

DRAFT CONCESSION AGREEMENT

FOR

BUS TERMINAL CUM COMMERCIAL COMPLEX AT
GURDASPUR (PUNJAB) ON PUBLIC PRIVATE PARTNERSHIP (PPP)

(NATIONAL COMPETITIVE BIDDING)

_____ 201__

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Concession Agreement

Part I

Preliminary

CONCESSION AGREEMENT

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

BETWEEN

1. Gurdaspur Improvement Trust, represented by **its authorized signatory[Executive Officer]** and having its principal office at _____ (hereinafter referred to as the "**Concessioneing Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **One Part;**

AND

2. {..... **LIMITED**}, a company incorporated under the provisions of the Companies Act, 1956/ 2013 and having its registered office at (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, and permitted assigns and substitutes) of the **Second Part.**

AND

3. M/s _____ [.....], having its Registered Office at _____, in its capacity as the confirming party to this Agreement (hereinafter referred to as the "**Selected Bidder**" which expression shall, unless the context otherwise requires, include its successors) represented herein through Mr. _____, the authorised signatory, as authorised vide board resolution dated _____, or power of attorney dated _____, of the **Third Part;**

or

The consortium of (i) M/s _____ [....] having its Registered Office at _____, (ii) M/s _____ [....] having its Registered Office at _____, and (iii) M/s _____ [....] having its Registered Office at _____, in their capacity as the confirming party to this Agreement (hereinafter referred to as the '**Selected Bidder**' which expression shall, unless the context otherwise requires, include its successors) duly represented through M/s _____ [....], the Lead Member of the consortium, through its Authorized signatory Mr./Ms. _____, _____ of the **Third Part**

WHEREAS:

- (A) The Concessioneing Authority had proposed for the Development of Bus Terminal cum Commercial Complex at Gurdaspur and the Operation & Maintenance thereof in the State (hereinafter called the "**Project**") on design, build, finance, operate and transfer ("**DBFOT**") basis in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- (B) Intentionally left blank.
- (C) The Concessioneing Authority had accordingly invited bids by its Tender Notice/ Request for Proposal dated (the "**Request for Proposal**" or "**RFP**") prescribing the technical and commercial terms and conditions for short-listing of bidders and selection of bidder for Development of Bus Terminal cum Commercial Complex at Gurdaspur and Operation & Maintenance thereof on DBFOT basis.

- (D) After evaluation of the bids received, the Concessioneing Authority had accepted the bid of the {Selected bidder/ Consortium comprising,, and (collectively the "**Consortium**") with as its lead member (the "**Lead Member**")} and issued its Letter of Award No. Dated (hereinafter called the "**LOA**") to the {Selected Bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within 60 (sixty) days of the date of issue thereof.
- (E) {The Selected Bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013 and has requested the Concessioneing Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (F) {By its letter dated, the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Concessioneing 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 Consortium for the purposes hereof}.
- (G) The Concessioneing 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 execution 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 48) 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 Punjab, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction/ 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 "**development**" include, unless the context otherwise requires construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Chandigarh are generally open for business;

- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (l) 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;
- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
- (p) "**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;
- (q) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organisation, dissolution, arrangement, protection or relief of debtors;
- (r) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Concessing Authority hereunder or pursuant hereto in any manner whatsoever;
- (s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (t) 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;
- (u) 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;

- (v) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
- (w) 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 Concessions Authority and/ or the Independent Engineer shall be provided free of cost and in three copies, and if the Concessions Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of Construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of Agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this signed Concession Agreement (including its Schedules) along-with any Addendums/ Corrigendum's/ Clarifications issued to the RFP document dated ____; 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 provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

Part II

The Concession

ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) Construction of the Project at the Project Site set forth in Schedule-A and as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) Operation and Maintenance of the Project in accordance with the provisions of this Agreement; and
- (c) 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 Concessions Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to develop, construct, operate and maintain the Project (the "**Concession**") for a period of **30 (thirty) years** commencing from the Appointed Date, 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:

- (a) Right of Way, access and licence to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) Finance, construct, develop and make the Project functional at the Project Site;
- (c) Manage, operate and maintain the Project and regulate the use thereof by third parties;
- (d) Demand, collect and appropriate Adda Fee and Commercial Charges, as per Article 27, from Buses and Users liable for payment of Adda Fee and Commercial Charges respectively (more specifically detailed out in Schedule-R) for using the Project or any part thereof and refuse entry of any such User if such Adda Fee, Parking Fee and/ or Commercial Charges due are not paid;
- (e) Perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- (f) 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
- (g) 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 transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 24, 34, 44 and 47, 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 at any time after **180 (one hundred and eighty) days** from the date of this Agreement or on an earlier day acceptable to the Concessioneing Authority, by notice require the Concessioneing Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Concessioneing Authority shall be deemed to have been fulfilled when the Concessioneing Authority shall have:

- (a) Handed over the possession of the Project Site, free of cost, to the Concessionaire, in accordance with the provisions of Clause 10.3.1;
- (b) Appointed an Independent Engineer;
- (c) Issued the Adda Fee Notification, as detailed out in Schedule-R; and

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) Submitted Performance Security, as per Article 9;
- (b) Executed and procured execution of the Substitution Agreement;
- (c) executed and procured execution of the Escrow Agreement;
- (d) Procured all the Applicable Permits specified in 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;
- (e) Procured financial close and executed the Financing Agreements and delivered to the Concessioneing Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) Delivered to the Concessioneing Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (g) Delivered to the Concessioneing Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representation and warranties set-forth in Sub-clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
- (h)** Delivered to the Concessioneing Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:

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

- 4.1.4 Each Party shall make all reasonable 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 Concessions Authority

In the event that (i) the Concessions Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Concessions Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance 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 a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Concessions Authority, or due to Force Majeure, the Concessionaire shall pay to the Concessions Authority 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 of 20% (twenty per cent) of the Performance Security.

ARTICLE 5
OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure, finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, 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 all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, equipment's, processes and systems used or incorporated into the Project;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) obtain and procure the requisite statutory permissions from the competent authorities under the Applicable Laws in respect of the Project Site relating to any services required for the development, construction and to make the Project Site operational in all respects;
 - (e) demand and collect requisite Adda Fee from the Buses entering the Bus Terminal;; Commercial Charges from the Users of Commercial Complex Area, Parking Fee and Advertisement fee;
 - (f) 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;
 - (g) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (h) Left Blank;
 - (i) Left Blank;

- (j) 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;
- (k) support, cooperate with and facilitate the Concessioneing Authority in the construction and operation of the Project in accordance with the provisions of this Agreement; and
- (l) transfer the Bus Terminal & Commercial Complex area along with all movable & immovable assets and the source codes & database structures free from all encumbrances to the Concessioneing Authority upon Termination of this Agreement or successful completion of the Concession Period, in accordance with the provisions thereof.
- (m) The Concessionaire shall be under an obligation that minimum average monthly commercial consideration or sub-licensing charges that may be collected from sub-licensee towards use of any commercial built-up area, within the Bus Terminal area and Commercial Complex, shall be **Rs 30 (thirty) per sq. ft.** during the Concessionaire Period. The minimum average commercial consideration shall be for the Financial Year in which the project's Appointed Date falls. After that the applicable minimum average monthly commercial consideration shall be escalated at the rate of **5 (five) % annually** during the Concession Period, over the previous year's amount (i.e. on compounded basis).

It is clarified that the relevant Project Agreement related to commercial built-up area /premises or sub-licensing document that may be executed by the Concessionaire with various sub-licensees pertaining to commercial built-up area or premises shall include this essential condition.

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 Concessioneing Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Concessioneing Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) 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 Concessioneing Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Concessioneing Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Concessioneing Authority. No review and/ or observation of the Concessioneing 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 Concessioneing 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 Concessioneing Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Concessioneing 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 Concessioneing Authority. For the avoidance of doubt, the Concessioneing Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing Authority an acknowledgment and undertaking, in a form acceptable to the Concessioneing 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 Concessioneing 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 selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Concessioneing Authority from national security and public interest perspective, the decision of the Concessioneing Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Concessioneing Authority. For the avoidance of doubt, it is expressly agreed that approval of the Concessioneing Authority hereunder shall be limited to national security and public interest perspective, and the Concessioneing Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Concessioneing 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.

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 subcontractors 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 and appropriately skilled for their respective functions. The Concessionaire shall be liable for all the activities of the personnel supplied by him.

5.6 Sole purpose of the Concessionaire

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

ARTICLE 6
OBLIGATIONS OF THE CONCESSIONING AUTHORITY

6.1 Obligations of the Concessioning Authority

6.1.1 The Concessioning Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Concessioning 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 the Applicable Laws, the following:

- (a) Intentionally Left Blank ;
- (b) Provide assistance to the Concessionaire for procuring the necessary clearances and/ or approval for Construction of Project from competent authority;
- (c) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (d) upon written request from the Concessionaire, provide access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (e) ensure that no barriers are erected or placed on or about the Project Site by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
- (f) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project Site;
- (g) Intentionally Left Blank;
- (h) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (h) support, cooperate with and facilitate the Concessionaire in the construction and operation of the Project in accordance with the provisions of this Agreement; and
- (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Maintenance obligations prior to Appointed Date

During the Development Period, the Concessioning Authority shall maintain the Project Site, at its own cost and expense. For the avoidance of doubt, the Concessioning Authority shall undertake only routine maintenance during the Development Period and it shall undertake special repairs only in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rains.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessions Authority that:

- (a) it is duly organised 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 authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {selected bidder/ Consortium Members},

together with {its/ their} Associates, hold not less than 100% (one hundred percent) of its issued and paid up Equity as on the date of this Agreement; and that Technical Member & Financial Member of the Consortium whose technical and financial capacity was evaluated for the purposes of qualification and short-listing in response to the Request for Proposal shall hold less than 49% (forty nine per cent) and 26% (twenty six per cent) respectively of such Equity during the Concession Period;

- (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 Members} is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing Authority in connection therewith; and
- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and Warranties of the Concessioneing Authority

The Concessioneing 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 the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the 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 Concessioneing Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
 - (g) it has the right, power and authority to manage and operate the Project/ Project Site up to the Appointed Date; and
 - (h) it has good and valid right to the Project Site, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

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

ARTICLE 8
DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, extent of Users/ Buses and all information provided by the Concessions 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 Concessions Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessions 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 Concessions 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 Concessions Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Concessions Authority contained in Clause 8.1.1 and shall not in any manner shift to the Concessions 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 Concessions 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 hereunder during the Construction Period of Bus Terminal, provide to the Concessions Authority, no later than 90 (ninety) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to **Rs. 1.5 crore (Rupees One Crore and Fifty Lakh)** in the form set forth in Schedule-F (the "**Performance Security**"). 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 Concessions Authority shall release the Bid Security to the Concessionaire.

Also, on completion of construction of the Bus Terminal, the Concessions Authority shall refund back the Performance Security to Concessionaire and thereupon, for the remaining Concession Period, the Concessionaire shall be required to furnish and maintain a Renewed Performance Security of **Rs 1 Crore (Rupees One Crore)**, in the form set forth in Schedule – F.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within the stipulated time period, the Concessions 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 Concessions 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 Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the applicable 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 Concessions Authority shall be entitled to terminate this Agreement in accordance with Article 37. 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 meeting such Condition Precedent within such Cure Period, the Concessions Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for the entire Concession Period. Upon completion of 6 (six) months after end of the Concession Period and thereby, request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements laid down in the Concession Agreement, the Concessions Authority shall release the Performance Security forthwith.

ARTICLE 10
RIGHT OF WAY

10.1 The Project Site

The site of the Project shall comprise the real estate described in Schedule-A and in respect of which the Right of Way/ possession shall be provided and granted by the Concessioneing Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the "**Project Site**"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for construction and implementation of the Project at the Project Site as set forth in Schedule-A.

10.2 Licence, Access and Right of Way

- 10.2.1 The Concessioneing Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, and investigations that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Concessioneing 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 Concessioneing Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, during the Conditions Precedent Period or commencing from the Appointed Date or any other date when the possession of any Project Site is provided, leave and licence rights in respect of all the land comprising the Project Site which are 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 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way.
- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Concessioneing Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by the Concessionaire or its sub-licensees, the licence in respect of the Project Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire hereby irrevocably appoints the Concessioneing 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 Concessions Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that trees on the Project Site are property of the Concessions Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Concessions Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Project Site and prepare a memorandum for the Project Site containing an inventory of the Project Site including the vacant and unencumbered land, structures, road works, trees and any other immovable property on or attached to the Project Site. Such memorandums shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Project Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum for the Project Site, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Project Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix for each Project Site shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Concessions 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 Concessions Authority shall grant vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of Project Site required and necessary for Bus Terminal and Commercial Complex, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Concessions Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

10.3.2 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 to the Concessions Authority and undertakes its removal at its cost and expenses.

10.3.3 The Government shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, 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. 50 (Rupees fifty) per day for every 1,000 (one thousand) square meters or part thereof, commencing

from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.

10.3.4 Upon receiving Right of Way in respect of any land included in the Appendix/ as per schedule laid in Clause 10.3.2, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on the land for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before the Project Completion Date. It is also expressly agreed that completion of the Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.4.2.

10.4 Site to be free from Encumbrances

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

10.5 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Project Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Project 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.

10.6 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Project Site. The Concessionaire shall obtain at its cost such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.7 Access to the Concessions Authority and Independent Engineer

The licence, right of way and right to the Project Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Concessions Authority and the Independent

Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement and any other obligation stipulated by the Concessions Authority.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Project Site shall vest in and belong to the Concessions Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Concessions 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 Concessions Authority. It is also agreed that the Concessions Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 11
UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Concessions Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Concessions Authority, undertake shifting of any utility including electric lines, water pipes, sewer lines and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the development, construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Concessions Authority or by the entity owning such utility, if the Concessions Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes, sewer lines or telephone cables, as the case may be. For the avoidance of doubt, the cost of shifting of such utilities shall be paid at rates as provided in Standard Data Book of MORT&H or as assessed by the Instrumentality owning the utility at their prevailing norms.

11.3 New utilities and roads

11.3.1 The Concessionaire shall allow, subject to such conditions as the Concessions Authority may specify, 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 as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

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11.4 Felling of trees

The Concessions Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Concessions 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 shall be borne by the Concessioneing Authority, 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 Government and shall be disposed in such manner and subject to such conditions as the Government may in its sole discretion deem appropriate. Further for the avoidance of doubt, the cost of felling of trees shall be paid as per rates provided in Standard Data Book of MORT&H or at rates as assessed by the Forest Department at their prevailing norms.

ARTICLE 12
CONSTRUCTION OF THE PROJECT

12.1 Obligations prior to commencement of Construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Concessioneing Authority and the Independent Engineer, its detailed design, Construction methodology, quality assurance procedures, and the procurement, engineering and time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) appoint its representative duly authorised to deal with the Concessioneing 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, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the existing Project Site of the Project and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, such tempering and diversions which are necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such tempering and diversions shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safety, structural stability and safe operation of the Project.

12.3 Drawings & Proposals

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

- (i) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings and Proposals to the Independent Engineer for review;
- (ii) By submitting the Drawings and proposals for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project and the Specifications and Standards;
- (iii) Within 30 (thirty) days of the receipt of the Drawings and Proposals, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 30 (thirty) days period and may begin or continue Construction Works at

- its own discretion and risk;
- (iv) If the aforesaid observations of the Independent Engineer indicate that the Drawings and Proposals are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings and Proposals shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
 - (v) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings and Proposals shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Concessioneing Authority be liable for the same in any manner;
 - (vi) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Concessioneing Authority for review and comments, its Drawings relating to construction works etc, and the Concessioneing 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 and Proposals. The provisions of this Clause 12.3 shall apply *mutatis mutandis* to the review and comments hereunder; and
 - (vii) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Concessioneing Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Concessioneing Authority, reflecting the Project as actually designed and engineered.

12.4 Completion of the Project

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake Construction of the Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.

The Construction Period for the Bus Terminal component is **550 (five hundred and fifty) days** from the Appointed Date, wherein the Concessionaire shall construct the Bus Terminal along with all mandatory services and make them operational in all respects as per provisions of this Concession Agreement.

The Construction Period for the **Commercial Complex** component is **1825 (eighteen hundred and twenty five) days** from the Appointed Date, wherein the Concessionaire shall be required to construct minimum specified built up area which has been detailed out in **Schedule-B**, as per the provisions of this Concession Agreement. However, if the Concessionaire opts to construct more than the specified area of Commercial Complex then the same can be constructed at any time during the subsistence of the Concession Period as per the provisions of Concession Agreement.

The **550th day (five hundred and fiftieth day)** from the Appointed Date shall be the scheduled date for completion of the Bus Terminal (the "**Scheduled Completion Date**") and the Concessionaire agree and undertakes that the construction work for the Bus Terminal shall be completed and made functional on or before the Scheduled Completion Date.

12.4.2 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-G for both Bus Terminal and Commercial Complex. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Concessioneing Authority, it shall pay Damages to the Concessioneing 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 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 Project Completion Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Concessioneing Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Concessioneing Authority under this Agreement, including the right of Termination thereof.

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 Concessions Authority and the Independent Engineer a monthly report on progress of the Construction Works at Project Site and shall promptly give such other relevant information as may be required by the Independent Engineer.

13.2 Inspection

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

13.3 Tests

13.3.1 For determining that the Construction Works and services conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Concessions Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in Construction shall be borne solely by the Concessionaire.

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

Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during Construction

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that Project Completion is not likely to be achieved by the Scheduled Project Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction Works and services

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Concessions Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, services, equipment if, in the reasonable opinion of the Concessions Authority, such work threatens the safety of the Users and staff at site.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works, services, equipment or any part thereof for such time and in such manner as may be specified by the Concessions Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessions Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Concessions 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 Concessions Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or services or equipment 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 Concessions Authority, the Preservation Costs shall be borne by the Concessions Authority.
- 13.5.4 If suspension of Construction Works or services or equipment is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority accordingly whereupon the Concessions Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Project 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 Project Completion Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Concessions Authority for every calendar month, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works and services in that month. The first such video recording shall be provided to the Concessions Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each month.

ARTICLE 14
COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Bus Terminal and Commercial Complex, the Concessionaire shall notify the Independent Engineer of its intent to subject the Bus Terminal/ Commercial Complex (as the case may be) to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessions Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.

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

14.2 Completion Certificate

Upon completion of Construction Works of the Bus Terminal and/ or Commercial Complex (as the case may be) and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessions Authority a certificate substantially in the form set forth in Schedule-J (the "**Completion Certificate**").

14.3 Provisional Certificate

14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "**Provisional Certificate**") if the Tests are successful and the Bus Terminal and/ or Commercial Complex can be safely and reliably placed in commercial operation though certain works or things forming part are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "Punch List"); provided that the Independent Engineer shall not withhold the

Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Concessing Authority.

- 14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if at least 95% of Bus Terminal and mandatory Commercial Complex respectively has been completed. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.

14.4 Completion of Punch List items

- 14.4.1 All items in the Punch List (specifically in relation to the Bus Terminal and mandatory Commercial Complex area) shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Concessing Authority or due to Force Majeure, the Concessing Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer for all the Project Site. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Concessing Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.
- 14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Concessing Authority, shall entitle the Concessing Authority to suspend the Commercial Operation at the Project Site and/ or terminate this Agreement.

14.5 Withholding of Provisional Certificate

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

Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

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

14.6 Rescheduling of Tests

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

ARTICLE 15
ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

Construction and functional operation of the Project shall be deemed to be completed when the Completion Certificate or the Provisional Certificate with respect to the Bus Terminal and Commercial Complex, as the case may be, is issued under the provisions of Article 14. The Bus Terminal and Commercial Complex respectively shall be deemed to enter into commercial service from the date of issuance of respective Completion Certificate(s) in accordance with the provisions of Article 14.2. When the Completion Certificate(s) for the Bus Terminal and Commercial Complex is issued, the date(s) of such certificate shall be deemed to be the Commercial Operations Date (COD) for the Bus Terminal and Commercial Complex respectively. For the avoidance of doubt, it is clarified that the Concessionaire shall be entitled to demand and collect the Adda Fee, Parking Fee and Commercial Charges in accordance with the provisions of Article 27 for the Project Site for which such Provisional Certificate is issued.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD for either the Bus Terminal or Commercial Complex does not occur prior to the 61st (sixty first) day from the Scheduled Project Completion Date of Bus Terminal and Commercial Complex, unless the delay is on account of reasons solely attributable to the Concessioneing Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Concessioneing Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16
CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Concessioneing 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 ("**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 Concessioneing Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Concessioneing Authority to consider such Change of Scope. The Concessioneing Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Concessioneing Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Concessioneing Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period, and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Concessioneing Authority to its contractors, along with proposed premium /discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Concessioneing Authority to the extent such cost is certified by the Independent Engineer as reasonable.

- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Concessioneing Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Concessioneing 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 Concessioneing Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.
- 16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works, services 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 7 (seven) days of issuing a Change of Scope Order, the Concessioneing Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Concessioneing Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Concessioneing Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Concessioneing Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.
- 16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Concessioneing Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of 180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to for part of the actual capital cost of the Project.

16.4 Restriction 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 Concessioneing Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of Project; provided that in the event that the Concessioneing 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 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 nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five 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 Concessions Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Concessions Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Concessions Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works, services 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 solely attributable to the Concessions Authority, the Concessions Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Concessions Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

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*, and upon issue of Change of Scope Order by the Concessions Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

ARTICLE 17
OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted flow of traffic on the Project Site during normal operating conditions;
- (b) collecting and appropriating the Adda Fee from all Buses, Parking Fee and Commercial Charges from the Users of Commercial Complex area at the Project Site;
- (c) minimising disruption to bus traffic and intending Users of the Bus Terminal in the event of accidents or other incidents affecting the safety of Users and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Project;
- (e) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, structures, pavement markings, lighting, sign boards, other traffic control devices, building works including white wash/ painting, any overhead/underground services;
- (f) undertaking major maintenance such as resurfacing of pavements, underground and overhead services and repairs and refurbishment of the system and other equipment;
- (g) undertaking routine maintenance including prompt repairs/ replacement of all electrical works/services and electronic equipments;
- (h) undertaking routine maintenance including prompt repairs/ replacement of all computer hardware, networking and software works etc;
- (i) ensure to have sufficient stock of spares, at Project Site and any default/ fault is attended/ rectified/ carried out immediately for smooth functioning of the system;
- (j) ensure to repair or replace any part required to be changed due to normal wear and tear. The frequency of inspection by the Concessioning Authority official shall depend on the type of equipment and recommended by the manufacturer;
- (k) ensure to collect Adda Fees from the Buses according to rates stipulated in Schedule – R;
- (l) ensure to maintain the Parking Areas and collection and appropriating of parking fee from the vehicles, parked at the Parking Areas, at rates stipulated in Schedule-R. However, the Concessionaire shall not charge any fee from the vehicles/ officials of Concessioning Authority;
- (m) ensure to abide by the provisions of the labour welfare legislations like the Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; The Minimum Wages Act, 1948; The Equal Remuneration Act, 1976; The Payment of Gratuity Act, 1972; The Employees State Insurance Act, 1948; The Workmen’s Compensation Act, 1923 and other similar legislations, rules and orders as issued from time to time;
- (n) ensure that no malpractices/ overcharging/ harassment by any of the employees of the Concessionaire.

- (o) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project Site;
- (p) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;
- (q) protection of the environment and provision of equipment and materials therefor;
- (r) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- (s) maintaining a public relations unit to interface with and attend to suggestions from the Users, Concessioneing Authority agencies, media and other agencies.

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, without limitation, accident debris) and keep the Project Site in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements set forth in Schedule-K (the "**Maintenance Requirements**").

17.3 Maintenance Manual

17.3.1 Not later than 180 (one hundred and eighty) days prior to the Scheduled Project Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project in conformity with the Specification and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Concessioneing Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 2 (two) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.4 Maintenance Programme

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

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

(g) intervals for major maintenance works and the scope thereof.

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

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

17.5 Safety and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of track closures and accidents, it shall follow the relevant operating procedures including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operations on the Project shall be limited to an initial response to any particular incident until such time as the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth use of Bus Terminal.

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 to Buses/ Users—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 User 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 Commissioning Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Commissioning 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 Commissioning Authority of the same without any delay.

17.7 Bus Terminal Closure

17.7.1 The Concessionaire shall not close any part of the Bus Terminal for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer and Commissioning Authority. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Commissioning Authority, at least 7 (seven) days before the proposed closure of the Bus Terminal

and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Concessions Authority.

17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any part of the Bus Terminal for a period not exceeding 4 (four) hours in a day at any time of the day.

17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated part of the Bus Terminal for the period specified therein, and in the event of any delay in re-opening such part of the Bus Terminal, the Concessionaire shall pay Damages to the Concessions Authority calculated at the rate of 0.1% (zero point one per cent) of the Performance Security, for each day of delay until the track has been re-opened for traffic.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Concessions Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of the applicable Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Concessions Authority under this Agreement, including the right of Termination thereof.

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

17.9 Concessions 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 Concessions Authority or the Independent Engineer, as the case may be, the Concessions 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 Concessions Authority as Damages. For the avoidance of doubt, the right of the Concessions 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 Concessions Authority shall have the right, and the Concessionaire hereby expressly

grants to the Concessioneing Authority the right, to recover the costs and Damages specified in Clauses 17.8.1, 17.8.2 and 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Government under this Clause 17.9.2 and debit the same to O&M Expenses.

17.10 Overriding powers of the Concessioneing Authority

17.10.1 If in the reasonable opinion of the Concessioneing 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 Buses/ Users, the Concessioneing Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Concessioneing 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 Concessioneing 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 Concessioneing Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Concessioneing 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 34.3, the Concessioneing Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Concessioneing 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 Concessioneing 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 34. It is also agreed that the Concessionaire shall comply with such instructions as the Concessioneing Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Concessioneing Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to 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 Specification and Standards, Maintenance Requirements and Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer/ Concessioning Authority of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer/ Concessioning Authority 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 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 User on account of any of the following for the 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 Concessioning Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project open to traffic/ Users provided they can be operated safely.

17.14 Barriers

The Concessioning Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Project except for reasons of Emergency, national security, law and order.

17.15 Advertising on the Site

Subject to Applicable Laws, as in force and effect from time to time, the Concessionaire may undertake any form of commercial advertising, display or hoarding at any place on the Project Site if the advertising does not, in the opinion of the Concessioning Authority, distract the Users or violates any Court orders and the guidelines of Government of Punjab.

ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. 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 requirement.

ARTICLE 19
MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

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

19.2 Inspection

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

19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer and Concessions Authority shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and Concessions Authority and furnish the results of such tests forthwith to the Independent Engineer and Concessions Authority. The costs of such tests shall be borne by the Concessionaire.

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and Concessions Authority and the Concessions 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 Engineer/ Concessions Authority 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 Concessioneing Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.5 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Concessioneing Authority, within 7 (seven) days of completion of each month, a statement of Add Fee substantially in the form set forth in Schedule-M (the "**Monthly Fee Statement**"). The Concessionaire shall also furnish to the Concessioneing Authority such other information as the Concessioneing Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

19.6 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Concessioneing Authority and the Independent Engineer, by facsimile or e-mail, a report stating unusual occurrence on the Project Site relating to the functioning of the Project. For the purposes of this Clause 19.6, accidents and unusual occurrences on the Project Site shall include:

- (a) disablement of any equipment during operation;
- (b) damaged or dislodged of any equipment;
- (c) any obstruction on the Project Site, which results in slow down of the services being provided by the Concessionaire;
- (d) communication failure affecting the operation of Project Site;
- (e) smoke or fire at Project Site;
- (f) flooding of Project Site; and
- (g) such other relevant information as may be required by the Concessioneing Authority or the Independent Engineer.

ARTICLE 20
TRAFFIC REGULATION

20.1 Traffic regulation by the Concessionaire

The Concessionaire shall regulate traffic on the Project in accordance with the Applicable Laws, and subject to the supervision and control of the State authorities empowered in this behalf under the Applicable Laws.

20.2 Police Assistance

For regulating the use of Project in accordance with the Applicable Laws and this Agreement, the Concessioneing Authority shall assist the Concessionaire in procuring police assistance from the State Police Department as and when requisitioned by the Concessionaire. For the avoidance of doubt, this shall not include the period when Police shall be deployed by the State authorities to deal with emergency, regulating traffic on Project and /or law and order situation otherwise.

20.3 Expenditure on Police assistance

The Concessionaire shall bear the expenditure of State Police Department as and when required in meeting with its obligations under the Agreement.

ARTICLE 21

MEDICAL FIRST AID

21.1 Medical First Aid

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall keep the First Aid Kit and operate it at the Project Site.

The Concessionaire shall install a system for making instant calls to 108 (toll free telephone number) for emergency services and coordinate until unless the Ambulance Services has reached the Project Site, for victims of accidents.

ARTICLE 22

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ARTICLE 23
INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Concessions Authority shall appoint an Independent Engineer under this Agreement (the "Independent Engineer"), at the cost which shall be shared equally between the Concessions Authority and Concessionaire.

23.2 Duties and functions

23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-Q.

23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Concessions Authority in respect of its duties and functions set forth in Schedule-Q.

23.3 Assistance to the Independent Engineer

The Independent Engineer shall be assisted by its technical staff from time to time.

23.4 Termination of appointment

23.4.1 The Concessions Authority shall endeavour that Independent Engineer as appointed shall provide its services from the date of its appointment and continue for 2 (two) years unless extended by the Concessions Authority. The Concessions Authority may, in its discretion, appoint another Independent Engineer in any unavoidable circumstances.

23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Concessions Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Concessions Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Concessions Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the change of Independent Engineer is considered appropriate, the Concessions Authority shall appoint forthwith another Independent Engineer.

23.5 Authorized signatories

The Independent Engineer shall designate and notify to the Concessions Authority and the Concessionaire one/two representatives to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated representatives by any other person.

Part IV

Financial Covenants

ARTICLE 24
FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 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 of 60 (sixty) days, subject to payment of Damages to the Concessions Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 90 (ninety) 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 Concessions Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Concessions Authority forthwith, and shall have provided to the Concessions Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

24.2 Termination due to failure to achieve Financial Close

24.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 34.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 24.2.1 shall not apply.

24.2.2 Upon Termination under Clause 24.2.1, the Concessions Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Concessions Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Concessions Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 25

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ARTICLE 26
CONCESSION FEE

26.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Concessions Authority by way of concession fee (the "Concession Fee") a sum of Re.1 (Rupee one) per annum and the Additional Concession Fee as specified in Clause 26.2.

26.2 Additional Annual Concession Fee

26.2.1 Without prejudice to the provisions of Clause 26.1, the Concessionaire agrees to pay to the Concessions Authority, on the completion of 550th (five hundred and fiftieth) day from the Appointed Date annually, the first years Additional Annual Concession Fee which shall be Rs ____ (As per the Bid of the Selected Bidder). Thereafter, for the remaining Concession Period, the Additional Annual Concession Fee shall be increased, after every year, at the rate of 4% (four percent), over the previous Additional Annual Concession Fee.

26.2.2 The Additional Annual Concession Fee payable under Clause 26.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

26.2.3 For Optional Commercial Built-up Area, Additional Annual Concession Fee–Optional Commercial Built-up Area ("AACF-Optional Commercial Component"), shall be an amount to be paid in Indian Rupees and calculated by dividing the Additional Annual Concession Fee (bid of Selected Bidder, as per article 26.2.1), by the total obligatory minimum commercial built-up area (in sq. ft.) of **46,479 sq. ft.** and multiply with Optional Commercial Built-up Area that may be constructed by the Concessionaire and as certified by the Independent Engineer and /or Concessions Authority's Nodal Officer/Project Engineer¹.

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26.4 Payment of Concession Fee: The Concession Fee and Additional Annual Concession Fee payable under the provisions of this Article 26 shall be due and payable on completion of 550th (five hundred and fiftieth) day from the Appointed Date in yearly instalment. Within 7 (seven) days from the 550th day, the Concessionaire shall pay to the Concessions Authority in the form of demand draft/pay order in favour of ____ (to be specified by the Concessions Authority) payable at Gurdaspur against the Additional Annual Concession Fee. The AACF (Optional Commercial Component) payable under the provisions of Article 26.2.3 shall be due and payable on completion of a planned construction phase of the Optional commercial built-up area component and issuance of completion certificate (for optional commercial built-up area phase) by the Independent Engineer and/ or Nodal Officer/ Project Engineer of Concessions Authority. The AACF (Optional Commercial Component) shall be paid in yearly instalment. Within 7 (seven) days from issuance of completion certificate (optional commercial built-up area), the Concessionaire shall pay to the Concessions Authority in the form of demand draft/pay order in favour of ____ (to be specified by the Concessions Authority) payable at Gurdaspur against the AACF (Optional Commercial Component).

¹ For an example, if the Concessionaire shall plan to construct Optional Commercial Built-up Area of 1,50,000 sq. ft. and offers an AACF Rs. 46 Lac and plan to construct it in two phases of (i) 100,000 sq. ft. in 1st phase and (ii) 50,000 sq. ft., in 2nd phase, then Concessionaire shall have to pay AACF-Optional Commercial Component, @ Rs. 46,00,000 / 46,000 sq. ft. x 1,00,000 sq. ft. = Rs. One Crore (per year) plus applicable escalation, @ 4 % per annum (compounded), towards 1st phase and (ii) Rs. 100 x 50,000sq. ft. = Rs. 50 Lac (per year), plus applicable escalation @4 % per annum (compounded), towards 2nd phase, based on the actual year of construction of additional optional commercial built-up area during the period of concession. The annual escalation shall be calculated from 550th (five hundred & fiftieth) day from the Appointed Date.

ARTICLE 27
REVENUES FROM THE PROJECT

27.1 Collection and appropriation of Adda Fees , Parking Fee, Commercial Rental /Charges and other revenues

27.1.1 On and from the COD of Bus Terminal and/ or Commercial Complex till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Adda Fees from the Buses, Parking Fee, Commercial Rental/Charges from the Commercial Complex / Shops and Advertisement Fees in accordance with this Agreement and Adda Fees and Parking Fee as per **Schedule-R**. However, the Concessionaire shall have the right to determine and levy the Commercial Rental/Charges as per Clause 5.1.4(m) . .

27.1.2 That Concessionaire acknowledges and agrees that upon payment of Adda Fees and Commercial Charges, any Bus/User shall be entitled to use the premises of Bus Terminal & Commercial Complex respectively at the Project Site and the Concessionaire shall not place, or caused to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

27.2 Revision of Adda Fee

27.2.1 The Parties hereto acknowledge and agree that the Adda Fee and Parking Fee etc shall be revised as per **Schedule - R**.

27.2.2 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Adda Fee/ Parking Fee or other relief from the Concessioning Authority or any Government Instrumentality except in accordance with the express provisions of this Agreement.

27.3 Display of Adda Fee rates

27.3.1 The Concessionaire shall, at the Bus Terminal area of the Project Site, prominently display the applicable rates of Adda Fee, to be charged from the Buses **entering the Bus Terminal area**, in Hindi and English for information of Users and shall also publish and display such other information in such manner as may be prescribed under the Concession Agreement.

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27.3.3 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Adda Fee payable under the Concession Agreement. 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 Concessioning Authority, refund such excess amounts to the Concessioning Authority or the concerned Department as directed by the Concessioning Authority.

ESCROW ACCOUNT

28.1 Escrow Account

- 28.1.1 The Concessionaire shall, prior to COD of Bus Terminal, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.
- 28.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Concessions Authority, and the Escrow Bank, which shall be substantially in the form set forth in Schedule-S.

28.2 Deposits into Escrow Account

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

- (a) all monies received in relation to the Project from Banks, insurance and shareholders;
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Concessions Authority, after deduction of any outstanding Concession Fee; and
- (d) Termination Payments.

28.3 Withdrawals during Concession Period

- 28.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
 - (b) Concession Fee due and payable to the Concessions Authority;
 - (c) All payments relating to construction of Bus Terminal and Commercial Complex, maintenance works;
 - (d) O&M Expenses, subject to the ceiling, set forth by the Independent Engineer in accordance with Good Industry Practice;
 - (e) O&M Expenses and other costs and expenses incurred by the Concessions Authority in accordance with the provisions of this Agreement, and certified by the Concessions Authority as due and payable to it;
 - (f) monthly proportionate provision of debt service payment due in an Accounting Year;

(g) all payments and Damages certified by the Concessioneing Authority as due and payable to it by the Concessionaire; and

(h) balance, if any, in accordance with the instructions of the Concessionaire.

28.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 28.3.1, except with the prior written approval of the Government.

28.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) outstanding Concession Fee;
- (c) all payments and Damages certified by the Concessioneing Authority as due and payable to it by the Concessionaire;
- (d) cost of repair and restoration of damages to the Project on account of a Non-Political Event;
- (e) all outstanding debt and interest thereon;
- (f) retention and payments relating to the liability for defects and deficiencies set forth in Article 39;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 28.4.1 until a Vesting Certificate has been issued by the Concessioneing Authority under the provisions of Article 38.

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

ARTICLE 29

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ARTICLE 30
CONSTRUCTION & OPERATION OF ADDITIONAL BUS TERMINAL

30.1 Restrictions on construction and operations of Additional Bus Terminal

- 30.1.1 Notwithstanding anything to the contrary contained in this Agreement, the Concessions Authority shall not operate, and shall procure that no Government Instrumentality shall operate or cause to be operated, any new Bus Terminal (the "**Additional Bus Terminal**") for use by Buses, for Gurdaspur city, at any time before the end of the Concession Period.
- 30.1.2 If the Government shall be in breach of the provisions of Clause 30.1.1, the Concessionaire shall, without prejudice to its other rights and remedies under this Agreement including Termination thereof, be entitled to receive compensation from the Concessions Authority under and in accordance with the provisions of Clause 35.4.

ARTICLE 31

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ARTICLE 32
INSURANCE

32.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice the “**Insurance Cover**”). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Concessioneing 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 Concessioneing Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance to the insurance company through Escrow Account and provide a photocopy of the receipt to the Concessioneing Authority. 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.

32.2 Notice to the Concessioneing Authority

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Concessioneing Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Concessioneing 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.

32.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 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 Concessioneing Authority, notarised 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 Concessioneing Authority.

32.4 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 Concessioneing 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.

32.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Concessioning 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.

32.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Concessioning Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, 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.

32.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, re-construction, 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.

ARTICLE 33
ACCOUNTS AND AUDIT

33.1 Audited accounts

- 33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Concessioneing 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 Auditors, to be provided to the Concessioneing 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.
- 33.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Concessioneing 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
- 33.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Concessioneing Authority, for the preceding Accounting Year, a statement duly audited by its Auditors giving summarised information on (a) the traffic count for each category of vehicles using the Project and liable for payment of Adda Fee therefor, (b) Adda Fee charged and received and other revenues derived from the Project, and (c) such other information as the Concessioneing Authority may reasonably require.

33.2 Appointment of auditors

- 33.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Auditors, a firm chosen by it. All fees and expenses of the Auditors shall be borne by the Concessionaire.
- 33.2.2 The Concessionaire may terminate the appointment of its Auditors after a notice of 45 (forty-five) days to the Concessioneing Authority, subject to the replacement of Auditors.
- 33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Concessioneing Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "**Additional Auditors**") to audit and verify all those matters, expenses, costs, realizations and things which the Auditors are required to do, undertake or certify pursuant to this Agreement.

33.3 Certification of claims by Auditors

Any claim or document provided by the Concessionaire to the Concessioneing 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 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 19.5.

33.4 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the 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 Concessioneing Authority by recourse to the Dispute Resolution Procedure as per Article 44.

Part V
Force Majeure and Termination

ARTICLE 34
FORCE MAJEURE

34.1 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 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

34.2 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);
- (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 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Concessioning 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.

34.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents collection of Processing Charges by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.4 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 consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, 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, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

34.5 Duty to report Force Majeure Event

34.5.1 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 34 with evidence in support thereof;

- (b) the estimated duration and the effect or probable effect 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.

34.5.2 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 event not 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.

34.5.3 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 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.4.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before COD of Bus Terminal, 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 Event subsists; or
- (b) after COD of Bus Terminal and/ or Commercial Complex, whereupon the Concessionaire is unable to collect Adda Fee, Parking Fee and/ or Commercial Charges despite making best efforts or it is directed by the Concessions 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 Adda Fee, Parking Fee and/ or Commercial Charges on account thereof.

34.7 Allocation of costs arising out of Force Majeure

34.7.1 Upon occurrence of any Force Majeure Event 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.

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

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

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Concessionaire's share of Adda Fee, Parking Fee and/ or Commercial Charges revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

34.7.3 Save and except as expressly provided in this Article 34, 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.

34.8 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 34, 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.

34.9 Termination Payment for Force Majeure Event

34.9.1 If Termination is on account of a Non-Political Event, the Concessioneing Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due (which shall in no case be more than 70% of the Total Project Cost) less Insurance Cover.

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

- (a) Debt Due (which shall in no case be more than 70% of the Total Project Cost) 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(which shall in no case be more than 70% of the Total Project Cost); and

(b) 100% (one hundred per cent) of the Adjusted Equity.

34.9.3 If Termination is on account of a Political Event, the Concessioneing Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 37.3.2 as if it were a Concessioneing Authority Default.

34.10 Dispute resolution

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

34.11 Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 35
COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 35.6, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Concessions Authority by way of compensation, all direct costs suffered or incurred by the Concessions Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 35.1 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 Concessions Authority.

35.2 Compensation for default by the Concessions Authority

Subject to the provisions of Clause 35.6, in the event of the Concessions Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; 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. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Adda Fee and/ or Commercial Charges revenues, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

35.3 Extension of Concession Period

Subject to the provisions of Clause 35.6, in the event that a material default or breach of this Agreement set forth in Clause 35.2 causes delay in achieving COD or leads to suspension of or reduction in collection of Adda Fee/ Commercial Charges, the Concessions Authority shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of Adda Fee/ Commercial Charges remained suspended on account thereof, as the case may be. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Adda Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

35.4 Intentionally Left Blank

35.5 Compensation to be in addition

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

35.6 Mitigation of costs and damage

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

ARTICLE 36
SUSPENSION OF CONCESSIONAIRE'S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Concessions Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Adda Fee, Commercial Charges, Parking Fee and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligation 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 Concessions Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Concessions Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

36.2 Concessions Authority to act on behalf of Concessionaire

36.2.1 During the period of Suspension, the Concessions Authority shall, on behalf of the Concessionaire, collect all Adda Fees, Commercial Charges, Parking Fees and any other revenue from the Project in accordance with this Agreement and deposit the same in the Escrow Account. The Concessions Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 28.3..

36.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire therein and all things done or actions taken, including expenditure incurred by the Concessions 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 Concessions Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Concessions Authority or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, Construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

36.3 Revocation of Suspension

36.3.1 In the event that the Concessions 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 Concessions

Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

36.4 **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 Concessioneing Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 **Termination**

36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the Concessioneing 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 36.4, the Concessioneing Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.

36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Concessioneing Authority upon occurrence of a Concessionaire Default.

ARTICLE 37
TERMINATION

37.1 Termination for Concessionaire Default

37.1.1 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 Concessioneing Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (One hundred and Twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the Construction or operation of the Project at any of the Project Site without the prior written consent of the Concessioneing Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.4.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Concessioneing Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Concessioneing Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, 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;
- (r) 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 Concessions Authority, a Material Adverse Effect;
- (s) 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 Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Concessions Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Concessions Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (w) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Concessions Authority.

37.1.2 Without prejudice to any other rights or remedies which the Concessions Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Concessions Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Concessions 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 37.1.3.

37.1.3 The Concessions Authority shall, if there be Senior Lenders, send a copy of its notice of

intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 15 (fifteen) 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 Concessioneing 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 Concessioneing Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

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

37.2 Termination for Concessioneing Authority Default

37.2.1 In the event that any of the defaults specified below shall have occurred, and the Concessioneing 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 Concessioneing Authority shall be deemed to be in default of this Agreement (the "**Concessioneing 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 Concessioneing Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Concessioneing Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- (c) the Concessioneing Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

37.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Concessioneing 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 Concessioneing Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Concessioneing Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Concessioneing Authority 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.

37.3 Termination Payment

- 37.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Concessioneing Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due (which shall in no case be more than 70% of the Total Project Cost) 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. (which shall in no case be more than 70% of the Total Project Cost) For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.
- 37.3.2 Upon Termination on account of a Concessioneing Authority Default, the Concessioneing Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- (a) Debt Due (which shall in no case be more than 70% of the Total Project Cost); and
 - (b) 100% (one hundred per cent) of the Adjusted Equity.
- 37.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Concessioneing Authority with the necessary particulars, and in the event of any delay, the Concessioneing 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 Concessioneing Authority of its payment obligations in respect thereof hereunder.
- 37.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 37 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.

37.4 Other rights and obligations of the Concessioneing Authority

Upon Termination for any reason whatsoever, the Concessioneing Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, and equipment, IT infrastructure including hardware and software on or about the Project Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Site or any part of the Project Site;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 38.1; and
- (e) succeed upon election by the Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Concessioneing Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Concessioneing Authority for this purpose shall be deducted from the Termination Payment.

37.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.3.4, 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 and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 38

DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

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

- (a) notify to the Concessioneing Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project including Project site, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including the approaches, pavements, structures, services and equipments of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets 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 licences pertaining to the Project and its design, engineering, Construction, equipment etc, 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 and shall be assigned to the Concessioneing Authority free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Concessioneing Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project and Project Site, including manufacturers' warranties in respect of any services, plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Concessioneing Authority, absolutely unto the Concessioneing 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 Concessioneing Authority or to its nominee.

38.1.2 Subject to the exercise by the Concessioneing 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.

38.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer and Concessioneing Authority

shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

38.3 Cooperation and assistance on transfer of Project

38.3.1 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 Parties.

38.3.2 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 Concessions Authority, its Concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

38.3.3 Intentionally Left Blank

38.4 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 Concessions Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-U (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 Concessions Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessions 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.

38.6 Divestment costs etc.

38.6.1 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 Concessions 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 Concessions Authority.

38.6.2 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.

ARTICLE 39
DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer and Concessions Authority 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 Concessions Authority in this behalf, the Concessions 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 Concessions Authority hereunder shall be reimbursed by the Concessionaire to the Concessions Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Concessions Authority shall be entitled to recover the same from the Escrow Account.

39.2 Retention in Escrow Account

39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2, a sum equal to the Performance Security shall be retained in the Escrow Account for a period of 90 (ninety) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 39.1.

39.2.1 Without prejudice to the provisions of Clause 39.2.1, the Engineer shall carry out an inspection of the Project at any time between 150 (one hundred and fifty) days and 120 (one hundred and twenty) 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 39.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 90 (ninety) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

Part VI

Other Provisions

ARTICLE 40
ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

40.1.1 Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Concessioneing Authority, which consent the Concessioneing Authority shall be entitled to decline without assigning any reason.

40.1.2 Subject to the provisions of Clause 40.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Concessioneing Authority, which the Concessioneing Authority may decline without assigning any reason thereof.

Even if the Concessioneing Authority gives consent as per para above and the Concessionaire creates Encumbrances or pledges its rights available under this Agreement, to Senior Lender, for executing any other project (being undertaken by the Concessionaire and not considered as part of this Project) then on the issuance of termination notice under the provisions of this Concession Agreement, all the rights of the Concessionaire to claim the balance amount (if any) as available in the Escrow Account shall cease to exist and the Concessioneing Authority shall have the first right to claim the balance amount (if any) till such default/dispute is resolved.

40.2 Permitted assignment and charges

The restraints set forth in Clause 40.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (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.

40.3 Substitution Agreement

40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Concessioneing Authority, the Conforming Party and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-V.

40.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Concessioneing Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

40.4 Assignment by the Concessioneing Authority

Notwithstanding anything to the contrary contained in this Agreement, the Concessioneing 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 Concessioneing Authority, capable of fulfilling all of the Concessioneing Authority's then outstanding obligations under this Agreement.

ARTICLE 41

CHANGE IN LAW

41.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 50 Lakh (Rupees Fifty Lakh) and 0.5% (zero point five percent) of the Concessionaire's Share in Adda Fee, Parking Fee and/ or Commercial Charges in any Accounting Year, the Concessionaire may so notify the Concessions 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 the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Concessions 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 Concessions Authority shall pay the amount specified therein; provided that if the Concessions Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 50 Lakh (Rupees Fifty Lakh) and 0.5% (zero point five percent) of the revenue being collected by the Concessionaire in any Accounting Year, the Concessions 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 the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Concessions 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 Concessioneing 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 Concessioneing Authority; provided that if the Concessionaire shall dispute such claim of the Concessioneing Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.3 Protection of NPV

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 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.

41.5 No claim in the event of recovery from Users.

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

ARTICLE 42
LIABILITY AND INDEMNITY

42.1 General indemnity

42.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Concessioneing Authority and its officers, servants, agents, Government Instrumentalities and Concessioneing Authority owned and/or controlled entities/enterprises, ("**the Concessioneing 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 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 of this Agreement on the part of the Concessioneing Authority Indemnified Persons.

42.1.2 The Concessioneing Authority will 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 Concessioneing Authority in the land comprised in the Project Site, and/or (ii) breach by the Concessioneing 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, proceeding, 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.

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend the Concessioneing Authority and the Concessioneing 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.

42.2.2 Without limiting the generality of the provisions of this Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Concessioneing Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Concessioneing 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, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Concessioneing Authority a licence, at no cost to the Concessioneing Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence 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.

42.3 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 42 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) 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.

42.4 Defence of claims

42.4.1 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 42, 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.

42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, 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).

42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, 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 authorised 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 42.4.3 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.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, 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.

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.

ARTICLE 43
RIGHTS AND TITLE OVER THE PROJECT SITE

43.1 Licensee rights

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

43.2 Access rights of the Concessions Authority and others

43.2.1 The Concessionaire shall allow free access to the Project Site at all times for the authorised representatives of the Concessions Authority, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorised 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.

43.3 Property Taxes

The property tax on the Project Site shall be payable by the Concessions Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Project Site for any non-residential/ commercial purposes or on the built-up area, which is under the occupation of Concessionaire/ sub-licensee shall not be reimbursed or payable by the Concessions Authority. For the avoidance of doubt, it is clarified that as per Section 97(2) of the Punjab Municipal Corporation Act, 1976, the Concessionaire shall bear all property taxes, house taxes, municipal taxes etc as levied by relevant authorities. Any such taxes payable by the Concessionaire under Applicable Laws for use if the Project Site shall not be reimbursed or payable by the Concessions Authority.

43.4 Restriction on sub-letting

The Concessionaire shall not sub-license or sub-let the whole or any part of the Project Site, save and except as may be expressly set forth in this 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.

ARTICLE 44
DISPUTE RESOLUTION

44.1 Dispute Resolution

44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably.

44.1.2 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.

44.2 Adjudication

44.2.1 Any Dispute which is not resolved amicably, as provided in Clause 44.1, shall be submitted for adjudication before Punjab Infrastructure Regulatory Authority established under Section 4 of Punjab Infrastructure (Development & Regulation) Act, 2002, in accordance with applicable law and all reference to Dispute Resolution shall be construed accordingly.

44.2.2 The Punjab Infrastructure Regulatory Authority shall make a reasoned award (the "Award"). Any Award made by Punjab Infrastructure Regulatory Authority pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Concessions Authority agree and undertake to carry out such Award without delay.

44.2.3 The Concessionaire and the Concessions Authority agree that an Award may be enforced against the Concessionaire and/or the Concessions Authority, as the case may be, and their respective assets wherever situated.

44.2.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any adjudication proceedings hereunder.

44.3 Costs associated with Dispute Resolution

44.3.1 The cost incurred on adjudication including inter alia the cost of Regulatory Authority proceedings shall be borne by the Parties in equal proportions.

44.3.2 Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 44.

44.4 Performance during Dispute

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Article 44. The provision of this dispute settlement shall be binding upon the successors; assigns and any trustee or receivers of either the Concessions Authority or the Concessionaire.

ARTICLE 45
DISCLOSURE

45.1 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 and the Maintenance Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Project Site and Concessionaire's Registered Office. The Concessionaire shall prominently display at the bus Terminal area applicable Adda Fee, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

45.2 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 and Project Site, 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.

45.3 Notwithstanding the provisions of Clauses 45.1 and 45.2, the Concessioneing 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 45.1 and 45.2, or portions thereof, the disclosure of which the Concessioneing Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 46
REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

- 46.1.1 The Concessionaire shall maintain a public relations office at the Project 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 Project Site so as to bring it to the attention of all Users.
- 46.1.2 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.
- 46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Concessioneing Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

- 46.2.1 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.
- 46.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Concessioneing Authority and to the Independent Engineer 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 Concessioneing Authority may, in its discretion, advise the Concessionaire to take such further action as the Concessioneing Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Concessioneing Authority of its decision thereon, and if the Concessioneing Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 47
MISCELLANEOUS

47.1 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 Chandigarh shall have jurisdiction over matters arising out of or relating to this Agreement.

47.2 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 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 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 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).

47.3 Depreciation and interest

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

47.3.2 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 rests.

47.4 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 5% (five 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.

47.5 Waiver

- 47.5.1 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 authorised representative of the Party; and
 - (c) shall not affect the validity or enforceability of this Agreement in any manner.
- 47.5.2 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.

47.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Concessioneing Authority or the Independent Engineer of any Project Agreement, Document, Proposal or Drawing submitted by the Concessionaire nor any observation or inspection of the Construction & installation of equipments, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Concessioneing 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.

47.7 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.

47.8 Survival

- 47.8.1 Termination shall:
- (a) not relieve the Concessionaire or the Concessioneing 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.
- 47.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

47.9 Entire Agreement

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

47.10 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 the Dispute Resolution Procedure set forth under this Agreement or otherwise.

47.11 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.

47.12 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.

47.13 Successors and Assigns

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

47.14 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Concessing Authority; provided that notices or other communications to be given to an address outside Chandigarh may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Concessing Authority;
- (b) in the case of the Concessing Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Concessing Authority or such other person as the Concessing Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Chandigarh it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

47.15 Language

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

47.16 Counterparts

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

ARTICLE 48
DEFINITIONS

48.1 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:

"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 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 0.27% (zero point two seven per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in 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;

"Adda Fee" means the charge or tariff payable by all the scheduled departures, with or without passengers, at the exit gate of the Bus Terminal for using the facilities at the Bus Terminal. It shall be demanded, charged, collected, retained and appropriated by the Concessionaire in accordance with the provisions of this Concession Agreement;

"Affected Party" shall have the meaning set forth in Clause 34.1;

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

"Appendix" shall have meaning set forth in Clause 10.3.1;

"Applicable Laws" means all laws, brought into force and effect by GOI or the State Government, including rules, regulations and notifications made thereunder, 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, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the development, construction, implementation, operation and maintenance of the Project during the subsistence of this Agreement;

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

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

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

"Bank" means a bank incorporated in India and having a minimum net worth of Rs.1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

"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 Security" means the security provided by the Concessionaire to the Concessions Authority along with the Bid in a sum of Rs. ___ Crore (Rupees ___ Crore), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"Bus Terminal" means the bus terminal to be constructed as per Schedule – B and C.

"COD" or "Commercial Operation Date" shall have the meaning set forth in Clause 15.1;

"Change in Law" means the occurrence of any of the following after the date of Bid:

(a) the enactment of any new Indian law as applicable to the State;

- (b) the repeal, modification or re-enactment of any existing Indian law as applicable to the State;
- (c) the commencement of any Indian law, as applicable to the State, which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law, as applicable to the State, by a judgement 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 date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/Consortium Members} together with {its/ their} Associates, in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction Period and (ii) 26% (twenty six per cent) thereof during the Concession Period; provided that the Consortium Members whose technical capacity and networth was used to satisfy the eligibility shall continue to have minimum 11 (eleven) percent each of the subscribed and paid up equity share capital of the SPV and 5% (five per cent) of the Total Project Cost specified in the Concession Agreement; provided further 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 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 COD of Bus Terminal, shall constitute Change in Ownership;

"Change of Scope" shall have the meaning set forth in Clause 16.1;

"Company" means the Company acting as the Concessionaire under this Agreement:

"Commercial Complex" means the commercial complex area to be constructed except the Bus Terminal Facilities, having a maximum built up area detailed out in Schedule – B;

"Completion Certificate" shall have the meaning set forth in Clause 14.2;

"Concession" shall have the meaning set forth in Clause 3.1.1;

"Concessionaire" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

"Concession Period" means the period starting on and from the Appointed Date and ending on the Transfer Date;

"Concessionaire Default" shall have the meaning set forth in Clause 37.1.1;

"Concessions Authority" means the Gurdaspur Improvement Trust;

"Concessions Authority Default" shall have the meaning set forth in Clause 37.2.1;

"Conditions Precedent" shall have the meaning set forth in Clause 4.1.1;

{**"Consortium"** shall have the meaning set forth in Recital (C);}

{**"Consortium Member"** means a company specified in Recital (C) as a member of the Consortium ;}

"Construction Period" means the period beginning from the Appointed Date and ending on COD;

"Construction Works" means all works, services 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;

"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 Concessioneing Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Concessioneing Authority or the Independent Engineer to accord their approval;

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

"Damages" shall have the meaning 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:

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

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to

be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

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

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

"Dispute" shall have the meaning set forth in Clause 44.1

"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 38.1;

"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 and Project Site as set forth in Schedule-H, and shall include 'as built' drawings of the Project and Project Site;

"Emergency" means a condition or situation that is likely to endanger the security of the individuals on or about the Project or any Project Site, 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 or Project Site, 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;

"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 set forth in Clause 28.1.2;

"Escrow Bank" shall have the meaning set forth in Clause 28.1.1;

"Escrow Default" shall have the meaning set forth in Schedule-S;

"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 Company,

and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

"Financial Close" means the fulfilment of all condition precedent to the initial availability of funds under the Financing Agreements;

"Financial Default" shall have the meaning set forth in Schedule-V;

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

"Financial Package" means the financing package indicating the total capital cost of development, Construction, equipment etc and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

"Financing Agreements" means the agreements executed by the Concessionaire 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 5.2.2;

"Force Majeure" or **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 34.1;

"GOP" means the Government of the state of Punjab, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Punjab and its administrators, successors and assigns;

"GOI" means the Government of India; its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of 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;

"Government Instrumentality" means any department, division or sub-division of the Government of India or the Government of Punjab 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 Government of Punjab, 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;

"Concessioneing Authority Representative" means such person or persons as may be authorised in writing by the Concessioneing 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 Concessioneing Authority under this Agreement;

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 42;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 42;

"Independent Engineer" shall have the meaning set forth in Clause 23.1;

"Indirect Political Event" shall have the meaning set forth in Clause 34.3;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 32, and include all insurances required to be taken out by the Concessionaire under Clause 32.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"Intellectual Property" means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, 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;

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

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

"Maintenance Manual" shall have the meaning ascribed to it in Clause 17.3;

"Maintenance Programme" shall have the meaning ascribed to it in Clause 17.4.1;

"Maintenance Requirements" shall have the meaning set forth in Clause 17.2;

"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;

"Medical First Aid Post" shall have the meaning set forth in clause 21.1;

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

"Non-Political Event" shall have the meaning set forth in Clause 34.2;

"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 collection of Adda Fee, Parking Fee, Commercial Charges etc 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 Concessioneing 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 any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

"O&M Inspection Report" shall have the meaning set forth in Clause 19.2;

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

"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 set forth in Clause 9.1;

"Political Event" shall have the meaning set forth in Clause 34.4;

"Project" means the design, finance, development, Construction, operation and maintenance of the Bus Terminal and Commercial Complex as detailed out in Schedule-B and Schedule-C, 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 with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs. 5 (five) crore;

"Project Assets" means all physical and other assets relating to and forming part of the Project and Project Site including (a) rights over the Site in the form of licence, Right of

Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, pavements, road surface, , sign boards, services, electrical systems, communication systems, and administrative offices; (c) software development, IT infrastructure including hardware and software; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project, but does not include Additional Facilities;

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

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

"Project Milestones" means the project milestones set forth in Schedule-G;

"Project Site" shall have meaning as ascribed to in Article 10.1

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

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

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

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

"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 Chandigarh by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Chandigarh by the Bank of India and the Bank of Baroda;

"Request for Proposals" or "RFP" shall have the meaning set forth in Recital (C);

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

"Safety Requirements" shall have the meaning set forth in Clause 18.1.1;

"Scheduled Project Completion Date" shall have the meaning set forth in Clause 12.4.1;

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

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

"Site" shall have the meaning set forth in Clause 10.1;

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

"State" means the State of Punjab and **"State Government"** means the Government of that State;

"Subordinated Debt" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate;

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

"Substitution Agreement" shall have the meaning set forth in Clause 40.3;

"Suspension" shall have the meaning set forth in Clause 36.1;

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

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

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

"Termination Payment" means the amount payable by the Concessions 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 as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Concessions Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Concessions Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost;

"Tests" means the tests set forth in Schedule-I to determine the completion of up-gradation/ development of Project in accordance with the provisions of this Agreement;

"Total Project Cost" means the lowest of:

- (a) Rs 23 (Twenty Three) Crore;
- (b) the capital cost of the Project, as set forth in the Financial Package;
- (c) the capital cost certified by the Independent Engineer; and
- (d) the actual capital cost of the Project upon completion of Project.

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement.

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

"User" means a person who uses the Bus Terminal area and Commercial Complex Area within the Project Site or any part thereof in/on any vehicle or otherwise;

"Vesting Certificate" shall have the meaning set forth in Clause 38.4; and

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

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

_____ **(Concessioneing Authority) by:**

_____ (Signature)

_____ (Name)

_____ (Designation)

SIGNED SEALED AND DELIVERED

for and on behalf of

_____ **(Concessionaire) by:**

_____ (Signature)

_____ (Name)

_____ (Designation)

In the presence of

1. _____ (Signature)

_____ (Name)

_____ (Designation)

2. _____ (Signature)

_____ (Name)

_____ (Designation)