

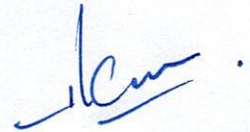
Dated: 16<sup>th</sup> March 2026

**OFFICE MEMORANDUM**

Subject: Changes in the Model Concession Agreement (MCA) for Multi Modal Logistics Park (MMLP) Project-reg

Considering the key challenges faced by various stakeholders, detailed deliberations were held over the proposed changes by the Inter Ministerial Committee (IMC) comprising of Ministry of Road Transport & Highways, NITI Aayog, Department of Economic Affairs, Department of Financial Services, Department of Legal affairs & DPIIT, Ministry of Commerce and Industry constituted for this purpose, in the meetings of IMC.

2. As per consensus of the IMC emerged over the proposed changes in the MCA of MMLP Project, the revised MCA of MMLP Project incorporating the changes is forwarded herewith for taking further necessary action.
3. This issues with the approval of Hon'ble Minister (RT&H).



(Harleen Kaur)  
Director(Highways)

Telephone No.011-23718575

To

1. Chairman, NHAI
2. Chairman, NHLML
3. DG(RD) & SS, MORTH
4. Managing Director, NHIDCL

Copy to:

1. CEO, NITI Aayog
2. Secretary, Department of Economic Affairs
3. Secretary, Department of Financial Services
4. Secretary, Department of Legal Affairs
5. Secretary, DPIIT, Ministry of Commerce and Industry

Copy also to:

1. PS to Hon'ble Minister, RT&H
2. PS to Shri Ajay Tamta, Hon'ble Minister of State, RT&H
3. PS to Shri Shri Harsh Malhotra, Hon'ble Minister of State, RT&H
4. PSO to Secretary (RT&H)
5. PPS to AS&FA
6. O/o all Additional Secretaries/Joint Secretaries in the MoRTH
7. CE(BP&SP), MoRTH
8. CEO, NHLML
9. Director (Technical), NIC, MORTH to upload the revised MCA of MMLP Project on the website of MORTH



**Public Private Partnership**

**In**

**Setting Up and Operating Multi Modal Logistics Park**

**MODEL CONCESSION AGREEMENT**

**Government of India**

**New Delhi**

**March 2026**

  
हरलीक कौर / Harleen Kaur  
निदेशक / Director  
सड़क परिवहन एवं राजमार्ग मंत्रालय  
Ministry of Road Transport & Highways  
सरकार / Govt. of India  
नई दिल्ली / New Delhi-110001

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**Part I**  
**Preliminary**

**CONCESSION AGREEMENT**

THIS AGREEMENT<sup>1</sup> 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 principal offices at [•] (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;**

**AND**

2 \*\*\*\*\* a company<sup>2</sup> 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 of India (“**GOI**”) has entrusted to National Highways Logistics Management Limited (“**NHLML**”), a 100% owned company of National Highways Authority of India (“**NHAI**”) under Ministry of Road Transport and Highways to set up Multi Modal Logistics Parks (“**MMLP**”) with private sector participation at various locations across India.
- (B) The Authority has resolved to establish one such Multi Modal Logistics Park<sup>3</sup> 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 Concession Agreement to be entered into;
- (C) The Authority had accordingly adopted a single stage two part bidding process and invited proposals by its Request for Proposal dated \*\*\*\*\* (the “**Request for Proposal**” or “**RFP**”) for selection of bidder for construction, operation and maintenance of the above referred Project on DBFOT basis.
- (D) The Authority had prescribed the technical and commercial terms and conditions in the RFP, and invited Bids for undertaking the Project.
- (E) 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 accepted the Bid of the {selected bidder/ Consortium} and issued the Letter of Award No.

<sup>1</sup> 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.

<sup>2</sup> 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

<sup>3</sup> 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

\*\*\*\*\*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.

- (F) {The selected bidder/ Consortium} has since promoted and incorporated the Concessionaire as a limited liability 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.
- (G) {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 for the purposes hereof}.
- (H) 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 juridical or 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) or 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, survey, soil & material 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, rehabilitation, 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 [.....]<sup>4</sup> 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 Milestone shall mean and include such date, period or

<sup>4</sup> Name of the State where the Authority is situated.

Project Milestone 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 “**Crore**” 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 “**liquidation**”, “**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 laws 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 initiation of corporate insolvency resolution process, liquidation, winding-up, reorganization, dissolution, arrangement, or proceedings for the 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, 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 in such a manner and format as may be specified by the Authority.

- 1.2.3 The Concessionaire acknowledges and agrees that it has been duly advised and guided by its professional advisors and legal counsel to understand the full extent, scope and implications of this Agreement, and accordingly, the rule of contra proferentem 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.
- 1.2.5 Any expenses, cost or fee, as may be applicable, in respect of execution of this Agreement, unless specified otherwise in the Agreement, shall be borne by the Concessionaire, in accordance with the Applicable Laws.

### 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 herein are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other Documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement; and
- (b) all other agreements and Documents forming part hereof or referred to herein i.e. the Agreement at (a) above shall prevail over the agreements and Documents at (b) above.
- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of any ambiguity or discrepancy 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 Specifications and Standards shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the specific written dimension shall prevail; and
- (f) between any value written in numerals and that in words, the value written in words shall prevail.

For the avoidance of doubt, it is clarified that replies to pre-bid queries issued by the Authority are solely for the purpose of clarification and in case of any ambiguity or discrepancy between the replies to the pre-bid queries and this Agreement, the provisions of this Agreement 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 MMLP on the Site set forth in Annex-I of **Schedule-A** and as specified in Annex-I and Annex-II of **Schedule-B** and in conformity with the Specifications and Standards set forth in **Schedule D** and other provisions of this Agreement;
  - (b) planning, design, financing and construction of the Access Road and Rail Connectivity on the Site set forth in Annex-II and Annex-III of **Schedule-A** and as specified in Annex-III and Annex-IV of **Schedule-B** and in conformity with the Specifications and Standards set forth in **Schedule D** and other provisions of this Agreement;
  - (c) operation and maintenance of the Project in conformity with the Schedule K and other provisions of this Agreement;
  - (d) provide Services in conformity with the Specifications and Standards and other provisions of this Agreement; and
  - (e) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

## ARTICLE 3 GRANT OF CONCESSION

### 3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire, the Concession set forth herein including the exclusive right, license and authority to design, finance, construct, operate and maintain the Project (the “**Concession**”) and provide Services for a period of 45 (forty-five) years, commencing from the Appointed Date, and ending on the Transfer Date (the “**Concession Period**”), and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) 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 Instrumentality on the Transfer Date;
  - (c) manage, operate and maintain the Project and regulate the use thereof by third parties;
  - (d) demand and collect Fee from Users liable for payment of Fee for using the Project MMLP and / or availing any Services or any part thereof and refuse entry to any User if the Fee due is not paid and appropriate the collected Fee in accordance with the provisions of this Agreement including any penalties or other levies collected by the Concessionaire.
  - (e) perform and fulfil all of the Concessionaire’s obligations in accordance with the provisions of this Agreement;
  - (f) provide Services to the Users as per the terms and conditions of this Agreement;
  - (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; and
  - (h) 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 Project nor sell, transfer, exchange, lease, sub-license, part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

### 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 Project 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 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 avoidance of doubt, 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. The Conditions Precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:
- (a) procured 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 all Applicable Permits relating to environmental protection of the Site<sup>5</sup>.]
  - (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
  - (d) [procured approval of the Railway and/ or Inland Waterways and/ or Irrigation and/ or \*\*\*\* (to be specified) authorities in the form of a general arrangement drawing that would enable the Concessionaire to construct road overbridges/ underbridges at level crossings/ bridges across waterways and river/ canal distributaries (excluding minor channels) on the Access Road in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval]
  - (e) [procured forest and wildlife clearance for and in respect of land forming part of the Right of Way under Clause 10.3.2, save and except permission for cutting of trees]
  - (f) procured Engineering Scale Plan (ESP) approval from the respective railway zonal headquarters;
  - (g) appointed the Independent Expert in accordance with the provisions of Clause 22.1 within 90 (ninety) days of this Agreement;
- 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;
  - (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 by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

<sup>5</sup> In case of any subsequent changes to concept master plans provided in Schedule B, all Applicable Permits relating to environmental protection shall be procured by the Concessionaire.

- (d) executed and procured execution of the Escrow Agreement;
  - (e) executed the Financing Agreements and delivered to the Authority a true copy thereof, duly attested by a Director of the Concessionaire;
  - (f) delivered to the Authority, a true copy of the Financial Package and the Financial Model including the details as per format prescribed in Schedule Y, duly attested by a Director of the Concessionaire, along with a soft copy of the Financial Model in Microsoft Excel or any substitute thereof, which is workable, formulae linked, interactive and containing the financials as appraised and adopted by the Senior Lenders;
  - (g) delivered to the Authority, {from the Consortium Members, their respective 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;
- 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 therein, 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, the 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 equal to the Bid Security.

#### 4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the time period specified therein, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or any other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, the Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to Bid Security. Provided, however, that no Damages shall be payable under this Clause 4.3 for any period for which Damages have already been paid under Clause 25.1.1. Provided further that such Damages for delay by the Concessionaire for fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent.

#### 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 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 of the Project.

#### 4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.3, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1<sup>st</sup> (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 this Agreement shall be deemed to have been terminated by mutual agreement of the Parties unless the Parties mutually agree, prior to such expiry, to extend the period by not more than 6 (six) months. Provided that any such extension shall not absolve the Parties from liability to pay Damages under Clauses 4.2 and 4.3. For the avoidance of doubt, it is clarified that such deemed Termination shall operate automatically and absolutely notwithstanding any discussions, correspondence, engagements or actions between the Parties. Provided, further, that in the event the Appointed Date does not occur for reasons solely attributable to the Concessionaire, the Authority shall be entitled to encash and appropriate the Performance Security to the extent of an amount equal to the Bid Security, after deducting any Damages already paid by the Concessionaire under Clause 4.3 and/or Clause 25.1.1.

**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 designing, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations as 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, 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 Government 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;

Provided that if the Concessionaire undertakes any revision or modification or variation in the Concept Master Plan prepared by the Authority as annexed in Schedule-B or on account of any actions or omissions taken by or attributable to the Concessionaire, due to which the Applicable Permits procured by the Authority as set forth in Clause 4.1.2 (including any studies, reports or assessments prepared by the Authority), requires any further approval or any modification therein or vitiates the Applicable Permits, approvals or sanctions (including any studies, reports or assessments prepared by the Authority), in such condition the Concessionaire shall be solely responsible, at its cost and expense, to apply for and obtain such further approvals or modifications in the existing approvals or fresh approval or modifications in the studies, reports or assessments prepared by the Authority, as the case may be.

The Authority may, without being under any obligation, at its discretion provide reasonable assistance to the Concessionaire in procuring such modifications or fresh approvals subject to the Concessionaire fulfilling the applicable eligibility requirements.

- (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project.
- (c) perform and fulfil its obligations under the Financing Agreements.
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws while performing 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 the 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 of 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) 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;
  - (l) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
  - (m) ensure that the equipment used in the Project are in good condition and conform to the Good Industry Practice;
  - (n) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions thereof;
  - (o) procure, the appropriate utilities and Services, required 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 Authority Representative and personnel of any public authority;
  - (r) not to interfere with the convenience of the public, the Authority and its Authority Representative, employees, agents etc.;
  - (s) undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Project;
  - (t) construct and make alterations or additions to the building/structure/installations on the Site at its own cost 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 Applicable 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; provided further that any structural changes to the building/structure/installations on the Site shall be undertaken after prior written approval of the Authority.
- 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 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 expenses of maintaining Rail Connectivity<sup>6</sup>, develop roads inside Project MMLP boundary to achieve seamless connectivity of Project MMLP with Access Road; the Concessionaire shall develop the Rail Terminal and the rail handling area in commensuration with the development of Rail Connectivity
- (w) provide the Project MMLP 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;
- (x) 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;
- (y) not to store any hazardous or explosive substance on the Site unless specific license is obtained from the regulatory body after taking prior written 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.
- (z) 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 Project, the Project Assets therein or any part/portion of the Project in any way prejudiced, affected or extinguished;
- (aa) use the Site or any premises erected thereupon for the exclusive purpose of providing the Services to the Users of the Project MMLP (“**User(s)**”) to the Site.
- (bb) the Authority and/or 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 Project 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;
- (cc) maintain complaints register at a conspicuous place in the Site for recording complaints, if any, of the Users of the Project and maintain a website for registering of complaints, if any, online, with access to the Authority. Within one (1) 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 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;
- (dd) pay all property taxes in relation to the Site and Project Assets. The payment of property taxes

<sup>6</sup> Maintenance of rail connectivity would include maintaining the rail siding from takeoff point to inside Project MMLP

shall not attract the provisions of Article 40 i.e. Change in Law.

- (ee) 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:
- to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy code, 2016;
  - 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.

- 5.1.5 The Concessionaire shall, at its own cost and expense, adhere to green principles in accordance with applicable Green Rating for Integrated Habitat Assessment Version, and ensure sustainable operations in the Project 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 MMLP; and
  - (h) ensuring adequate ventilation and natural day light in the Project MMLP.

5.1.6 Rerouting of the existing cart track / village road passing through the Project MMLP boundary.

5.1.7 The Concessionaire shall comply with all requirements of the Escrow Bank to ensure that the Authority is provided with a secure facility for real-time online viewing and downloading of the Escrow Account statements at all times during the Concession Period.

## 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, and 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 clarified that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is 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. It is further agreed that no review and/or observations of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. The Authority shall review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such request. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the outstanding debt, provided that the Authority's liability in respect of the restructured or rescheduled debt shall remain limited to the Debt Due prior to the restructuring or rescheduling of the outstanding debt.
- 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, whereunder 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 this Agreement, the Concessionaire agrees and acknowledges that the selection or replacement of the Design-in-Charge, EPC Contractor and O&M Contractor, as well as the execution of the design consultancy contract, EPC Contract and O&M Contract, shall be subject to the prior written approval of the Authority from national security and public interest perspective. The decision of the Authority in this regard shall be final, conclusive and binding on the Concessionaire, and the Concessionaire undertakes that it shall not give effect to any such selection or contract without prior written approval of the Authority. For the avoidance of doubt, it is expressly agreed that prior written approval of the Authority hereunder shall be limited to national security and public interest perspective. The Authority shall endeavour to convey its decision thereon expeditiously and, in matters not involving national security, not later than 30 (thirty) days from receipt of such request. 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 approval of the Authority and subject to following conditions:

- i) no objection from the Senior Lenders.
- ii) achievement of COD.
- iii) the Concessionaire shall not be in default of payment of Concession Fee to the Authority.

Provided that the Change in Ownership shall not be considered by the Authority where proceeding for imposition of Damages or Termination of this Agreement has been initiated. The Authority acknowledges and agrees to provide its approval for Change in Ownership within thirty (30) days of fulfilment of all conditions.

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 not less than 25% (twenty-five per cent) 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 individually 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 expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement. The Concessionaire shall ensure that all pending claims, arbitration, conciliation, or mediation proceedings, court proceedings and outstanding dues, if any, are fully settled or expressly waived prior to making any request for Change in Ownership.

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 Securities 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 situated 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 situated in India or abroad, having ultimate control of not less than 25% (twenty five per cent) 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 grant of requisite regulatory permits and approvals including employment / residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

#### 5.5 Employment of trained personnel

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.

#### 5.6 Sole purpose of the Concessionaire

The Concessionaire agrees that it has been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, and the Concessionaire shall not, except with the prior written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

#### 5.7 Branding of Project MMLP

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

The area near entrance & exit gates of Project 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 Project MMLP shall not trigger any 'political sentiments' and / or 'religious sentiments' and shall abide by the

extant policy in this regard.

#### **5.8 Facilities for differently abled and elderly persons**

The Concessionaire shall, in conformity with the guidelines issued from time to time by Government Instrumentality, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Project.

#### **5.9 Maintenance obligation during Development Period**

During the period from the date of hand over of the Site or part thereof to the Concessionaire until the Appointed Date, the Concessionaire shall maintain such part of the 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.

#### **5.10 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.

#### **5.11 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.

#### **5.12 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 such order or earlier, as per legal/statutory/administrative requirement or any such direction being issued in pursuance of Clause 5.11. 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 from the date of the removal of the person. All consequential effects of such removal, appointment or replacement, including legal/statutory/administrative issues, if any, shall be the sole liability of the Concessionaire.

#### **5.13 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 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.

#### **5.14 Obligations relating to non-discriminatory access**

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

#### **5.15 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 sub-contractors shall always be subject to the Applicable Laws. 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.

#### **5.16 Obligations relating to taxes**

Save and except as expressly provided in this Agreement, the Concessionaire shall, at all times during the subsistence of this Agreement, pay all taxes, levies, duties cesses and all other statutory charges, dues, assessments or outgoings payable in respect of the Project, Services and other services, or in respect of the materials stored therein, which may be levied by any Government Instrumentality. The payment receipts with respect to the same shall be submitted along with the quarterly status report in terms of clause 19.1.

#### **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 thirtieth (30<sup>th</sup>) day of June each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors, giving summarized information on (a) the procedure undertaken at the Project MMLP, 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 impact until the completion of all legal formalities. The Concessionaire shall then arrange for the expeditious removal of wreckage or debris, and for cleaning of 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 Project MMLP**

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Project MMLP and achieve integration of the Project 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 Project 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 Project MMLP and its impact on Users and the neighbourhood.

#### **5.21 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.

#### **5.22 Water and Electricity**

5.22.1 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 supply]<sup>7</sup> connection to the Site no later than [•] from Appointed Date. Provided, however, that in the event the Scheduled COD is extended, the date for providing such external power [and external water] connections shall be extended by a corresponding period. The Concessionaire shall, on and before the COD, set up a meter at its own cost to measure the power. During the Construction Period and Operation Period, the Concessionaire shall pay all the invoices relating to 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 as may be necessary for construction and operation of the Project. Upon fulfilling the obligated water supply to the Concessionaire, the Authority reserves the right to allocate surplus water supply to the Concessionaire and to others as well for the development of the Future Expansion Area.

5.22.2 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.

#### **5.23 Obligations relating to information**

5.23.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a

<sup>7</sup> The provision of external water supply shall apply on project to project basis.

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.

- 5.23.2 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.

#### **5.24 Obligations relating to procurement of goods and services**

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

#### **5.25 Obligations relating to medical aid**

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

#### **5.26 Obligations relating to Local Content**

The Concessionaire [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure local content in the Project of at least [50%/20%] in compliance with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE- II) dated September 16, 2020, as amended or modified from time to time till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.

#### **5.27 Obligations relating to payment of freight discount**

The Concessionaire undertakes to reimburse to authority any freight discount received from Indian Railways, if any, on account of cost borne towards development cost for enhancement works at service station upto take-off point as per approved ESP

**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 to comply with and perform all its obligations as 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 the 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;
  - (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) subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project;
  - (e) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project;
  - (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - (g) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - (h) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements;
  - (i) 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;
  - (j) subject to the Concessionaire complying with Applicable Laws, making requisite applications provide reasonable assistance to the Concessionaire in procuring electricity and water supply within the Project;
  - (k) 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;

- (l) provide external power [and external water supply]<sup>8</sup> connection<sup>9</sup> to the Site no later than [•] months from Appointed Date but in any event not later than 6 (six) months prior to COD.
- (m) upon written request from the Concessionaire, and subject to the Concessionaire complying with the Applicable Laws, and subject to the applicable guidelines issued by Government of India, from time to time, facilitate and provide reasonable support to the Concessionaire in procuring statutory approvals for setting up of custom facilities in the Project;
- (n) transfer all Indian Railways approvals for Rail Terminal and Rail Connectivity to the Concessionaire or ensure that these approvals are in favour of the Concessionaire before the commencement of the rail operations.

## 6.2 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 outstanding debt on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall be utilized for the Project only; and shall always be subject to the prior written approval of the Authority, which shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

Provided, however, that such refinancing shall not, under any circumstances, increase the liability of the Authority, nor shall it be construed to create any obligation, guarantee, or assurance on the part of the Authority.

## 6.3 Obligations relating to Future Expansion Area.

The Authority shall undertake to comply with and perform all its obligations as set out in Article 29 of this Agreement or arising hereunder with regards to Future Expansion Area.

<sup>8</sup> The provision of external water supply shall apply on project to project basis.

<sup>9</sup> Tapping and distribution will be in the scope of the Concessionaire

**ARTICLE 7**  
**REPRESENTATIONS AND WARRANTIES**

**7.1 Representations and warranties of the Concessionaire**

7.1.1 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 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;
- (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 shall ensure 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 each Consortium Member whose technical and financial capacity was evaluated for the purposes of selection in response to the Request for Proposal shall hold not less than 26% (twenty six per cent) of such Equity, which shall also be not less than 5% (five per cent) of the Total Project Cost during the Construction Period and 1 (one) year thereafter. The said period of 1 (one) year shall be reckoned from Project Completion Date.

Provided further that any such request made under Clause 5.3, shall at the option of the Authority, be required to be accompanied by a suitable no objection letter from the Senior Lenders;

- (l) the {selected bidder/ Consortium Members and its/ their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement.
- (m) {the selected bidder / each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has requested the Authority to enter into this Agreement with 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) 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 Request for Proposals, including the integrity pact 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, licensees, Contractors/sub-contractors, designers, consultants or agents and nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and Concessionaire's Contractors/sub-contractors, designers, consultants or agents in any manner whatsoever; and

## 7.2 Representations and Warranties of the Authority

7.2.1 The Authority represents and warrants to the Concessionaire that:

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

### 7.3 Disclosure

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

**ARTICLE 8  
DISCLAIMER**

**8.1 Disclaimer**

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Site, Request for Proposals, Scope of the Project, Specifications and Standards, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of construction material and resources, railway connectivity, road 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 or warranty 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.

### 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 120 (one hundred and twenty) days from the date of this Agreement, in the form of an irrevocable and unconditional insurance surety bond (issued by insurance company authorized by Insurance Regulatory and Development Authority of India, or irrevocable and unconditional e-bank guarantee from a Bank for a sum equivalent to Rs. \*\*\*\*\*/- (Rupees \*\*\*\*\*)<sup>10</sup> as set forth in Schedule-F (the “**Performance Security**”) towards 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.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 120 (one hundred and twenty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### 9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or 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 or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or to meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 36.

### 9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than [15% (fifteen per cent)] of the Total Project Cost; provided, however, that the Performance Security shall not be released if the

<sup>10</sup> Calculated @ approximately 3% (three per cent) of the estimated amount specified in the definition of Total Project Cost of Project

Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith. For the avoidance of doubt, it is clarified that the release of Performance Security by the Authority shall not, be construed as a certification of satisfactory or adequate performance of obligations by the Concessionaire under this Agreement. Further, in the event that any breach, default, claim, or non-compliance by the Concessionaire is discovered or arises after the release of the Performance Security, the Concessionaire shall remain fully liable and responsible for all such obligations, and the Authority shall be entitled to pursue all remedies available to it under this Agreement.

ARTICLE 10  
SITE & RIGHT OF WAY

**10.1 The Site**

The site of the Project shall comprise the land, buildings, road works and other structures appurtenant thereto for Project MMLP, the Access Road and the Rail Connectivity, as 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 all references to the Site shall be construed as references to the land, buildings, road works, rail and other structures appurtenant thereto, required for the Project as set forth in **Schedule-A** and **Schedule B**.

**10.2 License and Right of Way**

10.2.1 The Authority hereby grants to the Concessionaire license 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 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- licensees, 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 license 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 land, buildings, structures, road works, trees and any other immovable property on or attached to the Site duly supported by moving images and videos captured using drones or any other mechanism acceptable to the Authority. The memorandum shall include only the Site for which Right of Way is granted to the Concessionaire, upon possession by the Authority. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site in respect of which Right of Way has not been granted to the Concessionaire, including the areas where Right of Way which remains unacquired and/or where possession has not been taken by the Authority. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties in the presence of Independent Expert 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 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 Site 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 Right of Way for minimum [95%] of the land area of the Site required for the Project MMLP and [100%] of the land area for main carriageway of Access Road and Rail Connectivity as set out in Schedule A and in accordance with the Concept Master Plan provided in Schedule-B, so that completion of work in this granted Right of Way shall be sufficient to construct and achieve COD of the Project. 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 of the Project. The Parties also acknowledge and agree that the conditions specified in this Clause 10.3.2 shall not be modified or waived by either Party.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over 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 procure and grant, no later than 240 (two hundred and forty) 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 Project as per Concept 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 241st (two hundred forty one) day of the Appointed Date and until such Right of Way of the balance land is procured, subject to a maximum amount equal to the Bid Security. The Damages payable in terms of this Clause shall be the sole remedy available to the Concessionaire and the Authority shall not be liable for any consequential loss or damage to the Concessionaire.

- 10.3.5 Upon receiving 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 issuance of Provisional Certificate shall not be affected or delayed on account of possession of 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 possession of such part of the Site 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 240 (two hundred forty) days of the Appointed Date shall be completed before the Project Completion Date.

#### 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 without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition 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 Sub license

Save and except as otherwise permitted by this Agreement, the Concessionaire may sub-license the whole or any part of the Project MMLP, 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. The period and validity of such sub-license shall not extend beyond the Concession Period.

#### 10.6 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all unauthorized 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 to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

**10.8 Access to the Authority, 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 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 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. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

**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.

**11.2 Shifting of obstructing utilities**

11.2.1 The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake the shifting of any utility (including electric lines, water pipes and telephone cables), to an appropriate location within or outside the Site, if such utility causes or shall cause a material adversely effect on the construction, operation or maintenance of the Project in accordance with this Agreement, as per the scope given in Schedule B and in accordance with applicable standards and specifications of concerned utility owning entity. The Concessionaire shall, within 60 (sixty) days from the Appointed Date, identify any existing utilities not included in Schedule - B, if any, and notify the Authority forthwith and the cost of shifting of such utilities shall be treated as Change of Scope. The Authority shall provide necessary assistance to the Concessionaire in obtaining cost estimates for shifting of such utilities from the entity owning such electric lines, water pipes or telephone cables, as the case may be. The Concessionaire shall execute such utility shifting works under the supervision of the concerned utility owning agency and Independent Expert, in accordance with the provisions of this Agreement. In the event of any delay in shifting of utilities, the Concessionaire shall be responsible for failure to perform any of its obligations hereunder if such failure is not as a direct consequence of delay on the part of the concerned utility owning agency. The Concessionaire may undertake the shifting of utilities at any time after the signing of this Agreement.

11.2.2 In the event this Agreement is terminated prior to the Appointed Date, the Authority shall reimburse the Concessionaire the cost incurred towards shifting of utilities undertaken during the Development Period, subject to acceptance of work by concerned utility owning agency and certification by the Independent Expert. Such reimbursement shall be limited to the actual work executed at the Site and shall be payable at the rates specified in the approved estimates of the concerned utility owning agency, provided that such shifting of utilities has been undertaken in accordance with Clause 11.2.1.

**11.3 New Utilities**

11.3.1 The Concessionaire shall, subject to such conditions as may be specified by the Authority, allow access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. 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 in accordance with the policies of the Authority issued from time to time for laying of utilities. For the avoidance of doubt, it is clarified that such use of the Site shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused due to such use shall be restored by the Concessionaire 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 a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such felling including incidental charges thereof and transplant/ plantation shall be borne by the Concessionaire, and 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.

**11.5 Dismantling of structures**

The Concessionaire shall, at its own cost, dismantle all structures, on all lands such as patta lands, abadi lands, assigned lands or any other nature of land for which possession has been handed over by the Authority for the purposes of development of the Project. The Concessionaire shall, at its own cost, dispose of the dismantled material in its sole discretion as deemed appropriate, while complying with all environmental guidelines and regulations and clear the Site for undertaking construction.

ARTICLE 12  
**CONSTRUCTION OF THE PROJECT**

**12.1 Construction of the Project**

- 12.1.1 The Concessionaire shall undertake construction of the Project 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, under and in accordance with the terms of this Agreement.
- 12.1.2 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 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 Prior to commencement of Construction Works, the Concessionaire shall:
- (a) Submit to the Authority and the Independent Expert its Master Plan, detailed design, layout plan, obligations relating to commencement of construction of Railway Connectivity as specified by competent authority of Indian Railway, obligations relating to commencement of construction of Access Road, construction methodology, Quality Assurance Plan, 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; and
  - (e) appoint a person to head the EPC Contractor's design unit, who shall be responsible for surveys, investigations, data collection and designs of the Project (the "**Design-in-Charge**").

**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. The Concessionaire shall prepare and finalize the Master Plan ("**Master Plan**"), in terms of this Article 12.
- 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 Logistics Services within the Project MMLP, 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 Rail Connectivity, administrative facilities, and Commercial Zone, save and except when required to deal with the effects of Force Majeure or as may be required by the direction of any

### Government Instrumentality.

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies of) all Drawings to the Independent Expert for review. The Concessionaire shall ensure that the Drawings related to structures and Railway Connectivity are either approved by the concerned Governmental Instrumentality or prepared in accordance with standard drawings that have been issued by the concerned Government Instrumentality.
- (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 design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice;
- (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 relating to layout required for proper execution and completion of the Project and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of 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 micro film form or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an

- as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project.
- (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 be amended or altered with approval of the Authority upon recommendation by the Independent Expert. 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 Construction of the Project

- 12.5.1 On or after the Appointed Date, the Concessionaire shall undertake the construction of Project as specified in Schedule-B and Schedule-C and in conformity with the Specifications and Standards set forth in Schedule-D. The [..... (.....)] days from the Appointed Date shall be the scheduled date for completion of the Construction Works for the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.
- 12.5.2 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 12.5.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.5.3 In the event that the Project is not completed within 270 (two hundred and seventy) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

## 12.6 Extension of Time

12.6.1 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) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 12)
- (b) occurrence of a Force Majeure Event
- (c) 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 Authority Representative /personnel.

12.6.2 The Concessionaire shall, no later than 15 (fifteen) Business Days from the occurrence of an event or circumstance specified in Clause 12.6.1, 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.

12.6.3 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 12.6.2 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 12.6.3, the Authority shall be discharged from any and all liabilities in connection with such claim.

12.6.4 The Authority's Representative shall, on receipt of the claim in accordance with the provisions of Clause 12.6.2, 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 12.6, the Authority's Representative shall review previous determinations and may increase but shall not decrease the total Time Extension.

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, Lenders' Representative and the Independent Expert, and upload on the Authority's designated portal/website, a monthly report on physical and financial progress of the Construction Works and shall promptly give such other relevant information including invoices of materials as may be required by the Independent Expert. The Concessionaire shall ensure that a functional location tracking system is installed in each construction vehicle and shall also provide in the central server of the Authority, submit a detailed report (along with each monthly report) through its central server, real-time records indicating the locations and movements of all such vehicles, which shall include the following information:

- (i) Real- time location data of each construction vehicle.
- (ii) Timestamps indicating the start and end times of vehicle movements.
- (iii) Mileage covered by each vehicle.

The Concessionaire shall be responsible for ensuring the accuracy and integrity of the GPS location tracking system data.

**13.2 Inspection**

During the Construction Period, the Independent Expert shall inspect the entire Project at least once a month duly supported by video recording captured using a drone or such other mechanism acceptable to the Authority and shall make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report along with the video recording to the Authority and the Concessionaire within 7 (seven) days of such inspection and the Independent Expert shall also upload it on Authority's website promptly 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 or video recording or lack thereof by the Independent Expert shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. The Authority on the written request from the Lenders' Representative shall be obliged to provide a copy of such Inspection Report. The Authority reserves the right to host the video on its website for public viewing.

**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 location, 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 agencies inter alia including MES/ CPWD, IBC, BIS, RDSO, IRC and/or MoRTH 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, at its own costs, in accordance with the instructions

of the Independent Expert and furnish the results thereof to the Independent Expert and the Authority. Provided, however, that the Authority reserves the right to require certain tests to be undertaken by an independent agency, at its own costs for the purpose of authenticating the results of the Tests carried out or caused to be carried out by the Concessionaire; and in the event of any discrepancy, the results obtained from such independent agency shall be final and binding on the Parties. 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 12.5.1, 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, inform the Independent Expert in reasonable detail about the steps it proposes to take to expedite progress and submit a revised schedule as provided in accordance with Clause 12.2.1 (a) for achieving the Project Milestones or Project Completion Date, as the case may be.

Further, if the Independent Expert's report states that the progress achieved by the Concessionaire over any continuous period of three (3) months is less than 75% of the revised schedule, the Authority may, without prejudice to the rights of the Authority under this Agreement, invoke Termination as per Clause 36.1.1 (w) of this Agreement.

#### 13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Expert to this effect, 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 thereupon carry out remedial measures to secure the safety of suspended works and the Users. 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. 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. For the avoidance of doubt, it agreed that any such remedial measures undertaken shall not in any manner relieve the Concessionaire of its obligations under this Agreement.

- 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 Concessionaire shall submit a request to the Independent Expert for an extension of the dates set forth in the Project Completion Schedule, to the extent it is reasonably entitled. The Independent Expert shall review such request and may recommend the extension of the dates set forth in the Project Completion Schedule. Upon receiving such recommendation, the Authority may, at its sole discretion, accept the extension in full or in part. 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. For the avoidance of doubt, it is clarified that such extension of the Project Completion Schedule shall constitute the sole and exclusive remedy available to the Concessionaire under this Clause 13.5.4, and the Authority shall not be liable for any other costs, claims damages or incidental consequences arising out of or in relation to such extension.

### 13.6 Video recording

During the Construction, the Concessionaire shall provide to the Authority for every calendar month, a video recording, through drone or such other mechanism as may be acceptable to the Authority, capturing the status and progress of Construction Work for that month from an altitude sufficient to capture both ends of the Right of Way and compile the said recording into a compact disc or digital video disc, as the case maybe. 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 following the end of each month. Such video recording shall be carried out in accordance with the standard operating procedure or guidelines issued by the Authority from time to time, and shall also be uploaded by the Concessionaire on the Authority’s website. The Independent Expert shall ensure that the features and quality of the video recording is acceptable and the video is not distorted/tampered with. The Independent Expert shall also review and analyse each of the said video recordings and incorporate its observations, if any, in the Inspection Report. The Concessionaire shall be responsible for ensuring the accuracy, completeness, and integrity of the video recording. The Authority reserves the right to host such video recordings on its website for public viewing.

Notwithstanding anything to the contrary contained in this Agreement, in case of any discrepancy in information/data captured through video recording under this Clause 13.6 or location tracking system under Clause 13.1, the information/data captured through video recording under this Clause shall prevail.

### 13.7 Quality of materials and workmanship

The Concessionaire shall ensure that the construction, materials and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

### 13.8 Quality control system

13.8.1 The Concessionaire shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the “**Quality Assurance Plan**” or “**QAP**”).

13.8.2 “**Quality Assurance Plan**” shall include submission of the following by the Concessionaire to Independent Expert and Authority:

- a. organisation, duties and responsibilities, procedures, inspections and Documentation;
- b. quality control mechanism including sampling and testing of materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications as per, relevant IRC/ CPWD/IR specifications, IS Codes and Good Industry Practice;
- c. and internal quality audit system.

The Independent Expert shall, within 15 (fifteen) days of receipt of the Quality Assurance Plan, convey its approval to the Concessionaire, indicating modifications required, if any. The Concessionaire shall, to the extent necessary for compliance with the provisions of this Clause 13.8, incorporate the suggested modifications in the Quality Assurance Plan. The Authority reserves the right to host the Quality Assurance Plan on its website for public viewing.

13.8.1 The Concessionaire shall procure all Documents, apparatus and instruments, fuel, consumables, water, electricity, labour, materials, samples, and qualified personnel as are necessary for examining and testing the Project Assets and workmanship in accordance with the Quality Assurance Plan.

13.8.2 The cost of testing of construction, materials and workmanship under this Article 13 shall be borne by the Concessionaire.

### 13.9 Inspection and technical audit by the Authority

The Authority or any representative authorised by the Authority in this behalf may inspect and review the progress and quality of construction of the Project, and issue appropriate directions to the Independent Expert and the Concessionaire to undertake remedial action in the event the Construction Works are not in accordance with the provisions of this Agreement.

### 13.10 External technical audit

13.10.1 At any time during the Construction Period, the Authority reserves the right to appoint an external technical auditor to conduct an audit of the quality of the Works. The Auditor shall carry out the Tests and/ or collect samples for testing in the laboratory in the presence of the representatives of the Concessionaire and the Independent Expert. The timing, the testing equipment, and the sample size of such audit shall be as decided by the Authority. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Concessionaire and the Independent Expert for undertaking remedial action in accordance with this Agreement.

13.10.2 Upon completion of the remedial measures by the Concessionaire, the Auditor shall undertake a closure audit and this process shall be repeated till the remedial measures have brought the works in compliance with the Specifications and Standards. The Concessionaire shall provide all assistance as may be required by the auditor for the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 13.10, the external technical audit shall not affect any obligations of the Concessionaire or the Independent Expert under this Agreement.

### 13.11 Inspection of construction records

The Authority shall have the right to inspect, at any time, the records of the Concessionaire relating to the Construction Works.

**ARTICLE 14**  
**COMPLETION CERTIFICATE**

**14.1 Tests**

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Project or any of the Project Components, the Concessionaire shall notify the Independent Expert and the Authority of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire, and 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 the Concessionaire and Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by providing not less than 10 (ten) days' notice to the Independent Expert and the Authority.
- 14.1.2 All Tests shall be conducted in accordance with Schedule-I, duly supported by video recording 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**

- 14.2.1 Subject to the provisions of Clause 14.5, upon completion of Construction Works for Project and the Independent Expert determining the Tests to be successful for the Project, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the "**Completion Certificate**").

**14.3 Provisional Certificate**

- 14.3.1 Subject to the provisions of Clause 14.5, upon completion of Construction Works for Project MMLP (except Rail Terminal) and Access Road and the Independent Expert determining the Tests to be successful for the Project MMLP (except Rail Terminal) and Access Road, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the "**Provisional Certificate**").
- 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 MMLP (except Rail Terminal) and Access Road. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part, and the rights and obligations of the Concessionaire for and in respect to such completed part of the Project MMLP (except Rail Terminal) and Access Road shall be construed accordingly.

**14.4 Withholding of Provisional Certificate or Completion Certificate**

- 14.4.1 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 within 15 (fifteen) days of conducting Tests, notify the Authority and the Concessionaire of such defects and deficiencies. Upon receipt of such notice, the Concessionaire shall promptly remedy and rectify the defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.4.2 If the Independent Expert determines that the Tests are successful, and the Project MMLP (excluding Rail Terminal) and Access Road can be safely and reliably placed in commercial operation, it shall notify the same to the Authority and the Concessionaire within 15 (fifteen) days of conducting the Tests. Upon receipt of such a notice, and after conducting its own inspection, if the Authority is of the opinion that the Project MMLP (excluding Rail Terminal) and Access Road are not fit or safe for commercial operation, it shall, within 21 (twenty-one) days of receiving such notice, notify the Independent Expert and the Concessionaire of the defects and deficiencies in the Project MMLP and Access Road. Upon receipt of such notice, the Independent Expert shall, within 7 (seven) days of receiving of notice of the Authority, either issue or withhold issuance of the Provisional Certificate. If the Independent Expert decides to withhold issuance of the Provisional Certificate, it shall notify the Authority and the Concessionaire of the defects and deficiencies in the Project MMLP (excluding Rail Terminal) and Access Road. Upon receipt of such notice, the Concessionaire shall promptly remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.4.3 On and after issuance of Provisional Certificate, if the Independent Expert determines that the Tests are successful, and receives Commercial Notification of the Rail Terminal from competent authority of the Indian Railway notifying that the Rail Connectivity and Rail Terminal can be safely and reliably placed in commercial operation, it shall notify the same to the Authority and the Concessionaire within 15 (fifteen) days of conducting the Tests and receiving such notice. Upon receipt of such a notice, and after conducting its own inspection, if the Authority is of the opinion that the Rail Connectivity and Rail Terminal is not in line with the provision of the Concession Agreement, it shall, within 21 (twenty-one) days of receiving such notice, notify the Independent Expert and the Concessionaire of the defects and deficiencies in the Rail Connectivity and Rail Terminal. Upon receipt of such notice, the Independent Expert shall, within 7 (seven) days of receiving of notice of the Authority, either issue or withhold issuance of the Completion Certificate. If the Independent Expert decides to withhold issuance of the Completion Certificate, it shall notify the Authority and the Concessionaire of the defects and deficiencies in the Rail Connectivity and Rail Terminal. Upon receipt of such notice, the Concessionaire shall promptly remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

For avoidance of doubt, the Completion Certificate shall be issued subject to fulfilling requirements of (i) rectified all the defects or deficiencies for the Construction Works in accordance with this Article 14; (ii) Issuance of the Provisional Certificate; and (iii) Receipt of Commercial Notification of the Rail Terminal from competent authority of the Indian Railway.

14.4.4 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 or Completion Certificate under Clause

14.3 or 14.4 or 14.2 respectively, as the case may be, and such direction shall be complied forthwith.

#### **14.5 Rescheduling of 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.

#### **14.6 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.

#### **14.7 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 Upon issuance of the Provisional Certificate or the Completion Certificate, as the case may be, for the Project under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Provisional Certificate for the Project is issued (the “COD”). The Project MMLP and Access Road shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article-27.

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 MMLP into commercial service after issuance of Provisional Certificate, or where such delay occurs in the issuance of 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.

**15.2 Damages for delay**

Subject to the provisions of Clause 12.6, if COD does not occur prior to the 91<sup>st</sup> (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.

**15.3 Partial COD**

In case, a part of Project MMLP or Rail Terminal, along with entire Access Road, is completed upon fulfilling the testing and completion compliance as per the provisions of Article 14, the Concessionaire may enter into commercial service on such completed part with written approval of Authority and may demand and collect Fee in accordance with the provisions of Article 27 (the “Partial COD”).

For avoidance of doubt, issuance of Partial COD under this Clause shall not amend or revise obligations set out with regards to achievement of the COD in terms of this Agreement and further, the Revenue Share shall commence from the calendar month falling immediately after the 03<sup>rd</sup>(third) anniversary of the Partial COD as per clause 27.2.1.

**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 additional works and services which are not included in the Scope of the Project as contemplated by this Agreement or to make modifications/ alterations in the Scope of the Project (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.

It is clarified that any change in Scope of the Project with regard to Access Road and/or Railway Connectivity inter alia including any change in alignment or requirements pursuant to the request or approval of any Government Instrumentality shall be considered under this Clause 16.1.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessitated by change in requirement pursuant to request or approval of any Government Instrumentality with regards to Access Road and/or Railway Connectivity, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings thereof 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 and also to Independent Expert such information as is necessary, together with detailed proposal in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:
  - i. break-up of the quantities, unit rates and cost for different items of work;
  - ii. proposed design for the Change of Scope; and
  - iii. proposed modifications, if any, to the Scheduled Completion Date
- (c) The Parties agree that cost and time for implementation of the proposed Change of Scope shall be determined as follows: -

- (i) in the event of alteration/modification in the Scope of the Project, the cost of

existing items of work, that are being altered or modified, shall also be determined in accordance with the provisions of this Clause 16.2.2(c), and the cost of such Change of Scope shall be determined after reducing the cost of the existing items of work that are being altered/modified;

- (ii) design charges shall be determined at the rate of 1% (one percent) of the cost of the Change of Scope. For the avoidance of doubt, it is clarified that in the event of alteration/modification in the Scope of the Project, design charges shall be determined at the rate of 1% (one percent) of the cost of the Change of Scope without reducing the cost of the existing works being altered/modified;
- (iii) the reasonable time for completion of works under the Change of Scope shall be determined by the Independent Expert in accordance with Good Industry Practice; and
- (iv) No payment towards O&M shall be payable in the event of a Change of Scope;

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 efforts in good faith 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 10% (ten per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 10% (ten per cent) of the cost assessed by the Independent Expert. The Concessionaire shall, after commencement of work, present to the Authority bills for payment on monthly basis in respect of the works in progress on reaching of a stage, if any, specified in the Change of Scope Order, or for 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.

### 16.4 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; 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 Concessionaire shall be entitled to deny any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope orders to exceed 10% (ten per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

### 16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 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. It is 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.

### 16.6 Reduction in Scope of the Project

- 16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons attributable to the Authority or reduction of Scope of Project as may be required at the request for any Government Instrumentality, the Authority shall follow the following process for calculation of total cost of reduced scope

- (i) On direction by the Authority, the Independent Expert to assess the civil cost of the reduced scope, as per the schedule of rates applicable on the Bid Due Date.
- (ii) The civil cost of the reduced scope shall be multiplied by the [1.2] to arrive at the estimated cost of reduced scope.

On or before a Payment Milestone immediately succeeding the date of finalization of such reduction in scope, the Construction Support shall be reduced by the total cost of reduced scope and all payments made or to be made to the Concessionaire shall be suitably adjusted and recoveries, if any, shall be made from the payment to be released on that Payment Milestone immediately succeeding the date of finalization of reduction in scope. Provided further that any recoveries remaining to be settled after adjustment from the Construction Support, the same shall be paid by the Concessionaire prior to issuance of Completion Certificate.

- 16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*.

### 16.7 Additional land required for Access Road and Rail Connectivity

The Concessionaire shall, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, submit a request to the Authority for additional land required for [Railway Connectivity and/or Access Road or] construction of works specified in Change of Scope Order issued under this Article 16, in accordance with this Agreement. Upon receipt of such request, the Authority, if so required, may initiate and undertake proceedings for acquisition of such land and shall take all such steps as may be reasonably necessary for acquisition of such land. Upon acquisition, such land shall

form part of the Site; and shall be deemed to be included in the Appendix referred to in this Clause 10.3, and dealt with in accordance with the provisions thereof.

For the avoidance of doubt, it is agreed that the additional area to be acquired for the Rail Connectivity and Access Road shall be required if directed by any Government Instrumentality.

**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 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 obligations of the Concessionaire hereunder shall include:

- (a) 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;
- (b) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Operation Period;
- (c) Demand and collect Fee from Users in accordance with provisions of this Agreement;
- (d) Provide non-discriminatory access to Common User Facility;
- (e) Ensure that services of water supply, sewerage, drainage, electricity, telephone, etc. at the Site or in the vicinity, encountered during the period of operation & maintenance of the Project are not damaged.;
- (f) 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;
- (g) Provide all assistance to the Independent Expert/Authority as they may reasonably require for the performance of their duties and Services under this Agreement;
- (h) Provide to the Authority/Independent Expert the reports on a regular basis during the Operations Period in accordance with the provisions of this Agreement;
- (i) 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.
- (j) 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;
- (k) 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;
- (l) 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;
- (m) 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 Operation Period and be liable for any claims arising there from.
- (n) Ensure that the Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
  - (o) Ensure that Site and facilities created are not defaced by any kind of writings/posters
  - (p) 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.
  - (q) 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.
  - (r) Ensure that the Project Assets are handed over to Authority in sound condition on the Transfer Date;
  - (s) 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;
  - (t) Prevent with the assistance of concerned law enforcement agencies, any unauthorized use of the Project, including any encroachment upon, or unauthorized entry, occupation, or use of the Site or any part thereof 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 Instrumentality, 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. The Authority may publish guidelines from time to time related to the website.
  - (x) Discharge any maintenance obligation, Annual Maintenance Contract (AMC) and replacement of assets arising under the GCT Policy including any amendments thereto, ESP approval, or any agreement executed with the respective Government Instrumentality or Authority in relation to the Rail Connectivity and Rail Terminal shall be solely borne and fulfilled by the Concessionaire.
  - (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 quarterly 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, waste materials (including hazardous materials and waste water), rubbish and other debris (including, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at the location identified by the Authority and/or Independent 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 standard specifications provided under applicable schedules, all stretches of roads (including bridges/ under-bridges, over-passes, under-passes or other structures), rail line, buildings or other structures situated on the Site, even if used by general traffic other than Project MMLP<sup>11</sup>.

## 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 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.

17.3.3 The Concessionaire shall publish the scheduled dates for major or periodic maintenance on the Authority’s website at least 3 (three) days prior to the date on which such maintenance is scheduled and ensure that such information is updated regularly

## 17.4 Maintenance Programme

<sup>11</sup> The above clause shall apply on case to case basis and in accordance to Schedule - B.

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 personnels, cargo and vehicles at the Project, and in the event of unsafe conditions, damage, breakdowns, and accidents, it shall follow the relevant operating procedures including 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. The Concessionaire’s responsibility for rescue operations on the Project shall be limited to an initial response to any particular incident until such time that the competent authority takes charge and shall include prompt removal of debris or any other obstruction.

## 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.

- 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 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 Project beyond seven (7) days, the 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.

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 shortfall amount of the Average Daily Fee payable to the Authority from designated part of the Project, or part thereof, 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 / as provided under this Agreement.

**Explanation:** For the purpose of calculating Average Daily Fee, the average of annual revenue of preceding month shall be used.

## 17.8 Damages for breach of maintenance obligations

- 17.8.1 (a) 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 for all defects until the breach is cured, at (a) 0.5% (zero point five per cent) of Average Daily Fee, and/or (b) 5% (five per cent) of the cost of such repair or rectification as estimated by the Independent Expert,

whichever is higher.

(b) 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.

### **17.9 Authority's right to take remedial measures**

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

17.9.2 The Authority shall have the right, which the Concessionaire hereby expressly grants 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 (d) 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 Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 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 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 Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) Compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project provided that the Concessionaire shall be considered to be in breach of its obligations if such request or directions has been issued due to default of the Concessionaire

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project 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 the 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 the Authority. For avoidance of doubt, it is agreed that the rights of Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time and no compensation shall be claimed on account thereof. The Authority reserves the right to direct the removal of any advertisement that (i) is obscene, indecent, or offensive; (ii) compromises national security; (iii) promotes or perpetuates discrimination based on caste, color, religion, race, or any other protected characteristic; or (iv) violates any Applicable Laws or regulations or (v) is against public interest. Upon receipt of such direction, the Concessionaire shall promptly remove the offending advertisement.

Provided further that the Concessionaire shall not put any advertisement nor collect any revenue from the same until it has received Completion Certificate or the Provisional Certificate from the Independent Expert.

#### **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 the 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, Authority Representative 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, Authority Representative and experts appointed by the Authority.
- e) The Concessionaire shall provide all relevant information and data on Key Performance Indicators on a quarterly 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 except for reasons of Emergency, national security, or law and order. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be

undertaken, except for reasons of Emergency, national security or law and order, any diversions, or closing down of approach roads to the Project that may cause a Material Adverse Effect on the movement to and from the Project.

Any maintenance, repair, or rectification of the Project not forming part of scheduled maintenance shall be deemed to be unscheduled maintenance (the “**Unscheduled Maintenance**”). For the avoidance of doubt, the Parties agree that any forced closure of the whole or any part of the Project under the provisions of Clause 17.7 shall be deemed to be Unscheduled Maintenance.

### 17.19 IT System

The Concessionaire shall operate and maintain IT System with round-the-clock connections to the networks of the Authority and other stakeholders for exchange of data and information. The IT system should be online and shall provide real-time access to the Concessionaire, the Authority and the Senior Lender, if required. For this purpose, it shall follow such protocol for Application Programming Interfaces (APIs) or Electronic Data Interchange (the “EDI”) as the Authority and other Government Instrumentality may specify from time to time. The IT system shall comply with features and functionality specified in Schedule D3.

### 17.20 Sub-licensing of the Project MMLP

17.20.1 Subject to the provisions of Clause 5.2, 24.5 and this Clause, Concessionaire may sub-license part of the Project Assets comprising the Project MMLP, such that the period and validity of such sub-license shall not extend beyond the Concession Period.

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

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

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

17.20.2 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 17.20.1, the Concessionaire or the sub licensees shall not assign or in any manner create an Encumbrance on any Project Asset forming part of the Project MMLP without prior written approval of the Authority, which approval the Authority may, in its discretion, deny only if such sub-license, 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 17.20.2 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.

17.20.3 The Concessionaire agrees and undertakes that in respect of any sub-license, 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 in respect of such sub-license, the same shall be

received in the name of the Authority and deposited by the Concessionaire in the Escrow Account under a separate sub- account which will be utilized only as and when the same is required to be returned on conclusion of sub-license period or earlier if the sub-licensees/lessees is terminated on account of any reason.

17.20.4 On Termination of this Concession Agreement, the sub-licensees (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.

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 Project. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule-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.

**18.2 Expenditure on Safety Requirements**

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16

ARTICLE 19  
MONITORING OF OPERATION AND MAINTENANCE

**19.1 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, the Senior Lenders and the Independent Expert a quarterly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme, Safety Requirements and Escrow account statement, 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. The quarterly status report shall include a summary of:

- (a) key Performance Indicators achieved during the quarter, 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 quarter along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
- (c) key financial parameters for the quarter, as benchmarked against the quarterly budget and the reasons for shortfall, if any, and proposals to remedy the same.

During the Operation Period, the Concessionaire shall, no later than [45 (forty-five)] days after the close of each calendar quarter, submit to the Authority a statement, duly certified by its Statutory Auditor, confirming compliance with all applicable provisions of the Companies Act, 2013, in respect of Related Party Transactions. The statement shall include a summarized report detailing all Related Party Transactions undertaken during the preceding quarter.

The Independent Expert shall assess that all Related Party Transactions have been done on arm's length basis. In case, any particular revenue item has not been carried out in arm's length basis, the difference between revenue arrived by Independent Expert considering arm's length basis and actual revenue reported shall become part of Gross Revenue.

**19.2 Inspection**

The Independent Expert shall inspect the Project at least once a quarter. 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 as may be acceptable to the Authority.

**19.3 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, at its own cost, in accordance with the instructions of the Independent Expert and furnish the results of such tests forthwith to the Independent Expert. Provided that the costs incurred on third party tests, if such test are directed by the Independent Expert or the Authority, as the case may be, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the

Concessionaire.

#### 19.4 Remedial measures

- 19.4.1 The Concessionaire shall promptly undertake to repair or rectify the defects or deficiencies and implement remedial measures, if any, set forth in the O&M Inspection Report or the test results referred to in Clause 19.3 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.
- 19.4.2 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 Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8

#### 19.5 Reports of unusual occurrence

- 19.5.1 The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Expert, by 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 weekly and monthly summary of such reports shall also be sent within three days of closing of each week and month, as the case may be. For the purposes of this clause 19.5, accidents and unusual occurrences on the Project 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. disablement of any equipment during operation;
  - e. communication failure affecting the operation of the Project;
  - f. smoke or fire;
  - g. flooding of the Project; and
  - h. 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 19.5.1, has occurred on that day.

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 Project 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 Project 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 Project and shall be responsible for the security arrangements for the Project 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 Project. 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 Project, without unduly or unreasonably disrupting the operations of the Project or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Government in discharge of their obligations for and in respect of the security of the Project.
- 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 Project without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Government.

### 20.2 Insurance Premium

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

## ARTICLE 21

**CHANGE IN SPECIFICATION AND TECHNOLOGICAL 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 Project (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 Project, 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 Project 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 sixty (60) 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 engineering 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 this Agreement and shall be for a period of [5 (five) years], subject to earlier Termination. On expiry or Termination of the aforesaid period, the Authority may at its discretion renew the appointment, or appoint another firm pursuant to Schedule-M to be the Independent Expert for a term of [5 (five) years], subject to earlier Termination, 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 Authority’s website substantially in the format prescribed at Appendix – IV.

22.2.5 The Independent Expert shall monitor the redressal of grievances of the Users, by promptly forwarding such grievances to the Concessionaire for appropriate action and ensuring timely redressal by the Concessionaire, followed by reporting compliance to the affected Users.

**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, terminate the appointment of the Independent Expert at any time.

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 Independent Expert and the Concessionaire remains unresolved after a period of thirty (30) days, the Dispute shall be settled by Authority within thirty (30) days thereafter and the decision of the Authority shall be final. 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 forthwith.

## 22.5 Authorised signatories

22.5.1 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.

22.5.2 The designated person(s) shall be in employment with the consulting engineering firm appointed as Independent Expert for a period of not less than 5 (five) years immediately preceding the date of such designation, or for a period equal to the duration of such consulting engineering firm's existence, if such duration is less than 5 (five) years.

## 22.6 Dispute resolution

If either Party disputes issuance of or omission to issue 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.

## 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**

23.1.1 Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Project and shall meet the KPIs specified in this Article 23 and provide the Services as per Good Industry Practice.

**23.1.2 Total Turn-around Time of freight train**

- (a) "Total Turn-around Time" in relation to any freight train at the Rail Terminal, means the time that elapses between: (i) the time of its arrival into the Rail Terminal; and (ii) the time of its departure from the Rail Terminal

**Free time for loading and unloading of Indian Railway train (other than container train)**

- i. The Concessionaire shall ensure that the free time of any freight train shall not exceed the free time provided by the Indian Railways at the siding for respective wagon type.

**Free time for loading and unloading of container train**

- i. The Concessionaire shall ensure loading on container rack or unloading from container rack, as the case maybe, within 4 hours from the start of the operation (i.e. either loading or unloading) and shall undertake to deploy adequate equipment at all times to achieve the same.
- ii. In the event of the Concessionaire permitting base depot train examination (TXR) Services at the Terminal, the Concessionaire shall ensure timely completion of examination and issuance of brake power certificate (BPC) by the Indian Railway

**23.1.3 Crane moves at the Project MMLP**

- (a) The Concessionaire shall ensure that average crane moves per container handled at the Project MMLP shall not exceed 5 moves per container;

where,

Average crane moves per container shall mean the total moves undertaken by all loaded containers handled at the Project MMLP in a [calendar month] while at the Project MMLP divided by total loaded containers handed at Project MMLP in the respective month, where a move shall construe a lift-off or lift-on operation for the loaded container.

**23.1.4 Vehicle dwell time**

- (a) The average vehicle dwell time shall not exceed
- Trailer for container (Single operation) - 30 (Thirty) minutes
  - Truck for bulk / break-bulk / liquid cargo (Single Operation) – 3 hours

Vehicle dwell time shall be calculated as the interval between the vehicle's arrival and its departure as recorded at the Integrated Gate Complex.

Average vehicle dwell time shall be the total vehicle dwell time of all vehicles, calculated as above for each vehicle, during the period of a calendar month divided by the total number of such vehicles handled during the respective month.

## 23.2 Damages for shortfall in performance

23.2.1 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 23.2.3 for the half year in which the shortfall occurred. The Damages due and payable under this Clause 23.2 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 23.2.1 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.

23.2.2 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 Project, to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators.

Upon completion of the audit under the provisions of Clause 23.2.2, the Independent Expert shall compute and communicate to the Concessionaire and the Authority, by written notice, the Damages payable by the Concessionaire.

23.2.3 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 23.2.2 and any errors thereof shall be corrected and reconciled within 60 (sixty) days of the close of the relevant Accounting Year.

23.2.4 Any goods and services tax, if applicable, on the payment of Damages by the Concessionaire to the Authority shall be paid by the Concessionaire.

## 23.3 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 Project 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, including property taxes shall be borne by the Concessionaire.

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. The area for Commercial Zone development including administrative facilities shall not be more than 10 % (ten per cent) of the total project area subject to maximum FSI / FAR permissible for the Commercial Zone plot area. For avoidance of doubt, the FSI / FAR for Commercial Zone Development shall be calculated considering Commercial Zone plot area as an independent plot.

**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 the Project Assets forming part of Commercial Zone Development such that the period and validity of such sub- license 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, 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 the Authority may approve, at its discretion, or deny only if such sub- license, 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 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 30 (thirty) 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, 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, 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, assignment or other Encumbrance. For the avoidance of doubt, the Concessionaire agrees to procure that the consideration payable to it for any sub-license, assignment or other Encumbrance shall accrue evenly over the Concession Period and shall be payable on monthly/quarterly basis; 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. 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 0.2% (zero point two per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 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.
- 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, true copy of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with soft copy of the Financial Model in Microsoft Excel or any substitute thereof, containing financials as appraised and adopted by the Senior Lenders.
- 25.1.3 In the event the Concessionaire achieves Financial Close and fulfils all Conditions Precedent under Clause 4.1.3 within 120 days from the date of this Agreement, the Concessionaire shall be eligible for reduction in Performance Security by 0.50% of the Total Project Cost.

**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 clarified that the Concessionaire shall not be entitled to any compensation, damages, or other relief whatsoever on account of such Termination.
- 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. 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  
CONSTRUCTION SUPPORT

**26.1 Construction Support**

- 26.1.1 The Authority agrees to provide to the Concessionaire cash support equal to the sum set forth in the RFP towards development of Access Road, namely [Rs. .... (Rupees in words.....)], in 10 (ten) equal instalments in accordance with the provisions of this Article 26 (the “**Access Road Construction Support**”) and Rail Connectivity, namely [Rs. .... (Rupees in words.....)], in 10 (ten) equal instalments in accordance with the provisions of this Article 26 (the “**Rail Connectivity Construction Support**”). The Access Road Construction Support and the Rail Connectivity Construction Support shall hereinafter be collectively referred to as Construction Support (the “**Construction Support**”).
- 26.1.2 The sum hereinabove in Clause 26.1.1 shall be disbursed to the Concessionaire by way of Construction Support in accordance with the provisions of Clause 26.2.

**26.2 Payment of Construction Support**

- 26.2.1 Subject to the conditions specified in this Clause 26.2, the Construction Support shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 26.2.1 shall include Construction Support.
- 26.2.2 Upon receiving a report from the Independent Expert certifying the achievement of the below mentioned Payment Milestones<sup>\$\$</sup>, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an installment equal to one-tenth of the Access Road Connectivity Construction Support.

For the purpose of this Clause, the Payment Milestone for release of Construction Support shall be as under:

I (first) Payment Milestone - On achievement of 10% Connectivity Physical Progress – Access Road

II (second) Payment Milestone - On achievement of 20% Connectivity Physical Progress – Access Road

III (third) Payment Milestone – On achievement of 30% Connectivity Physical Progress – Access Road

IV (fourth) Payment Milestone - On achievement of 40% Connectivity Physical Progress – Access Road

V (fifth) Payment Milestone – On achievement of 50% Connectivity Physical Progress – Access Road

VI (sixth) Payment Milestone – On achievement of 60% Connectivity Physical Progress – Access Road

VII (seventh) Payment Milestone – On achievement of 70% Connectivity Physical Progress – Access Road

VIII (eighth) Payment Milestone – On achievement of 80% Connectivity Physical Progress –

<sup>\$\$</sup> Independent Expert, during finalization of design, shall upfront decide weightages of all the items in due consultation with the Authority and the Concessionaire, recommend percentage physical progress achievements based on the above decided weightages for the entire Construction Period. The weightages shall be fixed as per format in Annexure - I of Schedule G of this Agreement.

## Access Road

IX (ninth) Payment Milestone – On achievement of 90% Connectivity Physical Progress – Access Road

X (tenth) Payment Milestone – On achievement of 100% Connectivity Physical Progress – Access Road

26.2.3 Upon receiving a report from the Independent Expert certifying the achievement of the below mentioned Payment Milestones<sup>\$\$\$</sup>, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an installment equal to one-tenth of the Rail Connectivity Construction Support.

For the purpose of this Clause, the Payment Milestone for release of Construction Support shall be as under:

I (first) Payment Milestone - On achievement of 10% Connectivity Physical Progress – Rail Connectivity

II (second) Payment Milestone - On achievement of 20% Connectivity Physical Progress– Rail Connectivity

III (third) Payment Milestone – On achievement of 30% Connectivity Physical Progress– Rail Connectivity

IV (fourth) Payment Milestone - On achievement of 40% Connectivity Physical Progress– Rail Connectivity

V (fifth) Payment Milestone – On achievement of 50% Connectivity Physical Progress– Rail Connectivity

VI (sixth) Payment Milestone – On achievement of 60% Connectivity Physical Progress– Rail Connectivity

VII (seventh) Payment Milestone – On achievement of 70% Connectivity Physical Progress– Rail Connectivity

VIII (eighth) Payment Milestone – On achievement of 80% Connectivity Physical Progress– Rail Connectivity

IX (ninth) Payment Milestone – On achievement of 90% Connectivity Physical Progress– Rail Connectivity

X (tenth) Payment Milestone – On achievement of issuance of Commercial Notification for Rail Terminal from competent authority of Indian Railways.

26.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Construction Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

<sup>\$\$\$</sup> Independent Expert, during finalization of design, shall upfront decide weightages of all the items in due consultation with the Authority and the Concessionaire, recommend percentage physical progress achievements based on the above decided weightages for the entire Construction Period. The weightages shall be fixed as per format in Annexure - I of Schedule G of this Agreement.

**ARTICLE 27**  
**CONCESSION FEE**

**27.1 Concession Fee**

In consideration of the grant of the Concession, the Concessionaire shall pay to the Authority by way of concession fee, a sum of Rs.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**”.

**27.2 Revenue Share**

27.2.1 Without prejudice to the provisions of Clause 27.1, the Concessionaire agrees to pay to the Authority a revenue share (the “**Revenue Share**”) commencing from the calendar month falling immediately after the 03<sup>rd</sup>(third) anniversary of the COD or Partial COD, as the case may be, in the manner set out below:

- (a) From the calendar month falling immediately after the 3<sup>rd</sup> (third) anniversary of the COD or Partial COD, as the case may be, the Revenue Share at the rate of [N<sup>12</sup>] % of the Gross Revenue shall become payable during the remaining Concession Period in terms of this Agreement.

In case the 03<sup>rd</sup> (third) anniversary of the COD or Partial COD, as the case may be falls between the quarters<sup>13</sup> of the relevant Accounting Year, Revenue Share shall be computed on the Gross Revenue for the subsequent months in the quarter in which the 3<sup>rd</sup> (third) anniversary of the COD or Partial COD (as the case may be) falls.

For avoidance of doubt, in case the 3<sup>rd</sup> (third) anniversary of the COD or Partial COD, as the case may be falls on 17<sup>th</sup> (seventeenth) October, the Revenue Share for the 1<sup>st</sup> (first) quarter shall be payable on the Gross Revenue for the months of November and December.

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

27.2.2 The Revenue Share payable under this Clause 27.2 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

<sup>12</sup> N is the % share of Gross Revenue applicable from month falling immediately after 3<sup>rd</sup> anniversary of COD or Partial COD, as the case may be

<sup>13</sup> The term quarter used in this Agreement, unless repugnant to the context, shall mean the calendar quarter of the relevant Accounting Year

received during the particular quarter(s), or part thereof, within 7 (seven) days of the close of such quarter or part thereof.

In the event the Revenue Share is not paid within the period specified above from the close of each quarter, the amount of outstanding Revenue Share for the relevant quarter shall attract delayed interest payment at the rate of [\_\_\_\_] to be computed on the outstanding Revenue Share amount from the end of the 7 (seven) days period till the date of actual payment subject to a maximum period of 60 (sixty) days after the expiry of the initial 7 (seven) days period mentioned above.

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

#### 27.4 Minimum Revenue Payable to the Authority

- (a) The minimum revenue payable by the Concessionaire to the Authority during the Concession Period is Rs. [ ] INR on XNPV, excluding the applicable taxes, if any, as on Appointed Date and payable against the respective Check Point(s) to the Authority shall be as per Schedule Q of this Agreement.
- (b) The sum of the 'present value on "XNPV" basis' 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) shall be greater than or equal to the minimum revenue payable to the Authority ("**Minimum Revenue payable to the Authority**") as detailed in Schedule Q of this Agreement.

Note: For determining the sum of the 'present value on "XNPV" basis' of Revenue Share paid by the Concessionaire to the Authority up to the respective Check Point(s) detailed 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 annual rate of [\_\_\_\_]% 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 on "XNPV" basis' 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 detailed in Schedule Q) is less than the '**Minimum Revenue payable to the Authority**', then the difference between the **Minimum Revenue payable to the Authority** for the respective Check Point(s) as detailed in Schedule Q and the sum of present value on "XNPV" basis of the Revenue Share paid by the Concessionaire up to the respective Check Point(s) shall be the 'present value on "XNPV" basis' of the shortfall amount at the Appointed Date.

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

- (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 pay the shortfall amount as determined in Sub-clause (c) above (the "**Minimum Revenue Shortfall**").

- (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 deemed to be in material breach of the Concession Agreement and further action shall be taken as per the provisions of this Agreement.
- (f) For avoidance of doubt, it is clarified that if the sum of present value on “XNPV” basis of Revenue Share payable to the Authority in terms of Clause 27.2 and 27.3 exceeds the Minimum Revenue payable to the Authority , 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 Revenue payable to the Authority .

However, for the sake of clarity it is understood that any deficit payment against Minimum Revenue payable to the Authority or surplus payment over Minimum Revenue payable to the Authority at the respective Check Point(s) (as detailed in Schedule-Q) will be taken into account for the purpose of Minimum Revenue payable to the Authority at subsequent Check Point (s).

## 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 Project, 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 27.4 demonstrates that the Gross Revenue is more than the amount reported by the Concessionaire or its sub-licensees, the Concessionaire shall pay Damages, to the Authority, at the rate equal to 30 (thirty) times the difference in daily Gross Revenue determined by the Authority or its Authority Representative.

## 27.6 Applicability of GST

The Parties agree and undertake that the payment of Concession Fee and any other payment made under this Article is exclusive of any Goods and Services Tax (GST) or any other applicable taxes. Any GST or other statutory levies applicable under Applicable Laws shall be charged over and above the Concession Fee and any other payment made under this Article and shall be borne and paid by the Concessionaire as per Applicable Law.

**ARTICLE 28**  
**USER FEE**

**28.1 Collection and appropriation of Fee**

28.1.1 On and from COD or Partial COD, as the case may be, and till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, and collect Fee from the Users as deemed appropriate as per market conditions and fair market practices subject to Article 29 of this Agreement. 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 Project on the website of Project and specify in respect of all or any category of Users.

For avoidance of doubt, it is expressly agreed that the Concessionaire shall not be entitled to demand and collect the Fee for use of Access Road.

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 Project, and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement.

**28.2 Revision of Fee**

28.2.1 The Concessionaire may, at any time during Operation Period, modify the Fees, provide that, no revision of Fee shall take place within a period of thirty (30) days from the date of the immediately preceding revision. The revision of Fee shall not be applicable retrospectively.

**28.3 Penalty for evasion of Fee**

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

**28.4 Display of Fee**

28.4.1 The Concessionaire shall, at a suitable location at the Project MMLP and on the website of the 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 (under valid and subsisting sub-license agreement's) at the Project 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 Project 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 15 (fifteen) days of completion of each month, a statement of Fee in respect of the Services, facilities and amenities rendered by the Concessionaire or its authorised representatives or the sub-licensees (under valid and subsisting sub-license agreement's) at the Project substantially in the form set forth in **Schedule-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 (under valid and subsisting sub-license agreement's) at the Project; provided that notwithstanding such appointment, the Concessionaire shall be and remain solely liable and responsible for the collection of Fee in accordance with this Agreement and its deposit into the Escrow Account and for compliance with the provisions of this Agreement.

ARTICLE 29  
FUTURE EXPANSION OF THE PROJECT

**29.1 Future Expansion of the Project**

29.1.1 The Parties undertake that at any time after the [10<sup>th</sup> (tenth)] anniversary of the COD or the aggregate annual container traffic of the Project exceeding [70%] of the Obligated Design Capacity, the Authority shall have to right to undertake the development of the Future Expansion Area in part or full (the “**Future Expansion**”).

For avoidance of doubt, traffic computation for the purpose of assessing Clause 29.1.2 shall be on the basis of the container traffic reported at the Integrated Gate Complex in the immediately preceding 12 (twelve) month period. It is further clarified that the container traffic considered shall be cumulative traffic of loaded and empty TEUs for both inbound and outbound containers.

29.1.2 In the event that Authority intends to exercise its right to undertake development of the Future Expansion Area, in part or full, it shall undertake competitive bid process or process(es) to select Developer(s) and the Concessionaire shall have the “Right of First Refusal” in such bidding process(es) (the “**ROFR**”), subject to conditions herein

(a) Concessionaire must participate in the competitive bidding process(s) pursuant to the terms and conditions set out for such bidding process(es). Further, in the event, the Concessionaire is deemed responsive in such bid process(es) and its Bid is within the range of [10%] of the most competitive Bid received, the Concessionaire shall have the ROFR by matching the first ranked bid in terms of the selection criteria.

(b) Concessionaire must have satisfactory performance without any material default (being a default entitling the counter party to suspend obligations and/ or terminate the agreement) under any Project Agreement or evidenced by no Damages or penalties being levied on the Concessionaire in [3 (three) years] immediately preceding date of invitation of such bid process(es).

(c) Upon successful exercise of the ROFR, the Concessionaire shall sign a separate project agreement(s) in accordance with terms of the bid process(es).

29.1.3 The Parties hereby undertake and agree that the provisions of Clause 29.1.2 hereinabove shall cease to have force and effect, and the right to ROFR shall no longer be binding upon failure of Concessionaire to participate in bidding process(es) for the Future Expansion and the Authority may utilize the Future Expansion Area for other purposes as it may deem fit.

**29.2 Obligation of the Concessionaire towards Future Expansion**

29.2.1 It is expressly agreed that the Concessionaire shall, at all times, provide non-discriminatory access to Common User Facility, and no dispute or claim with regards to ROFR or any terms of Concession Agreement shall excuse the Concessionaire from its obligations or liability towards Developer(s).

29.2.2 The Concessionaire shall ensure maintenance of the Access Road and shall charge the Developer(s) such maintenance charges in proportion of the area allocated to each party. For such calculation, area pertaining to the Common User Facility shall be excluded.

29.2.3 The Concessionaire shall undertake benchmarking exercise to assess the establish reasonableness of terminal access charges with respect to comparable Indian Railway facilities

in the vicinity of [500 km] or as published by competent authority of Indian Railways for operations of private owned wagons in railways owned terminals. The Concessionaire, prior to publishing of tariff, shall submit to Authority details of the benchmarking exercise and proposal for such tariffs.

- 29.2.4 The Authority reserves the right to appoint an Independent Expert to undertake its own benchmarking and such assessment by Independent Expert shall prevail. The decision of the Authority shall be final and binding in case of any disputes with regards to benchmarking and notification of tariff.
- 29.2.5 Pursuant to the benchmarking exercise under this Clause 29.2.3 and Clause 29.2.4, the Concessionaire shall publish and notify terminal access and terminal handling charges on its own website and that of the Authority in the first week of January every year, which shall be applicable for the subsequent Financial Year. For avoidance of doubt, the Concessionaire shall not charge any other tariff except terminal access and terminal handling service from the Developer(s) for providing access and handling at the Rail Terminal.

**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.
- 30.1.3 The Concessionaire shall ensure that the Escrow Bank shall provide to the Authority with a secure facility for real-time online viewing and downloading of the Escrow Account statements at all times during the Concession Period.

**30.2 Deposits into Escrow Account**

- 30.2.1 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.

Provided further that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreement.

Notwithstanding anything to the contrary contained in this Agreement, in the event the Concessionaire fails to pay the Concession Fee for any of the quarter, the Authority shall have right to recover such Concession Fee due and payable to it by the Concessionaire from the Fee collected from Users and deposited in the Escrow Account.

**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 and statutory payments due and payable by the Concessionaire for and in respect of the Project;
  - (b) all payments relating to constructions of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
  - (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
  - (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.

For the avoidance of doubt, it is clarified that expenses for bid preparation and associated activities incurred by the promoters prior to the Appointed Date, shall not be eligible for withdrawal under the Escrow Agreement.

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 and statutory payments due and payable by the Concessionaire for and in respect of the Project;
- (b) outstanding Concession Fee for a period of upto 6 (six) months prior to the Transfer Date;
- (c) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including outstanding Concession Fee other than those specified in Clause 31.4.1 (b) above, and any claims in connection with or arising out of Termination; 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 (k) 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 amounts as may be required under the Financing Agreements and the Applicable Laws, provided that the coverage shall not be less than the engineering, procurement and construction cost specified in the Financing Agreements and shall also include such other 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 or in such manner and format as the Authority may specify, furnish to the Authority, in reasonable detail, the 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 Project, 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 Realisable Fees, and all other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall upload its Balance Sheet, Cash Flow Statement and Profit and loss Account, along with a report thereon by its Statutory Auditors, on the Authority's website and shall also provide copy to the Authority 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. The Authority reserves the right to post the Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by Statutory Auditors on its website for public viewing.
- 32.1.2 The Concessionaire shall, within 30 (thirty) days of the closure 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 31<sup>st</sup> (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**") 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 Monthly Fee Statements under Clause 28.5.

### 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 be 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.

### 32.6 CAG Audit

The Concessionaire recognizes the right of the Authority for verification and assurance of revenue accrued to the Concessionaire. On the request by the Authority, the Concessionaire shall make available Project Agreements, financial statement and other such Documentation of the Concessionaire for verification and assurance of revenue in accordance with "Public Auditing Guidelines for Public Private Partnerships in Infrastructure Projects" issued by Comptroller and Auditor General of India (CAG) in 2009 and Guidance note on- "Compliance audit of Public Private Partnership arrangements" issued on 06th January 2017 or any other notification, circular as may be applicable .

For avoidance of doubt, it is clarified that the Concessionaire referred in this Clause 32.6 refers to the Company incorporated to undertake the Project in terms of this Concession Agreement.

## 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 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 reasonably foreseen, prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

For the avoidance of doubt, it is clarified that (i) any ordinary commercial risks; (ii) increase in costs of labour, materials, fuel or utilities; or (iii) regular or seasonal weather conditions including annual monsoons, delays or difficulties in obtaining Applicable Permits, shall not constitute a Force Majeure Event.

**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, 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) that could not have been reasonably predicted based on data or information available for the period of 10 (ten) years prior to the Bid Due Date;
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 33.3 or a Political Event set forth in Clause 33.4;
- (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 or any person acting on its behalf 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.

For the avoidance of doubt, any directions, including rules and regulations, measures, etc. issued by the Government, State Government or Government Instrumentality to mitigate the effects of the aforementioned events shall also be considered as Non-Political Event.

**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, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage that causes damage to the Project and/or prevents collection of Fee by the Concessionaire in terms of Project, exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (b) industry-wide or State-wide strikes or industrial action interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any boycott, agitation, economic upheaval or similar occurrence which prevents construction of the Project or collection of Fee by the Concessionaire in terms of Project, for an aggregate period exceeding 7 (seven) days in an Accounting Year, excluding any event that qualifies as a Political Event under Clause 33.4(e);
- (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 event or circumstance of a nature analogous to any of the foregoing.

For the avoidance of doubt, any directions, including rules and regulations, measures etc., issued by the Government, State Government or Government Instrumentality to mitigate the effects of the aforementioned events shall also be considered as Indirect Political Event.

**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;
- (e) any boycott, agitation, economic upheaval or similar occurrence which prevents collection of Fee by the Concessionaire for a continuous period exceeding 30 (thirty) days in an Accounting

Year; or

- (f) 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 Event; 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 Event unless it shall have notified the other party of the occurrence of the Force Majeure Event 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 failing which the Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event.

### 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 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 collect the Fees and/or unable to construct Rail Connectivity despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof or such period for which Concessionaire was unable to construct the Rail Connectivity; provided that in the event of partial collection of Fee where the daily collection is less than 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 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 provided, however that, such costs shall not include loss of Fee, revenues or debt repayment obligations (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, it is clarified that the Force Majeure Costs shall not include loss of Fee revenues or debt repayment obligations.

I. Upon occurrence of a Force Majeure Event after the Appointed Date and prior to the Project Completion Date for the Project, the Force Majeure Costs shall mean escalation cost, prolongation cost, interest on Debt Due, and all other costs directly attributable to the Force Majeure Event. It is hereby expressly agreed by the Parties that escalation cost, prolongation cost and payment of interest on Debt Due for the purposes of this Clause 33.7.2 shall be limited to the extent determined hereinbelow:

- i. escalation cost shall be determined on the basis of variation in Price Index from the initial date set forth for the Scheduled Completion Date in the Schedule G till the Project Completion Date, proportionately for the period of delay attributable to the Force Majeure Event;
- ii. prolongation cost shall be determined as the product of [8% (eight percent)] of the value of incomplete work and the period of delay attributable to the Force Majeure Event, divided by the period specified in Clause 12.5.1; and
- iii. interest on Debt Due, for the period of delay attributable to the Force Majeure Event.

For the avoidance of doubt, the incomplete work referred to in this Clause 33.7.2 shall be limited to the portion of the work that remains unfinished due to the occurrence of a Force Majeure Event, and shall specifically exclude any work that was incomplete due to delays attributable to the Concessionaire prior to the occurrence of such Force

Majeure Event. The value of such work shall be assessed as of the Bid Due Date by Independent Expert, in accordance with the methodology set out in Clause 16.2.2.

- II. Upon occurrence of a Force Majeure Event after the COD, Force Majeure Costs shall mean (a) interest on Debt Due and (b) O&M Expenses as determined from original Financing Agreements. Provided that such O&M Expenses shall not exceed [0.7% (zero-point seven percent)] of the Estimated Project Cost per annum, and shall be adjusted for inflation using the applicable Price Index from the Bid Due Date to the first day of the relevant Accounting Year for which the Force Majeure Costs are to be determined.
- 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 equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.
- 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:
- Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
  - 110% (one hundred and ten percent) of the Adjusted Equity
- 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 Excuse from performance of obligations**

- 33.10.1 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;
- 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 and 36.6, in the event of the Concessionaire being in material default or breach 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 before COD**

Subject to the provisions of Clause 34.4 and 36.6, in the event of the Authority, being in material default or breach of this Agreement at any time after the Appointed Date and before COD, it shall pay to the Concessionaire by way of compensation, the direct costs incurred or 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 under this Agreement. Provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. It is hereby agreed by the Parties, that compensation payable by the Authority under this Clause 34.2 shall be limited to the extent determined hereinbelow:

- i) escalation cost shall be determined on the basis of variation in Price Index from the initial date set forth for the Scheduled Completion Date in the Schedule G till the COD, proportionately for the period of delay attributable to the Authority.
- ii) prolongation cost shall be determined as the product of 8% (eight percent) of the value of incomplete work and the period of delay attributable to the Authority, divided by the period specified in Clause 12.3.1.
- iii) loss of Fee revenues for the period of delay solely attributable to the Authority arrived at by multiplying such period with 80% of Average Daily Fee of one year period immediately following the COD. This amount, without any interest, shall be payable within 60 days from end of one year period following the COD.

For the avoidance of doubt, incomplete work shall refer only to the portion of the work that remains unfinished due to reasons attributable solely to the Authority. The value of such work shall be assessed as of the Bid Due Date by the Independent Expert, in accordance with the methodology specified in Clause 16.2.2(c).

Provided however, in the event of the Authority being in material default or breach of this Agreement at any time after the COD, the provision of Clause 34.3 shall be applicable.

**34.3 Compensation and extension of Concession Period for default by the Authority after COD**

In the event of the Authority being in material default or breach of this Agreement at any time after COD, the Concessionaire shall be entitled to compensation and extension of the Concession Period in accordance with the provisions set out below. Subject to Clause 34.6,

where such default results in suspension of or reduction in the collection of Fee, the Authority shall pay compensation to the Concessionaire for the period of such suspension or reduction, comprising (a) interest on Debt Due and (b) O&M Expenses as determined from the original Financing Agreements; provided, however, that such O&M Expenses shall not exceed [0.7% (zero point seven percent)] of the Estimated Project Cost per annum, adjusted for inflation using the applicable Price Index from the Bid Due Date to the first day of the current month of the relevant Accounting Year for which the compensation is to be determined. In addition to such compensation, the Authority shall extend the Concession Period for a duration equal to the period for which the collection of Fee remained suspended on account of such default; and in the event of a reduction in the collection of Fee, where the daily collection is less than 90% (ninety percent) of the Average Daily Fee, the Concession Period shall be extended in proportion to the daily loss of Fee. For the avoidance of doubt, a 25% (twenty five per cent) reduction in Fee collection compared to the Average Daily Fee for four days shall entitle the Concessionaire to an extension of one day in the Concession Period.

Provided further that in the event of the Authority being in material default or breach of this Agreement at any time after COD and till Project Completion Date, the calculation of extension in Concession Period shall additionally considered the prolongation cost and escalation cost for such period calculated in terms of Clause 34.2 towards the underconstruction Rail Connectivity works, if any.

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 under this Agreement.

#### **34.4 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.

#### **34.5 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 the Agreement by the other Party.

#### **34.6 Termination for default by the Authority before COD**

34.6.1 The Parties expressly agree that in the event of a material default or breach of this Agreement by the Authority prior to the COD, which subsists for a continuous period of 270 (two hundred and seventy) days, the Concessionaire may terminate this Agreement by issuing a Termination Notice to the Authority; provided that prior to issuing such Termination Notice, the Concessionaire shall inform the Authority of its intention to terminate by issuing a notice and shall afford the Authority a period of 15 (fifteen) days to make a representation, and may, upon expiry of such period, whether or not it has received such representation, proceed to issue the Termination Notice.

34.6.2 Upon such Termination in accordance with Clause 34.5.1, the Authority shall make a Termination Payment to the Concessionaire in an amount equivalent to that which would be payable under Clause 36.3.2 as if the Termination had occurred on account of an Authority Default.

**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 any or 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 authorise 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.

**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, operate the Project, collect all Fee and revenue under and in accordance with this Agreement, and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and 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 therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 35.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its designs, engineering, 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 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 thereunder 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, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

Notwithstanding anything to the contrary contained in this Agreement, during the period of Suspension, the Authority reserves the right, in public interest, to substitute the Concessionaire upon issuing a notice to the Lenders' Representative, without prejudice to any other rights or remedies available to it under this Agreement. For this purpose, the Authority may invite, negotiate and procure offers through public auction or tender for the takeover and transfer of the Project, including the Concession, to a Nominated Company. Such substitution shall be subject to the Nominated Company assuming all liabilities and obligations of the Concessionaire under or arising out of this Agreement, including obligations owed to the Authority and to the Senior Lenders to the extent of the Debt Due. During and upon such substitution, the Authority shall ensure that the Debt Due of the Senior Lenders is duly considered and protected.

In the event that the Concessionaire fails to pay the Revenue Share at the scheduled dates or does not meet the Key Performance Indicators (KPIs) as under Article 23 for a period of [2 (two) consecutive years], the Authority shall have the right to initiate the Substitution of the Concessionaire. This process shall be conducted with the consent of the Lenders' Representative, on behalf of Senior Lenders, in the form set forth in this Agreement.

### 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, 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 90 (ninety) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) COD does not occur within the period specified in Clause 12.5.3;
- (f) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (g) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (h) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (i) 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;
- (j) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (k) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (l) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (m) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (n) 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;
- (o) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse

Effect;

- (p) filing of an application for initiating corporate insolvency resolution process by any person under the Insolvency and Bankruptcy Code, 2016 against the Concessionaire, its promoters or persons having influence or control over the Concessionaire or its promoters, as the case may be, which has a potential to impact the Project in the opinion of the Authority or further, admission of an application for initiating corporate insolvency resolution process by an adjudicating authority under the Insolvency and Bankruptcy Code, 2016 against the Concessionaire, its promoters or persons having influence or control over the Concessionaire or its promoters, as the case may be or 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.
- (q) 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;
- (r) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
- 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;
- (s) any representation or warranty of the Concessionaire herein contained which is, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (t) 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;
- (u) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (v) 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;
- (w) the Concessionaire fails in achieving the rate of progress as per revised schedule in accordance with Clause 13.4 of this Agreement during the Construction Period;
- (x) if Project experiences two or more accidents in an Accounting Year, and this pattern persists

for any 2 Accounting Years out of a block of 3 Accounting Years and it is determined by the Authority that the cause of such accident is due to defects or deficiencies in the Project or as result of breach of safety or maintenance obligation set forth in this Agreement;

- (y) the Concessionaire repudiates the Supplementary Agreement on any ground whatsoever or takes any action or evidences or conveys an intention not to be bound by the Supplementary Agreement; or
- (z) the Concessionaire renders itself to be or is rendered incapable of, for any reason, performance of any of its obligations as set out in this Agreement.

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:

Notwithstanding anything to the contrary contained in this Agreement, the Authority reserves the right, in public interest, to substitute the Concessionaire upon issuing a notice to the Lenders' Representative, without prejudice to any other rights or remedies available to it under this Agreement. For this purpose, the Authority may invite, negotiate and procure offers through public auction or tender for the takeover and transfer of the Project, including the Concession, to a Nominated Company. Such substitution shall be subject to the Nominated Company assuming all liabilities and obligations of the Concessionaire under or arising out of this Agreement, including obligations owed to the Authority and to the Senior Lenders to the extent of the Debt Due. During and upon such substitution, the Authority shall ensure that the Debt Due of the Senior Lenders is duly considered and protected.

## 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:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement for the Project and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire for Project 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, 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. The Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD save and except in accordance with this Clause 36.9

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) Debt Due; and
- (b) 120% (one hundred and twenty 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.

#### **36.4 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 Project forthwith on an “as is where is” basis;
- (b) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 37.1; and
- (c) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

#### **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 Certificate / Provisional Certificate for Project , the Concessionaire shall notify to the Authority, the Total Project Cost of Project as on COD and as on the date of issue of Completion Certificate /Provisional Certificate for Project 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.

- 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 for Project 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 of issue of Termination Notice.

### 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 foreclose this Agreement by mutual consent in circumstances which does not constitute Party's Default. Such a foreclosure can occur in any of the following 2 (two) categories 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 foreclosure as specified in Clause 36.8.1 or otherwise 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 foreclose this Agreement as a Type B Foreclosure under Clause 36.8.1, 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 Termination Payment before COD**

36.9.1 Upon Termination on account of Concessionaire Default occurring prior to COD, no Termination Payment shall be due and payable if Physical Progress is upto 20% (twenty per cent). In the event the Physical Progress exceeds 20% (twenty per cent), the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to the lower of:

- (i) 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; or
- (ii) expenditure exceeding 20% (twenty per cent) of the Total Project Cost.

The Parties further agree that for the purposes of this Clause 36.9.1(ii), Total Project Cost shall mean the amount specified in Sub-clause (c) of the definition of Total Project Cost in Clause 49.1.

For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is 60% (sixty per cent) of the Total Project Cost, the Termination Payment due and payable in such event shall be lower of 90% of Debt Due or 40% (forty per cent) of the Total Project Cost.

### **36.10 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 another Contractor to execute or complete the Project with or without appropriate changes or modifications. Such an appointment or engagement shall be without prejudice to the Concessioner's liabilities and obligations under Article 38 and similar such Articles.

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 Project free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, structures and equipment, of all defects and deficiencies so that the Project MMLP 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, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project, as and shall be assigned to the Authority free from any Encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, Documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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 giving 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 effort 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.

### 37.4 Vesting Certificate

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

### 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 Project 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.

**ARTICLE 38**  
**DEFECTS LIABILITY**

**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 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.

**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 total Realisable Fee for the year immediately preceding the Transfer Date, shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, or till the defects and deficiencies in the Project are rectified to the satisfaction of the Authority, whichever is later 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 Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 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 an Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the form set forth in Annexure I of Schedule-F) or e-bank 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 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 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 charge on Receivables of the Concessionaires as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project.
- (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, or the Authority 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 or the Selected Bidder/Consortium Members of 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 succeeding 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.

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 other financial burden, the aggregate financial effect of which exceeds the higher of Rs.1 crore (Rupees one crore) and 0.5% (zero point five percent) of the Realisable Fee in any Accounting Year (the “**Threshold Limit**”), 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 cost increase, 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. 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 and while determining the amount payable to the Concessionaire, the Threshold Limit shall not be deducted from such amount.

Provided however, if the Change in Law, except where such Change in Law is on account of any change in the rates of any of the Taxes, results in an increase in the cost of construction after the Scheduled Completion Date, the Authority shall not be liable to pay any amount if the delay is attributable to the Concessionaire.

For the avoidance of doubt, the Concessionaire shall not be entitled to any benefit on account of any Change in Law which is a direct consequence of Non-Political Force Majeure Event or Indirect Political Force Majeure event as mentioned in Clause 33.2 and Clause 33.3.

**40.2 Reduction in costs**

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or other financial gains, the aggregate financial effect of which exceeds the higher of Rs.1 crore (Rupees one crore) and 0.5% (zero-point five percent) 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, or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority;

provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 40.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement and while determining the amount payable to the Authority, the Threshold Limit shall not be deducted.

The Parties further agree that payment of the property tax shall not attract the provisions of Clauses 40.1 and 40.2.

#### **40.3 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**

**41.1 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.

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 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**

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

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

42.3.3 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right to recover the costs and Damages specified in Clause 42.3.2 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instruction of the Authority under this Clause 42.3.3 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

**42.4 Restriction on sub-licensing / subletting**

The Concessionaire shall not sub-license or sublet 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 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 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 this Agreement.

#### 42.6 Stamp duty on license

The Parties agree that stamp duty, if any, due and payable on the grant of license comprising this Agreement shall be paid by the Authority.

**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**”), shall, in the first instance, be attempted to be resolved amicably.
- 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.

**43.2 Escalation of Dispute Conciliation\**

In the event of any Dispute(s) between the Parties remaining unresolved 30 (thirty) days of the notice in writing referred to in Clause 43.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to Arbitration or Conciliation in accordance with the provisions of Clause 43.3.

**43.3 Arbitration & Conciliation**

- 43.3.1 Any Dispute between the Parties the sum of which is of value less than Rs. 10,00,00,000/- (Rupees Ten Crores Only) which remains unresolved between the Parties through the mechanisms available/ prescribed in this Agreement, which has not been agreed upon/ reached settlement by the Parties, will be referred to SAROD, (a Society registered under Society's Act, 1860 vide Registration no. S/RS/SW1049/2013) duly represented by Government/ Authority and National Highways Builders Federation (NHBF) or to India International Arbitration Centre (“IIAC”).
- (a) 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 III.
- (b) 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.
- (c) The venue 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.
- (d) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.
- (e) The arbitrators shall make a reasoned award (the "Award"). Any Award made in any Arbitration held pursuant to this Article / 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.
- (f) The Concessionaire and the Authority agree that the Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- (g) 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.
- 43.3.2 Any Dispute between the Parties the sum of which is of value Rs. 10,00,00,000/- (Rupees Ten Crores Only) or above which remains unresolved between the Parties through the mechanisms available or prescribed in this Agreement, which has not been agreed upon/ reached settlement by the Parties, will be resolved by Conciliation as per the Arbitration and Conciliation Act, 1996.
- 43.3.3 The Concessionaire and the Authority agree that an Arbitration Award or the Settlement Agreement 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 or the Conciliation Agreement 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.
- 43.3.5 This provision relating to Conciliation under the Arbitration and Conciliation Act, 1996 shall cease to apply once the provisions relating to substitution of conciliation process by mediation are notified under Mediation Act, 2023. Thereafter “Conciliation” herein be referred to as Mediation as per the provisions of the Mediation Act 2023.
- 43.3.6 Notwithstanding anything to the contrary contained in this Agreement, it is agreed that any Dispute between the Parties the sum of which is of value equal to or above Rs. 10,00,00,000/- (Rupees Ten Crores Only) shall be adjudicated by Civil Courts and shall not be referred to Arbitration. It is further agreed that all declaratory disputes or non-monetary disputes shall be adjudicated by Civil Courts and shall not be referred to Arbitration.

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 Site and Concessionaire’s Registered Office and shall also upload the Specified Documents on the Authority’s website. 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. The Authority reserves the right to host the Specified Documents on its website for public viewing.

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

**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 Site 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**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Site 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 and in electronic form as specified by the Authority.
- 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 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, 2019, 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 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 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 MMLP 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 4% (four 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 MMLP 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 unless made a part of this Agreement. 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 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**

46.21.1 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 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 Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail

- or by courier, be sent by 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 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 Delhi it may send such notice by 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 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.

#### **46.18 Limitation on damages payable by the Concessionaire**

During the Construction Period, the Parties agree that the aggregate damages payable by the Concessionaire under, or in accordance with, Clause 12.5.2 and Clause 15.2 shall not exceed 10% (ten percent) of the Estimated Project Cost.

During the Operation Period, the Parties agree that the aggregate damages payable by the Concessionaire under, or in accordance with, Clause 17.8 shall not exceed 10% (ten percent) of the Estimated Project Cost.

#### **46.19 Limited reliance on the Financial Model/ Financial Package**

The reliance on the Financial Model/ Financial Package shall be limited to as specified in this Agreement and no part of the Financial Model, including the expected rate of return/ demand volume etc., shall be binding on the Parties. The Authority shall not be liable to allow any claim with reference to the Financial Model/ Financial Package as compensation on account of any loss derived from the assumptions made in the Financial Model/ Financial Package.

#### **46.20 Retention of Video Recording**

The Concessionaire shall preserve and store all video recordings required under this Agreement during

the Development Period, Construction Period and the Operation Period. Video recordings made during the Development Period and Construction Period shall be retained for a minimum period of 1 (one) year from the COD, and video recordings made during the Operation Period shall be retained for a minimum period of 3 (three) years from the date of such recording, or until the final resolution of any related Dispute, whether through conciliation, mediation, or court proceedings, whichever is later. Provided, however, that this requirement shall not apply to video recordings that are hosted on the Authority's website or are otherwise made available to the Authority.

#### **46.21 Liability of the Content uploaded on the Authority's website**

- 46.21.1 The Concessionaire agrees and acknowledges that the Authority assumes no responsibility or liability whatsoever, in respect of any information, data, video recording, report, Document, notice pertaining to the Project provided by the Concessionaire and uploaded or published on the Authority's website (the "**Content**") in accordance with this Agreement.
- 46.21.2 The Authority shall have no obligation to review, verify, validate, or approve any such Content, nor shall it be responsible for ensuring its compliance with any applicable legal, contractual, technical, or regulatory standards. The Concessionaire shall bear sole and absolute responsibility for ensuring that all the Content is accurate, complete, up-to-date, and fully compliant with the Agreement and all Applicable Laws, rules, regulations, directions, and notifications issued by any Government Instrumentality.
- 46.21.3 The Concessionaire expressly acknowledges and agrees that it shall be solely responsible for:
- a. ensuring that all Content uploaded or published on the website is accurate, complete, and in strict conformity with this Agreement and instructions issued by the Authority from time to time; and
  - b. at its cost and expense, defending, addressing, and resolving any claims, complaints, or proceedings arising from or in connection with the Content, including any errors, omissions, or non-compliance, and shall be responsible for all liability, civil or criminal, or claims, and shall fully indemnify, defend, and hold harmless the Authority from and against any and all losses, damages, costs, liabilities, penalties, or expenses incurred in connection therewith.

## 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 the road proposed to be developed for connecting Project MMLP to the carriageway of highway alongside Project, at the area set out in Annex - II of Schedule A and as described in Annex - III of Schedule B of this Agreement;

“**Access Road Construction Support**” shall have the meaning set forth in Clause 26.1.1;

“**Access Road Project Cost**” shall mean the Access Road Construction Support assessed for development of Access Road;

“**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 [0.42% (zero point four two per cent)]<sup>14</sup> 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.

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;

<sup>14</sup> 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 45 year Concession Period shall be  $100/540 = 0.1852$  rounded off to two decimal points i.e. 0.19.

“**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;

“**Alternative Reference Rate**” means, in relation to any currency, a widely accepted risk-free or near risk-free benchmark interest rate that has been identified, recognised, recommended, or permitted by the Reserve Bank of India, or by the relevant central bank, financial regulator, or benchmark administrator for such currency, as a replacement for the London Interbank Offered Rate (LIBOR) or any other discontinued or non-representative benchmark.

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

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made 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 of fulfilment of all Condition Precedents including achievement of Financial Close, to be declared by the Authority with the consent of the Concessionaire, 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 prior to the Appointed Date.

“**Arbitration**” shall have the meaning set forth in Clause 43.3;

“**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);

“**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 rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**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 Due Date**” means last date of submission of Bids specified in the RFP;

“**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)<sup>15</sup>, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“**Business Day**” shall have the meaning as set forth in Clause 1.2.1;

“**Change in Law**” means the occurrence of any of the following after the Bid Due Date that have a direct effect on the Project:

- (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;

Provided further that any change in operational or business policy or such directions issued by Indian Railways, Central Board of Indirect Taxes and Customs or any of their agencies shall not construe Change in Law.

“**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

<sup>15</sup> To be calculated @ [\*] % of the amount specified in the definition of Total Project Cost of Project

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 Project and one year 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 one year after COD, shall constitute Change in Ownership;

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

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

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

“**Commercial Notification**” shall mean commercial notification of GCT by competent authority of Indian Railway allowing handling of inward and outward rail traffic as per GCT Policy;

“**Common User Facility**” means the facility or infrastructure within the Project that is developed by the Concessionaire including Rail Terminal, Rail Connectivity and Access Road and other such areas intended to be used by the Concessionaire, the Developer and other Users on non-discriminatory basis as per the provisions of this Agreement;

“**Common User Facility Agreement**” shall mean the agreement entered into between the Concessionaire, Developer and the Authority in respect of Common User Facility in terms of provisions of Article 29;

“**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;

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

“**Concept Master Plan**” shall mean concept master plans of Project MMLP, Rail Connectivity and the Access Road respectively, as set out in Schedule B, referred to collectively;

“**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;

“**Connectivity Physical Progress – Access Road**” shall mean the physical construction of the Access Road completed by the Concessionaire and shall be measured as per the assessment done by

the Independent Expert in accordance with Clause 26.2 of this Agreement;

“**Connectivity Physical Progress – Rail Connectivity**” shall mean the physical construction of the Rail Connectivity completed by the Concessionaire and shall be measured as per the assessment done by the Independent Expert in accordance with Clause 26.2 of this Agreement;

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

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

“**Construction Period**” means the period beginning from the Appointed Date and Project Completion Date;

“**Construction Support**” shall have the meaning set forth in Clause 26.1.1;

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

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

“**Control**” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in a group directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

“**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;

“**DBFOT**” or “**Design, Build, Finance, Operate and Transfer**” shall have the meaning set forth in Recital (B);

“**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 Project:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost for Project (the “**principal**”) but excluding any part of the principal that had fallen due for repayment one year prior to the Transfer Date; limited to maximum outstanding amount one year prior to the Transfer Date computed as per Schedule-X.
- (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;

provided further that the Debt Due shall in no case exceed 85% (eighty five percent) of the Total Project Cost;

“**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 under the Financing Agreements;

“**Design-in-Charge**” shall have the meaning set forth in Clause 12.2.1(e);

“**Developer**” means a company or entity, to whom the Authority awards the work for the development, operation, and maintenance of the any part of Future Expansion Area and “**Developer(s)**” shall mean all such Developer collectively

“**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 set forth in Article 44;

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

“**Estimated Project Cost**” means the Estimated Project Cost as specified in the RFP;

“**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, who meets the eligibility criteria as specified in the RFP with whom the Concessionaire has entered into an EPC Contract;

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

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

“**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 Construction 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 Project Cost of Project

completion and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Construction Support, if any;

“**Financing Agreements**” means the agreements executed by the Concessionaire for Project 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.

“**Future Expansion Area**” shall refer to the designated land or area as set out in Annex IV of Schedule A, that is earmarked for future expansion, development or utilization, as identified and approved by the Authority;

“**Future Expansion**” shall have the meaning ascribed to it in Clause 29.1.1;

“**Future Expansion Trigger**” shall have the meaning ascribed to it in Clause 29.1.2;

“**GCT**” means the 'Gati Shakti Multi-modal Cargo Terminal (GCT)' as referred to in the GCT Policy;

“**GCT Policy**” means the Master Circular on 'Gati Shakti Multi-modal Cargo Terminal (GCT)', 2022 and Policy for 'Gati Shakti Multi-Modal Cargo Terminal', as issued by Indian Railways and amended or replaced by any such policy governing private railway freight terminal by the Indian Railways;

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

“**Gross Revenue**” shall mean

- (i) all the pre-tax revenues earned from the User for and in respect of Project Facilities and Services provided under or pursuant to this Agreement during the relevant period of computation. Gross Revenue shall be computed based on the Fees charged to the Users and

shall include any one-time or upfront revenue, and shall also include any imputed revenue calculated as per Clause 19.2 for and in respect of different Services as under.

- a) Revenue from Terminal Services – Gross Revenue shall include any revenue earned from the Fees charged to the User(s) in providing Terminal Services. For avoidance of doubt, the revenue heads will inter alia include Terminal Handling Charges, Container Handling Charges, Cargo Handling Charges, Lift on / Lift off (LOLO) Charges, Terminal Service Charges, Terminal Access Charge, Customs Examination charges, Weighment Charges, Documentation Charges, Documentation & Surveyor Charges, Maintenance & Repair Charges, Data Charges, Infrastructure & Development Charges, Terminal Infra-charge on Loaded Containers, Equipment Imbalance Charge on Loaded Containers, Storage Charges, Ground Rent, or any other charge analogues to charges mentioned herein above.
  - b) Revenue from Warehousing Services – Gross Revenue shall include any revenue earned from
    - i. Fees earned directly from the User(s) by the Concessionaire or by an Associated Firm providing Warehousing Services; and
    - ii. Fees from leasing, sub-licensing, sub-contracting, or other similar contractual arrangements, of Warehousing Zone Facility, in full or in part to any third-party agency, if applicable
  - c) Revenue from Transportation Services – Gross Revenue shall include any revenue earned from Transportation Services within Project MMLP and Future Expansion Area.
  - d) Revenue from Value-Added Services – Gross Revenue shall include any revenue earned from the Fees charged to the User(s) in providing Value-Added Services.
  - e) Revenue from Commercial Zone Services - Gross Revenue shall include any revenue earned from
    - i) Fees earned directly from the User(s) by the Concessionaire or by an Associated Firm providing Commercial Zone Services; and
    - ii) Fees from leasing, sub-licensing, sub-contracting, or other similar contractual arrangements, of Commercial Zone, in full or in part to any third-party agency, if applicable
  - f) Revenue from Allied Services - Gross Revenue shall include any revenue earned from the Fees charged to the User(s) in providing any other services not mentioned herein.
- (ii) Further, in computing the Gross Revenue, income from interest on investments including security deposits, advances, premiums received etc. shall also be included.

Any income receipts from the sale of Movable Assets (sale of Movable Assets for replacement of the same assets or its substitute in the Project and certified by the Independent 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.

“**IRC**” means the Indian Roads Congress;

“**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;

“**Integrated Gate Complex**” shall be the common gate complex for the Project MMLP and shall be as described in Annex -I of Schedule B;

“**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;

“**IT System**” shall have the meaning ascribed to it in Clause 17.19;

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

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

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

“**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 (E);

“**Logistics Services**” shall mean Terminal Services, Warehousing Services and Transportation Services and such other services as may be specified by the Authority from time to time in furtherance of services defined in schedule C and /or as per Applicable Laws;

“**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**” shall mean master plan finalized in terms of Article 12 for construction,

development and operation of the Project in accordance with the provisions of this Agreement;

“**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;

“**Mediation Act**” means the Mediation Act, 2023 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Minimum Revenue payable to the Authority**” shall have the meaning ascribed to it in Clause 27.4;

“**Minimum Revenue Shortfall**” shall have the meaning ascribed to it in Clause 27.4 (d);

“**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;

“**Movable Assets**” means tangible assets that are not permanently affixed to land or buildings and are expected to be used for more than one accounting period.

“**Multi-Modal Logistics Park**” / “**MMLP**” shall mean an infrastructure facility spread over a minimum area of 100 (one hundred) acres with round the clock multi modal freight transport access, enabling inter modal handling and storage of Containers and Cargo, so as to provide a basket of Logistics Services including Value Added Services and shall include facilities for export and import of cargo/containers.

“**Mutual Foreclosure Agreement**” shall mean the agreement executed under Clause 36.8 pursuant to the execution of which all rights, claims, and obligations of the Parties arising under the Agreement shall cease;

“**Nominated Company**” means a company selected by the Lenders’ Representative and proposed to the Authority or selected by the Authority, as the case may be, for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement or (ii) wherever the Selected Bidder/Consortium Members of the Concessionaire are sought to be substituted in accordance with Clause 3A of the Substitution Agreement, the Concessionaire itself;

“**Non-Political Event**” shall have the meaning as set forth in Clause 33.2;

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

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

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

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement,

reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, or another 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 19.2;

“**Obligated Design Capacity**” shall have the meaning as set forth in Clause 29.1;

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

“**Overall Site**” shall mean the Site awarded for development of Project and the Future Expansion Area as set out in Annex IV of Schedule A;

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

“**Partial Commercial Operation Date**” / “**Partial COD**” shall have the meaning as set forth in Clause 15.3;

“**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;

“**Physical Progress**” shall mean the physical construction of the Project completed by the Concessionaire and shall be measured as per the assessment done by the Independent Expert in accordance with Schedule G;

“**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;

“**Price Index**” shall comprise:

- (a) 70% (seventy per cent) of WPI; and
- (b) 30% (thirty per cent) of CPI (IW),

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

“**Project**” means the construction, operation and maintenance of the Project MMLP, Access Road and Rail Connectivity 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 Project 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 (i) IT System relating to or in respect of the Project.

“**Project Components**” means Project MMLP, Access Road and Rail Connectivity collectively and “**Project Component**” shall mean any of the components of the overall Project individually

“**Project Completion Date**” means the date on which the Completion Certificate issued under the provisions of Article 14;

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

“**Project Facilities**” means all the amenities and facilities situated on the Site, as described in Schedule-B under Project to provide Services as outlined in Schedule-C;

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

“**Project MMLP**” means the design, finance, construction, operation, maintenance, marketing, and management of the MMLP located at part of Site described in Annex - I of Schedule A and providing Project Facilities and Services in accordance with the provisions of this Agreement.

Project MMLP includes whole of the physical assets and other assets, which are necessary or required for providing Services and shall include such other assets as procured from time to time, in accordance with Scope of Work and Standards & Specifications detailed in this Agreement, for or in relation to performance of Services as per provisions of this Agreement. Provided further that Project MMLP shall exclude Rail Connectivity and Access Road;

“**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;

“**Quality Assurance Plan**” or “**QAP**” shall have the meaning set forth in Clause 13.8;

“**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;

“**Rail Connectivity**” means the rail network to be developed by the Concessionaire from takeoff point of the serving station of the Indian Railways/DFC to the Rail Terminal, at the area set out in Annex - III of Schedule A and as described Annex - IV of Schedule B of this Agreement;

“**Rail Connectivity Construction Support**” shall have the meaning set forth in Clause 26.1.1;

“**Rail Connectivity Project Cost**” shall mean the Rail Connectivity Construction Support assessed for development of Rail Connectivity;

“**Rail Terminal**” means the designated area or facility within the Project where trains are loaded, unloaded, or maintained and cargo are handled, at the area set out in Annex - I of Schedule A and as described Annex - I of Schedule B of this Agreement;

“**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;

“**Related Party**” means a related party of Concessionaire under the provisions of the Companies Act, 2013 and shall also include all the Consortium Member;

“**Related Party Transaction**” means an agreement to transfer resources, services, or obligations between Related Party, which can occur whether or not a price is charged;

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

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

“**Right of First Refusal**” or the “**ROFR**” shall have the meaning ascribed to it in Clause 29.1.2

“**Right of Way**” or “**ROW**” 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 12.5;

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

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire. Provided that for the purpose of this definition, financial institutions, banks, and multilateral lending agencies shall at least have a net worth of Rs. 1,000 Crore (Rs. one thousand crore), and non-banking financial companies shall at least have a net worth of Rs 500 Crore (Rs. Five hundred crore);

“**Services**” shall mean the Logistics Services and Value-Added Services, Commercial Zone 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 Project, as set forth in Schedule-D, D1 & D2, and any modifications thereof, or additions thereto, as included in the engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“**State**” means the [State of \*\*\*\*\* and/or the Union Territory of \*\*\*\*\*] in which the Project is situated and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 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, limited to maximum outstanding amount on Transfer Date computed as per Schedule X; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above, but restricted to the lesser of:

- (i) the actual applicable interest rate; and
- (ii) in the case of loans denominated in Indian Rupees, a rate equal to 5% (five per cent) above the Bank Rate; and

in the case of loans denominated in foreign currency, the relevant Alternative Reference Rate applicable to such currency, or such other benchmark rate as may be recognised or permitted by the Reserve Bank of India, plus a margin of 2% (two per cent)

but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date.

Provided that, where the relevant Alternative Reference Rate is discontinued, ceases to be published, or becomes non-representative, the applicable interest rate shall be determined in accordance with a fallback mechanism:

- (i) consistent with the guidelines, directions, or advisories issued by the Reserve Bank of India from time to time; and
- (ii) acceptable to the Senior Lenders, and such fallback rate shall be deemed to be the applicable benchmark for the purposes of this Agreement.”

Provided further 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 Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Terminal Services**” shall mean intermodal transfer, cargo handling, container handling, rail-side transit storage, ICD services, cargo aggregation and distribution, internal shifting within the Project MMLP and such other services as may be specified by the Authority from time to time in furtherance of Services defined in Schedule-C and/or as per Applicable Laws;

“**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 Project Completion Date, the Concessionaire shall notify to the Authority, the Total Project Cost as on Project Completion Date and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. It is further agreed that at any time during the Concession Period, the aggregate of Debt Due and Adjusted Equity shall be limited to Total Project Cost for the purpose of computing the Termination Payment.

It is also agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the project cost towards Project MMLP expended as on COD and its disaggregation between Debt Due and Equity.

“**Tests**” means the tests set forth Schedule-I to determine the completion of the Project in accordance with the provisions of this Agreement;

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

- (a) the aggregate value of capital cost of the Project *{less Construction Support}* as set forth in the Financial Package for Project; and
- (b) the aggregate value of actual capital cost of the Project *{less Construction Support}* upon completion of Project;
- (c) a sum of [Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_)], *less Construction Support*<sup>16</sup>.

<sup>16</sup> This amount may be indicated on the basis of project-specific cost estimates, including financing charges;

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 Project Completion Date, 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 expire pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**Transportation Services**” shall mean movement of cargo / containers from / to the Project MMLP through any mode of transportation including rail, road, water, air, pipeline, cable.

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

“**User**” or “**User(s)**” means a person who uses or intends to use the Services of Project or any part thereof on payment of Fee in terms of the Project 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 Project.*

“**User Charter**” shall have the meaning as set forth in Clause 23.3;

“**Value Added Services**” shall mean services in addition to Logistics Services that are likely to be provided at the Project as outlined in Schedule C

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

“**Warehousing Services**” shall mean storing, handling and value addition of physical inventory for sale or distribution or aggregation or for holding or home consumption

“**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 for the period ending with the preceding month

**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)

and this amount shall, after bidding, be reduced by a sum equivalent to the Construction Support. In determining this amount, the estimated cost of construction shall be increased by 25% thereof to account for contingencies, risk premia and financing costs. These costs should be reviewed and firmed up during pre-bid consultations.

  
 हरलीन कौर / Harleen Kaur  
 निदेशक / Director  
 सड़क परिवहन एवं राजमार्ग विभाग  
 Ministry of Road Transport & Highways  
 भारत सरकार / Govt. of India  
 नई दिल्ली / New Delhi-110001

(Name)

(Designation)

(Address)

(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 thereof<sup>17</sup>;

(Signature)

(Name)

(Designation)

(Address)

(e-mail address)

In the presence of: 1.

2.

---

<sup>17</sup> 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**  
(See Clause 10.1)  
**SITE OF THE PROJECT**

**The Site**

- a) Site of the Project shall include the land, buildings and structures as described in Annex-I, Annex-II and Annex-III of this Schedule A.
- 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 Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- c) The Site of the Project includes all the land earmarked for the Project and specifies the location and land use.
- d) Details of Overall Site including Site and the Future Expansion Area are described in Annex-IV.

Annex - I  
(SCHEDULE-A)  
**Site for Project MMLP**

[Note: Through suitable drawings and description in words, the land, buildings, structures and works comprising the Site for Project MMLP shall be specified briefly but precisely in this Annex-I.]

1. **Site for Project MMLP**

2. **Land**

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

[Detail of land use]

[Coordinates and reference points of the Project MMLP site along with suitable drawings]

3. **Inventory within the Project MMLP Site**

[In the event there are any buildings or structures on the Project MMLP Site, the same shall be marked in the drawings and briefly described in words.]

- a. Buildings
- b. Structures
- c. Roads
- d. Rail
- e. Utilities
- f. Trees
- g. Other immovable properties

Annex - II  
(Schedule-A)  
**Site for Access Road**

[Note: Through suitable drawings and description in words, the land, buildings, structures and road works comprising the Site for Access Road shall be specified briefly but precisely in this Annex-II.]

**1. Site for Access Road**

The Site of the [\*\*\*-Lane divided] Access Road comprises the section of [\_\_\_\_\_] \*\* commencing from Km \*\*\* to Km \*\*\* i.e. the \*\*\* - \*\*\* section in the State of \*\*\*. The land, carriageway and structures comprising the Site are described below.

**2. Land**

The Site of the Access Road comprises the land described below:

S. No.	Chainage (In Km)		Construction Zone within ROW (In m)	Total ROW (In m)	Date of Handover of Construction Zone	Date of Handover of Balance ROW
	From	To				

**3. Carriageway**

The present carriageway of the Access Road is a [-lane divided carriageway with paved shoulders in its entire length].

**4. Major Bridges**

The Site includes the following Major Bridges:

S.No	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

**5. Railway Over Bridges**

The Site includes the following Railway Over Bridges:

S.No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

**6. Grade Separators**

The Site includes the following Grade Separators:

S.No	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

**7. Minor Bridges**

The Site includes the following Minor Bridges:

S. No.	Chainage	Type of Structure	No. of Spans	Width (In m)

	(In Km)			

### 8. Total number of structures

The total number of structures on the Site is noted below:

[(a) No. of Major Bridges	-	**
(b) No. of Railway Over Bridges	-	**
(c) No. of Grade Separators	-	**
(d) No. of Minor Bridges	-	**
(e) No. of Vehicular and Non-Vehicular Underpasses	-	**
(f) No. of Box Culverts	-	**
(g) No. of Pipe Culverts	-	**
(h) No. of Slab Culverts	-	**]

### 9. Bus bays and Truck Lay byes

The total number of bus bays and truck lay byes on the Access Road is noted below:

[(a) No. of Bus bays on LHS	-	**
(b) No. of Bus bays on RHS	-	**
(c) No. of Truck lay-byes on LHS	-	**
(d) No. of Truck lay-byes on RHS	-	**]

### 10. Permanent Bridge, Tunnel or Flyover having length more than 60 meters

The Site includes the following permanent bridge/ tunnel / flyover with length as noted below:

- [(a) Bridge at km \*\*\* to km \*\*\* of NH-\*\* with length\*\* meters  
 (b) Tunnel at km \*\*\* to km \*\*\* of NH-\*\* with length\*\* meters  
 (c) Flyover at km \*\*\* to km \*\*\* of NH-\*\* with length\*\* meters]

### 11. Alignment Plan of Access Road

## Annex - III

(Schedule-A)

Site for Rail Connectivity<sup>16</sup>

[Note: Through suitable drawings and description in words, the land, buildings, structures and track works comprising the Site for Rail Connectivity shall be specified briefly but precisely in this Annex-III.]

## 1. Site of Rail Connectivity

The Site of the Rail Connectivity comprises the section commencing from km \*\*\* to km \*\*\* i.e. the \*\*\* - \*\*\* section in the State of \*\*\* in the \*\*\*\* Railway zone. The land and other structures comprising the Site are described below:

## 2. Route Length

The route length of the Railway Connectivity comprises the section as described below:

S. No	Name of location From	Name of location To	Start Chainage (km)	End Chainage (km)	Length (km)	Remarks

## 3. Land

The Site of the Railway Connectivity comprises the land described below:

S. No	Name of location From	Name of location To	Start chainage (km)	End chainage (km)	Land width (m)	Remarks

## 4. Details of existing structures and facilities on the Site for Rail Connectivity

## 4.1 Important Bridges

The Site includes the following Important Bridges:

S. No.	Bridge No. and location (km)	Type of Structure			No. of Spans with span length (m)	Width (m)
		Foundation	Sub-structure	Superstructure		

## 4.2 Major Bridges

The Site includes the following Major Bridges:

S. No.	Bridge No. and location (km)	Type of Structure			No. of Spans with span length (m)	Width (m)
		Foundation	Sub-structure	Superstructure		

<sup>16</sup>The contents of this Annexure-I may be suitably modified to reflect project specific requirements.


### 4.3 Minor Bridges/culverts

The Site includes the following Minor Bridges and culverts:

S. No.	Bridge No. and location (km)	Type of Structure			No. of Spans with span length (m)	Width of the bridge (m)
		Foundation	Sub-structure	Superstructure		

### 4.4 Tunnels

S. No.	Block Section	km from	km to	Remarks

### 4.5 Railway Flyovers

The Site includes the following Railway Flyover:

S. No.	Block Section	Bridge No and location (Km)	Type of Structure			Span (Nos. × length)	Width (m)
			Foundati on	Sub-structure	Super-structure		

### 4.6 Road under-bridges (RUB)/ road over-bridges (ROB)

The Site includes the following RUB (Road under railway line)/ ROB (road over railway line):

S. No.	Block Section	Bridge No. and location (km)	Type of Structure		Span (Nos. × length)	Width (m)/ height (m)	ROB/ RUB
			Found <sup>n</sup>	Super-structure			

### 4.7 Railway level crossings

The Site includes the following railway level crossings:

S. No.	Block Section	Chainage	LC No	TVUs	L C Classi-fication	Remarks

#### 4.8 Railway stations on Railway Project

The Site includes the following railway stations

S. No.	Station	C.L. km	Nos. of Lines	Station Building Area	Nos. of P.F. & Length	Remarks (Whether Jn. Station)

#### 4.9 Foot over bridges on Railway Project

The Site includes the following foot over bridges:

S. No.	Station Block Section	Chainage	Span/Nos. of Track	Remarks

#### 4.10 Transmission lines crossing the Right of Way

The Site includes the following transmission lines crossing the Right of Way:

S.No.	Block Section	Chainage	HT/LT (Specify KV)	OH/UG	Height above RL/Depth below RL

#### 4.11 Underground power line crossing the Right of Way

The Site includes the following Underground Power Line Crossings

Sr. No.	Location	System Voltage	Distance of Structure from centre of Track	Remarks

#### 4.12 Signalling infrastructure

The Site includes the following signalling infrastructure:

S.No.	Station	Standard of Interlocking	Existing Signalling System (RRI/TBM Rly etc.)	Type of Signals (Single distant/ double distant/ colour light etc.)	Remarks

#### 4.13 Telecommunication infrastructure

The Site includes the following telecommunication infrastructure:

S.No.	Station	Control Phone	DOT	Any other Communication	Availability of OFC

#### 4.14 [Any Other Structures]

[Provide details of other structures Feeding Post, Sub Station, SP, SSP, Relay Huts, Gumties, Cable/OFC Huts, Telecom Towers etc., if any.]

#### 5 Alignment Plan of Rail Connectivity

Annex - IV  
(Schedule-A)  
**Detail of Overall Site**

- 1. Layout of Overall Site**
- 2. Layout of Future Expansion Area**

[Note: Through suitable drawings and description in words.]

**SCHEDULE-B***(See Clause 2.1)***DEVELOPMENT OF THE PROJECT****1. Development of the Project**

Development of the Project shall include construction of the Project MMLP, Access Road and Rail Connectivity as described in this Schedule-B.

**2. Project MMLP**

2.1. **Development of the Project MMLP shall include** construction of Project Facilities **as described in Annex-I and Annex-II of this Schedule-B.**

2.2. Project MMLP shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-I and Annex-II of Schedule-D.

**3. Access Road**

3.1. Development of the Access Road shall include construction of Project Facilities as described in Annex-III of this Schedule-B.

3.2. Development of the Access Road shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-III of Schedule-D.

**4. Rail Connectivity**

4.1. **Development** of the Rail Connectivity shall include construction of Project Facilities as described in Annex-IV of this Schedule-B.

4.2. Development of the Rail Connectivity shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-IV of Schedule-D.

4.3. For developing the Rail Connectivity, the Concessionaire shall not deviate from the alignment approved by Indian railway while according Engineering Scale Plan approval.

ANNEX – I  
(SCHEDULE-B)

**1. CONCEPT MASTER PLAN – PROJECT MMLP**

[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 Rail Terminal, Administrative facilities and Commercial Zone inside MMLP**

Facilities	% Range of land footprint of total area	
	Minimum (%)	Maximum (%)
Rail Terminal	[•]	[•]
Administrative facilities (Administrative Block, Custom Office etc.) and Integrated Gate Complex	[•]	[•]
Commercial Zone with facilities such as Bank, ATM, Retail Spaces, Convention Centre etc.	[•]	[•]
Landscaping zone	[•]	[•]

**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.

## 2. FACILITIES AT PROJECT MMLP

- (a) **Rail Terminal** includes the rail siding as shown in the Concept Master Plan given in this Schedule B and shall mean a terminal where goods are loaded in wagons for transportation over Indian Railway network, and / or unloaded from wagons after being transported over Indian Railway network.

Rail Terminal includes -

- i. All railway tracks, sleepers, ballast, embankments, bridges, over-head infrastructure, signal interlocking and tele-communication equipment, gates, buildings, in-motion weighbridges and other constructions, erections, works and movable property constructed / erected / provided or used in connection with the railway track.
- ii. Platform for cargo/container handling,
- iii. Mechanized / manual cargo handling system as per market and cargo requirement
- iv. all allied infrastructure required for operationalization of the rail terminal

The Rail Terminal shall only include the area within the Site for Project MMLP. For avoidance of doubt, the Rail Terminal shall exclude the area for Rail Connectivity.

Rail Terminal also includes area for any future rail line and allied infrastructure. While developing the future rail lines, the Concessionaire shall not deviate from the alignment of rail siding provided in the concept Master Plan in Annex-I of this Schedule-B.

The Concessionaire shall develop any additional rail lines required for meeting the service requirements during the Concession period.

The Concessionaire shall construct the Rail Terminal in accordance with the approved Engineering Scale Plan (ESP). The Concessionaire shall be responsible for all construction and modification works, including but not limited to civil, permanent ways, signaling, traction, overhead electrification (OHE), information technology (IT), networking, and any other incidental works required as per the approved detailed project report (DPR), ESP, signaling interlocking plan (SIP), and applicable general conditions of Gati Shakti Multi-Modal Cargo Terminal policy (the "GCT Policy") for development of Gati Shakti Multi-Modal Cargo Terminal (the "GCT"). The Concessionaire shall undertake the preparation of detailed design, SIP, general arrangement drawing (GAD) and any other document required for construction and shall obtain all requisite approvals required from the concerned zonal Railway and any other competent authority. The Concessionaire shall ensure the operationalization of the Rail Terminal within the timeline stipulated in the approved feasibility report, DPR, ESP, SIP, and applicable GCT policy, and in any case, no later than four (4) years from the Appointed Date.

Any modification to the scope of work of Rail Terminal after ESP approval pursuant to the request or approval of any Government Instrumentality, the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16.

- (b) **Inland Container Depot (ICD) (the "Inland Container Depot")** means an off seaport (or port) facility having such fixed installations or otherwise, equipment, machinery, etc. providing services for handling / clearance of laden import, export container for home use, warehousing, temporary admissions, re-export etc. under custom control and with storage facility. The key infrastructure required for an ICD shall include:

- Container Yard – Yard is the stacking area where the export containers are aggregated prior

to dispatch to port, import containers are stored till custom clearance and where empty container awaits onward movement. Likewise, some area are earmarked for keeping special containers such as refrigerated, hazardous, overweight/ over-length, etc.

- ICD Warehouse – Covered warehouse as per custom policy and requirement, where export cargo is received and import cargo is stored/delivered; containers are stuffed/stripped or reworked; LCL exports are consolidated and import LCLs are unpacked; and cargo is physically examined by Customs.
- ICD gate complex – The gate complex regulates the entry and exits of road vehicles carrying cargo and container in the ICD. It is a place where documentation, security and container inspections procedures are undertaken.
- Other Allied Infrastructure – Other infrastructure would include office space for customs staff, and other all such infrastructure required for operationalizing the ICD

ICD shall be developed as per requirements specified in Customs Act 1962 and regulations thereof and shall fulfil all compliances under the Handling of Cargo in Customs Areas Regulations (HCCAR), 2009, as amended from time to time.

The Concessionaire, in its name, shall procure all approvals for smoothly running an Inland Container Depot in accordance with the applicable provisions under the Customs Act, 1962, its rules, regulations, circulars/instructions issued from time to time for seeking such approvals or any such Applicable Laws, prior to the commencement of COD. It is to be clarified that Concessionaire shall seek approval from jurisdictional commissioner of customs to issue notifications under Section 8 of the Customs Act, 1962 for approving landing place and specifying limits of customs area and also seek approval under Section 45(1) of the Customs Act, 1962 for declaration as “Custodian” in accordance with the provisions of the said abovementioned Act.

The Concessionaire shall be required to comply with provisions of the Customs Act, 1962, its rules, regulations and circulars/instructions issued from time to time by the Central Board of Indirect Taxes and Customs (“CBIC”) in relation to the custody, storage, handling and disposal of cargo including the handling of cargo as per the Customs Area Regulations, 2009, or any other circulars/instructions as may be amended/issued from time to time.

The Concessionaire shall also comply with the circulars/instructions issued by the CBIC on cost recovery charges as may be amended/issued from time to time, for the officers deployed. The payment of cost recovery charges for the officers and staff deployed and exemption from such payment shall be governed by the extant of the rules, policy and circulars in this regard.

(c) **Domestic Container Yard**

Domestic Container Yard shall mean a stacking area outside ICD area and within the Project MMLP Site where domestic laden, or empty containers are stored for further movement.

(d) **Warehousing zone** may inter alia include cold storages, dry warehouses – Open and closed, Silos, liquid storage facility as per Standards & Specifications detailed in this Agreement excluding any storage / warehouse considered under the Rail Terminal and/or ICD.

(e) **Internal Road & Circulation Area**

- a) Internal roads
- b) Paved area for circulation

(f) **Integrated Gate Complex**

Integrated gate complex with access-controlled entry/ exit points with boom barriers and weighbridges, etc for the Project MMLP (the “Integrated Gate Complex”)

(g) **Administrative Building**

Administrative building including space for offices, office space for Authority & IE, workers canteen etc., Custom office, skill development centre for training and capacity building.

(h) **Truck and Vehicle Parking**

Parking facilities for trucks and other vehicles of Users who come to avail the Services of the Project MMLP Administrative facilities and Integrated Gate Complex.

(i) **Supporting facilities**

- a) Facilities for providing O&M services for trucks, containers, rail, cargo handling and material handling equipment
- b) Recreational facilities for drivers and support staff such as lodging and boarding facilities, restrooms, etc.

(j) **Utilities**

Utilities such as raw and portable water distribution network, sump & overhead tank, recycled water system, rainwater harvesting, storm water drains, sewage treatment plant, solid waste management, electrical substation and distribution network, street lighting, yard lighting, fire station, fire water supply network with hydrants & fire network, etc., and all other facilities required for the efficient operation of MMLP as per industry practice.

(k) **Landscaping and Horticulture area**

Open landscape and horticulture area

(l) **Common facilities**

Weigh bridge- Minimum 2 Nos. to be developed, one each for entry and exit to be developed

(m) **Commercial Zone**

- i. Commercial Zone consisting of facilities such as shopping complex, bank, ATM, retail spaces, convention centers for holding meetings, office spaces for freight forwarders, CHAs, shipping line, etc.
- ii. Commercial Zone Development shall be undertaken in accordance with and subject to the terms and conditions specified in Annex-II of this Schedule-B as further described in Article-24 of this Agreement.
- iii. Commercial Zone Development shall be undertaken in conformity with the Specifications and Standards set forth in Schedule-D.

(n) **IT System**

(o) **Any other Facility**

Any other facilities or Services required on case-to-case basis for smooth functioning and operations of Project MMLP.

ANNEX – II  
(SCHEDULE-B)

1. **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.]

*a. Specifications and Standards*

The Commercial Zone Facilities shall be constructed in conformity with the Specifications and Standards specified in Annex-II of Schedule-D.

ANNEX – III  
(SCHEDULE-B)

**1. DESCRIPTION OF [\*\*\*-LANING]**

**b. Width of Carriageway**

The paved carriageway [shall be 17.5 metres wide excluding the median]:

Except as otherwise provided in this Agreement, the width of the paved carriageway shall conform to Clause 1. a above.

**c. Access Road Facilities**

Access Road facilities shall be constructed in conformity with following facilities.

1. [.]
2. [.]
3. [.]

**d. Specifications and Standards**

The Access Road shall be constructed in conformity with the Specifications and Standards specified in Annex-III of Schedule-D.

**2. CONCEPT PLAN – ACCESS ROAD**

[Note 1: Through suitable drawings and description in words, the details of Access Road provided by the Authority.]

ANNEX – IV  
(SCHEDULE-B)

**1. DESCRIPTION OF RAIL CONNECTIVITY**

**a. Salient features of proposed rail connectivity infrastructure**

1.	Serving Railway Station	
2.	Take off point Chainage	
3.	Track length of proposed Railway siding (km)	
4.	Route Length (km)	
5.	Line	
6.	Gauge	
7.	Ruling Gradient	
8.	Proposed Steepest Grade	
9.	Number of Curve	
10.	Maximum Curve	
11.	Major Bridges	
12.	Minor Bridges	
13.	ROB	
14.	RUB	
15.	Level Crossings	
16.	Rails	
17.	Sleepers	
18.	Sleepers Density	
19.	Ballast	
20.	Points and Crossings	
21.	Signaling arrangements at serving station.	
22.	Signaling arrangements at GCT yard.	
23.	OHE and Traction	

24.	Cost Estimate	
This is for information only and may change as per the final approval by railways		

**b. Rail Connectivity Facilities**

Rail Connectivity facilities shall be constructed in conformity with following facilities.

1. [.]
2. [.]
3. [.]

The Concessionaire shall construct the Rail Connectivity from the designated take-off point onward and construction and modification works required at the serving station (common-user traffic facilities) in accordance with the approved ESP. The Concessionaire shall be responsible for all construction and modification works, including but not limited to civil, permanent ways, signaling, traction, overhead electrification (OHE), information technology (IT), networking, and any other incidental works required as per the approved feasibility report, detailed project report (DPR), ESP, signaling interlocking plan (SIP), and applicable general conditions of GCT Policy. The Concessionaire shall undertake the preparation of detailed design, SIP, general arrangement drawing (GAD) and any other document required for construction and shall obtain all requisite approvals required from the concerned zonal Railway and any other competent authority.

Any modification to the scope of work of Rail Connectivity from the take-off points onward, or to the works required at the serving station (common-user traffic facilities) after ESP approval pursuant to the request or approval of any Government Instrumentality, the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16.

**c. Specifications and Standards**

The Rail Connectivity shall be constructed in conformity with the Specifications and Standards specified in Annex-IV of Schedule-D.

**2. CONCEPT PLAN – RAIL CONNECTIVITY**

[Note 1: Through suitable drawings and description in words, the details of Rail Connectivity provided by the Authority.]

ANNEX – V  
(SCHEDULE-B)

**1. Provision related to Environment Protection**

The Concessionaire shall in addition to the terms and conditions of the approvals, sanctions, permissions granted by relevant Government Instrumentality, relating to the Project, also comply and adhere to the following terms and conditions:

General Conditions: (Construction phase)

- a. The solid waste generated should be properly collected and segregated. Dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.
- b. Disposal of muck construction spoils, including bituminous material during construction phase should not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in the approved sites with the approval of competent authority.
- c. Any hazardous waste generated during construction phase should be disposed of as per applicable rules and norms with necessary approvals of the State Pollution Control Board.
- d. Adequate drinking water and sanitary facilities should be provided for construction workers at the Site. Provision should be made for mobile toilets. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.
- e. Arrangement shall be made that waste water and storm water do not get mixed.
- f. Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices
- g. The ground water level and its quality should be monitored regularly in consultation with Ground Water Authority, if ground water tapping is done.
- h. Permission to draw ground water for construction of basement if any shall be obtained from the competent Authority prior to construction/operation of the project.
- i. Fixtures for showers, toilet flushing and drinking should be of low. Flow either by use of aerators or pressure reducing devices or sensor-based control.
- j. The Energy Conservation Building code shall be strictly adhered to.
- k. All the topsoil excavated during construction activities should be stored for use in horticulture/landscape development within the Project Site.
- l. Additional soil for levelling of the proposed Site shall be generated within the Site (to the extent possible) so that natural drainage system of the area is protected and improved.
- m. Soil and ground water samples to be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.
- n. Concessionaire to strictly adhere to all the conditions mentioned in State Protection and Preservation of Tree Act, as applicable, and as amended during the validity of Environment Clearance.
- o. The diesel generator sets to be used during construction phase should be of low sulphur diesel type and should conform to Environments (Protection) Rules prescribed for air

and noise emission standards.

- p. Vehicles hired for transportation of raw material shall strictly comply the emission norms prescribed by Ministry of Road Transport & Highways Department. The vehicle shall be adequately covered to avoid spillage/leakages.
- q. Ambient noise levels should conform to applicable standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be taken to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/MPCB.
- r. Diesel power generating sets proposed as source of backup power for elevators and common area illumination during construction phase should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel is preferred. The location of the DG sets may be decided with in consultation with State Pollution Control Board.
- s. Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings by a separate environment cell /designated person.

General Conditions: (Operation phase) a)

- i. The solid waste generated should be properly collected and segregated.
  - ii. Wet waste should be treated by organic waste convertor and treated waste (manure) should be utilized in the existing premises for gardening. And, no wet garbage shall be disposed outside the premises.
  - iii. Dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.
  - iv. recyclable material.
- b) E-waste shall be disposed through Authorized vendor as per E-waste (Management and Handling) Rules 2016. c)
- i. The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the SPCB and Environment department before the project is commissioned for operation. Treated effluent emanating from STP shall be recycled/ reused to the maximum extent possible. Treatment of 100% grey water by decentralized treatment should be done. Necessary measures should be made to mitigate the Oduor problem from STP.
  - ii. Concessionaire to ensure 100 % treatment to sewage/liquid waste and explore the possibility to recycle at least 50% of water.
- d) Concessionaire shall ensure completion of STP. MSW disposal facility, green belt, development prior to occupation of the buildings. Concessionaire to explore possibility of utilizing excess treated water in the adjacent area for gardening before discharging it into sewer line.

- e) The Occupancy Certificate shall be issued by the Local Planning Authority to the Project only after ensuring sustained availability of drinking water, connectivity of sewer line to the Project Site and proper disposal of treated water as per environmental norms
- f) Traffic congestion near the entry and exit point from the roads adjoining the proposed Project Site must be avoided. Parking should be fully internalized and no public space should be utilized.
- g) Concessionaire to provide adequate electric charging points for electric vehicles (EVs).
- h) Green Belt Development shall be carried out considering Central Pollution Control Board (CPCB) guidelines including selection of plant species and in consultation with the local DFO, Agriculture Dept.
- i) A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.
- j) Separate funds shall be allocated for implementation of environmental protection measures/EMP along with item-wise break-up. This cost shall be included as part of the Bidding. The funds earmarked for the environment protection measures shall not be diverted for other purposes.
- k) Concessionaire should submit half yearly compliance reports in respect of the stipulated prior environment clearance terms and conditions in hard & soft copies to the State Pollution Control Board & SEEIA, on 1st June & 1st December of each calendar year, with intimation to the Authority.
- l) A copy of the clearance letter shall be sent by Concessionaire to the concerned Municipal Corporation and the local NGO if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Concessionaire.
- m) The Concessionaire shall upload the status of compliance of the stipulated Environment Clearance conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely, SPM, RSPM, SO<sub>3</sub>, NO<sub>x</sub> (ambient levels as well as stuck emissions or critical sector parameters, indicated for the Project shall be monitored and displayed at a convenient location near the main gate of the MMLP by the Concessionaire in the public domain.

**General Conditions for the Project:**

- a) Concessionaire has to strictly abide by the conditions stipulated by SEAC & SEIAA.
- b) If applicable Consent for Establishment shall be obtained from State Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment department before start of any construction work at the site.
- c) Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the Concessionaire if it was found that construction of the project is deviating the environmental clearance.
- d) The Concessionaire shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB

and the SPCB.

- e) The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the Concessionaire to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the Concessionaire along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEF by e-mail.
- f) No further Expansion or modifications, other than mentioned in the EIA Notification, 2006 and its amendments shall be carried out without prior approval of the SEIAA. In case of deviations or alterations in the project proposal from those submitted to SEIAA for clearance, a fresh reference shall be made to the SEIAA as applicable to assess the adequacy of conditions imposed and to add additional environmental protection measures required, if any.

**Specific Conditions for the Project:**

The specific conditions, if any, during obtaining Environment Clearance shall be complied by the Concessionaire, strictly in accordance with the rules and regulations, at its own cost and expense.

**SCHEDULE-C***(See Clause 2.1)***SERVICES**

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

**1. Logistics Services****i. Terminal Services - Terminal Services shall mean:**

- a. Inter-modal transfer services;
- b. Rail-side handling services;
- c. Rail-side transit storage services;
- d. Internal shifting of cargo / container from/ to rail side / container yard / bulk/ break-bulk/ liquid cargo terminals, and within the Project MMLP;
- e. Stuffing / De-stuffing of cargo, loading / unloading/ handling of loaded / empty container within the Project MMLP, shifting of container / cargo for custom examination, seal cutting, re-sealing of containers / vehicle;
- f. Cargo aggregation and distribution services;
- g. Services at Inland Container Depots / Custom bonded area;
- h. Services at Domestic Container Yard;
- i. Services at bulk/ break-bulk/ liquid cargo terminals;
- j. Services from Cargo scanning facilities along with provision of container scanners;
- k. Any other services on case-to-case basis;
- l. Common testing facilities to support custom clearance for Exim Cargo.

**ii. Warehousing Services**

Warehousing Services shall mean any or all of the following services delivered at Warehousing Zone

- a) Storage services;
- b) Inventory management services;
- c) Loading / unloading of cargo by any means;
- d) Putaway and Picking services;
- e) Order Fulfilment services;
- f) Any other services delivered at Warehousing Zone on case-to-case basis;

**2. Value-Added Services**

Value Added Services shall mean:

- a) Palletization services;
- b) Cross-docking services;
- c) Service relating to container cleaning, repair & maintenance;

- d) Services relating to Cleaning / Sorting / Customization / Boxing / Labelling / Re-labelling / Bundling / Assembling / Dis-assembling / Branding / Re-branding / Packing / Repacking / Kitting;
- e) Services relating to providing electricity for reefer containers;
- f) 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;
- g) Any other services on case-to-case basis not covered under para 1 or 2 of this Schedule;

### 3. Commercial Zone Services

- a) Services related to motels, restaurants, petrol pumps, conference room, retail shops, convenience stores and amenities;
- b) Provision of such other services as may be specified by the Authority.

### 4. Supporting services

Supporting facilities shall mean to include:

- a) Services relating to parking space and O&M services for trucks/ trailers, equipment, containers;
- b) Services relating to recreational facilities for drivers and other staff;
- c) Services relating to building information modelling of the project facilities as applicable
- d) Services relating to office space;
- e) Services relating to parking facility for trucks and other vehicles of the Users with sufficient turning and movement space.

### 5. General provisions

- a) Conduct of all the Services as required by the Applicable Laws and the provisions of this Agreement;
- b) Provision of such other services as may be specified by the Authority.

**SCHEDULE-D**  
**SPECIFICATIONS AND STANDARDS**

**1. Specifications and Standards for Project MMLP**

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I and Annex-II of this Schedule-D for construction of the Project MMLP.

**2. Specifications and Standards for Access Road**

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-III of this Schedule-D for construction of the Access Road.

**3. Specifications and Standards for Rail Connectivity**

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-IV of this Schedule-D for construction of the Rail Connectivity.

**4. Specifications and Standards for IT System**

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-V of this Schedule-D for deployment of IT System.

ANNEX - I  
(SCHEDULE-D)

**1. Specifications and Standards for Project MMLP**

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

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

**1. Levelling & Grading**

- Prior to the start of any activity of earthwork, the area under construction shall be cleared of shrubs, vegetation, grass, brushwood, trees, and saplings.
- The trees cut inside the Site shall be uprooted up to 1m below ground level and the branches to be chopped to small sizes and stacked at designated place within premises
- The Concessionaire shall prepare and submit the Independent Expert for approval the drawing showing the cutting and filling mentioning the Finished Ground Level (FGL) and various locations, road junctions etc.
- The unsuitable soil shall be removed for required depth prior to the start of any construction work.
- Site levelling and grading works to be done considering balanced cut & fill up to possible extent to minimize the borrow earth from the outside of Site. Unsuitable soil shall not be used for filling for below building, roads, open container yards & truck parking area
- Slope to be maintained in embankments at considerable level difference areas using slope protection measures or toe retaining structure.
- IS 3764:1992-Safety code for excavation works to be adhered during earthwork activities.
- Methods of test for soils shall be as per IS: 2720 as applicable.
- Mechanical compaction at optimal moisture content and ramming to be done layer wise (maximum 200 mm thickness) with proper mechanical compaction and watering and to achieve required relative density as per the applicable IS Codes and specifications.

**2. Paved Area (Container Yard//Truck Parking/Railway Platform and Handling Area)**

- The container yard / paved area / truck parking area / railway platform / handling area to be designed and constructed as per SP 63. The sub grade, weather in cut or fill shall meet the requirements specified in MoRTH specifications for roads and IRC: SP:63 and ICPI manual for yard pavements
- If Paver blocks are used, they need to be as per IS 15658
- Provision of refer charging points for refer containers for at least 10% of the total ground slots
- Adequate numbers of 30 meters high mast lighting tower with LED flood light should be installed. The LED should have minimum average lumen level of 20 lux in the ground up to 50m from centre of high mast lighting shall be as per SP 72:2010-National lighting Code
- Provision for RTG/RNG shall be made in the Master Plan both for railway yard and container yard. Runway for cranes shall be reinforced concrete beams supported on compacted ground or on piles. Concrete beam shall be designed and constructed as per the specifications of IS 456
- Design life of yard pavement shall be as specified in ICPI manual and BS: 7533

- Adequate drainage system to be provided in the yard area confirming to applicable IS code provisions.

### 3. Railway works

- The design of the railway siding shall be in conformity with Standards and Specifications stipulated for Station Yards for Eastern & Western Dedicated Freight Corridors, published by Ministry of Railways – Letter no. 2011/CEDO/SD/17/0 dated 21.01.2013
- The Gauge for the Rail Siding shall be nominal Broad Gauge (1676mm) the Siding shall be designed for speed of 50 Km/h.
- All tracks shall be designed for 25 tonne Axle loading. All bridges shall be designed for 32.5 Tonne Axle loading
- The Ruling Grade of siding shall not exceed the ruling grade of the section & yard gradient shall not be steeper than 1 in 400.
- The sharpest curvature plan shall not be less than 250m Radius
- Fixed structures to suit the moving dimensions as specified in Indian Railways Schedule of Dimensions of Broad Gauge (1676mm)
- Minimum track Centre shall be 6m as per Indian Railway Guidelines
- Formation width of 7.85m for Single line BG Track and Side slope of 2H: 1 V shall be adopted as per guidelines of Indian Railways. A Blanket layer of suitable thickness shall be provided on top of formation as per RDSO guidelines G-14 CSL of Loop Lines / Handling Lines shall be of minimum 750m length (FM to FM).
- Rails: 60 Kg IRS T12 110 UTS Rail, 39m long rail (Three Rail Panel) with Fish Plated joints.
- Sleepers: 60 KG PSC Sleeper with elastic fastenings (Elastic Rail Clip- Mark III, Grooved Rubber Pads, GFN Liners), density 1540 Sleepers per Km.
- Ballast Cushion: 300 mm as per Correction Sleep No. 126 dated 21.06.2011 to IRPWM. Ballast will be as per IRC specifications with latest correction slips/addendum
- Points & Crossings: TW 60 Kg 1 in 12 Fan Shaped Turnouts with Curved Switches, CMS Crossings and PSC Sleepers

### 4. Track Structure

#### Railway Yard

- Rails: 60 kg IRS T12 110 UTS Rail, 39m long Rail (Three Rail Panel) with Fish Plated joints.
- Sleepers: 60 Kg PSC Sleeper with Elastic Fastenings (Elastic Rail Clip-Mark-III, Grooved Rubber Pads, GFN Liners), Density 1540sleepers / Km.
- Ballast Cushion: 300 mm as per Correction Slip No. 126 dated 21.06.2011 to IRPWM. Ballast will be as per IR Specifications with latest correction slips/addendum.
- Points & Crossings: TW 60 kg 1 in 12 Fan Shaped Turnouts with Curved Switches, CMS Crossings and PSC Sleepers.

#### Siding Line / Yard

- Rails: 52 kg IRS T12 IU Rail, 39m long Rail (Three Rail Panel) with Fish Plated joints. Single Rail with stager joints on sharp curves of radius < 400m.
- Sleepers: 52 Kg PSC Sleeper with Elastic Fastenings (Elastic Rail Clip-Mark-III, Grooved Rubber Pads, GFN Liners), Density 1540 sleepers/km.

- Ballast Cushion: 300 mm as per Correction Slip No. 126 dated 21.06.2011 to IRPWM. Ballast will be as per IR Specifications with latest correction slips/addendum.
- Points & Crossings: TW 60 kg 1 in 12 / 1 in 8.5 Fan Shaped Turnouts with Curved Switches, CMS Crossings and PSC Sleepers.

### **Permanent Way**

- Rail-60 Kg 90 UTS Flat Bottom (1st quality / IU as per IR specification T-12, 2009)
  - Fish Plate-60 Kg to RDSO/ T-1898 (M) length 610mm as per IRS Specification T 1-66
  - Sleeper-25T PSC sleeper to Drg. No. RDSO/T-7008 as per IR specification T-39/1996
  - Rubber Pad-10mm CGRSP to RDSO/T-7010, 6.2mm CGRSP to RDSO/T-6618
  - GFN Liner-RDSO/T-6938 & 6939, RDSO/T-3706
  - Metal Liner-RDSO/T-8616 & 8617, RDSO/T-3740
  - Fastening-ERC Mk V to RDSO/T-5919
  - ERC Mk III to RDSO/T-37001 as per IRS T-31-1992
  - Points & Crossing-Thick Web Curved Switches & Weldable CMS crossings with 60 Kg 110 UTS Rails.
  - Formation
    - The formation shall be constructed & Mechanical compaction shall be done as per RDSO guidelines for Earth Work in Railway Project Guidelines No. GE-1, July 2003.
    - Formation width should be 7.85m for BG single line & 13.16 for Double Line with side slope of 2:1.
    - Formation shall conform to the specification for 25 T Axle load as per Guidelines GE-14 (Nov 2009) & its amendment from time to time. Earth work shall be carried out in layers as per IRUSS-2019, each layer sloping out 1 in 30.
  - Ballast
    - Track Ballast shall be procured conforming to RDSO specification for Track Ballast, June 2004 with up-to- date correction slips, of approved quality for use on all lines with 300mm cushion.
  - Welding of Rail Joints
    - The Rail joints shall be welded by Alumino Thermit welding of Rail joints by short Pre-Heating (SKV) process to IR specification No. T-19-1994 as detailed in RDSO Manual for Fusion Welding of Rails by Alumino Thermic process "September 1998".
    - The Welding shall be got done only from approved Portion Manufacturing firm with Portions, consumables, equipment's & RDSO certified Welders / Welding Supervisor.
  - Short Welded Rails
    - The Laying of Short Welded Rails shall conform to provisions of Para 505 of Part B of Chapter V of IRPWM. Special care shall be taken to provide expansion gaps at Fish plated joints as per IRPWM para 508 Table 1 for initial laying.
- ### 5. Boundary wall
- Earthwork in excavation.
  - PCC 1:4:8 levelling course recommended.

- RCC for footing/Piles as per site condition, columns, plinth beams and tie beams.
- Plinth beams shall be constructed such that half of the height shall be above FGL and half below FGL.
- RCC columns at every 3.6 m maximum interval with beams and - brick work (200 mm thick min.) above the plinth beam is to be provided. The total height of boundary wall above FGL shall be minimum 2.4 m.. Alternately RCC Columns, Beams and Precast RCC/Pre-Stressed CC panels of minimum 70 mm thick in CC M 40. With minimum height of 2.4 m above FGL M S Angle (Y Shape) with three rows of Barbed wire at 200 mm c/c & 450 mm dia Concertina coil fencing throughout the length above the boundary wall
- Plaster in CM 1:6 and finishing coat on both side (Brick Wall) with cement-based paint.

## 6. Warehouse

- Earth work in excavation for foundation.
- Filling with mechanical compaction with minimum 95% dry density and minimum loading requirement of [2 T/m<sup>2</sup>] or higher based on cargo requirements.
- Food grain / agri warehouses shall be designed and constructed as per guidelines of FCI / CWC.
- For multipurpose warehouses, the following specifications shall be applicable:
  - PCC 1:4:8 levelling course.
  - RCC work /piles for footing, pedestal, Beams & Column and is required for other structures such as mezzanine slabs etc.
  - Damp proof course at Finished Floor Level (FFL) 50 mm thick.
  - Fly ash /CC solid block brick work (200 mm thick min.) in cement mortar 1:6 ratio in cladding up to minimum 3 m height and above the wall cladding pre-coated galvalume steel sheet of minimum 0.5 mm thickness.
  - Pre-Engineered building with structural design vetted by institutions such as IIT/REC/NIT etc.
  - Minimum eave height shall be 11m.
  - Roof system with Pre-coated galvalume steel sheet of minimum 0.5 mm thickness at top and bottom and with insulation of Glass wool/bubble with both side high resistance aluminium with support GI mesh/MS wires. Roof to be designed with no leakage, permitting skylight illumination. Turbo ventilators are to be provided.
  - Damp proof course at FFL 50 mm thick.
  - For food grain warehouses the minimum height shall be [5 m] and for other warehouses it shall be [11 m].
  - Pre-Engineered building with structural design vetted by IIT/NIT
  - Flooring 100 mm thick PCC 1:4:8, 200 mm RCC M30 Vacuum dewatered flooring with hardener at the top. Epoxy as per requirement.
  - External Painting-Weather-shield / Premium Acrylic smooth exterior finish with additive of silicone on external brick / block works.
  - Internal Painting-Acrylic /oil bound distemper on brick / block works. Synthetic enamel paint on all steel structure works.
  - Docking System/Rolling Shutters at 1.25 m above the finished ground level.
  - Docking to be provided as per Good Industry Practice /as per Standard of Warehouse Specifications.

- Lessee/sub lessee has to deploy Warehouse Management System.

## 7. Silos

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

## 8. Cold Storage

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

## 9. Building & Other Structures

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

## 10. Internal Roads

- Rigid Pavements are to be developed as per IRC 15
- Flexible Pavements to be developed as per IRC 37
- Road Over Bridges to be designed as per IRC 05
- Rail Under Bridges to be designed as per Railway norms and as per IRC []
- Utility corridors shall be provided along the road.
- Storm water drain shall be provided along the road based on the storm water requirements as per design.
- Lighting shall be as per National Highway norms within city limit
- Road markings are to be as per IRC 35
- Road signages are to be as per IRC 67
- All roads have to be designed for turning radius as per IRC 106 for trailers with a length of 18 metres.

## 11. Equipment

- Major Equipment
  - Provision for installation and operations major equipment such as RTG, RMG, Truck Mounted Cranes (min. 30 tonnes), Mobile Cranes (min. 30 tonnes), as required shall be made in the Master Plan.
  - RTG/RMG should be run on electricity.

- The Concessionaire shall construct and/or install the Project equipment in accordance with the relevant Specifications and Standards and the manufacturer's guidelines for the equipment.
- All equipment to be procured shall be accompanied by relevant efficient energy usage certificate and/or emission under control certificate from relevant Authority.
- Conveyor system shall be used for handling of bulk and break-bulk cargo. **Conveyor Systems shall be designed and constructed as per IS: 11592, 8597** for Bulk materials and **IS: 6834** for bagged materials, along with applicable relevant Indian standards for belting, idlers, pulley mechanism, belt weighers etc.

- Minor equipment

Refer to Circular No. 50/2020 published by Department of Revenue Anti-Smuggling Unit (CBIC), Ministry of Finance, dated 5<sup>th</sup> Nov, 2020.

## 12. Landscaping & Rainwater harvesting

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

## 13. Integrated Gate Complex and Parking Spaces

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

## 14. UTILITIES

### Electrical Distribution System

- Design specification and selection of power cable is to be as per IS 7098. All electrical lines must be laid underground.
- Guideline for Cable Laying, installation testing commissioning is to be as per IS: 1255.
- Earthing work is to be as per IS 3043.
- Power transformer design and selection is to as per IS 2026.
- IS:1180 is to be followed for outdoor distribution transformer.
- IS: 10118 is to be followed for selection, installation & maintenance of switchgear and control gear.
- All the Power Cable shall be laid directly buried in ground and in case of crossing HDPE pipe may be used.
- The detailed design documents/drawings are to be approved from State Electricity Board/Chief Electrical Inspector before execution.

## 15. Road lighting

- The lighting shall comply with the standards, requirements, illumination level and specifications

given in Indian Standard 'Code of Practice for Lighting of Public Throughfare' IS: 1944 Part I & II.

- GI conical Poles and LED luminaries are to be considered for Road Lighting system.
- Power supply to Road lighting pole is to be fed through underground 1.1 kV XLPE insulated, armored, Aluminum conductor cables. Distribution of power be through 415V, 3 phase, 4 wire system.
- The streetlights shall be controlled from outdoor street light Panel with 4Pole MCCB incomer, energy meter, automatic timers switch and power contactor for switching ON/ OFF the lights and MCB outgoing for distribution.

#### 16. Data Networking

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

#### 17. Telephone System

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

#### 18. Closed Circuit Television

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

[Custom requirements to be defined]

#### 19. Public Address System

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

#### 20. Fire Fighting System

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

#### 21. Water Supply System

- The water supply system shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO) "Manual on Water Supply and Treatment and other relevant manual. Appropriate rain water harvesting system needs to be implemented as per applicable manual.

- The incoming water supplies and the system they supply shall be designed and constructed as per National Building Code.
- Distribution system for potable and recycled water shall comply with IS:4984.

## 22. Drainage System

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

## 23. General standards

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

- (a) Bureau of Indian Standards (BIS), Indian Standards, CPWD, MoRTH, IRC, Indian Railways Standards;
- (b) Relevant International Standards or codes as applicable in the United States of America or the European Union or Singapore; and
- (c) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent 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. For Project MMLP, updated codes and specifications in force at the time of actual execution shall be considered.

For ICD and CFS operations the Concessionaire shall refer and comply to Policy and Guidelines for setting up of Inland Container Depots (ICD) and Container Freight Stations and Air freight Station and as updated time to time.

ANNEX – II  
(SCHEDULE-D)

1. **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:

[•].

Annex - III  
(Schedule-D)

**Specifications and Standards for Access Road**

**1 Manual of Specifications and Standards to apply**

Subject to the provisions of Paragraph 2 of this Annex-III, the Access Road shall conform to the Manual of Specifications and Standards for Road Projects published by [the Authority/MORTH on \*\*\*\*.] (An authenticated copy of the Manual has been provided to the Concessionaire as part of the bid documents.)

**2 [Deviations from the Manual]**

Notwithstanding anything to the contrary contained in the aforesaid Manual, the following Specifications and Standards shall apply to the Access Road, and for purposes of this Agreement, the aforesaid Manual shall be deemed to be amended to the extent set forth below:]

[Note 1: Deviations from the aforesaid Manual shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements]

Annex - IV  
(Schedule-D)

**Specifications and Standards for Rail Connectivity**

**1 Specifications and Standards as per applicable Policy**

Railway Terminal and Rail Connectivity shall conform to the conditions prescribed in ESP approval and any subsequent approvals granted by Indian Railway, the GCT Policy or its succeeding policies and any other such policy prescribed by Indian Railway from time to time in relation to development of railway terminal and railway siding.

Annex - IV  
(Schedule-D)

**Specifications and Standards for IT System**

The IT System to be deployed by Concessionaire shall provide at the least provide following features and functionalities –

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

**SCHEDULE-E**  
(See Clause 4.1.3)  
**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.

- Novation of Environment Clearance in the name of Concessionaire SPV
- Consent to Establish from state pollution control board for the Project
- Permission of the State Government for drawing water from river / reservoir
- License from inspector of factories or other competent authority
- In Principle approval of Master Plan from Authority along with estimated cost of investment for Project MMLP development (In sync with Financial Close amount)
- Submission of Project Schedule with investment per month in sync with Project Milestone requirement.
- NOC from Director of Town and Country Planning - (DTCP)/ Gram Panchayat
- Permission of State Government or such other Competent Authority as required by Law for borrow earth.
- Clearance of Pollution Control Board for setting up Batching Plant;
- Clearance of Pollution Control board for installation of diesel generator sets
- Any other clearances as per Applicable Law.
- Submission of Drawing Controlling Index along with the Project Schedule
- Permission of the State Government for extraction of boulders from quarry;
- Permission of Pollution Control Board and such other competent authority as required by law for installation of crushers;
- Licence for use of explosives;
- Licence from Inspector of factories or other competent authority for setting up Batching Plant;
- Clearance of Pollution Control Board and such other competent authority as required by law for Asphalt Plant;
- Permission of State Government and such other competent authority as required by law for borrow earth;
- Permission of State Government for cutting of trees, if required by law;

ii. Provided that the aforementioned Applicable Permits shall be held either in the name of the Concessionaire or in the name of a party having a valid agreement with the Concessionaire.

**PART B – PERMITS AND CLEARANCES REQUIRED UNDER APPLICABLE LAWS**

Below is the list of approvals which is required<sup>18</sup> to be obtained by the Concessionaire after Appointed Date:

S. No.	Approval	Relevant Authority
<b>Rail Operation<sup>19</sup></b>		
1.	Commercial Notification of GCT (Green Field), ARN etc.	Ministry of Railways
<b>DTA Warehouse (State government approvals)</b>		
6.	Warehouse	Chief town planner cum chairman (Building 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)

<b>Inland Container Depot operations</b>		
18.	In principal approval or Letter of Intent	IMC approval

<sup>18</sup> Permits and approvals, and its responsibility, applicable may vary from project to project

<sup>19</sup> To be included if the railway siding is to be operated by the Concessionaire – to be confirmed in the bidding documents.

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
<b>HR/ admin/ safety and security/ firefighting/ pollution control</b>		
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 Container Depot	State Government
38.	Environmental Monitoring Report	Noise, water, air assessment state

		department
39.	Environmental statement (Form V)/ Audit report	Noise, water, air assessment, state department
<b>Other approvals</b>		
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**  
**Annexure-I of Schedule F**  
*(See Clause 9.1)*  
**PERFORMANCE SECURITY**

[•]

[•]

[•]

**WHEREAS:**

- (A) [•] (the “**Concessionaire**”) and the [•] (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 [•]) (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 the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon 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 until the earlier of the 1<sup>st</sup> (first) anniversary of the Appointed Date or compliance of the conditions 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 shall cease to be in force and effect when the Commercial Operation Date under the Agreement has occurred. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a Statutory Auditor of the Concessionaire, and the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of 180 (one hundred and eighty) days or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
12. This Guarantee shall also be operatable at our..... Branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension / renewal thereof shall

be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

13. The guarantor/bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of NHLML, details of which is as under:

S. No.	Particulars	Details
1.	Name of Beneficiary	
2.	Name of Bank	
3.	Account No.	
4.	IFSC Code	

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.

Annexure II of Schedule F  
(See Clauses 9.1)  
**FORM OF SURETY BOND**  
**[Performance Security]**

To

\_\_\_\_\_ (name of the authority)

\_\_\_\_\_ [address of Authority]

WHEREAS:

- (A) -----(the "Concessionaire") and the ----- (the "Authority") have entered into a concession agreement dated ----- (the "Agreement") whereby the Authority has agreed to the Concessionaire undertaking [\*\*\* 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 Rs \*\*\* Crore (Rupees \*\*\* Crore) (the "**Surety Bond 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 "**Surety Insurer**") have agreed to furnish this Surety Bond by way of Performance Security.

NOW, THEREFORE, the Surety Insurer hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Surety Insurer hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon 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 up to an aggregate sum of the Surety Bond Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of Chief Executive Officer/ Chief Operating Officer in the <Name of the Authority>, 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 Surety Insurer. The Surety Insurer 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 Surety Insurer, 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 Contractor for any reason whatsoever.
3. In order to give effect to this Surety Bond, the Authority shall be entitled to act as if the Surety Insurer were the principal debtor and any change in the constitution of the Concessionaire and/or the Surety Insurer, 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 Surety Insurer

under this Surety Bond.

4. It shall not be necessary, and the Surety Insurer hereby waives any necessity. for the Authority to proceed against the Concessionaire before presenting to the Surety Insurer its demand under this Surety Bond.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Surety Insurer under this Surety Bond, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment 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 Surety Insurer 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 Surety Insurer from its liability and obligation under this Surety Bond and the Surety Insurer hereby waives all of its rights under any such law.
6. This Surety Bond is in addition to and not in substitution of any other Surety Bond or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, 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 Surety Insurer under this Surety Bond is restricted to the Surety Bond Amount and this Surety Bond will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Surety Insurer under this Surety Bond, no later than 6 (six) months from the date of expiry of this Surety Bond, all rights of the Authority under this Surety Bond shall be forfeited and the Surety Insurer shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 30% (thirty per cent) of the Bid Project cost which is deemed to be Rs. \*\* cr. (Rupees \*\*\* crore) for the purposes of this Surety Bond, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a Statutory Auditor of the Concessionaire, the Authority, shall release the Performance Security forthwith.
9. The Surety Insurer undertakes not to revoke this Surety Bond 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 Surety Bond and the undersigned has full powers to do so on behalf of the Surety Insurer.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Surety Insurer at its above referred branch, which shall be deemed to have been duly authorized 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 Surety Bond shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
- 12. This Surety Bond shall also be operatable at our..... Branch at New Delhi, from whom, confirmation regarding the issue of this bond or extension/renewal thereof shall be made available on demand. iIn the contingency of this bond been invoked and payment thereunder claimed, the said branch shall accept such invocation on letter and make payment of amounts so demanded under the said invocation.
- 13. This Surety Bond is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

Signed and sealed this..... Day of ..... 20.....at.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the surety insurer by:

(Signature)  
 (Nam)  
 (Address)  
 (Designation)  
 (Code Number)

Note:

- (i) The Surety Bond Should contain the name, designation and code number of the office(s) signing the bond.
- (ii) The address, telephone number and other details of the Head Office of the Surety Insurer as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

**SCHEDULE-G**

(See Clause 12.1)

**PROJECT COMPLETION SCHEDULE****1 Project Completion Schedule**

During Construction Period, the Concessionaire shall comply with the requirements set forth in this **Schedule-G** for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

**Pre – COD milestones (Project milestones I to IV)**

The Project mandates an investment of 100% (hundred per cent) or more of the Total Project Cost.

**2 Project Milestone-I**

2.1 Project Milestone-I shall occur on the date falling on the [180<sup>th</sup> (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 construction of the Project MMLP and expended not less than \*\*\* (\*\*\*) per cent) of the total capital cost 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. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

**3 Project Milestone-II**

3.1 Project Milestone-II shall occur on the date falling on the [365<sup>th</sup> (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 commenced [construction of all buildings and structures and expended not less than \*\*\*\*% (\*\*\*) per cent)] of the total capital cost 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. Provided, however, that at least \*\*\*\*% (\*\*\*) per cent) of the total capital cost set forth in the Financial Package shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

**4 Project Milestone-III**

4.1 Project Milestone-III shall occur on the date falling on the [550<sup>th</sup> (five hundred and fiftieth) day] from the Appointed Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced [construction of all Project Facilities and expended not less than \*\*\* (\*\*\*) per cent)] of the total capital cost 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. Provided, however, that at least \*\*\* (\*\*\*) per cent) of the total capital cost set forth in the Financial Package shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

## 5 Project Milestone-IV

5.1 Project Milestone-IV shall occur on the date falling on the [730<sup>th</sup> (seven hundred and thirtieth)] day from the Appointed Date (the “**Project Milestone-IV**”).

5.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced [installation of equipment at the Project Facilities and expended not less than \*\*\*% (\*\*\*) per cent)] of the total capital cost 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 Project MMLP and Access Road (excluding Rail Terminal).

## 6 Project Milestone-V

6.1 Project Milestone-V shall occur on the date falling on the [1095<sup>th</sup> (one thousand and ninety fifth)] day from the Appointed Date (the “**Project Milestone-V**”).

6.2 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have commenced construction of the Project MMLP and expended not less than \*\*\* (\*\*\*) per cent) of the total capital cost 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. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

## 7 Project Milestone-VI

7.1 Project Milestone-VI shall occur on the date falling on the [1460<sup>th</sup> (one thousand four hundred and sixtieth)] day from the Appointed Date (the “**Project Milestone-VI**”).

7.2 Prior to the occurrence of Project Milestone-VI, the Concessionaire shall have commenced [construction of all buildings and structures and expended not less than \*\*\* (\*\*\*) per cent)] of the total capital cost 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. Provided, however, the Concessionaire shall have received Commercial Notification for the Rail Terminal.

## 8 Scheduled Completion Date

8.1 The Scheduled Completion Date shall be [1460<sup>th</sup> (fourteen hundred and sixtieth)] 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 or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

## 10 Physical Progress

The Independent Expert, during finalization of design, shall upfront decide weightages of all the items in due consultation with the Authority and the Concessionaire, recommend percentage physical progress achievements based on the above decided weightages for the entire Construction Period. The weightages shall be fixed as per format in Annexure – I, II, and III of this Schedule.

Annexure-I of Schedule G  
Format for Weightages for Project MMLP

**Weightages**

Proportions of the Payments to the concessionaire for different stages of Construction of the Project MMLP shall be as specified below:

[To be specified based on the proposed Project MMLP]

Item	Stage for measurement of Physical Progress	Unit	Qty.	Weightage in percentage to the contract price
1	2	3	4	5

Annexure-II of Schedule G  
 Format for Weightages for Access Road  
 Highway Projects with Flexible Pavements

**Weightages**

Item	Stage for measurement of Physical Progress	Unit	Qty.	Weightage in percentage to the contract price
1	2	3	4	5

Proportions of the payments to the concessionaire for different stages of Construction of the Access Road shall be as specified below:

[To be specified based on the proposed Access Road]

Annexure-III of Schedule G  
 Format for Weightages for Rail Connectivity  
**Weightages**

Proportions of the Payments to the concessionaire for different stages of Construction of the Rail Connectivity shall be as specified below:

[To be specified based on the proposed Rail Connectivity]

Item	Stage for measurement of Physical Progress	Unit	Qty.	Weightage in percentage to the contract price
1	2	3	4	5

**SCHEDULE-H**  
(See Clause 12.3)  
**DRAWINGS**

**1. Drawings**

In compliance of the obligations set forth in Clause 12.3 of this Agreement, the Concessionaire shall finalise the drawing control index for Project and furnish to the Independent Expert and Authority, free of cost, all Drawings listed in Annex-I of this Schedule-H.

**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 in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Expert, as if such drawings formed part of Annex-I of this Schedule-H.

Annex - I  
(Schedule-H)

**List of Drawings**

[Note: The Authority shall describe in this Annex-I, all the Drawings that the Concessionaire is required to furnish under Clause 12.3.]

**SCHEDULE-I**  
(See Clause 14.1.2)  
**TESTS**

**1. Schedule for Tests**

- 1.1 The Concessionaire shall, no later than 90 (ninety) days prior to the likely completion of the Project, notify the Independent Expert and the Authority of its intent to subject the Project to Tests, and no later than 7 (seven) 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.
- 1.2 The Concessionaire shall notify the Independent Expert of its readiness to subject the Project 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. In the event of the Concessionaire and the Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by providing not less than 10 (ten) days notice to the Independent Expert and the Authority. The Independent Expert shall thereupon conduct the Tests itself, or cause any of the Tests to be conducted in accordance with Article 14 and this **Schedule-I**.

**2. Tests**

- 2.1 **Visual and Physical Test:** The Independent Expert shall conduct a visual and physical check of the Project to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.2 **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 construction is in conformity with the Specifications and Standards, especially with respect to the capacity of each of its systems and equipment.
- 2.3 **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 and described in **Schedule-B** and **Schedule D**
- 2.4 **Tests for Project:** The Independent Expert shall conduct or cause to be conducted Tests for determining the compliance of the Project with the Specifications and Standards, Applicable Laws, Applicable Permits, Good Industry Practice, and the calibration certificate issued by the manufacturers.
- 2.5 **Environmental audit:** The Independent Expert shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.6 **Safety review:** The Independent Expert shall carry out a safety audit of the Project to determine its compliance with the provisions of **Schedule-L** and this Agreement.
- 2.7 **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 with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws and Applicable Permits.

**5. Provisional/ Completion Certificate**

Upon successful completion of Tests, the Independent Expert shall issue the Provisional Certificate or Completion 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 [Name of 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 Project<sup>17</sup> with the provisions of the Agreement, and I am satisfied that the Project can safely and reliably provide Services to Users thereof.
2. The Concessionaire has received the Commercial Notification for Rail Terminal from \*\*\*\* on \*\*\*\*.
3. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed on this the [•] day of [•] 20[•].

SIGNED, SEALED AND DELIVERED

For and on behalf of

**INDEPENDENT EXPERT** by:

**Signature**

**Name**

**Designation**

Address

**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 [Name of the Project MMLP] 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 MMLP 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, duly categorizing the list of outstanding items as (i) those attributable to the Concessionaire, and (ii) those not attributable to the Concessionaire, 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,)<sup>18</sup> 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 MMLP, pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project MMLP can safely and reliably provide Services to Users thereof, and in terms of the Agreement, the Project MMLP 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)

**SCHEDULE-K**  
**MAINTENANCE MANUAL, SERVICE MAINTENANCE REQUIREMENTS**

**1. Service Requirements**

- 1.1. The Concessionaire shall adhere to Good Industry Practices for maintaining Service quality and shall maintain up to date certifications of industry best practices and standards for Service quality, as may be applicable from time to time during the Concession Period.
- 1.2. Further, Concessionaire shall develop and submit a Service quality manual, in reference to Annex-I of this Schedule-K, to the Independent Expert laying down processes and procedures related to the quality assurance of Services offered to Users of the Project.

**2. Maintenance Requirements**

- 2.1. The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this **Schedule-K**.
- 2.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in this **Schedule-K** within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement & non-fulfilment of the maintenance obligations by the Concessionaire. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.8 of this Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.
- 2.3. All Materials, works and construction operations shall conform to Good Industry Practice.

**3. Repair/rectification of defects and deficiencies**

- 3.1. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in this Schedule-K within the time limit set forth therein.
- 3.2. The Concessionaire shall furnish the Maintenance Manual to the Independent Expert in reference to but not limited to the following standards:
- Building maintenance as per CPWD Maintenance Manual-2019.
  - Equipment maintenance as per Good Industry Practices. Equipment fitness certificates are to be submitted to the Independent Expert.
  - Maintenance history book is to be maintained for all the equipment.
  - Maintenance for rigid pavement as per IRC :SP : 83:2018
  - Maintenance for flexible pavement as per IRC : SP: 82: 2015
  - Maintenance for interlocking concrete block pavement as per IRC: SP: 63:2018.
  - Railway siding and track maintenance as per Indian Railway Permanent Way Manual (IRPWM).
  - Road Lighting maintenance as per IS: 1944:1970/1981.
  - Firefighting system-Maintenance of Piping systems as per maintenance manual by CPHEEO and fire hydrants as per NBC.
  - Fire safety extinguishers maintenance as per IS 2190:2010 & IS 1648:1961.
  - Water supply, Sewerage and storm water drainage system maintenance shall be as per CPHEEO

- “Manual on Operation & Maintenance of water supply”, “Manual on Sewerage and Sewage Treatment Systems Part B Operation & Maintenance”, “Manual on Storm Water Drainage System-Volume II-Part B: Operation & Maintenance” and IS 2065 :1983.

- Painting works as per IS 2395:1994.
- The Concessionaire shall use all possible and updated technology in sanitation, solid waste management and disposal and rainwater harvesting for better upkeep and maintaining the best hygienic conditions in the Project.

The Maintenance Manual shall cover all the activities required for maintenance of all the Project Assets. A reference of various activities and their prescribed maintenance frequency is provided below:

S. No.	Activity	Frequency
	<b>Railway Siding and Road</b>	
1	Sweeping/cleaning of platforms, washable apron & track in railway siding area	At least daily & as and when required
2	Sweeping/Cleaning of roads and pavements including concrete /bituminous surface, pavement/ circulating area, kerb stone etc.	At least daily & as and when required
3	Sweeping/cleaning of cargo movement areas	At least daily & as and when required
4	Damage of pavement	Damage to the edge of the pavement to be repaired within 7 days Partial repair to be completed within 15 days. Complete repair to be completed within 30 days
	<b>Compound Wall</b>	
1	Damage to the Compound Wall	To be permanently rectified within 3 days of detection of breach. In case of any opening, the same should be closed at least by temporary means immediately after notice of the same.
2	Painting of Compound Wall	At least once in 5 years.
	<b>Landscaping Areas</b>	

1	Watering of landscaped areas to be done with proper permanent water supply arrangements like sprinklers etc.	At least once daily/As per requirement
2	Damaged trees and bushes	To be replaced within 3 days and in case of any hindrance to traffic or pedestrian movement, the same is to be cleared immediately.
3	Obstructions caused by landscaping obstructing the minimum headroom of 5 m above the driveway or obstructing the visibility of road signs	To be removed within 1 day
	<b>Wet Utilities</b>	
1	Damage to related to water supply	Restoration through temporary measures within 4 hours Restoration through permanent measures within 3 days.
2	Damage of drainage system	Restoration through temporary measures within 4 hours Restoration through permanent measures within 1 day
3	Damage of sanitary installations	Leakages to be repaired within 24 hours Damage to septic tank to be repaired within 1 day after detection
4	Damage to rainwater harvesting system	Restoration through temporary measures within 1 days Restoration through permanent measures within 7 days
		Periodically desilting and particularly prior to pre-monsoon & monsoon
	<b>Solid Waste Management</b>	
1	Refuse or solid waste to be disposed of to the secondary collection centres or designated disposal sites	Daily
	<b>Electrical Utilities</b>	

1	Functioning of power supply, electrical installations and electrical equipment for buildings and external	Power supply to common areas to be restored within 30 seconds during the night and within 5 minutes during the day, in the event of a power shortage, using the DG set.  24 hours back up is required for cold storage as well as common operating areas.  Safety audit as per requirement / once in a year whichever is minimum
2	Electrical fittings like bulbs, lamp shades, wiring etc. to be operational at all times	Replacement/restoration through temporary measure within 4 hours  Restoration through permanent measure within 2 days
3	Damage to internal lighting (Illumination of MMLP)	Restoration through temporary measures within 4 hours  Restoration through permanent measures within 2 days  Lighting level falling below the Standards and Specifications to be rectified within 4 hours
4	Damage to exterior lighting	Faults and minor failures to be repaired within 4 hours  Any major failure of the system to be repaired within 1 day
5	Safety audit	At least once in a year.
	<b>Telecom, Data, PA &amp; CCTV System</b>	
1	Telecommunication and networking system incl. WiFi	Restoration through temporary measures within 6 hours  Restoration through permanent measures within 3 days
2	Functioning of public address system	Restoration through temporary measure within  1 hour  Restoration through permanent measure within 2 days
3	Damage to CCTV & security system	To be repaired within 7 days

	<b>Other Services</b>	
1	Functioning of Air Conditioning (HVAC) System	Temporary repair and rectification within 8 hours Permanent repair and rectification within 2 days
	<b>Fire Fighting System</b>	
1	Cleaning of firefighting equipment including portable fire extinguishers, smoke detectors/fire detectors, fire pump panels, valves, hydrants, piping of all types etc.	At least once in a fortnight & as and when required
2	Check working of fire extinguishers including powder checking	At least once in every 3 months
3	Check working and functioning of automatic analogous addressable fire detection, fire alarm, and firefighting system periodically	At least once in every 3 months
4	Replacement of fire extinguisher	Prior to the expiry date or once in every 3 years whichever is minimum.
5	Defective or damaged fire fighting Equipment	Defective detectors to be replaced within 1 day.
6	Fire mock drill	Every month/ as per requirement of Chief Fire officers of area in which MMLP is located whichever is minimum.
7	Safety audit	At least once in a year.
	<b>Miscellaneous</b>	
1	Regular pest and rodent control treatment for all buildings and landscaped areas	At least once every month
2	Cleaning of any other equipment/Misc. items	As and when required

3.3. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

**4. Other defects and deficiencies**

In respect of any defect or deficiency not specified in this Schedule-K, 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.

**5. Extension of time limit.**

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.

**6. Emergency repairs/restoration**

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

**7. Daily Inspection by the Concessionaire**

7.1. The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Project 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.

**8. Divestment Requirements**

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

**9. Display of Schedule – K**

9.1. The Concessionaire shall display a copy of this **Schedule-K** at the Project MMLP along with the Complaint Register stipulated in Article 45.1.

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

The Concessionaire shall furnish the Service Quality Manual for all the Services undertaken under Schedule C of this Agreement but not limited to the major Services to the Independent Expert:

- i) Logistics Services
- ii) Value Added Services
- iii) Supporting Services
- iv) Commercial Zone Services
- v) Security Services
- vi) Other Services as prescribed by the Authority

The Service Quality Manual shall adhere to ISO 9001:2015-Quality management systems which shall include, but not limited to the following:

- i) Customer focus
- ii) Leadership
- iii) Involvement of people
- iv) Process approach
- v) System approach to management
- vi) Continuous improvement
- vii) Factual approach to decision making
- viii) Mutually beneficial supplier relationships

The Service Quality Manual shall be revised on an annual basis based on the quantum and type of the Services at the MMLP and as approved by the Independent Expert.

**SCHEDULE-L**

(See Clause 18.1.1)

**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 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 insofar as they relate to safety of the Users:

- (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 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.

**4. Safety measures during Construction Period:-**

- 4.1 A Safety Consultant shall be appointed by the Authority, no later than 4 (four) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.
- 4.2 The Safety Consultant shall collect and analyse the accident data for the preceding two years in the manner specified in Paragraph 4.1 of this Schedule-L. It shall study the Safety Report for the Development Period and inspect the Access Road to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional road safety measures, if any, that are considered essential for reducing accident hazards on the Access Road. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.
- 4.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road Users in accordance with the guidelines of IRC for safety in construction zones, and notify the Authority and the Independent Expert about

such arrangements.

## 5. Safety measures during Operation Period

- 5.1 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 corrections of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 5.2 The Concessionaire shall 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.
- 5.3 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.
- 5.4 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.

## 6. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be met in accordance with Article 18. For the avoidance of doubt, it is clarified that the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, 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 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. 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.

**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, evolve and adopt a manual for surveillance and safety of the Project (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, 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.

**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 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 MoRTH vide its letter No. RW/NH-39011/30/2015-P&P(Pt-1) dated 15.02.2019, as amended from time to time, 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 The Authority shall invite expressions of interest from consulting engineering firms to undertake and perform the duties and functions set forth in Schedule-N and in accordance with pre-determined criteria.
- 1.3 In the event that the Authority shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule-M shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinise the relevant records forming part of such selection process
- 1.4 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**.
- 1.5 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 Development Period and 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.

**6. Interim Independent Expert**

The Authority may, in its discretion, appoint an interim Independent Expert from another project within the State or a neighbouring state of the Project for a period not exceeding 6 (six) months or until the appointment of another Independent Expert in accordance with this Schedule, whichever is earlier.

**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, operation and maintenance of the Project.

**2. Definitions and interpretation**

- 2.1. The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2. References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

**3. Role and functions of the Independent 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) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 4;
  - (iv) review, inspection and monitoring of O&M as set forth in Paragraph 5;
  - (v) review, inspection, and monitoring of Divestment Requirements as set forth in Paragraph 6;
  - (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
  - (vii) determining, as required under the Agreement, the period, or any extension thereof, for performing any duty or obligation;
  - (viii) assisting Authority in review and inspection of the books of accounts submitted by the Concessionaire to the Authority and the records maintained by Concessionaire as set forth in Paragraph 12;
  - (ix) providing all requisite data on monthly basis within a period of 7 days from the close of month, as required by Authority, for updating the Authority’s website substantially in the format prescribed at Appendix – IV
  - (x) assisting the Parties in resolution of Disputes as set forth in Paragraph 8; and
  - (xi) 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. Development Period

4.1 **During the Development Period, 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, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. 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 modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Expert shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Expert shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.

4.4 **The Independent Expert shall review the detailed design, construction methodology, Quality Assurance Plan 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.

4.5 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, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

#### 5. Construction Period

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

5.2. 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.

5.3. The Independent Expert shall inspect the Construction Works of the Project once every month, duly supported by video recording captured using a drone or such other mechanism acceptable to the Authority, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20<sup>th</sup> (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, including invoices of materials (i.e., steel, cement, bitumen and aggregates), and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Independent Expert shall ensure that the features and quality of the video recordings submitted by the Concessionaire during the Construction Period are of

acceptable quality, free from distortion or tampering. The Inspection Report shall also contain a review of the such video recording and maintenance of the existing area inside MMLP, road connectivity 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 along with the video recording captured during such inspection, to the Authority and the Concessionaire within 7 (seven) days of the inspection and the Independent Expert shall also upload it on Authority's website promptly.

- 5.4. The Independent Expert may inspect the Project more than once in a month if any lapses, defects, or deficiencies require such inspections.
- 5.5. For determining that the Construction Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, at such location, time and frequency and in such manner to be specified by the Independent Expert from time to time 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.

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;

- 5.6. 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.
- 5.7. 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.
- 5.8. 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 Project 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.
- 5.9. 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.

- 5.10. 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.
- 5.11. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall review the request of the Concessionaire for the extension of dates set forth in the Project Completion Schedule, to the extent the Concessionaire is reasonably entitled, and may recommend the Authority of the same.
- 5.12. The Independent Expert shall carry out, or cause to be carried out, all the Tests specified in **Schedule-I** and issue a Provisional Certificate or Completion Certificate, as the case may be. 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**.
- 5.13. 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.
- 5.14. The Independent Expert shall aid and advise the Concessionaire in preparing the Maintenance Manual.
- 5.15. The Independent Expert shall obtain from the Concessionaire a copy of all the Concessionaire's qualitycontrol records and documents before the Completion Certificate is issued pursuant to Clause 14.2.
- 5.16. Upon reference from the Authority, the Independent Expert shall undertake the assessment of cost of civil works, as per applicable schedule of rates, in accordance with the Agreement.

## 6. Operation Period

- 6.1. 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*.
- 6.2. 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.
- 6.3. 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.
- 6.4. 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.
- 6.5. The Independent Expert shall ensure periodic calibration of equipment as well as periodic check of all scientific testing equipment.

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 report on the services for which the Gross Revenue was mis-reported by the Concessionaire.
- 6.6. 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.
- 6.7. The Independent Expert shall inspect the Project once every month duly supported by video recording captured using a drone or such other mechanism acceptable to the Authority, preferably after receipt of the monthly status report from the Concessionaire, but before the 20<sup>th</sup> (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Programme, Maintenance Requirements and Safety Requirements. The Independent Expert shall ensure that the features and quality of the video recordings submitted by the Concessionaire during the Operation Period are of acceptable quality, free from distortion or tampering. The O&M Inspection Report shall also contain a review of the such video recordings and 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, along with recommended remedial measures. The Independent Expert shall send a copy of its O&M Inspection Report along with the video recording captured during such inspection to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.8. The Independent Expert may inspect the Project more than once in a month, if any lapses, defects, or deficiencies require such inspections.
- 6.9. 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 is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.10. In respect of any defect or deficiency 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.
- 6.11. 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.
- 6.12. The Independent Expert shall examine the request of the Concessionaire for closure of any section of the Project 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.
- 6.13. The Independent Expert shall monitor and review the curing of defects and deficiencies by the

Concessionaire as set forth in Clause 19.5.

- 6.14. In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Project, 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.
- 6.15. Upon reference from the Authority, the Independent Expert shall undertake the assessment of cost of civil works, as per applicable schedule of rates, in accordance with the Agreement.

## 7. Termination

- 7.1. At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Expert shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 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 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.
- 7.2. The Independent Expert shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 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.

## 8. Determination of costs and time

- 8.1. The Independent Expert shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

The Independent Expert shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

## 9. Assistance in Dispute resolution

- 9.1. 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.
- 9.2. 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.

## 10. Other duties and functions

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

## 11. Miscellaneous

- 11.1. 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.
- 11.2. 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.

- 11.3. The Independent Expert shall obtain, and the Concessionaire shall furnish in 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 one of the copies to the Authority along with its comments thereon.
- 11.4. 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.
- 11.5. 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. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.
- 11.6. Wherever no period has been specified for delivery of services by the Independent Expert, the Independent Expert shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

## 12. Assistance to Authority in review of book of accounts

- 12.1. Upon receipt of copy of books of accounts from Authority, the Independent Expert shall review the Escrow account statements with respect to the provisions of the Escrow agreement, books of accounts for information pertaining (a) Fee determination thereof, and (b) Project costs, and (c) such other information relating or resulting from other duties and functions of Independent Expert in accordance with the Agreement, as the Authority may reasonably require and submit its report within 10 days.

**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)
<b>Logistics Services</b>						
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	
[.]						
<b>Value Added Services</b>						
[.]						
[.]						
<b>Support services</b>						
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 Project MMLP<sup>19</sup>**

Fee for Logistics Services	Fee for Value Added Services	Fee from other services
Handling charges for Bulk INR [ ] / ton	[•]	Truck parking charges: INR [ ] per truck / day
Handling charges for Container: INR [ ] / TEU		Driver resting: INR [ ] / day
Handling charges for Break bulk: INR [ ] / ton		Office space rental: INR [ ] per Sq.ft / month
Terminal access charges for Container: INR [ ]/TEU		[•]
Internal Hauling charges for Container: INR [ ]/TEU		
Internal Hauling charges for Break bulk: INR [ ]/MT		
Internal Hauling charges for Bulk: INR [ ]/MT		
Stuffing charges per container: INR [ ] / TEU		
De-stuffing charges per container: INR [ ] / TEU		
Storage charges: INR [ ] per Sq.ft / day		
Out of cycle movement charges: INR [ ] / TEU		
Warehousing rental: INR [ ]		

per Sq.ft / month [•]		
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<sup>19</sup> The amount may be indicated in the bidding documents and be included herein accordingly.

**SCHEDULE-Q**  
**MINIMUM REVENUE PAYABLE TO AUTHORITY**

As per Article 27, the Concessionaire shall pay to the Authority, for each Accounting Year, a Concession Fee including the Revenue Share, such that the sum of present value on “XNPV” basis of the Revenue Share payable to the Authority, commencing from the month falling immediately after the 5th (fifth) year (Accounting Year) from the Appointed Date, the Revenue Share payable to the Authority shall, at each of the check points specified in table below, be not less than the minimum amounts and percentages set forth therein, in accordance with Clause 27.4.

Check Point	Accounting Year from Appointed Date	Commencement of Revenue Share XNPV Calculation	Sum of present value on XNPV basis of Revenue Share Payable to the Authority (INR)	Minimum Percentage of Minimum Revenue payable to Authority
Check Point 1	Completion of 5th Accounting Year	Month immediately succeeding the 5th Accounting Year	[0.00]	[1.5%]
Check Point 2	Completion of 6th Accounting Year	Month immediately succeeding the 6th Accounting Year	[0.00]	[1.5%]
Check Point 3	Completion of 7th Accounting Year	Month immediately succeeding the 7th Accounting Year	[0.00]	[1.5%]
Check Point 4	Completion of 8th Accounting Year	Month immediately succeeding the 8th Accounting Year	[0.00]	[1.5%]
Check Point 5	Completion of 9th Accounting Year	Month immediately succeeding the 9th Accounting Year	[0.00]	[1.5%]
Check Point 6	Completion of 10th Accounting Year	Month immediately succeeding the 10th Accounting Year	[0.00]	[1.5%]
Check Point 7	Completion of 11th Accounting Year	Month immediately succeeding the 11th Accounting Year	[0.00]	[1.5%]
Check Point 8	Completion of 12th Accounting Year	Month immediately succeeding the 12th Accounting Year	[0.00]	[1.5%]
Check Point 9	Completion of 13th Accounting Year	Month immediately succeeding the 13th Accounting Year	[0.00]	[1.5%]
Check Point 10	Completion of 14th Accounting Year	Month immediately succeeding the 14th Accounting Year	[0.00]	[1.5%]
Check Point 11	Completion of 15th Accounting Year	Month immediately succeeding the 15th Accounting Year	[0.00]	[1.5%]
Check Point 12	Completion of 16th Accounting Year	Month immediately succeeding the 16th Accounting Year	[0.00]	[1.5%]
Check Point 13	Completion of 17th Accounting Year	Month immediately succeeding the 17th Accounting Year	[0.00]	[1.5%]

Check Point 14	Completion of 18th Accounting Year	Month immediately succeeding the 18th Accounting Year	[0.00]	[1.5%]
Check Point 15	Completion of 19th Accounting Year	Month immediately succeeding the 19th Accounting Year	[0.00]	[1.5%]
Check Point 16	Completion of 20th Accounting Year	Month immediately succeeding the 20th Accounting Year	[0.00]	[1.5%]
Check Point 17	Completion of 21st Accounting Year	Month immediately succeeding the 21st Accounting Year	[0.00]	[1.5%]
Check Point 18	Completion of 22nd Accounting Year	Month immediately succeeding the 22nd Accounting Year	[0.00]	[1.5%]
Check Point 19	Completion of 23rd Accounting Year	Month immediately succeeding the 23rd Accounting Year	[0.00]	[1.5%]
Check Point 20	Completion of 24th Accounting Year	Month immediately succeeding the 24th Accounting Year	[0.00]	[1.5%]
Check Point 21	Completion of 25th Accounting Year	Month immediately succeeding the 25th Accounting Year	[0.00]	[1.5%]
Check Point 22	Completion of 26th Accounting Year	Month immediately succeeding the 26th Accounting Year	[0.00]	[1.5%]
Check Point 23	Completion of 27th Accounting Year	Month immediately succeeding the 27th Accounting Year	[0.00]	[1.5%]
Check Point 24	Completion of 28th Accounting Year	Month immediately succeeding the 28th Accounting Year	[0.00]	[1.5%]
Check Point 25	Completion of 29th Accounting Year	Month immediately succeeding the 29th Accounting Year	[0.00]	[1.5%]
Check Point 26	Completion of 30th Accounting Year	Month immediately succeeding the 30th Accounting Year	[0.00]	[1.5%]
Check Point 27	Completion of 31st Accounting Year	Month immediately succeeding the 31st Accounting Year	[0.00]	[1.5%]
Check Point 27	Completion of 32nd Accounting Year	Month immediately succeeding the 32nd Accounting Year	[0.00]	[1.5%]
Check Point 29	Completion of 33rd Accounting Year	Month immediately succeeding the 33rd Accounting Year	[0.00]	[1.5%]
Check Point 30	Completion of 34th Accounting Year	Month immediately succeeding the 34th Accounting Year	[0.00]	[1.5%]
Check Point 31	Completion of 35th Accounting Year	Month immediately succeeding the 35th Accounting Year	[0.00]	[1.5%]

Check Point 32	Completion of 36th Accounting Year	Month immediately succeeding the 66th Accounting Year	[0.00]	[1.5%]
Check Point 33	Completion of 37th Accounting Year	Month immediately succeeding the 37th Accounting Year	[0.00]	[1.5%]
Check Point 34	Completion of 38th Accounting Year	Month immediately succeeding the 38th Accounting Year	[0.00]	[1.5%]
Check Point 35	Completion of 39th Accounting Year	Month immediately succeeding the 39th Accounting Year	[0.00]	[1.5%]
Check Point 36	Completion of 40th Accounting Year	Month immediately succeeding the 40th Accounting Year	[0.00]	[1.5%]
Check Point 37	Completion of 41st Accounting Year	Month immediately succeeding the 41st Accounting Year	[0.00]	[1.5%]
Check Point 38	Completion of 42nd Accounting Year	Month immediately succeeding the 42nd Accounting Year	[0.00]	[1.5%]
Check Point 39	Completion of 43rd Accounting Year	Month immediately succeeding the 43rd Accounting Year	[0.00]	[1.5%]
Check Point 40	Completion of 44th Accounting Year	Month immediately succeeding the 44th Accounting Year	[0.00]	[1.5%]
Check Point 41	Completion of 45th Accounting Year	Month immediately succeeding the 45th Accounting Year	[0.00]	[1.5%]

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.

**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 [development \*\*\* 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

- 2.5.1 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.
- 2.5.2 The Authority shall have the right to access a secure facility for real-time online viewing and downloading of the Escrow Account statements at all times during the Concession Period.

## 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 levied and collected by the Concessionaire;
- (d) any other revenues rentals, deposits or capital receipts, as the case may be, from or in respect of the Project;
- (e) all proceeds received pursuant to any; and
- (f) all payments by the Authority, after deduction of any outstanding Concession Fee.

Notwithstanding anything to the contrary contained in this Agreement, in the event the Concessionaire fails to pay the Concession Fee for 2 (two) consecutive months, the Authority shall have right to recover such Concession Fee due and payable to it by the Concessionaire from the Fee/charges collected.

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) Revenue Support;
- (c) All Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (d) Termination Payments.

Provided that, notwithstanding the provisions of Clause 4.1.1 and 4.2, 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, 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.

For the avoidance of doubt, it is clarified that expenses for bid preparation and associated activities incurred by the promoters prior to the Appointed Date, shall not be eligible for withdrawal under this Agreement.

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) outstanding Concession Fee for a period of upto 6 (six) months prior to the Transfer Date
- (c) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (d) all payments and Damages certified by the Authority as due and payable to it by the

Concessionaire pursuant to the Concession Agreement, including outstanding Concession Fee other than those specified in Clause 31.4.1 (b) above, 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.

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

#### **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

10.1.2 Any dispute, difference or claim arising out of or in connection with this Agreement, the sum of which is of value less than Rupees 10 Crores, which has not been resolved amicably, shall be decided finally by reference to Arbitration or Conciliation in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The provision relating to Conciliation under the Arbitration and Conciliation Act, 1996 shall cease to apply once the provisions relating to substitution of conciliation process by mediation are notified under Mediation Act, 2023. Thereafter "Conciliation" herein be referred to as Mediation as per the provisions of the Mediation Act 2023.

10.1.3 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.

10.1.4 Notwithstanding anything to the contrary contained in this Agreement, it is agreed that any dispute, difference or claim arising out of or in connection with this Agreement the sum of which is of value Rupees 10 Crores or above, which has not been agreed upon/ reached settlement by the parties through Conciliation under Arbitration and Conciliation Act, 1996 or otherwise, shall be adjudicated by civil courts and shall not be referred to Arbitration. It is further agreed that all declaratory disputes or non-monetary disputes shall be adjudicated by

civil courts and shall not be referred to Arbitration.

10.1.5 Subject to Clause 10.1.1, it is expressly agreed by the Parties that civil courts in Delhi shall have exclusive jurisdiction over any disputes, differences or claims arising out of or in connection with this Agreement, and no other courts shall have jurisdiction for adjudication of any such disputes, differences or claims.

## 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 at Delhi 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 10.1 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 e-mail. The address for service of each Party, its 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 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 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)

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)

In the presence of

- 1. [•]
- 2. [•]

SIGNED, SEALED AND DELIVERED

For and on behalf of [•] by:

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



In the presence of

1. [•]

2. [•]

**SCHEDULE-S**

(See Clause 32.2.1)

**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**

2.1 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 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 ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 100,00,00,000 (Rupees One hundred 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 2.2 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 10 (ten) 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**  
(See Clause 37.4)  
**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 Project 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**  
(See Clause 39.3.1)  
**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 [\*\*\* 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 THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 90 (ninety) days;

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

**“Nominated Company”** means (i) a company selected by the Lenders’ Representative and proposed to the Authority or selected by the Authority, as the case may be, for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement or (ii) wherever the Selected Bidder/Consortium Members of the Concessionaire are sought to be substituted in accordance Clause 3A of this Agreement, the Concessionaire itself;

**“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. For the avoidance of doubt, it is clarified that the right of the Lenders’ Representative to substitute the Concessionaire shall be without prejudice to the right of the Authority to substitute the Concessionaire in accordance with Clause 3.3.3 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 in accordance with this

Agreement. For the avoidance of doubt, it is clarified 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.

### 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 30 (thirty) 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 30 (thirty) 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.
- 3.3.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority reserves the right, in public interest, to substitute the Concessionaire upon issuing a notice to the Lenders' Representative, without prejudice to any other rights or remedies available to it under the Concession Agreement. During and upon such substitution, the Authority shall ensure that the Debt Due of the Senior Lenders is duly considered and protected.

### 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. Similarly, in exercise of its rights by the Authority under Clause 3.3.3, the Authority may undertake a similar process through public auction or tender, provided that during and upon such substitution by the Authority, the Authority shall ensure that the Debt Due of the Senior Lenders is duly considered and protected.

- 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 by the Lenders' Representative, 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 selected by the Lenders' Representative and proposed to the Authority 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.

### 3.5 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 and the Authority are irrevocable and shall not be contested in any proceedings before any court of law 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.

### 3.A PROCEDURE FOR HARMONIOUS SUBSTITUTION OF CONCESSIONAIRE

For the purpose of the harmonious substitution as detailed herein, an event of "Financial Default" as defined shall be deemed to include situations where the Authority and/or the Senior Lenders have reasons to apprehend, in their considered opinion, that the Concessionaire is likely to face financial distress and is likely to default in the compliance of the terms of the Concession. For the purpose of the harmonious substitution as detailed herein, the term "Nominated Company" shall mean, wherever the Selected Bidder/ Consortium Members of the project SPVs/ are sought to be substituted, the current SPV company itself.

Parties therefore agree to following: -

- 3.A.1 Provisions pertaining to substitution of the Concessionaire by the Lenders Representative are contained in Article 39.3 read with the Substitution Agreement set forth in Schedule-V and Article 3.1.1 of the Substitution Agreement in particular Article 3.2 and Article 3.3 of the Substitution Agreement provide for substitution in the event of Financial Default and Concessionaire's Default respectively. It is further clarified that Right of Substitution by the Lender's Representative can be exercised in situations other than those illustrated in Clause 3.2 and Clause 3.3 of the Substitution Agreement. In cases of harmonious substitution as envisaged herein, the provisions contained in Article 3.4 of the Substitution Agreement shall be applicable, and in addition the procedure laid down hereunder shall be applicable.
- a. The Concessionaire shall make a written representation to the Lender's Representative with a copy to the Authority requesting the Lender's Representative to seek approval of the Authority for Substitution. Upon receiving the said request, the Lender's Representative shall make its own assessment regarding the said request and upon being satisfied that it will be in the interest of the Project that the Substitution be effected, Lender's Representative in consultation with the Concessionaire would invite, negotiate and procure offers either by private negotiations or public auction or tenders, for the said Substitution as defined herein.
  - b. Selection of the substitute (company or the Selected bidder/ Consortium Members of such project SPV) and the valuation of the Equity of the Concessionaire would be determined by the Concessionaire and Lenders.
  - c. Upon receiving the proposal of the Lender's Representative, the Authority shall satisfy itself about the credentials of the Nominated Company or of the substitute to the Selected bidder/Consortium Members of such projects and accord its concurrence regarding such substitution considering the following.
    - i. In the event that COD has been achieved, the substituting entity should have adequate experience of operating and maintaining completed road projects by itself or through its associates/subsidiaries.
    - ii. In the event that COD is yet to be achieved, the substituting entity should have the requisite financial and technical qualifications to bid for a project of at least the same size.

Thereafter, (where the substitution entity is a new company), the nominated company will form an SPV for taking over the project along with all the rights and obligations of the concessionaire under the Concession Agreement.

- d. While concurring with the said proposal of the Lender's Representative, Authority, in its sole

discretion, may levy an appropriate penalty not exceeding 1% (one per cent) of the Total Project Cost keeping in view the nature and extent of default as per the procedure to be prescribed for the purpose by the Authority. Provided that no penalty shall be levied on the Concessionaire for non-fulfilment of its obligations where the responsibility for delay in execution or completion for the project is on account of non-fulfilment or delay in fulfillment of the obligations of the Authority, namely, land acquisition, environmental clearances, other statutory/regulatory approvals/ clearances, as the case may be. The Authority shall cure such defaults before the signing of substitution agreement.

- e. Subsequent to such substitution, the Concessionaire shall ensure compliance to the Article 5.3 and Article 7.1 (k) read with the definition of “Change in Ownership” under Article 49.
- f. The Procedure prescribed under other Articles of the Concession Agreement and the Substitution Agreement, except to the extent of this harmonious substitution specified herein, shall be applicable.
- g. The Authority shall stand fully discharged of any claims whatsoever, by the existing Concessionaire where the substitution entity is a new company.
- h. Such substitution is permitted only once during Construction Period.

#### **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 In the event of any dispute, difference or controversy of whatever nature howsoever arising

under or out of or in relation to this Agreement (including its interpretation) among the Parties, and so notified in writing by any Party to the other Parties shall, in the first instance, be attempted to be resolved amicably.

- 8.1.2 Any dispute, difference or claim arising out of or in connection with this Agreement which has not been resolved amicably shall be decided by reference to Conciliation in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The provision relating to Conciliation under the Arbitration and Conciliation Act, 1996 shall cease to apply once the provisions relating to substitution of conciliation process by mediation are notified under Mediation Act, 2023. Thereafter “Conciliation” herein be referred to as Mediation as per the provisions of the Mediation Act 2023.
- 8.1.3 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.
- 8.1.4 Notwithstanding anything to the contrary contained in this Agreement, it is agreed that any dispute, difference or claim arising out of or in connection with this Agreement the sum of which is of value Rupees 10 Crores or above, which has not been agreed upon/ reached settlement by the parties through Conciliation under Arbitration and Conciliation Act, 1996 or otherwise, shall be adjudicated by civil courts and shall not be referred to Arbitration. It is further agreed that all declaratory disputes or non-monetary disputes shall be adjudicated by civil courts and shall not be referred to Arbitration.
- 8.1.5 Subject to Clause 8.1.1, it is expressly agreed by the Parties that civil courts in Delhi shall have exclusive jurisdiction over any disputes, differences or claims arising out of or in connection with this Agreement, and no other courts shall have jurisdiction for adjudication of any such disputes, differences or claims.

## 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 at Delhi 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 e-mail. The address for service of each Party and its e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

#### 9.11 Language

All notices, certificates, correspondence, and proceedings under or in connection with this Agreement shall be in English.

#### 9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

#### 9.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of THE Authority by:

**CONCESSIONAIRE** by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

  
 हरलीन कौर / Harleen Kaur  
 निदेशक / Director  
 सड़क परिवहन एवं राजमार्ग विभाग  
 Ministry of Road Transport & Highways  
 कक्षा संसदीय / Govt. of India  
 नई दिल्ली / New Delhi-110001

SIGNED, SEALED AND DELIVERED

For and on behalf of **SENIOR LENDERS**

by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

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**

**Deleted**

**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 NHLML/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**

- 1.1 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.
- 1.2 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.
- 1.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by email or any other means of electronic transmission effected to a number, address, or site of a party.
- 1.4 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 request that the Dispute be referred to arbitration;
  - the names, addresses, telephone numbers and email addresses of the Parties to the Dispute;
  - 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 of 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.

### **Rule 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.

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.

- 11.2 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.
- 11.3 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.
- 11.4 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**

- 1.1 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.
- 1.2 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 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.

**Fees**

- 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:
- Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
  - Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
  - 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 – Hearing**

- 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:
- appoint one or more experts to report the Tribunal on specific issues;
  - 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**

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.

- 36.1 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.
- 36.2 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 an 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 RAIL CONNECTIVITY AND RAIL TERMINAL****Obligations of the Concessionaire**

The Concessionaire at its own cost promptly and diligently operate, maintain, and ensure safety of the Rail Connectivity and the Rail Terminal.

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 Rail Connectivity and Rail Terminal, 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 Rail Connectivity and Rail Terminal is diminished.

The Concessionaire shall, at all times during the Concession Period, post commissioning of the GCT, 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 Railways Standards.

The Concessionaire shall provide access to the Siding for inspection to designated officials of Indian Railways as per the applicable circular on GCT, including amendments if any, and GCT Agreement signed with competent railway authority. The Concessionaire shall 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.

**SCHEDULE Y**  
**FORMAT FOR INTIMATION FINANCIAL CLOSE**

(To be filled by Concessionaire and submitted at the time of Financial Close)

**1. Details of the Project:**

S. No.	Particulars	Details
A.	Project description	
B.	Type of Project	
C.	Location/ State	
D.	Area (Acres)	
E.	Total Project Cost assessed by Authority (Rs. In cr.)	
F.	Total Project Cost assessed by Senior Lenders (Rs. In Cr.)	
G.	Concession Period	
H.	Date of signing of Concession Agreement	
I.	Likely Appointed Date	
J.	Construction Period	
K.	Financing structure (Rs. In Cr.) Source of funding under different heads (Debt, Equity, Equity Support, etc.)	
L.	Scheduled Completion Date	

**2. Details of Total Project Cost:**

S. No.	Particulars	Amount (Rs. Crore)
1.		
2.		
3.		

4.		
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**3. Financing Pattern:**

S. No.	Particulars	Amount (Rs. Crore)
1.	Equity	
2.	Debt	
3.	Others (to be specified).....	

**4. Name of the Senior Lenders**

S. No.	Name of the Bankers/FIs/NBFCs	Amount (Rs. Crore)
1.		
2.		
3.		

**5. Financing details**

S. No.	Name of the Bankers/FIs/NBFCs	Details
1.		Rate of interest during Construction Period
2.		Rate of interest during Operation Period
3.		Average DSCR
4.		Minimum DSCR
5.		Project IRR
6.		Equity IRR
7.		

**6. Amortization Schedule:**

**7. Sanction Letter containing the terms and conditions of the Facility sanctioned by the Senior Lenders for the Project**