may on the application of a party remove an arbitrator:
- a) Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
 - b) Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
 - c) Who has continuously absented from attending the proceedings for more than 3 (three) sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD.

- 18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.
- 18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.
- 18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

Rule 19 - Re-hearing in the Event of Replacement of the Tribunal

If the sole or presiding arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

Rule 20 - Jurisdiction of the Tribunal

- 20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null, and void shall not entail ipso jure the invalidity of the arbitration agreement.
- 20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. In either case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated or participated in the appointment of an arbitrator.
- 20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.
- 20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration not with sanding the failure or refusal of any Party to comply with these rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that Party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

Rule 21 - Fees of SAROD and Arbitral Tribunal

Fee Schedule Registration Fee (Non - Refundable): Rs, 10,000/- (Rupees ten thousand) or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

Rule 22- Transmission of File to the Tribunal

- 22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.

- 22.2 The Tribunal shall as soon as practicable, after consultation with the Parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

Rule 23 - Judicial Seat of Arbitration

- 23.1 Unless otherwise agreed by the Parties, the judicial seat of arbitration shall be New Delhi.
- 23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the Parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

Rule 24 - Language of Arbitration

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

Rule 25 - Conduct of the Proceedings

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10.AM to 5PM with a recess of one hour.

Rule 26 - Communication between Parties and the Tribunal

- 26.1 Where the Tribunal sends any written communication to one Party, it shall send a copy to the other Party or Parties as the case may be.
- 26.2 Where a Party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other Party or all other Parties, whichever is applicable, and show to the Tribunal that the same has been so copied.
- 26.3 The address of the Parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either Party may at any time notify the Tribunal and the other party or Parties, whichever is applicable.
- 26.4 A copy of correspondence between the Parties and the Tribunal shall be sent to the Secretary.

Rule 27 - Party Representatives

Any Party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other Party or Parties. In case one Party is represented by non-legal person, another Party will also be represented by non-legal person so as to maintain natural justice.

Rule 28 – Hearings

- 28.1 Unless the Parties have agreed on documents-only arbitration, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.
- 28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete timetable pertaining to all the activities of the Arbitration e. g. submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents,

visit/inspection of site if any. The Tribunal shall stick to the timetable with without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the Tribunal.

- 28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.
- 28.4 In the event that a Party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the Party present has submitted evidence to prove its case.
- 28.5 All meetings and hearing shall be in private unless the Parties agree otherwise.

Rule 29 - Documents Only Arbitration

- 29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.
- 29.2.1 Where the Parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the Parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the Parties or either of them intends to apply for an oral hearing.
- 29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of Tribunal shall be final and binding upon the Parties.

Rule 30 – Witnesses

- 30.1 The Tribunal may require each Party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.
- 30.2 No Party shall call any expert witness without the leave of the Tribunal.
- 30.3 Any witness who gives evidence may be questioned by each Party or its representative subject to any rulings made by the Tribunal,
- 30.4 A witness may be required by the Tribunal to testify under oath or affirmation.
- 30.5 Subject to such order or direction which the Tribunal may make, the testimony or witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,
- 30.6 Any Party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether
- 30.7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

Rule 31 - Experts Appointed by the Tribunal

- 31.1 Unless otherwise agreed by the Parties, the Tribunal may:

- a) appoint one or more experts to report the Tribunal on specific issues;
 - b) require a Party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.
- 31.2 Unless otherwise agreed by the Parties, if a Party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the Parties may question him and present expert witnesses in order to testify on the points at issue.
- 31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the Parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

Rule 32 - Rules applicable to substance of dispute-

(1) Where the place of arbitration is situated in India,

- 32.1 In an arbitration, the arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

Rule 33- Closure of Hearing

- 33.1 The Tribunal may inquire of the Parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.
- 33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

Rule 34 - Additional Powers of the Tribunal

- 34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to: -
- a) Allow any Party, upon such terms (as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
 - b) Extend or abbreviate any time limits provided by these rules;
 - c) Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
 - d) Order the Parties to make any property or thing available for inspection
 - e) Order any Parties to produce to the Tribunal, and to the other Parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power which the Tribunal determines to be relevant;
 - f) Make orders or give directions to any Party for interrogatories;
 - g) Make orders or give directions to any Party for an interim injunction or any other interim measure;
 - h) Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these rules.
- 34.2 If the Parties so agree, the Tribunal shall also have the power to add other Parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

Rule 35 - Deposits to Costs and Expenses

- 35.1 The Tribunal's fees and SAROD administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.
- 35.2 The Claimant shall deposit with the SAROD half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD one half of the fees payable at the

time of filing the Statement of Respondent's Defence and Counterclaim (if any). The balance of fees payable shall be paid 60 (sixty) days before the date of the final hearing or on such other date that the Secretary may direct.

- 35.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of.
- 35.4 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the Parties.
- 35.5 All deposit(s) shall be made to and held by the SAROD. Any interest which may accrue on such deposit(s) shall be retained by the SAROD.
- 35.6 If a Party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the noncomplying party, although it may proceed to determine claims or counterclaims by any Party who has complied with orders.
- 35.7 The Parties shall remain jointly and severally liable to the SAROD for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

Rule 36 - Decision Making by the Tribunal

- 36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.
- 36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting Arbitrator alone as if acting as a sole arbitrator.
- 36.3 However, in the case of a three-member Tribunal the presiding arbitrator may, after consulting the other arbitrators, make procedural rulings alone.

Rule 37 - The Award

- 37.1 It will be mandatory for the Parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.
- 37.2 The Tribunal shall assemble at the assigned place in SAROD and shall exercise utmost secrecy and confidentiality in writing the award.
- 37.3 Unless the Secretary extends the time or the Parties agree otherwise, the Tribunal shall make its Award in writing within 30 (thirty) days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the arbitrator or arbitrators.
- 37.4 The Tribunal may make interim awards or separate awards on different issues at different times.

- 37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.
- 37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the Parties and for filing with the Secretary.
- 37.7 The Secretary shall release the award to the Parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD.
- 37.8 By agreeing to have arbitration under these Rules, the Parties undertake to carry out the award without delay.
- 37.9 Stamp duty on award shall be payable by the Party in whose favor the award has been pronounced.

Rule 38 - Additional Award

- 38.1 Within 30 (thirty) days after the receipt of the award, either Party, with notice to the Secretary and the other Party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- 38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the Parties within 7 (seven) days of the receipt of the request, that it will make and additional award, and complete the additional award within 30 (thirty) days after the receipt of the request.

Rule 39 - Correction of Awards

- 39.1 Within 30 (thirty) days of receiving an Award, unless another period of time has been agreed upon by the Parties, a Party may by notice to the Secretary and the other Party request the Tribunal to correct in the Award, any errors in computation, any clerical or topographical errors or any errors of similar nature.
- 39.2 If the Tribunal considers the request to be justified, it shall make the correction(s) within 30 (thirty) days of receiving the request. Any correction shall be notified in writing to the Parties and shall become part of the Award.
- 39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own initiative within 30 (thirty) days of the date of the Award.

Rule 40 – Settlement

- 40.1 If, the Parties arrived at amicable settlement of the dispute during the currency proceedings, the Parties shall file memo of settlement before the Tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both Parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award.
- 40.2 The Parties shall:
- a. Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated:
 - b. Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD and the Tribunal.

- 40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless Party raises justifiable grounds for objection.
- 40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the Parties through the Secretary.

Rule 41 - Interest

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of Sate Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

Rule 42 – Costs

- 42.1.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which Party shall bear them and in what proportion they shall be borne.
- 42.1.2 In this Rule, "costs of the arbitration" shall include:
- a. The fees and expenses of the Tribunal and the administration fees of the SAROD as determined by the Secretary in accordance with the Schedule of Fees;
 - b. The costs of Tribunal appointed experts or of other assistance rendered: and
 - c. All expenses which are reasonably incurred by the SAROD in connection with the arbitration.
- 42.2 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of Party appointed experts etc.) of one Party shall be paid by the other party.

Rule 43 - Waiver

A Party which is aware of non-compliance with these rules and yet proceeds with the arbitration without promptly stating its objection in writing to such non-compliance shall be deemed to have waived its right to object.

Rule 44 - Exclusion of Liability

- 44.1 The Tribunal, the President, the SAROD and any of its officers, employees or agents shall not be liable to any Party for any act or omission in connection with any arbitration conducted under these rules,
- 44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no Party shall seek to make any arbitrator or the President or the SAROD and any of its officers a witness in any legal proceedings arising out of the arbitration.

Rule 45 - General Provisions

- 45.1 In all matters not expressly provided for in these rules, the President, the Secretary and the Tribunal shall act in the spirit of these rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.
- 45.2 The Secretary may from time to time issue practice notes on the implementation of these rules.

Rule 46 - Amendment to Rules

These Rules may from time to time be amended by the Governing Body of SAROD.

SCHEDULE-X - OPERATIONS AND MAINTENANCE OF RAILWAY SIDING

Obligations of the Concessionaire

The Concessionaire at its own cost promptly and diligently operate, maintain, and ensure safety of the Siding from the Take off Point of the serving station to the Rail Terminal inside the MMLP.

The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved Detailed Project Report (DPR) by the Indian Railways Department. While carrying out the operations and maintenance of the Siding, the Concessionaire acknowledges and accepts that it is holding, operating and maintaining the Siding in trust for eventual transfer to the Authority, on termination of the agreement and therefore, will not do any act as a result of which the value and services of the Siding is diminished.

The Concessionaire shall, at all times during the Concession Period, post commissioning of the Siding, at its own risk, cost, charges and expenses and pay for maintenance repairs, railway inspection, renewals and replacement of various type of assets and equipment in relation to the Siding or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or Termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commissioning of the Siding. While carrying out the repair, maintenance and replacement of the Siding, the Concessionaire shall carry out the work in accordance with the recommendations and guidelines of Indian Railways and the relevant latest Indian Standards.

The Concessionaire shall provide access to the Siding for inspection to designated officials of Indian Railways as per the applicable circular on “Private Sidings of Ministry of Railways”, including amendments if any, and will adhere to inspection schedule as recommended in “Compendium of Schedule of Inspections and Check Lists for Inspections” issued by Indian Railways Institute of Civil Engineering, including amendments, if any, and all cost pertaining to inspection, operations and maintenance of the Siding has to be borne by the Concessionaire.

DEFINITIONS AND INTERPRETATION

“**Rail Terminal**” shall mean a location in the MMLP with siding and facilities to handle cargo trains, including inland container depots, port rail terminals and railway goods sheds.

“**Siding**” includes the railway track connecting the MMLP with the Railway system, as hereinafter agreed to be constructed by the Authority & approved by the Railway Administration and all branches and extensions thereof which may hereafter be constructed by the Concessionaire and all sleepers, ballast, embankments, bridges, tunnels, signals interlocking and tele-communication equipment gates, buildings and other constructions, erections, works and movable property constructed / erected / made/ provided or used in connection with the said track and also all land whereon or on part where of the said track and connected things aforesaid are constructed / erected / made / provided or used including land -acquired for the purpose thereof as hereinafter provided and belonging to the Railway Administration or the Authority and used by the Concessionaire.

The siding shall cover only that portion of track network on which Railway rolling stock will ply.

“**Take off Point**” means the starting point of the railway connectivity connection drawn from the serving station of existing railway line/network to provide rail access to the Rail Terminal inside MMLP for operation of cargo trains;

Appendix-II:

List of Standards

EXCAVATION

EARTHWORK, EXCAVATION AND SUB BASE

Applicable Codes

The following Indian Standard Codes, unless otherwise specified herein, shall be applicable. In all cases, the latest editions including all applicable official amendments and revisions shall be referred to.

- a) IS: 783 - Code of practice for laying of concrete pipes.
- b) IS: 3764 - Excavation work - Code of Safety .
- c) IS: 2720 - Methods of test for soils:
 - (Part-1) - Preparation of dry soil samples for various tests.
 - (Part-2) - Determination of Water Content.
 - (Part-4) - Grain size analysis.
 - (Part-5) - Determination of liquid and plastic limit.
 - (Part-7) - Determination of water content - dry density relation using light compaction.
 - (Part-8) - Determination of water content - dry density relation using heavy compaction.
 - (Part-9) - Determination of dry density – moisture content by constant weight of soil method.
 - (Part-14) - Determination of density index (relative density) of cohesionless soils.
 - (Part-22) - Determination of organic matter.
 - (Part-26) - Determination of pH Value.
 - (Part-27) - Determination of total soluble sulphates.
 - (Part-28) - Determination of dry density of soils in place, by the sand replacement method.
 - (Part-33) - Determination of the density in place by the ring and water replacement method.
 - (Part-34) - Determination of density of soil in place by rubber balloon method.
 - (Part-38) - Compaction control tests (Hilf Method).
- d) IS: 1498 - Classification and identification of soils for general engineering purposes)
- IS: 4081 - Safety code for blasting and related drilling operation.

Masonry

IS. No.	Title
IS 269	Specification for Ordinary Portland cement (33 Grade)

IS 383	Specification for coarse and fine aggregate
IS 456	Plain and reinforced concrete - Code of practice
IS 712	Specification for building limes.
IS 1077	Common burnt clay building bricks.
IS 1200 (Part 3)	Method of measurements of brick works
IS 2212	Code of practice for brick work. (1st Revision)
IS 2222	Specification for burnt clay perforated building bricks.
IS 2645	Specification for integral water proofing compounds for cement mortar and concrete
IS 2849	Specification for non-load bearing gypsum partition blocks, (Solid and hollow types)
IS 3346:1980	Method of the determination of thermal conductivity of thermal insulation materials
IS 3495	Method of test for burnt clay building bricks.
IS 3812	Specification for fly ash for use as pozzolana and admixture.
IS 4082:1977	Stacking & storage of construction materials and components at site – Recommendations
IS 4139	Specification of calcium silicate bricks
IS 4885	Specification for sewer brick
IS 5454	Methods of sampling of clay building bricks.
IS 6441 (Part-1): 1972	Methods for test for Autoclaved Cellular concrete Products: Determination of unit weight or bulk density and moisture Content
IS 6441 (Part-2): 1972	Methods for test for Autoclaved Cellular concrete Products: Determination of dry shrinkage
IS 6441 (Part-5): 1972	Methods for test for Autoclaved Cellular concrete Products: Determination of compressive strength
IS 9103	Specification for concrete admixtures
IS 12894	Pulverized fuel ash lime bricks specification,
IS 13757	Specification of burnt clay fly ash bricks.

Mortar

I.S. No.	Title
IS 269	Specification for 33 grade ordinary Portland cement
IS 383	Specification for coarse and fine aggregate from natural source for concrete.
IS 455	Specification for Portland slag cement.
IS 460 (Part I)	Specification for test sieves: wire cloth test sieves.
IS 650	Specification for standard sand for testing of cement
IS 1269	Specification for 53 grade ordinary Portland cement
IS 1344	Specification for calcined clay Pozzolana.
IS 1489	Specification for Portland pozzolana cement
IS 1542	Specification for sand for plaster
IS 1727	Methods of Test for Pozzolan materials
IS 2116	Specification for sand for masonry mortar.

IS 2250	Code of practice for preparation and use of masonry Mortar.
IS 2386 (Pt-I)	Method of test for aggregate for concrete (Particle size and shape)
IS 2386 (Pt-II)	-Do- Estimation of deleterious materials and organic impurities.
IS 2386 (Pt-III)	-Do- Specific gravity, density, voids, absorption and bulking.
IS 3025	Method of sampling and test for water
IS 3406	Specification for masonry cement.
IS 3812 (Part I)	Specification for fly ash for use as pozzolana in cement mortar and concrete
IS 3812 (Part II)	Specification for fly ash for use as admixture in cement mortar and concrete
IS 4031 (Part I) to (Part XIII)	Method of Physical test for hydraulic cement
IS 4032	Method of chemical analysis of Hydraulic cement.
IS 8041	Rapid hardening Portland cement.
IS 8042	Specification for white cement
IS 8043	Hydrophobic Portland cement
IS 8112	Specification for 43 grade ordinary Portland cement
IS 11652	Woven HDPE sacks for packing cement
IS 11653	Woven polypropylene sacks for packing cement
IS 12174	Jute synthetic union bags for packing cement

PLAIN & REINFORCED CONCRETE

Applicable Codes

The following Indian Standard Codes, unless otherwise specified herein, shall be applicable. In all cases, the latest editions including all applicable official amendments and revisions shall be referred to.

Materials

- 1) IS.269 Specification for 33 grade ordinary Portland cement.
- 2) IS.455 Specification for Portland slag cement.
- 3) IS.1489 Specification for Portland-pozzolana cement (Part 1 & 2).
- 4) IS: 8112 Specification for 43 grade ordinary Portland cement.
- 5) IS: 12330 Specification for sulphate resisting Portland cement.
- 6) IS: 383 Specification for coarse and fine aggregates from natural sources for concrete.
- 7) IS: 432 Specification for mild steel and medium (tensile steel bars and hard-drawn steel) wires for concrete reinforcement. (Part 1 & 2)
- 8) IS: 786 Specification for high strength deformed steel bars and wires for concrete reinforcement.
- 9) IS: 1566 Specification for hard-drawn steel wire fabric for concrete reinforcement.
- 10) IS: 9103 Specification for admixtures for concrete.
- 11) IS: 2645 Specification for integral cement water- proofing compounds.
- 12) IS: 4990 Specification for plywood for concrete shuttering work.
- 13) IS: 1786 2008 High strength deformed steel bars and wires for concrete reinforcement

Material Testing

- 1) IS.4031 Methods of physical tests for hydraulic cement (Parts 1 to 15)
- 2) IS: 4032 Method for chemical analysis of hydraulic cement.
- 3) IS: 650 Specification for standard sand for testing of cement.
- 4) IS: 2430 Methods for sampling of aggregates for concrete.
- 5) IS.2386 Methods of test for aggregates for concrete (Parts 1 to 8)
- 6) IS: 3025 Methods of sampling and test (physical and chemical) for water used in industry.
- 7) IS: 6925 Methods of test for determination of water soluble chlorides in concrete admixtures.

Material Storage

- 1) IS: 4082 Recommendations on stacking and storing of construction materials at site.

Concrete Mix Design

- 1) IS: 10262 Recommended guidelines for concrete mix design.
- 2) SP: 23 (S&T) Handbook on Concrete Mixes

Concrete Testing

- 1) IS.1199 Method of sampling and analysis of concrete.
- 2) IS: 516 Method of test for strength of concrete.
- 3) IS: 9013 Method of making, curing and determining compressive strength of accelerated cured concrete test specimens.
- 4) IS: 8142 Method of test for determining setting time of concrete by penetration resistance.
- 5) IS: 9284 Method of test for abrasion resistance of concrete.
- 6) IS: 2770 Methods of testing bond in reinforced concrete.

Equipments

- 1) IS: 1791 Specification for batch type concrete mixers.
- 2) IS: 2438 Specification for roller pan mixer.
- 3) IS: 4925 Specification for concrete batching and mixing plant.
- 4) IS: 5892 Specification for concrete transit mixer and agitator.
- 5) IS: 7242 Specification for concrete spreaders.
- 6) IS: 2505 General Requirements for concrete vibrators: Immersion type.
- 7) IS: 2506 General Requirements for screed board concrete vibrators.
- 8) IS: 2514 Specification for concrete vibrating tables.
- 9) IS: 3366 Specification for pan vibrators.
- 10) IS: 4656 Specification for form vibrators for concrete.
- 11) IS: 11993 Code of practice for use of screed board concrete vibrators.
- 12) IS: 7251 Specification for concrete finishers.
- 13) IS: 2722 Specification for portable swing weigh batchers for concrete (single and double bucket type).
- 14) IS: 2750 Specification for steel scaffoldings.

Codes of Practice

- 1) IS: 456 Code of practice for plain and reinforced concrete.
- 2) IS: 457 Code of practice for general construction of plain and reinforced concrete for dams and other Massive structures.
- 3) IS: 3370 Code of practice for concrete structures for storage of liquids (Parts 1 to 4)
- 4) IS: 3935 Code of practice for composite construction.
- 5) IS: 2204 Code of practice for construction of reinforced concrete shell roof.
- 6) IS: 2210 Criteria for the design of reinforced concrete shell structures and folded plates.
- 7) IS: 2502 Code of practice for bending and fixing of bars for concrete reinforcement.
- 8) IS: 5525 Recommendation for detailing of reinforcement in reinforced concrete works.
- 9) IS: 2751 Code of practice for welding of mild steel plain and deformed bars used for Reinforced concrete construction.
- 10) IS: 9417 Specification for welding cold worked bars for reinforced concrete construction.
- 11) IS: 3558 Code of practice for use of immersion vibrators for consolidating concrete.
- 12) IS: 3414 Code of practice for design and installation of joints in buildings.
- 13) IS: 4326 Code of practice for earthquake resistant design and construction of building.
- 14) IS: 4014 Code of practice for steel tubular scaffolding (Parts 1 & 2)
- 15) IS: 2571 Code of practice for laying in situ cement concrete flooring.
- 16) IS: 7861 Code of practice for extreme weather concreting: Part 1 Recommended practice for hot weather concreting.

- 17) IS: 1893 Criteria for earthquake resistant structures subjected to seismic forces.
 - 18) IS: 13920 Code of Practice for Ductile Detailing of Reinforced Concrete Structures subjected to Seismic forces.
 - 19) IS: 13827 Improving Earthquake Resistance of Earthen Buildings-Guidelines.
 - 20) IS: 13828 Improving Earthquake Resistance of Low Strength Masonry Buildings-Guidelines
- Construction Safety
- 1) IS.3696 Safety code for scaffolds and ladders. (Parts 1 & 2)
 - 2) IS: 7969 Safety code for handling and storage of building materials.
 - 3) IS: 8989 Safety code for erection of concrete framed structures.

Measurement

- 1) IS 1200 Method of measurement of building and Engineer-in-charge Works
- 2) IS 3385 Code of practice for measurement of Civil Engineer-in-charge Works

MASONRY, PLASTERING AND PAINTING

Applicable Codes and Specifications

The following Indian Standard Codes, unless otherwise specified herein, shall be applicable. In all cases, the latest editions including all applicable official amendments and revisions shall be referred to.

- IS: 110 - Ready mixed paint, brushing, grey filler, for enamels for use over primers
- IS: 269 - Specification for 33 grade ordinary Portland cement
- IS: 280 - Specification for mild steel wire for general Engineering purposes
- IS: 287 - Recommendations for maximum permissible moisture content of timber used for different purposes
- IS: 304 - High Tensile Brass Ingots and Castings.
- IS: 337 - Varnish, finishing interior
- IS: 348 - French polish
- IS: 383 - Specification for coarse and fine aggregates from natural sources for concrete
- IS: 412 - Expanded metal steel sheets for general purposes
- IS: 419 - Specification for putty for use on window frames
- IS: 428 - Distemper, oil emulsion, colour as required
- IS: 459 - Specification for unreinforced corrugated and semi-corrugated asbestos cement sheets
- IS: 702 - Specification for industrial bitumen
- IS: 710 - Specification for marine plywood
- IS: 712 - Specification for building limes
- IS: 730 - Specification for hook bolts for corrugated sheet roofing
- IS: 733 - Wrought aluminium and aluminium alloys, bars, rods and sections for general Engineering purposes
- IS: 777 - Specification for glazed earthenware tiles
- IS: 1003 - Specification for timber panelled and glazed shutters (Parts 1 & 2)
- IS: 1038 - Specification for steel doors, windows and ventilators
- IS: 1077 - Specification for common burnt clay building bricks
- IS: 1081 - Code of practice for fixing and glazing of metal (steel & aluminium) doors, windows and ventilators
- IS: 1124 - Method of test for determination of water absorption, apparent specific gravity and porosity of natural building stones
- IS: 1237 - Specification for cement concrete flooring tiles
- IS: 1322 - Bitumen felts for water proofing and damp proofing
- IS: 1346 - Code of practice for water proofing of roofs with bitumen felts
- IS: 1361 - Specification for steel windows for industrial buildings
- IS: 1397 - Specification for kraft paper
- IS: 1443 - Code of practice for laying and finishing of cement concrete flooring tiles
- IS: 1477 - Code of practice for painting of ferrous metals in buildings (Parts 1 & 2)
- IS: 1542 - Specification for sand for plaster
- IS: 1580 - Specification for bituminous compounds for water-proofing and caulking purposes

- IS: 1597 - Code of practice for construction of stone masonry: Part 1 Rubble stone masonry
- IS: 1659 - Specification for block boards
- IS: 1661 - Code of practice for application of cement and cement-lime plaster finishes
- IS: 1834 - Specification for hot applied sealing compound for joint in concrete
- IS: 1838 - Specification for preformed fillers for expansion joint in concrete pavements and structures (non extruding and resilient type): Part 1 Bitumen impregnated fiber
- IS: 1948 - Specification for aluminum doors, windows and ventilators
- IS: 1949 - Specification for aluminum windows for industrial buildings
- IS: 2074 - Ready mixed paint, air-drying, red oxide- zinc chrome, and priming
- IS: 2098 - Asbestos cement building boards
- IS: 2114 - Code of practice for laying in-situ terrazzo floor finish
- IS: 2116 - Specification for sand for masonry mortars
- IS: 2185 - Specification for concrete masonry units (Parts 1,2 & 3)
- IS: 2202 - Specification for wooden flush door shutters (Solid core type): Parts 1 & 2
- IS: 2212 - Code of practice for brickwork
- IS: 2250 - Code of practice for preparation and use of masonry mortars
- IS: 2338 - Code of practice for finishing of wood and wood based materials (Parts 1 & 2)
- IS: 2339 - Aluminum paint for general purposes, in dual container
- IS: 2395 - Code of practice for painting concrete, masonry and plaster surfaces (Parts 1 & 2)
- IS: 2402 - Code of practice for external rendered finishes
- IS: 2571 - Code of practice for laying in-situ cement concrete flooring
- IS: 2572 - Code of practice for construction of hollow concrete block masonry
- IS: 2645 - Specification of integral cement waterproofing compounds
- IS: 2690 - Specification for burnt clay flat terracing tiles: Part 1 Machine made
- IS: 2691 - Specification for burnt clay-facing bricks
- IS: 2750 - Specification for steel scaffoldings
- IS: 2835 - Flat transparent sheet glass
- IS: 2932 - Specification for enamel, synthetic, exterior type (a) undercoating, (b) finishing
- IS: 3007 - Code of practice for lying of asbestos cement sheets - corrugated and (Part 1 & 2) semi-corrugated sheets
- IS: 3036 - Code of practice for laying lime concrete for a waterproofed roof finish
- IS: 3067 - Code of practice of general design details and preparatory work for damp-proofing and waterproofing of buildings
- IS: 3068 - Specification for broken brick (burnt clay) coarse aggregates for use in lime concrete
- IS: 3384 - Specification for bitumen primer for use in waterproofing and damp proofing
- IS: 3461 - Specification for PVC-asbestos floor tiles
- IS: 3462 - - Specification for unbacked flexible PVC flooring
- IS: 3495 - Method of test for burnt clay building bricks: Part 1 to 4
- IS: 3536 - Specification for ready mixed paint, brushing, wood primer, pink
- IS: 3564 - Specification for door closers (hydraulically regulated)
- IS: 3696 - Safety code of scaffolds and ladders (Parts 1 & 2)
- IS: 4020 - Methods of test for wooden flush door: Type test
- IS: 4021 - Specification for timber door, window and ventilator frames
- IS: 4351 - Specification for steel doorframes
- IS: 4443 - Code of practice for use of resin type chemical resistant mortars
- IS: 4457 - Specification for ceramic unglazed vitreous acid resisting tile
- IS: 4631 - Code of practice for laying epoxy resin floor toppings
- IS: 4832 - Specification for chemical resistant mortars (Part II)
- IS: 4860 - Specification for acid resistant bricks
- IS: 4948 - Specification for welded steel wire fabric for general use
- IS: 5318 - Code of practice for laying of flexible PVC sheet and tile flooring
- IS: 5410 - Cement paint, colour as required

- IS: 5411 - Specification for plastic emulsion paint (Parts 1 & 2)
- IS: 5437 - Wired and figured glass
- IS: 5491 - Code of practice for laying of in-situ granolithic concrete floor topping
- IS: 6041 - Code of practice construction of autoclaved cellular concrete block masonry
- IS: 6042 - Code of practice for construction of light weight concrete block masonry
- IS: 6248 - Specification for metal rolling shutters and rolling grilles
- IS: 7193 - Specification for glass fiber base coal tar pitch and bitumen felts
- IS: 7452 - Specification for hot rolled steel sections for doors, windows and ventilators
- IS: 8042 - Specification for white Portland cement
- IS: 8543 - Methods of testing plastics
- IS: 8869 - Specification for washers for corrugated sheet roofing
- IS: 9197 - Specification for epoxy resin, hardeners and epoxy resin composites for floor topping
- IS: 9862 - Specification for ready mixed paint, brushing, bituminous, black, lead-free, acid, alkali, water and chlorine resisting
- IS: 12200- Code of practice for provision of water stops at transverse contraction joints in masonry and concrete dams
- BS: 476 - Methods for determination of the fire resistance of elements of construction (General
(Part – 20) Principles)
- BS: 476 - Methods for determination of the fire resistance of load bearing elements of
(Part – 21) construction
- BS: 476 - Methods for determination of the fire resistance of non-load bearing elements of
(Part – 22) construction
- Part – IV - National Building code of India

Flooring

IS No.	Subject
IS 269	Specification for 33 grade ordinary Portland Cement
IS 401	Code of practice for preservation of timber
IS 451	Technical supply conditions for wood screws
IS 455	Specification for Portland slag cement
IS 661	Code of practice for thermal insulation of cold storages
IS 702	Specification for industrial bitumen
IS 1124	Method of test for determination of water absorption, apparent specific gravity and porosity of natural building stones
IS 1130	Specification for marble (blocks, slabs and tiles)
IS 1141	Code of practice for Seasoning of timber
IS 1200-(Part XI)	Method of measurement of Building and Civil Engineering work (Part 11) paving, floor finishes, dado and skirting
IS 1237- Edition 2.3	Specification for cement concrete flooring tiles
IS 1322	Specification for bitumen felts for water proofing and damp- proofing
IS 1443	Code of practice for laying and finishing of cement concrete flooring tiles

IS 1489 (Part-I)	Specification for Portland pozzolana cement (Part-I) fly ash based
IS 1489-(Part II)	Specification for Portland pozzolana cement (Part II) calcined clay based
IS 1580	Specification for bituminous compounds for water proofing and caulking purpose
IS 2114	Code of practice for laying in-situ terrazzo floor finish
IS 2571	Code of practice for laying in-situ cement concrete flooring
IS 3622	Specification for sand stone (Slab & Tiles)
IS 3670	Code of practice for construction of timber floors
IS 4457	Acid and/or alkali Resistant tiles.
IS 5318	Code of practice for laying of hard wood parquet and wood block floors
IS 5766	Code of practice for laying of burnt clay brick floor
IS 8041	Specification for rapid hardening Portland cement
IS 8042	Specification for white Portland cement
IS 8043	Specification for hydrophobic Portland cement
IS 8112	Specification for 43 grade ordinary Portland cement
IS 12330	Specification for sulphate resisting Portland cement.
IS: 13630 (Part-1 to 15)	Methods of Testing of ceramic tiles
IS 13712	Specification for ceramic tiles; definition, classification characteristic and marking
IS 15622	Specification for pressed ceramic tile

Roofing

IS. No.	Subject
IS 73	Specification for paving Bitumen
IS 277	Galvanized steel sheets (plain and corrugated)
IS 651	Glazed stoneware pipes and fittings
IS 702	Specification for industrial bitumen
IS 1199	Methods of sampling and analysis of concrete
IS 1200 (PT.IX)	Method of measurements of building and civil engineering works Part - 9 Roof covering (including cladding)
IS 1200 (PTX)	Method of measurements of building and civil engineering works: Part -10 ceiling and lining
IS 1230	Cast iron rain water pipes and fitting

IS 1367 (PT -13)	Technical supply conditions for threaded steel fasteners pt.13 hot dip galvanized coating on threaded fasteners
IS 2095 (PT-1)	Gypsum plaster boards (Pt.1) plain Gypsum plaster boards
IS 2115	Code of practice for flat roof finish: mud phuska
IS 2633	Method of testing uniformity of coating on zinc coated articles
IS 2645	Specification for integral water proofing compounds for cement mortar and concrete
IS 3007 (PT.1)	Code of practice for laying of asbestos cement sheets: part- 1 corrugated sheets
IS 3007 (PT.2)	Code of practice for laying of asbestos cement sheets part- 2 semi- corrugated sheets
IS 3087	Particle boards of wood and other lignocellulosic materials (medium density) for general purposes – specifications
IS 3144	Methods of test for mineral wool thermal insulation materials
IS 3346	Method of the determination of thermal conductivity of thermal insulation materials
IS 3348	Specification for fibre insulation boards
IS 3384	Specification for bitumen primer for water proofing and damp proofing
IS 4671	Expanded polystyrene for thermal insulation purposes
IS 5382	Specification for rubber sealing rings for gas mains, water mains and sewers
IS 5688	Methods of test of performed block type and pipe covering type thermal insulations
IS 6598	Cellular concrete for thermal insulation
IS 7193	Specification for glass fibre base coal tarpitch & bitumen felts (Amendment I)
IS 8183	Bonded mineral wool
IS 10192	Specifications for synthetic resin bonded glass fibre (SRBGF) for electrical purposes.
IS 13592	Unplasticised polyvinyl chloride (UPVC) pipes for soil and Waste discharge system for inside and outside building.
IS 14753	Specifications for polymethyl Methacrylate (PMMA) (Arylic) sheets
IS 14862	Fibre cement flat sheets - specifications
IS 14871	Specifications for products in fibre reinforced cement - Long corrugated or Asymmetrical section sheets and fittings for roofing and cladding.

General works

Code No.	Subject
IS 63	Whiting for paints and putty
IS 198	Varnish gold size
IS 228	Structural steel (Standard quality)
IS 277	Specification for galvanized steel sheets (Plain and corrugated)
IS 419	Putty for use on window frames
IS 800	Code of practice for use of structural steel in general in steel construction
IS 806	Code of practice for use of steel Tubes in general building construction
IS 808	Dimensions for Hot rolled steel beams, columns, channel and angle sections
IS 812	Glossary of terms relating to welding and cutting metals
IS 813	Scheme of symbols for welding
IS 814	Covered electrodes for manual metal arc welding of carbon and carbon manganese steel
IS 816	Code of practice for use of metal arc welding for general construction in mild steel

IS 817	Code of practice for training and testing of metal arc welders
IS 818	Code of practice for safety and healthy requirements in electric and gas welding and cutting operations
IS 822	Code of procedure for inspection of welds
IS 823	Manual for metal arc welding in mild steel
IS 1038	Steel doors, windows and ventilators
IS 1081	Code of practice for fixing and glazing of metal (Steel and aluminium) doors, windows and ventilators
IS 1148	Hot rolled steel rivet bars (upto 40 mm diameters) for structural purposes
IS 1161	Steel tubes for structural purposes
IS 1182	Recommended practice for radiographic examination of fusion welded butt joints in steel plates
IS 1200- (Pt. VIII)	Method of measurements of steel work and iron works
IS 1363 Part I	Hexagon head bolts, screws, and nuts of product grade C (Hexagon Head bolt)
IS 1363 Part II	Hexagon Head Bolts, screws and nuts of product Grade 'C'

Roads

Standard	Title
MORT&H	Manual for Maintenance of Roads, 1983
MORT&H	Standard Plans for Single, Double and Triple Cell Box Culverts with and without Earth Cushion
MORT&H	Type Designs for Intersections on National Highways, 1992
MORT&H	Manual for Construction and Supervision of Bituminous Works, 2001
MORT&H	Guidelines for Maintenance Management of Primary, Secondary and Urban Roads
NHAI	Works Manual – 2006
IS 73	Specification for paving bitumen
IS 164	Ready mixed paint for road marking
IS 217	Specification for cut back bitumen
IS 8112	Specification for 43 grade ordinary Portland Cement
IS 278	Specification for galvanized steel barbed wire for fencing
IS 334	Glossary of terms relating to bitumen and tar
IS 383	Specification for coarse and fine aggregate from natural sources for concrete
IS 460	Specification for test sieves
IS 516	Method of test for strength of concrete
IS 702	Specification for industrial bitumen
IS 712	Specification for building limes
IS 1195	Specification for bitumen mastic for flooring
IS 1199	Methods of sampling and analysis of concrete
IS 1203	Method of testing tar and bituminous material, determination of penetration
IS 1205	Method of testing tar and bituminous material determination of softening point
IS 1208	Method of testing tar and bituminous material determination of ductility
IS 1212	Method of testing tar and bituminous material determination of loss of heating
IS 1216	Method of testing tar and bituminous material determination of solubility in carbon-di-sulphide, trichloroethylene
IS 1834	Specification for hot applied sealing compound for joint in concrete
IS 1838 (Pt. 1)	Specification for performed fillers for expansion joint in concrete pavements and structures (non extruding and resilient type/ bitumen impregnated fibre)
IS 2386 (Pt. 1)	Method of test for aggregate for concrete particle size and shape
IS 2386 (Pt. 2) 1963	Method of test for aggregate for concrete estimation of deleterious materials and organic

	impurities
IS 2386 (Pt. 3)	Method of test for aggregate for concrete specific gravity, density, voids, absorption and bulking
IS 2386 (Pt. 4)	Method of test for aggregate for concrete mechanical properties
IS 2720 (Pt.V)	Method of test for soil: Determination of liquid and plastic limit.
IS 2720 (Pt. VII)	Methods of test for soils: part VII determination of water content dry density relation using light compaction
IS 2720 (Pt. XXVIII)	Method of test for soil: determination of dry density of soils in place, by sand replacement method
IS 3812	Specification for fly ash for use as pozzolana and admixture
IS 5317	Specification for bitumen mastic for bridges decking and roads
IS 5640	Method of test for determining aggregate impact value of soft coarse aggregates
IS 6241	Method of test for determination of stripping value of road aggregates
IRC:5-2015	Standard Specifications and Code of Practice for Road Bridges, Section I – General Features of Design (Eighth Revision)
IRC:6-2017	Standard Specifications and Code of Practice for Road Bridges, Section-II - Loads and Load Combinations (Seventh Revision)
IRC:7-2017	Recommended Practice for Numbering Culverts, Bridges and Tunnels (Second Revision)
IRC:22-2015	Standard Specifications and Code of Practice for Road Bridges, Section VI – Composite Construction (Limit States Design) (Third Revision)
IRC:24-2010	Standard Specifications and Code of Practice for Road Bridges, Steel Road Bridges (Limit State Method) (Third Revision)
IRC:78-2014	Standard Specifications and Code of Practice for Road Bridges, Section VII- Foundations and Substructure (Revised Edition)
IRC:83-2018 (Part III)	Standard Specifications and Code of Practice for Road Bridges, Section IX – Bearings, Part III: POT, PIN, Metallic Guide and Plane Sliding Bearings (First Revision)
IRC:83-2014 (Part IV)	Standard Specifications and Code of Practice for Road Bridges, Section IX – Bearings (Spherical and Cylindrical)
IRC:89-2019	Guidelines for Design and Construction of River Training & Control Works for Road Bridges (Second Revision)
IRC:112-2020	Code of Practice for Concrete Road Bridges (First Revision)
IRC:SP:13-2004	Guidelines for the Design of Small Bridges and Culverts (First Revision)
IRC:SP-105-2015	Explanatory Handbook to IRC:112-2011: Code of Practice for Concrete Roads Bridges
IRC:SP:114-2018	Guidelines for Seismic Design of Road Bridges
IRC: SP: 84-2019	Manual of Specification & Standards for Four Laning of Highways
IRC: 73-2018	Manual of Specification & Standards for Two Laning of Highways with paved shoulder
IRC 92-1985	Guidelines for the design of interchange in urban area
IRC-SP 42-2014	Guidelines of Road Drainage

IRC 115-2014	Guidelines for Structural Evaluation and Strengthening of Flexible Road Pavements Using Falling Weight Deflectometer (FWD) Technique” (with CD
IRC:58-2015	Guidelines for the Design of Plain Jointed Rigid Pavements for Highways (Fourth Revision)
IRC 37-2018	Guidelines for the design of Flexible Pavements
IRC: 99-2018.	Guidelines for Traffic Calming Measures in Urban and Rural Areas (First Revision)
IRC: 67-2012.	Code of Practice for Road Signs
IRC: 35-2015.	Code of Practice for Road Markings
IRC:56-2011	Recommended Practices for Treatment of Embankment and Roadside Slopes for Erosion Control
IRC: SP:21-2009	Guidelines on Landscaping and Tree Plantation

WATER SUPPLY HEADS

Water Supply

BIS. No.	Subject
IS 554	Pipe threads where pressure tight joints are required on the threads- Dimensions, tolerances and designation.
IS 778	Specification for copper alloy gate, and check valves for water works purposes
IS 779	Water meters (domestic type) -Specification
IS 14846	Specification for sluice valves for water works purposes (50 to 1200 mm size)
IS 14845	Resilient Seated Cast Iron Air Relief Valves for Water Works Purposes - [CED 3: Sanitary Appliances and Water Fittings]
IS 13095	Butterfly valves for general purposes [MED 17: Chemical Engineering Plants and Related Equipment]
IS 781	Specification for cast copper alloy screw down bib taps and stop valves for water services
IS 782	Specification for caulking lead
IS 909	Underground fire hydrant, sluice valve type-Specification
IS 1239 (Part 1)	Steel tubes tubular and other wrought steel fittings, Part 1- Steel tubes- Specification
IS 1239 (Part 2)	Specification for mild steel tubes tubular and other wrought steel fittings, Part 2-Mild street tubular and other wrought steel pipe fittings
IS 1536	Centrifugally cast (spun) iron pressure pipes for water gas and sewage- Specification
IS 1537	Specification for vertically cast iron pressure pipes for water, gas and sewage
IS 1538	Cast iron fittings for pressure pipes for water, gas and sewage - Specification
IS 1703	Water fittings - copper alloy float valves (horizontal plunger type)- Specification
IS 2692	Ferrules for water services- Specification
IS 3950	Specification for surface boxes for sluice valves
IS 4736	Specification for Hot-dip Zinc Coatings on mild steel tubes
IS 5312 (Part 1)	Swing type reflex (non return) valves for water works purposes. Part 1- Single door pattern
IS 5312 (Part 2)	Swing type reflex (non return) valves for water works purposes. Part 2- Multi door pattern
IS 5382	Rubber sealing rings for gas mains, water mains and sewers
IS 9762	Specification for polyethylene floats (spherical) for float valves
IS 9763	Plastic Bib taps and stop valves (rising spindle) for cold water services- specifications
IS 15450	PE-AL-PE Pipes for hot and cold-water supplies-Specifications
IS 15778	Chlorinated Polyvinyl Chloride (CPVC) pipes for potable hot and cold water distribution supplies-specifications.
IS 15801	Polypropylene- Random Copolymer Pipes for hot and cold water supplies-Specifications
IS 2685	Code for selection/Installation and Maintenance of Sluice Valve

IS 8329	Centrifugally Cast (Spun) Ductile Iron Pressure Pipes for Water, Gas and Sewage [MTD 6: Pig iron and Cast Iron]
IS 9523 (2000)	Ductile Iron Fittings for Pressure Pipes for Water, Gas and Sewage [MTD 6: Pig iron and Cast Iron]
IS 8360-1 (1977)	Fabricated high density polyethylene (HDPE) fittings for potable water supplies, Part 1: General requirements [CED 50: Plastic Piping System]

Drainage

IS No.	Subject
IS 458	Pre-cast Concrete Pipes (with and without reinforcement).
IS 651	Specification for Salt Glazed Stoneware Pipes and Fittings.
IS 783	Code of Practice for Laying Concrete Pipes
IS 1726	Specification for Cast Iron Manhole Covers and Frames
IS 1729	Cast Iron /Ductile Iron Drainage Pipes and Pipe Fittings Socket and Spigot Series for Over-ground Non-pressure Pipe Line.
IS 4127	Code of Practice for Laying of Glazed Stone Ware Pipes
IS 4885	Specifications for Sewer Bricks
IS 12592	Pre-cast Concrete Manhole Covers and Frames - Specifications
IS 3114	Code or Practice for laying of Cast iron pipes.
IS 5961	Specification for cast iron grating for drainage purpose.
IS 2470 (Part -1)	Code of practice for Installation of septic tank : Part 1 Design criteria and construction

Sanitary

BIS. No.	Subject
IS 771 (Pt.1)	Specification for glazed fire clay sanitary appliances: Part 1: General requirements.
IS 771 (Pt.-2)	Specification for glazed fire clay sanitary appliances: Part 2: Specific requirements of kitchen and laboratory sink.
IS 772	Specific action for general requirements for enameled cast iron sanitary appliances.
IS 774	Flushing cisterns for water closets and urinals (Other than plastic cistern)-Specifications.
IS 1300	Phenolic moulding materials.- Specifications
IS 13983	Providing and fixing stainless steel sink
IS 1570 (Part-5)	Schedule for Wrought steel (Stainless Steel and heat resisting steels)
IS 1703	Water fittings- copper alloy float valves (horizontal plunger type) - Specification.
IS 1729	Cast iron /Ductile Iron Drainage Pipes and pipe fittings for Over ground non-pressure pipe line Socket and Spigot Series.
IS 1795	Specification for pillar taps for water supply purposes.
IS 1865	Iron casting with spheroidal or nodular graphite
IS 2267	Polystyrene moulding and extrusion materials - Specifications
IS 2326	Specification for Automatic Flushing Cisterns for Urinals (Other than plastic cisterns)
IS 2548 (Part-1)	Plastic seats and covers for water closets Part 1: Thermo set seats and covers - Specifications
IS 2548 (Part-2)	Plastic seats and covers for water closets Part 2: Thermoplastic seats and covers.- Specifications
IS 2556	Vitreous sanitary appliances (vitreous china) -Specifications
IS 2556 (Part-1)	Part-1: General requirements.
IS 2556 (Part-2)	Part-2: Specific requirements of wash-down water closets.
IS 2556 (Part-3)	Part-3: Specific squatting pans.
IS 2556 (Part-4)	Part-4: Specific requirements of wash basins.
IS 2556 (Part-5)	Part-5: Specific requirements of laboratory sinks.
IS 2556 (Part-6)	Part-6: Specific requirements of Urinals & Partition plates
IS 2556 (Part-7)	Part-7: Specific requirements of accessories for sanitary appliances
IS 2556 (Part -14)	Part-14: Specific requirements of integrated squatting pans.

IS 2556 (Part -15)	Part-15: Specific requirements of universal water closets.
IS 2556 (Part -16)	Part-16: Specific requirements of wash down wall mounted water closets
IS 2963	Specification for Copper alloy waste fittings for wash basins and sinks.
IS 3076	Specification for low density polyethylene pipes for potable water supplies.
IS 3389	Urea formaldehyde moulding materials. - Specifications
IS 3989	Specification for centrifugally cast (spun) iron spigot and socket soil, waste and ventilating pipes fittings and accessories.
IS 4827	Specification for electroplated coating of nickel and chromium on copper and copper alloys.
IS 4984	Specification for high density polyethylene pipes for potable water supplies.
IS 4985	Unplasticised P.V.C. pipes for potable water supply - Specifications.
IS 7231	Plastic flushing cisterns for water closets and urinals - Specifications.
IS 13983	Stainless steel sinks for domestic purposes -Specifications.
IS 15905	Centrifugally Cast Iron Hubless pipes & fittings

**ELECTRICAL
CODES OF PRACTICE GUIDE**

Standard	Title
IS 1885 (Part-I): 1961	Fundamental definition Electrical power system protection
IS 1885 (Part-XI): 1966	Electrical Measurement
IS 1885 (Part-XXX): 1971	Overhead transmission and distribution of electrical energy
IS 1885 (Part-XXXII): 1993	Cables, conductor and accessories for Electrical Supply
IS 8270: 1976	Guide for preparation of diagrams, charts & tables for electro technology
IS 3043: 1987	Earthing
IS 13234	Guide for short circuit calculations
IS 732:1989	Code of practice for electrical wiring installations (thirdrevision)
IS 8061:1976	Code of practice for design, installation and maintenanceof service lines up to and including 650 V
IS 8884:1978	Code of practice for the installation of electric bells andcall systems
IS 5578:1984/ IEC 60391 (1972)	Guide for marking of insulated conductors (first revision)
IS 11353:1985/ IEC 60445 (1973)	Guide for uniform system of marking and identification ofconductors and apparatus terminals
IS 13234:1991/ IEC 60909: 1988	Guide for short circuit current calculations in three-phaseac systems (superseding IS 5728)
IS 7752 (Part 1):1975	Guide for improvement of power factor in consumerinstallation: Part 1 Low and medium supply voltages
IS 3646 (Part 1):1992	Code of practice for interior illumination: Part 1 General requirements and recommendations for working interiors (first revision)
IS 3646 (Part 2):1966	Code of practice for interior illumination: Part 2 Scheduleof illumination and glare index
IS 3646 (Part 3):1968	Code of practice for interior illumination: Part 3 Calculationof coefficients of utilization by the BZ method
IS 6665:1972	Code of practice for industrial lighting
IS 10118 (Part 1):1982	Code of practice for selection, installation and maintenanceof switchgear and control gear: Part 1 General
IS 10118(Part 2):1982	Code of practice for selection, installation and maintenanceof Switchgear and control gear: Part 2 Selection
IS 10118 (Part 3):1982	Code of practice for selection, installation and maintenanceof switchgear and control gear: Part 3 Installation
IS 10118 (Part 4):1982	Code of practice for selection, installation and maintenanceof switchgear and control gear: Part 4 Maintenance
IS 4146:1983	Application guide for voltage transformers (first revision)
IS 4201:1983	Application guide for current transformers (first revision)
IS 5547:1983	Application guide for capacitor voltage transformers (firstrevision)
IS 2309:1989	Code of practice for protection of buildings and alliedstructures against lightning (second revision)
IS 3043:1987	Code of practice for earthing
IS 5216 (Part 1):1982	Recommendations on safety procedures and practices inelectrical work: Part 1 General (first revision)
IS 5216 (Part 2):1982	Recommendations on safety procedures and practices inelectrical work: Part 2 Life saving techniques (first revision)

ELECTRIC FANS

Standard	Title
IS 374:1979	Electric ceiling type fans and regulators (third revision)
IS 2997:1964	Air circulator type electric fans and regulators
IEC: 60665 (1981) IS 2312:1967	Propeller type ac ventilating fans (first revision) Draft Standard issued in wide circulation
IS 3588:1987	Electric axial flow fans (first revision)
IS 3963:1987	Roof extractor units (first revision)
IS 4283:1981	Hot air fans (first revision)
IS 6272:1987	Industrial cooling fans (man coolers) (first revision)
IS 4894:1987	Centrifugal fans (first revision)

LOW VOLTAGE SWITCH GEAR AND CONTROL GEAR

Standard	Title
IS 4237:1982	General requirements for switchgear and control gear for voltages not exceeding 1000 volts ac or 1200 volts dc (first revision) [superseded by IS 13947 (Part 1):1993]
IS 6875 (Part 1): 1973	Control switches (switching devices for control and auxiliary circuits including contactor relays) for voltages up to and including 1000 V ac & 1200 V dc: Part 1 General requirements [superseded by IS 13947 (Part 5/Section 1)]
IS 6875 (Part 2): 1973	Control switches (switching devices for control and auxiliary circuits including contactor relays) for voltages up to and including 1000 V ac and 1200 V dc: Part 2 Push-buttons and related control switches [Superseded by IS 13947 (Part 5/Section 1)]
IS 6875 (Part 3): 1980	Control switches (switching devices for control and auxiliary circuits including contactor relays) for voltages up to and including 1000 V ac and 1200 V dc: Part 3 Rotary control switches [superseded by IS 13947 (Part 5/Section 1)]
IS 10027:2000	Composite units of air-break switches and rewirable type fuses for voltages not exceeding 650 volt ac - Specification (first revision)
IS 4064 (Part 1): 1978	Air-break switches, air break disconnectors, air-break switch disconnectors and fuse-combination units for voltages not exceeding 1000 V ac or 1200 V dc: Part 1 General requirements (revised) [superseded by IS 13947 (Part 3): 1993]
IS 2675:1983	Enclosed Distribution Fuse Boards and Cut Outs for voltages not exceeding 1000 V A.C. or 1200 V D.C.
IS 8828:1996	Circuit-breakers for over current protection for household and similar installations (second revision)
IS 13032:1991	Miniature circuit breaker boards for voltage up to and including 1 000 Volt ac
IS 12640 (Part 1): 2008	Residual current operated circuit-breakers for household and similar uses: Part 1 circuit-breakers without integral over current protection (RCCBs) (First Revision)
IS 12640 (Part 2): 2008	Residual current operated circuit-breakers for household and similar uses: Part 2 circuit breakers with integral overcurrent protection (RCBOs) (First Revision)
IS 2959:1985	Contactors for voltages not exceeding 1000 V ac or 1200V dc (first revision) [superseded by IS 13947 (Part 4/ Section 1)]
IS 12021:1987	Specification for control transformers for switchgear and control gear for voltages not exceeding 1000 Volt AC
IS 5039:1983	Distribution pillars for voltages not exceeding 1000 volts (first revision)
IS 8623 (Part 1):1993/ IEC 60439-1 (1985)	Specification for low voltage switchgear and control gear assemblies: Part 1 Requirements for type-tested and partially type tested assemblies (first revision).
IS 8623 (Part 2):1993/ IEC 60439-2 (1987)	Specification for low voltage switchgear and control gear assemblies: Part 2 Particular requirements for busbar trunking systems (busways)- (first revision)
IS 8544 (Part 1): 1977	Motor starters for voltages not exceeding 1000 V: Part Direction line ac starters [superseded by IS 13947 (Part 4/Section 1): 1993]
IS 8544 (Part 2):	Motor starters for voltages not exceeding 1000 V: Part 2 Star-delta starters [superseded by IS

1977	13947 (Part 4/ Section 1): 1993]
IS 8544 (Part 3/Sec 1): 1979	Motor starters for voltages not exceeding 1000 V: Part 3 Rheostatic motor starters, Section 1 General requirements [superseded by IS 13947 (Part 4/Section 1): 1993]
IS 8544 (Part 4): 1979	Motor starters for voltages not exceeding 1000 V: Part 4 Reduced voltage ac starters: two step auto-transformer starters [superseded by IS 13947 (Part 4/Section 1): 1993]

POWER CABLE

Standard	Title
IS 694:1990/IEC 60227- 1 to 5 (1979)	PVC Insulated cables for working voltages up to and including 1100 V
IS 694: 2010	Polyvinyl chloride insulated sheathed and unsheathed cables with rigid and flexible conductor for rated voltages up to and including 450/750 V: Part 1 General requirements (fourth revision)
IS 1554 (Part 1):1988/ IEC 60502 (1983)	PVC insulated (heavy duty) electric cables: Part 2 For working voltages up to and including 1100 V (Third revision)
IS 3961 (Part 1):1967	Recommended current ratings for cables: Part 1 Paper insulated lead sheathed cables
IS 4288:1988	PVC insulated (heavy duty) electric cables with solid aluminium conductors for voltages up to and including 1100 V (second revision) (withdrawn)
IS 4289 (Part 1):1984/ IEC 60245-5	Flexible cables for lifts and other flexible connections: Part 1 Elastomer insulated cables (first revision)

ELECTRIC WIRING ACCESSORIES

Standard	Title
IS 9537 (Part 1):1980/ IEC 60614-1 (1978)	Conduits for electrical installations: Part 1 General Requirements
IS 9537 (Part 2): 1981	Conduits for electrical installations: Part 2 Rigid steel conduits (superseding IS:1653)
IS 3480:1966	Flexible steel conduits for electrical wiring
IS 2667:1988	Fittings for rigid steel conduits for electrical wiring (first revision) [Superseded by IS 14768 (Part 2): 2003]
IS 3837:1976	Accessories for rigid steel conduits for electrical wiring (first revision)
IS 9537 (Part 4): 1983	Conduits for electrical installations: Part 4 Pliable self-recovering conduits of insulating materials
IS 9537 (Part 5):2000/ IEC 60614-2-3(1990)	Conduits for a electrical installations: Part 5 Pliable conduits of insulating material [Superseding IS 6946]
IS 3419:1989	Fittings for rigid non-metallic conduits (second revision)
IS 14772:2000/IEC 60670-1(1989)	Enclosures for accessories for household and similar fixed electrical installations [Superseding IS 5133 (Part 1 and 2)]
IS 2412:1975	Link clips for electrical wiring (first revision)
IS 371:1999	Ceiling roses (third revision)
IS 3854:1997/IEC 60669- 1(1998)	Switches for domestic and similar purposes (second revision)
IS 4615:1968	Switch-socket outlets (non-interlocking type) (Withdrawn)
IS 4160:2005/ IEC 60884- 2-6(1997)	Interlocking switch socket outlets - Specification (first revision)
IS 1293:2005/IEC 60884- 1 (2002)	Plugs and socket outlets of rated voltage up to and including 250 volts and rated current up to and including 16 amperes - Specification (third revision)

LIGHT FITTINGS AND LUMINAIRES

Standard	Title
IS 1913 (Part 1): 1978	General and safety requirements for luminaires: Part 1 Tubular fluorescent lamps (second revision)
*IS 10322 (Part 1):1982 / IEC 598 - 1(1979)	Luminaires: Part 1 General requirements
IS 10322 (Part 2): 1982 / IEC 598 - 1(1979)	Luminaires: Part 2 Constructional Requirements
IS 10322 (Part 5/Sec. 2):2012	Luminaires: Part 5 Particular requirements, Sec 2 Recessed luminaires (First Revision)
IS 10322 (Part 5/Sec. 3):2012/ IEC 60598-2-3 (1979)	Luminaires: Part 5 Particular requirements, Sec 3 Luminaires for road and street lighting (First revision)
IS 10322 (Part 5/Sec 4):1987/ IEC 60598-2-4 (1979)	Luminaires: Part 5 Particular requirements, Section 4 Portable general purpose
IS 10322 (Part 5/Sec 5):1987/ IEC 60598-2-5	Luminaires: Part 5 Particular requirements, Section 5 Flood lights [superseding IS 1947]
IS 3287:1965	Industrial lighting fittings with plastic reflectors
IS 1777:1978	Industrial luminaires with metal reflectors (first revision)
IS 2206 (Part 1): 1984	Flameproof electric lighting fittings: Part 1 Well-glass and bulkhead types (first revision)
IS 3528:1966	Waterproof electric lighting fittings
IS 3553:1966	Watertight electric lighting fittings
IS 7537:1974	Road traffic signals
IS 9583:1981/IEC 598-2-22 (1980)	Emergency lighting units

TRANSFORMERS

Standard	Title
IS 2705 (Part 1):1992/ IEC 60185 (1966)	Current transformers:
IS 6949:1973	Summation current transformers
IS 11171: 1985	Dry type power transformer
IS 2026: 1977	Power Transformer
IS 1180: 1989	Distribution transformers
IS 3639: 1966	Power transformers fittings and accessories
IS 6600: 1972	Guide for loading of oil immersed transformers
IS 2705: 1992	Current transformers Part I to III
IS 3156: 1992	Voltage transformers Part I to III
IS 3156: 1992	Outdoor type three-phase distribution transformers

SAFETY

Standard	Title
IS 4770:1991	Rubber Gloves for electrical purposes
IS 15625: 2006	Insulating Mats
IS 15505: 2004	HCFC Blend- A Extinguishing System
IS 2171: 1976	Chemical based Fire Extinguishers
IS 2878: 1976	CO ₂ based Fire Extinguisher

FIRE**LIST OF RELEVANT INDIAN STANDARDS****FIRE FIGHTING SYSTEM**

IS No.	Title
IS-8757	Glossary of terms associated with Fire safety
IS-884	Specification for first-aid hose reel for firefighting
IS-901	Specification for couplings, double male and double female instantaneous pattern for firefighting,
IS-902	Specification (for suction hose couplings for firefighting Purposes (third revision)
IS-903	Specification for fire hose delivery couplings, branch pipe, nozzles and nozzle spanner. (fourth revision)
IS-904	Specification for two and three- way suction collecting heads for firefighting purposes.
IS-907	Specification for suction strainers, cylindrical type for firefighting purpose. (second revision)
IS-908	Specification for fire hydrant, stand post type. (second revision)
IS-909	Specification for underground fire hydrant. Sluice valve type
IS-636	Specification for Non percolating flexible firefighting delivery hose.
IS-7637	Glossary of terms for firefighting equipment.
IS-937	Specification for washers for water fittings for firefighting purposes.
IS-1641	Code of practice for fire safety of buildings (general): General Principles for fire grading and classification.
IS-1642	Code of practice for fire safety of buildings (General): Details of construction. (second revision)
IS-1643	Code of practice for fire safety of buildings (general) ' Exposure hazard. (first revision)
IS-1644	Code of practice for fire safety of buildings (general): Exit requirements and personal hazard. (second revision)
IS-1646	Code of practice for fire safety of buildings(general): Electrical installations. (third revision)
IS-2871	Specification for branch pipe, universal for firefighting purposes.
IS-2930	Functional requirements for hose laying tender for fire brigade use.
IS-5290	Specification for landing valves.
IS-8090	Specification for couplings, branch pipe, nozzle, used in hose reel tubing for firefighting.
IS-8442	Specification for stand post type water and foam monitor for firefighting (first revision)
IS-9972	Specification for automatic sprinkler heads. (first revision)
IS-11101	Specification for extended branch pipe for fire brigade use
IS -12349	Fire protection Safety sign.

IS -12407	Graphic symbols for fire protection plan.
IS -9668	Code of practice for provision and maintenance of water supplies and firefighting.
IS -3844	Code of practice for installation and maintenance of internal fire hydrants and hose reel on premises.
IS -12585	Specification for thermoplastic house (Textile Reinforced)for Water General purpose.
IS -10221	Code of practice for coating and wrapping of underground mild steel pipe lines. (first revision)
IS-15105	Design and installation of fixed automatic sprinkler fire extinguisher system-Code of Practice.
IS -325	Three phase induction motors.
IS-1822	AC Motor starter for voltage not exceeding 1000 volts.
IS -3624	Pressure and vacuum gauges.
IS-1520	Horizontal centrifugal pumps for clear, cold, fresh water.
IS-1239	Mild steel tubes, tubulars and other wrought steel fittings.
IS -3589	Specification for Steel pipes for water, and sewage
IS -6392	Steel pipe flanges.
IS -778	Specification for copper alloy gate, globe and check valves and water works purpose (fourth revision)
IS -2592	Recommendation for methods of measurement of fluid flow by means of orifice plates and nozzles.
IS -732	Code practice for electrical wiring installations.
IS 900	Code of practice for installation and maintenance of induction motors.
IS -1248	Direct acting electrical indicating analogue electrical Measures and their accessories general requirement instruments.
IS-2516	A. C. Circuit breakers for voltages not exceeding 1000 volts.
IS -4047	Heavy duty air break switches and composite units of air break switches and fuses (for voltage not exceeding 1000 volts.
IS -2208	HRC cartridge fuse links up to 650 volts.
IS -1554 (Part I)	PVC insulated (heavy duty) electric cables for working voltage up to and including 1100 volts.
IS:1536	Specification for Centrifugally Cast (Spun) Iron pressure pipes for water, gas & sewage (first revision)
IS 1537	Specification for Vertically Cast-Iron pressure pipes for water, gas & sewage (first revision)
IS:1538	Specification for Cast Iron Fittings for pressure pipes for water, gas & sewage (third revision)
IS:780	Sluice valve for water works purposes (50 to 300 mm size)
IS:13095	Butterfly valves for general purpose.
IS:13039	Code of practice for provision and maintenance of External Hydrant System (first revision)

FIRE DETECTION AND ALARM SYSTEM

IS No.	Title
694: 2010	Polyvinyl chloride insulated unsheathed and sheathed cables/cords with rigid and flexible conductor for rated voltages up to and including 450/750 V (fourth revision)
1255: 1983	Code of practice for installation and maintenance of power cables up to and including 33 KV rating (second revision)
1554(Part-I): 1988	PVC insulated (heavy duty) electric cables: Part 1 for working voltage up to and including 1100 V (third revision)
2175: 1988	Specification for heat sensitive fire detectors for use in automatic fire alarm system (Second revision)
9968(part 1) :1988	Elastomer insulated cables: Part 1 for working voltage up to and including 1100 V (first revision)
11360: 1985	Specification for smoke detectors for use in automatic electrical fire alarm system.
2189: 2008	Code of Practice for selection, installation and maintenance of Automatic fire detection and alarm system (second revision)- Code of Practice

IS 15325: Design and Installation of fixed automatic high and medium velocity water spray system

- NFPA-10: Portable Fire Extinguishers
- NFPA-13: Standard for installation of water Sprinkler system
- NFPA-15: Standard for installation of Water Spray fixed system
- NFPA-20: Standard for installation of stationary pump for fire protection system
- NFPA-70: National Electrical Code
- NFPA-72: National Fire Alarm & Signalling Code
- NFPA 2001: Standard for clean agent system
- Local municipality code (If any)

WAREHOUSES

Applicable Codes & Standards:

Following codes and standards (latest editions) including their latest addenda shall be followed wherever applicable unless otherwise specified:

Sl No	Code	Description
1	IS:875-I	Code of Practice for Design Dead Loads for Building and Structures
2	IS:875-II	Code of Practice for Design Imposed Loads for Building and Structures
3	IS:875-III	Code of practice for design loads (other than earthquake) for buildings and structures.
4	IS:1893	Criteria for earthquake resistant design of structures.
5	IS:4326	Code of Practice for earthquake resistant design and construction of buildings
6	IS: 800	Code of practice for use of structural steel in general building construction
7	IS: 801	Code of practice for use of cold-formed light gauge steel structure members
8	IS: 802	Code of practice for use of structural steel in overhead transmission line towers
9	IS: 806	Code of practice for use of steel tubes in general building construction
10	IS: 808	Dimensions for hot rolled steel beam, column channel and angle section
11	IS: 811	Specification for cold formed light gauge structural steel sections
12	IS: 813	Scheme of symbols for welding.
13	IS:1079	Hot rolled carbon steel sheet and strip – specification
14	IS:2062	Hot rolled medium and high tensile structural steel – specification
15	IS:4923	Hollow steel sections for structural use.
16	IS:1161	Steel tubes for structural purpose
17	IS:2721	Galvanized steel chain link fence fabric – specification
18	IS :4736	Hot dip zinc coatings on mild steel tubes
19	IS:4759	Hot dip zinc coatings on structural steel and other allied products– Specification
20	IS:1868	Anodic coatings on aluminium and its alloys
21	IS:2395-I	Paintings of concrete, Masonry and plaster surfaces – code of operations and workmanship
22	IS:2395-II	Code of practice for painting concrete, masonry and plaster surfaces: Schedule
23	IS:1477-I	Code of practice for painting of ferrous metals in buildings: pre-treatment
24	IS:1477-II	Code of practice for painting of ferrous metals in buildings: Painting
25	IS:1905	Code of practice for structural use of un-reinforced masonry
26	IS:3067	Code of practice for general design details and preparatory works for damp/water proofing
27	SP:6	Handbook for structural engineers (all parts)
28	SP:7	National Building Code of India
29	SP:16	Design Aids for reinforced concrete to IS:456
30	SP:20	Handbook on masonry design and construction
31	SP:22	Explanatory handbook on codes for earthquake engineering
32	SP:24	Explanatory handbook on Indian Standard Code of Practice for plain and reinforced concrete
33	SP:25	Handbook on causes and prevention of cracks in buildings
34	SP:32	Handbook on functional requirements of industrial buildings
35	SP:34	Handbook of concrete reinforcement & detailing

Other Codes

- IS:4000 Assembly of structural joints using high tensile friction grip fasteners

- IS:7205 Safety code for erection of structural steel works
- IS:7215 Tolerance for fabrication of steel structures

IRC code

- IRC: SP-13 – Guidelines for the design of small bridges and culverts
- IRC: 5 – Code of practice for Road Bridges (General features of Design)
- IRC: 78 – 2000 – Code of Practice for Road Bridges (Design of substructure and Foundation)
- IRC: SP: 73-2018: Manual of Specifications and Standards for Two Laning of Highways with Paved Shoulders (Second Revision)
- IRC: SP: 84-2019: Manual of Specifications and Standards for Four laning of Highways through a public-private partnership
- IRC: SP: 87-2019: Manual of Specifications and Standards for Six Laning of Highways through a public-private partnership
- IRC: SP: 19-2001: Survey, Investigation, and Preparation of Road Projects
- IRC: 37-2018: Tentative Guidelines for the design of Flexible Pavements
- IRC: 58-2015: Guidelines for the Design of Plain Jointed Rigid Pavements for Highways (Fourth Revision)
- IRC: 73-1980: Geometric Design Standards for Rural Highways
- IRC: 64-1990: Guidelines for Capacity of Roads in Rural Areas
- IRC: 108-2015: Guidelines for Traffic Forecast on Highways (First Revision)
- IRC: SP: 23-2005: Vertical Curves for Highways
- IRC: SP: 30-2009: Manual on Economic Evaluation of Highway Projects in India (Second Revision)
- IRC: SP: 42-2014: Guidelines on Rural Drainage (First Revision)
- IRC: SP: 50-2013: Guidelines on Urban Drainage (First Revision)
- IRC: SP: 93-2011: Guidelines on Requirements for Environmental Clearance for Road projects
- IRC: 108-2015: Guidelines for Traffic Forecast on Highways
- MoRT&H: Specifications for Road and Bridge Works, 2013 (Fifth Revision)
- MoRT&H: Standard Data Book for Analysis of Rates, 2003 (First Revision)
- AASHTO: A Policy on Geometric Design of Highways and Streets, 2011
- IRC: 5-2015: Standard Specifications and Code of Practice for Road Bridges, Section I - General Features of Design (Eighth Revision)
- IRC: 6-2016: Standard Specifications and Code of Practice for Road Bridges, Section-II Loads and Stresses
- IRC: 22-2015: Standard Specifications and Code of Practice for Road Bridges, Section VI - Composite Construction (Limit States Design) (Third Revision)
- IRC: 24-2010: Standard Specifications and Code of Practice for Road Bridges, Steel Road Bridges (Limit State Method) (Third Revision)
- IRC: 78-2014: Standard Specifications and Code of Practice for Road Bridges, Section VII- Foundations and Substructures (Revised Edition)
- IRC: 112-2011: Code of Practice for Concrete Road Bridges
- IRC: SP: 13-2014: Guidelines for the Design of Small Bridges and Culverts (First Revision)
- IRC: SP: 83-2015: Standard Specifications and Code of Practice for Road Bridges, Section ix Bearings
- IRS (INDIAN RAILWAY STANDARDS) - Issued by RDSO

FOR RAILWAY WORKS

Following codes and guidelines are applicable for the Railway siding:

1. Indian Railways SOD 1676 mm Gauge (BG), Revised 2004, (Embodying up to ACS No. 27 Dt.17-07-2019)
2. Rationalisation of Formation layer thickness on Indian Railway Track - Specification No. RDSO/2018/GE:IRS -0004 (D) Part-IV (For 25 Tonne Axle loading)

In addition to above following general guidelines to be followed:

For Civil works:

- a) Indian Railways Permanent Way Manual
- b) Indian Railway Bridge Manual
- c) Indian Railway Schedule of Dimensions (as mentioned above)
- d) The relevant IRS Specifications referred to in the above documents listed above.
- e) Specifications of Works of concerned zonal railway (Southern Railways)

For Signalling and Telecommunication works:

- a) Indian Railway Signal Engineering Manual for signalling; and
- b) Indian Railway Telecom Manual for telecommunication works.

For Electrification works:

- a) Indian Railways Manual AC Traction, Volume-II Part-I and Volume-II Part-II.
- b) Manual of Standards & Specification for Railway Electrification
- c) Indian Railways Standards of Dimension

Standards and Specifications Related to Logistics facilities:

The equipment and its mechanisms shall be designed and constructed in compliance with the latest editions and amendments of the following standards and codes of practice.

Standards equivalent or higher in BS, JIS, FEM, DIN, ISO, and IEC are also acceptable.

Standards and Specifications Related to Logistics facilities:

SN	Standards/ Specifications	Particulars
1	IS 3177	Code of Practice for Electric Overhead Traveling Cranes and Gantry Cranes other than Steel Work Cranes
2	IS 807	Code of Practice for Design, Erection & Testing (Structural Portion) of Cranes & Hoists
3	IS 3938	Specification for Electric Wire Rope Hoists
4	IS 4137	Code of Practice for Heavy Duty Electric Overhead Travelling Cranes Including Special Service Machines for use in Steel Works
5	IS 13367	Safe use of Cranes - Code of Practice Part 1 General
6	IS 4357	Methods for Stability Testing of Forklift Trucks
7	IS 4573	Specification for Power Driven Mobile Cranes
8	IS 13558	Cranes - Controls - Layout and Characteristics - Mobile Cranes
9	IS 13834	Canes- Classification
10	IS 13870	Cranes and Lifting Appliances Selection of Wire
11	IS 14469	Mobile Cranes- Determination of Stability
12	IS 14474	Mobile Cranes - Experimental Determination of Crane
13	IS 13367	Safe use of Cranes - Code of Practice
14	Institution of Electrical Engineers (IEE) Regulation	Electrical Equipment of Buildings
15	BS 7121	Code of Practice for Safe use of Cranes, Inspection, Testing & Examination
16	ISO 4308	Maintenance of Lifting Application
17	ISO 4309	Cranes Wire Rope Care, Maintenance and Discard
18	IS 1436:1991	Standards for Weigh bridge specifications
19	IS 1432:1959	Standards for General requirements for Weighing Instruments
20	IS 3594	Standards for Fire Safety of Industrial Buildings
21	IS 2171	Standards for Portable Fire Extinguishers
22	IS 2878	Standards for Portable and Trolley mounted fire extinguishers
23	IS 15683:2018	Standards for Portable Fire Extinguishers
24	IS 2190:2010	Standards for Selection, Installation and Maintenance of First

		Aid Fire Extinguishers
25	IS 1893:1984	Criteria for Earthquake resistant design of Structures
26	IS 4326:1993	Earthquake resistant design and construction of buildings
27	IS 3935	BIS Standards for building construction
28	IS 5503:1969	BIS Guidelines for Silos and Grain storage
29	IS 10987:1992	BIS standards for design, fabrication, testing and installation of underground storage/tank storage
30	NBC Guidelines	National Building Code guidelines under Group H: Storage and Warehousing occupancy Guidelines
31	NBC Guidelines	Fire Safety Standards as specified under National Building Code Part 4
32	WDRA Guidelines	WDRA Warehouse Registration Rules, 2017 (Rule 20 for Infrastructure requirements of Warehouses)
33	WDRA Guidelines	Construction standards based on provisions laid down under the Warehousing (Development and Regulation) Act, 2007