CONCESSION AGREEMENT

BETWEEN

TAMILNADU INDUSTRIAL DEVELOPMENT CORPORATION LIMITED
(THE AUTHORITY)

AND

_____
(THE CONCESSIONAIRE)

FOR

DEVELOPMENT OF PLUG AND PLAY FACILITIES UNDER PPP MODE ON DBFOT BASIS WITH A CONCESSION PERIOD OF 45 YEARS AT DEFENCE INDUSTRIAL PARK, VARAPATTI VILLAGE, SULUR TALUK, COIMBATORE DISTRICT

10 July 2025

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at Chennai on this the _____ day of _____

BETWEEN:

1. **Tamilnadu Industrial Development Corporation Limited,** a Government of Tamil Nadu Organisation, represented by its Managing Director and having its principal office at 19-A, Rukmani Lakshmipathi Road, Egmore, Chennai - 600 008, Tamil Nadu, hereinafter referred to as **"Authority"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of One Part;

AND

2. _____, a special purpose company incorporated under the Companies Act, 2013, with Corporate Identity Number (CIN) _____and having its registered office at ……, represented by its …….. authorized vide Board Resolution dated …… 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. …….<name of Selected Bidder> having its registered office at ……. represented by its …….. authorized vide <Board Resolution/ Power of Attorney dated ……> 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;

(or)

{The consortium of (i) M/s ……[…] having its registered office at ……, and (ii) M/s …… […] having its registered office at ……, in their capacity as the confirming party to this Agreement duly represented through M/s ……, the Lead Member of the consortium, through its Authorized signatory Mr./Ms. ……, authorized vide <Board Resolution/ Power of Attorney dated ……> hereinafter referred to as the "**Concessionaire**" (which expression shall, unless the context otherwise requires, include its successors) of the Second Part}

The Authority and the Concessionaire individually referred to as "Party" and jointly as "Parties"

WHEREAS:

A. The Authority is desirous of selecting a Concessionaire for establishment, operation & maintenance of plug and play facilities at Defence Industrial Park, Varapatti Village, Sulur Taluk, Coimbatore District in Tamil Nadu for a period of 45 years;

B. The Authority vide RFP No._____dated _____ invited bids from the interested parties for establishment, operation & maintenance of the plug and play facility for a period of 45 years at Defence Industrial Park on Design, Build, Finance, Operate and Transfer (DBFOT) model under PPP mode;

C. In response to the invitation referred to in recital 'B' above, the Authority received the bid dated _____ submitted by the Bidder in accordance with the RFP;

D. The Authority, after evaluating the Proposal received by it from the Bidder, accepted the Proposal referred to in recital "C" above submitted by the Bidder and communicated its acceptance to the Bidder vide Letter of Intent dated _____ for Award of Concession;

E. Following the issue of the Letter of Intent for Award of Concession, the Authority has agreed to grant the Concession to the Concessionaire to establish the plug and play facility and operate and maintain it for a period of 45 years on the terms, conditions and covenants hereinafter set forth in this Agreement.

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires the following terms shall have the following meanings assigned/ascribed thereto: -

"**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;

"**Additional Auditors**" shall have the meaning set forth in Clause 24.2.(c);

"**Adjusted Depreciated Value**" shall mean the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of [3% (three per cent)] based on the written down value method) to reflect the variation occurring in the WPI between the date of purchase thereof and the Transfer Date;

"**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 till the expiry of the Concession Period, 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 year following COD to the extent of variations in WPI occurring between COD and Reference Date;

and the aforesaid shall apply, mutatis mutandis, to the Equity funded in Indian Rupees and expended for Optional Development Obligation.

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.

"Aerospace/Defence Industries" means those which are designing, engineering, manufacturing, servicing, suppling such material/ components/ sub-assemblies etc. fully or partially to the OEMs/ Tier I/ Tier II/ Tier III companies of Aerospace/Defence Industries majors including HAL,ISRO, all Defence PSUs of GoI, all Defence & security forces viz. Army, Navy, Air Force, Coast Guard, CRPF, State Police Department, etc. Construction of MRO Aircraft Hangers will also be considered as Aerospace/Defence Industry.

All industries units which have got the AS9100 certification are considered as Aerospace/ Defence related industrial/service units.

"**Affected Party**" shall have the meaning as set forth in Clause 25.1;

"**Affiliate" or "Associate"** means, with respect to any Party and/or with respect to the Bidder and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Bidder and/or member of Consortium. For the purposes of this definition, the term "control" (including with correlative meaning, the terms "controlled by" and "under common control with") as applied to any Party or Bidder or a member of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Bidder or a member of Consortium whether through ownership of not less than 50% (Fifty per cent) of the voting securities, by contract, or otherwise.

"**Agreement**" or "**Concession Agreement**" means this agreement as of date hereof, including Appendices as may be amended, supplemented or modified in accordance with the provisions hereof.

"**Appendix**" means the schedules, supplements or documents, appended to this Agreement.

"**Applicable Laws**" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.

"**Applicable Permits**" means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document.

"**Appointed Date**" means the date on which Financial Close is achieved and every Condition Precedent is satisfied or waived, in accordance with the provisions of this Agreement. 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;

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

"**Authority Default**" shall have the meaning as set forth in Clause 28.2.(a);

"**Authority Indemnified Persons**" shall have the meaning set forth in Clause 33.1.(a);

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

"**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 Proposal and the entire set of documents submitted by the Bidder in response to the RFP.

"**Bidder**" or "**Selected Bidder**" means M/s _____.

"**Bid Security**" means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security under the Concession Agreement;

"**Change in Law**" shall mean the occurrence of any of the following after the date of Bid:

a. the enactment of any new Indian law as applicable to the Project;
b. the repeal, modification or re-enactment of any existing Applicable Law;
c. the commencement of any Indian law which has not entered into effect until the Bid Date;
d. a change in the interpretation or application of any Indian law by a 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 100% (hundred percent) of subscribed and paid-up equity share capital of the SPV until the Commercial Operations Date (COD) and below 51% of subscribed and paid-up equity share capital of the SPV until the 5th (Fifth) anniversary after the Commercial Operations Date (COD); further for each Consortium Member whose Technical Capacity and Financial Capacity was evaluated for the purposes of qualification and award of Project in response to the RFP, decline below 26% (twenty six per cent) of the issued and paid up equity share capital until the 5th (Fifth) anniversary after the Commercial Operations Date (COD) of the Project; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Bid) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period of Five years after Commercial Operations Date (COD), shall constitute Change in Ownership; Selected bidder being a single entity shall hold 100% of the subscribed and paidup equity share capital of the SPV till Commercial Operations Date (COD) and thereafter 51% of subscribed and paid-up equity share capital until the 5th (Fifth) anniversary after the Commercial Operations Date (COD);

"**COD**" or "**Commercial Operation Date**" will be the date on which the works are completed and commercial invoice is generated for the collection of sub-lease charges or 2nd (second) anniversary of the appointed date, whichever is earlier;

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

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

"**Concession**" shall have the meaning as set forth in Clause 3.1;

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

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

"**Conditions Precedent**" shall have the meaning as set forth in Clause 4.1;

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

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

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

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

a. commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

b. not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

c. not in any way be extended by any period of Suspension under this Agreement;

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

"**DBFOT"** means Design, Build, Finance, Operation and Transfer model.

"**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 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 Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

c. any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

provided further that the Debt Due, on or after COD, shall in no case exceed 70% (seventy percent) of the Total Project Cost;

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

"**Dispute**" shall have the meaning as set forth in Clause 35.1.(a);

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes as set forth in Article 35;

"**Divestment Requirements**" means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 29.1;

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

"**Drawings**" means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-C, and shall include 'as built' drawings of the Project;

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

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

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

"**EPC Contractor**" means the person with whom the Concessionaire has entered into an EPC Contract;

"**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;

"**Escrow Account**" means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

"**Escrow Agreement**" shall have the meaning as set forth in Clause 22.1;

"**Escrow Bank**" shall have the meaning as set forth in Clause 22.1;

"**Escrow Default**" shall have the meaning as set forth in Schedule-L;

"Execution Date" shall mean the date of signing of this Concession Agreement;

"**Expert**" means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

"**Financial Close**" means the date on which the Financing Documents providing for financial assistance by the Lenders for the Project have become effective and the Concessionaire has access to such Financial Assistance;

"**Financial Model**" means the financial model adopted by 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 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 the Project and the means of financing thereof, as set forth in the Financial Model and approved by the 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 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.(c);

"**Financial Year**" means any twelve-month period commencing from 1st April and ending on 31st March;

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 25.1;

"**GOI**" means the Government of India;

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

"**Government**" means the Government of the State;

"**Government Authority**" means GoI, state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Project Facilities and Services or any portion thereof, but shall not include the Authority.

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

"**Gross Revenue**" of the Project Facilities for and in respect of any Accounting Year shall mean the total amount of Gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire from the operation of the project facilities and provision of Associated Services, and/or any other activity related to the Project, if any, and shall include Revenues and receipts from and on account of co-working space, weighbridge, interest, parking, use of spaces for rent or fee of every description and kind, and any other services or facility provided by the Concessionaire, but shall exclude the following:

a. All statutory applicable indirect Taxes such as GST and the like by whatever name called now or in future, which the Concessionaire is bound to pay;
b. Any revenue earned by the Concessionaire on sale of assets of a capital nature which are owned by the Concessionaire; and

For avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate/Non-Affiliate/Third party to whom the Concessionaire has contracted any Associated Services and/or any other activity related to the Project;

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to Article 33;

"**Independent Engineer**" shall have the meaning as set forth in Clause 19.1;

"**Indirect Political Event**" shall have the meaning as set forth in Clause 25.3;

"**Insolvency Event**" in respect of a Party means: (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 ("Code"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect happen under the provisions of the Companies Act, 1965 or the Companies Act, 2013 or the Code in relation to the winding up of the company;

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 23, and includes all insurances required to be taken out by the Concessionaire under Clause 23.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"**Intellectual Property**" means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"**Leased Premises**" shall have the meaning as set forth in Clause 10.2.(b);

"**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 paripassu charge on the assets, rights, title and interests of the Concessionaire;

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

"**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;

"**Material Breach**" a breach by any Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;

"**Minimum Development Obligations**" shall have the meaning as set forth in Clause 12.3;

"**Month**" means the calendar month as per the Gregorian calendar.

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

"**Non-Political Event**" shall have the meaning as set forth in Clause 25.2;

"**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 sub-lease rentals in accordance with the provisions of this Agreement;

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

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

"**O&M Expenses**" means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premier 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 as set forth in Clause 18.2;

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

"**Optional Development Obligation**" shall have the meaning set forth in Clause 12.5.(a);

"**Party**" means either the Authority or the Concessionaire as the context may require or admit and "Parties" means both Authority and Concessionaire;

"**Performance Security**" shall mean the bank guarantee(s) procured by the Concessionaire for the benefit of the Authority guaranteeing the performance obligations of the Concessionaire during the operation phase hereunder in the manner specified in Clause 9.1.

"**Person**" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity;

"**Project**" means the construction, operation and maintenance of the Plug & Play facility along with associated amenities & facilities 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;

"**Political Event**" means the Force Majeure Events set out in Article 25.4.

"**Project Agreements**" means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, Sub-lease Agreement, 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, Substitution Agreement;

"**Project Assets**" means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of lease, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, (c) Project Facilities situated on the Site; (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 authorizations relating to or in respect of the Project;

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

"**Project Facilities**" shall mean collectively the plug & play infrastructure facilities to be developed at the Project Site and other infrastructure to carry out the Associated Services;

"**Project Milestones**" means the project milestones as set forth in Schedule-F;

"**Proposal**" means the bid and the entire set of documents submitted by the Bidder in response to the RFP.

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

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

"**Quarter**" means a period of 3 (three) Months.

"**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**" or "**₹**" means the lawful currency of the Republic of India;

"RFP" means the Request for proposal dated _____ vide ref no._____, issued by the Authority inviting Bids/Proposals in accordance therewith for selection of Bidder, and includes any addendum / clarifications issued in respect thereof by the Authority.

"**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 as set forth in Clause 17.1;

"**SBI MCLR**" means the prevailing marginal cost of fund based lending rate for a tenor of 1 year, notified by the State Bank of India;

"**Scheduled 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 Lenders, but does not include a bank in which any Lender has an interest;

"**Scheduled Completion Date for 50% of minimum development obligation**" shall have the meaning as set forth in Clause 12.4.(a);

"**Scheduled Completion Date for 100% of minimum development obligation**" shall have the meaning as set forth in Clause 12.4.(a);

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

"**Site**" or "**Project Site**" shall have the meaning as 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-B, 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 Authority;

"**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 for meeting the Total Project Cost and subordinated to the financial assistance provided by the 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 percent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter-Bank Offer Rate) plus 2% (two percent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

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

"**Substitution Agreement**" shall have the meaning as set forth in Clause 31.3.(a);

"**Suspension**" shall have the meaning as set forth in Clause 27.1;

"**Taxes**" means any Indian taxes including Goods and Service Tax (GST), local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials,

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

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

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

"**Termination Payment**" means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

"**Total Project Cost**" means the total cost of development of the project, the cost as mentioned in the financing agreements or as certified by the Authority/Independent Engineer, whichever is lower;

"**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;

"**Vesting Certificate**" shall have the meaning as set forth in Clause 29.4; and

"**Water Supply Agreement**" means the Agreement to be executed between the Authority and the Concessionaire for supply of water by the Authority. The Agreement contains the terms & conditions for supply of water;

"**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;

1.2 Interpretations

This Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the Bid documents, inter alia including the RFP, issued by the Authority and also including addendums, clarifications given in writing and the submissions of the Concessionaire and the Bid submitted

by the Concessionaire but not otherwise. In case of any contradictions in the terms of this Agreement and any such other Bid documents as referred to above, the terms of this Agreement shall prevail.

In this Agreement unless the context otherwise requires:

a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;

b. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations, or other entities (whether or not having a separate legal entity);

c. the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;

d. the words "include" and "including" are to be construed without limitation;

e. any reference to any period of time shall mean a reference to that according to Indian Standard Time;

f. any reference to day shall mean a reference to a calendar day;

g. any reference to month shall mean a reference to a calendar month;

h. "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

i. "Rupee", "Rupees", "Rs." and "₹" shall denote Indian Rupees, the lawful currency of India.

j. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;

k. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party and/or a Statutory

Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;

l. unless otherwise stated, 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;

m. unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and

n. any word or expression used in this Agreement, unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 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:

1 this Agreement; and
2 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:

1 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;
2 between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
3 between any two Schedules, the Schedule relevant to the issue shall prevail;

4 between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

5 between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

6 between any value written in numerals and that in words, the latter shall prevail.

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 the following during the concession period:

a. **Implementation phase**

i. The project site admeasuring 10.31 acres at plot no: A-30 and A-36 at Defence Industrial Park, Coimbatore district with basic infrastructure viz. water supply, storm water drainage and road connectivity will be handed over to the Concessionaire on "As-is-where-is" basis and the Concessionaire shall design, finance and construct the Plug and Play infrastructure facility for manufacturing / assembling Industrial Units and sub-lease it to potential industries in accordance with the provisions of this agreement.

ii. Permissible Activities in Project facilities:

1. Manufacturing / assembling
2. Warehousing and logistics with a cap of 10% of the total built-up area
3. Co-working facility
4. Food Court
5. Training and Skill Development
6. Any other activity connected to (1) to (3) above

iii. The suggested list of facilities to be created shall include but not limited to the following;

- Water supply
- Electrical cabling
- Heavy duty lifts
- Truck parking facility
- Dock leveller
- Weighbridge
- Common sewage treatment
- High speed internet connectivity

- Food court
- Roof top Solor power generation
- Rainwater harvesting

iv. The Concessionaire shall undertake a detailed market study to identify potential clients and incorporate their requirements in the design of plug and play facilities.

v. The Concessionaire shall obtain all the relevant pre-establishment regulatory clearances/approvals/NOCs before commencement of construction.

vi. The infrastructure facility with plug-and-play shall be developed on the principles of ease of use, scalability and modularity. This may include modular construction, pre-configured spaces, and standardized layouts that allow for easy customization to suit the needs of different industrial/business users.

vii. Ensuring that the facility has a reliable power supply with adequate capacity with design for expansion and backup systems (e.g., generators or uninterruptible power supplies) to minimize downtime.

viii. Implementing robust security measures, including physical security, access control, and surveillance, to protect the facility and its users as per government regulations regarding health, safety, and environment.

ix. Installing a well-designed and scalable network infrastructure, including wired and wireless connectivity, to support the needs of tenants or users adopting state of art technologies and user friendliness.

x. Designing spaces with flexibility in mind, allowing industrial and business users to easily configure and customize their areas based on their specific requirements.

xi. Promoting the plug and play infrastructure facility to potential industrial and business users highlighting its convenience, scalability, and cost-effectiveness as selling points.

xii. Establishing sub-leasing agreements and a management structure to oversee the facility's operations, maintenance, and ongoing support.

xiii. Installation of all other equipment / machineries which are necessary for achieving the various parameters stipulated in the agreement shall deem to be part of the scope of work.

b. **Operation Phase**

i. to operate and maintain the Project facilities in accordance with the provisions of this Agreement;

ii. The Concessionaire shall sub-lease the facilities to the industries after due verification of their background, products/services, manufacturing process, etc.

iii. The extent of built-up space allotted to warehousing & logistics activities shall be limited to 10%.

iv. Minimum 50% of the built-up space shall be allotted to projects related to 'Aerospace/Defence Industries'.

v. The Concessionaire shall facilitate the allottees to establish their enterprise with minimum lead time by providing the necessary support for obtaining the applicable statutory approvals /clearances/NOCs, power connection, etc.

vi. The Concessionaire should ensure that the allotees comply with the rules and regulations of the government in respect of safety, security and environment by incorporating suitable provisions in their respective agreements of sub-lease.

vii. The Concessionaire should maintain the Project Facilities and Services as per Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

viii. Payment of one-time upfront land premium, fixed annual fee and revenue share to the Authority as per clause 21.1.

ix. The Concessionaire should make sure that the payments to the utility services (electricity, water, wastewater, solid waste, etc.) are paid periodically in accordance with the respective service provisioning agreements either directly or through the industrial and business entities who have taken the units on sub-lease.

x. The Concessionaire should submit a annual status report to the Authority as per clause 18.1. The Authority shall prescribe a standard template for forwarding the report.

xi. **Rental Structure**

The Concessionaire may determine the rental structure for sub-leasing the project facilities and other services in such manner as it deems fit; Further, the Concessionaire may collect additional service charges for and in respect of any facility or service as it may deem fit.

xii. **Repairs and Maintenance**

1. The Concessionaire at its own cost promptly and diligently maintain, replace or restore any of the project facilities or part thereof which may be lost, damaged, destroyed or worn out during the operation period.

2. Repair as necessary and maintain the Project Facilities and Services or any part thereof and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services; and

3. While carrying out the repairing, maintaining and replacing the equipment / machineries in plug and play infrastructure facilities, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, Project Facilities in trust for eventual transfer to the Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Project Facilities and Services is diminished.

4. The Concessionaire shall, at all times during the Concession Period, at its own risk, cost, charges and expenses, performance and pay for maintenance repairs, renewals and replacement of various type of assets and equipment in the project facilities or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Concession.

5. While carrying out the repair, maintenance and replacement of the Project Facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Indian Standards.

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;

d. transfer of the Project Assets upon expiry or early termination of this Agreement in accordance with the provisions of this Agreement;

ARTICLE 3

GRANT OF CONCESSION

3.1 Concession

Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to design, construct, operate and maintain the Project Facilities in the site owned by the Authority (the "Concession") for a period as provided in clause 3.3 below, 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.

3.2 Rights Associated with the Grant of Concession

Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

a. perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;

b. the Right of Way, access and lease rights to use the Site for the purpose of and to the extent conferred by the provisions of this Agreement;

c. to design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project Facilities either itself or through such person as may be selected by it provided that the ultimate obligation and responsibility for the performance of this agreement shall continue to vest with the Concessionaire;

d. 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;

e. to transfer the Project Facilities to the Authority at the end of the Concession Period or on Termination, in accordance with the provisions of this Agreement;

f. to borrow or raise money or funding required for the due implementation of the Project and mortgage, charge or create lien or encumbrance on the whole or part of the Project Facilities including the lease rights for the site;

g. operate and maintain the Project Facilities during the Concession Period, either by itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this Agreement shall continue to vest with the Concessionaire;

h. exclusively hold, possess, and control the Site, in accordance with the terms of the Concession Agreement for the purposes of establishing and operating the Project Facilities;

i. save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and

j. 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.

3.3 Concession Period

The Concession hereby granted is for a period of 45 years commencing from the Appointed Date (the "Concession Period") during which the Concessionaire is authorized and obliged to provide the Services in accordance with the provisions hereof;

Provided that: -

a. in the event of the Concession being extended by the Authority beyond the said period of 45 years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and

b. in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the date of commencement of operation of the plug and play infrastructure facilities and ending with the date of termination/determination of the Concession/this Agreement.

3.4 Acceptance of the possession of the project site

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

a. satisfied itself as to the physical conditions of the project site along with the basic infrastructure facilities for the performance of its obligations under this Agreement; and

b. obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

3.5 Peaceful Occupation

The Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Project facilities during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Plug and play infrastructure facilities or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Plug and play infrastructure facilities or any part thereof, the Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

a. Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 20, 25, 35 and 38,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 condition's precedent specified in this Clause 4.1 (the "Conditions Precedent")

b. The Authority shall satisfy the Conditions Precedent set forth in this Clause 4.1.(b) within a period of 180 (one hundred and eighty) days from the date of this Agreement and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

   i. handed over physical possession of the Project Site free of encumbrance to the Concessionaire for the purposes of the Project;

   ii. Provided to the Concessionaire the Lease, Right of Way and access to the Site in accordance with the provisions of Article 10;

   iii. Executed and procured water supply agreement;

   iv. Executed and procured execution of Substitution Agreement;

   v. Executed and procured execution of the Escrow Agreement with the Concessionaire, and the Escrow Bank in accordance with Article 22;

   vi. Appointed an Independent Engineer in terms of this Agreement.

c. The Conditions Precedent required to be satisfied by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

   i. procured all the Applicable Permits specified in Schedule-D 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;

ii. executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

iii. opening the Account and executing the Escrow Agreement;

iv. delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and

v. delivered to the Authority {from the Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement.

vi. provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire;

vii. opening the Account and executing the Escrow Agreement;

viii. Executed and procured water supply agreement;

ix. executed and procured execution of the Substitution Agreement;

x. delivered to the Authority its monthly project completion schedule to achieve the minimum development obligations within the stipulated timelines;

d. 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. Subject only to payment of Damages, it is agreed between the Parties that the obligation to fulfill each parties Conditions Precedent is an independent obligation of the respective Party.

e. 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.

f. Any of the Conditions Precedent set forth in Clause 4.1.(c) may be waived fully or partially by the Authority at any time in its sole discretion or the Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Authority. Any of the

Conditions Precedent set forth in Clause 4.1(b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.(b) within the period specified in respect thereof and has not waived or extended the time and (ii) the delay has not occurred as a result of breach of this Agreement bythe Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each days delay until the fulfillment of such Conditions Precedent, subject to the maximum of 20% of the Performance Security and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided further that in the event of delay by the Concessionaire in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.(c), no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.(c).

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.(c) within the period specified in respect thereof and has not waived or extended the time and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.(b) or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to the maximum limit of 40% of the Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement.

Provided further that in the event of delay by the Authority in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.(b), no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.(b).

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

a. 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 Facilities and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

b. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

c. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

d. 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:

   i. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.(b), and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

   ii. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;

   iii. be solely liable for compliance of all requirements related to the Project as per the Standards and Specifications;

   iv. perform and fulfil its obligations under the Financing Agreements;

   v. 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;

vi. 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;

vii. always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;

viii. follow the Standard Operating Procedures from time to time related to the Project;

ix. 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;

x. Maintain proper records of revenues collected from the industrial and business users who have taken the units on sub-lease, receipts from the Authority and other receipts and provide to the Authority information as per the provisions of this Agreement;

xi. Allot minimum 50% of the built-up space to projects related to 'Aerospace/Defence Industries';

xii. carry out its obligations and duties with regard to the operation and maintenance of the Project Facilities in accordance with the provision of this Agreement. The obligations shall include all works arising from any obligation of the Concessionaire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;

xiii. Employ such qualified and experienced personnel at the Project Facilities as is required to carry out the Services and take care of Operation and Maintenance of the Project;

xiv. Purchase and maintain insurance cover as stipulated in Article 23 at its own cost and expense, including towards the premium and all incidental costs;

xv. Pay all statutory dues except taxes payable to local body with respect to the Project Site. Renewal fees should be paid by the Concessionaire during the concession period;

xvi. Pay water charges to the Authority;

xvii. Pay Annual Maintenance Charges to the Authority;

xviii. transfer the Project Assets to the Authority upon expiry of the Concession period or termination of this Agreement, in accordance with the provisions of this Agreement;

5.2 Obligations relating to Project Agreements

a. 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.

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

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

d. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority and / or Lenders Representative to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). Further, it is clarified that in case both the Authority and Lenders" Representative decide to exercise their right to step-in, the Authority shall have

the sole right to step into the Project Agreements. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

e. The Concessionaire shall also procure that such Project Agreements shall also include a covenant that all disputes arising out of such Agreements shall be settled between the Concessionaire and the Counterparties and that the Authority or its advisors/contractors/consultants shall not be impleaded in such disputes whatsoever.

5.3 Change in Ownership

a. The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

b. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

i. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or

ii. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him**,** shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon

expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause:

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

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

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

5.4 Engagement of Contractors

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability for operation and maintenance of the Project Facilities and Services.

Provided:

i. the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;

ii. the Concessionaire should have obtained requisite security clearance if required for the Contractor the Concessionaire intends to engage;

iii. the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and

iv. any contract that it enters with an Affiliate in respect of the Project shall be on an arm's length basis.

5.5 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their 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.

5.6 Obligations relating to 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 qualified, and trained for their respective function.

5.7 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 Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.8 Liability for Personnel

a. The Concessionaire shall be solely responsible for complying with all statutory responsibilities and liabilities in respect of the personnel engaged by him and liable for obtaining all mandatory registrations and deposit of contributions under various

enactments. If, on account of default of the Concessionaire Authority is compelled to make any payments/contributions or discharge any responsibility/liability of the Concessionaire, Authority shall be entitled to recover and/or set off such amounts/expenses incurred from the amounts due to the Concessionaire without prejudice to the right of Authority to initiate appropriate legal proceedings for recovery of such amounts. The Concessionaire shall indemnify the Authority against all claims whatsoever arising out of his default in respect of the personnel engaged by him under any Statute/Law in force.

b. The Concessionaire shall maintain and submit all records & returns prescribed under all the Applicable Law to the designated Authorities within the prescribed time limit and also to the Authority's Representative or any officer acting on its behalf whenever demanded.

c. The Agreement as entered into between the Authority and the Concessionaire shall in no way nullify, reduce, mitigate or absolve the parties of any responsibility, obligation or liability that may devolve upon them under any statutory/mandatory provisions prevailing in India. Liabilities of the Concessionaire in respect of obligatory laws remain unaffected and Concessionaire shall remain responsible for settlement of claims, if any, of third parties who may suffer damages either due to the fault of the Concessionaire or its employees and Associates.

d. The provisions indicated above are not comprehensive; the Concessionaire shall ensure compliance of all statutory/mandatory provisions under all the Applicable Laws, rules & regulations made by the State Govt./Central Govt. from time to time pertaining to the contract, including all labour laws and the laws as applicable.

e. If as a result of the Concessionaire's failure to provide any of the statutory benefits under any labour welfare enactments, the liability falls on the Authority, such amounts incurred by the Authority will be recovered from the Concessionaire without prejudice to the right of the Authority such other legal recourse against the Concessionaire including termination of the contract.

5.9 Security and Safety at the Project Site

For security and safety at the Project Site, the Concessionaire shall:

a. engage and depute trained personnel for maintaining the security and safety inside the project site in accordance with Good Industry Practice.

b. abide by and implement any instructions of the Authority and the Independent Agency for enhancing the security within and around the Project Facilities.

5.10 Obligations relating to Taxes

The Concessionaire shall pay and comply, at all times during the subsistence of this Agreement, all Taxes (Including Goods & Service Tax), levies, duties, cess and all other statutory charges payable and fall due in respect of the Project. Further, it is also specified that in case there is any prospective change in Taxes/Levies in future whereby change in legislation/policy or otherwise by Central Govt./State Govt. or any other authority, the same shall be within scope of Concessionaire and no claim will be paid by the Authority.

5.11 Obligations relating to Other Charges

The Concessionaire shall make timely payments for all utility services in respect of the Sites, including water, annual maintenance, sewerage, electricity, telecommunication, internet and cable charges, etc. on its own account. The Concessionaire shall hold the Authority harmless and keep the Authority indemnified from any fine/penalty/charges/levies/damages/ losses on account of any claims/suits/demands/proceedings arising out of non-payment or delayed payment of such charges or any default on the part of the Concessionaire in payment of such charges whatsoever.

5.12 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 Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

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

b. The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

   i. Upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support to the Concessionaire in procuring/renewing Applicable Permits required from any Government Instrumentality for implementation and operation of the project. However, non-rendering of any support by the Authority shall not absolve the Concessionaire of its obligation to obtain all Applicable Permits;

   ii. ensure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;

   iii. Not do or omit to do any act, deed or thing which may in any manner is violating of any of the provisions of this Agreement;

   iv. Support and cooperate with the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;

6.2 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. The Authority shall endeavour to convey its decision on such request of the Concessionaire within 15 days of receipt of the proposal by the Authority. For the avoidance of doubt, the tenure of

debt refinanced hereunder may be determined mutually between the Lenders and the Concessionaire, but there payment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

ARTICLE 7

REPRESENTATION AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

a. It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

b. it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

c. {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;

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 hereunder 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 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 criminalliabilities 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 where the Selected Bidder is a Consortium, the Lead Member shall with its other Consortium Member directly hold 100% (hundred percent) of subscribed and paid-up equity share capital of the SPV until Commercial Operations Date (COD); and thereafter shall directly hold not less than 51% (fifty one percent) of subscribed and paid-up equity share capital of the SPV until the 5th (Fifth) anniversary after the Commercial Operations Date (COD); further for each Consortium Member whose Technical Capacity and Financial Capacity was evaluated for the purposes of qualification and award of Project in response to the RFP shall hold at least 26% (twenty six percent) of the issued and paid up equity share capital until the 5th (Fifth) anniversary after the Commercial Operations Date (COD) of the Project; Provided further that any Company acquiring more that 51% of the subscribed and paid-up equity share capital of the SPV during the concession period shall be required to fulfil the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession.

l. {the selected bidder/ each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

m. all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be

acquired by it Subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

n. no representation or warranty by it contained herein or in any other document furnished by it to the Authority or 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;

o. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith

p. 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; and

q. All undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representation and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

b. It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;

c. It has the financial standing and capacity to perform its obligations under this Agreement;

d. This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

e. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;

f. It has complied with Applicable Laws in all material respects; and

g. it has good and valid right to the Site and has power and authority to grant a lease in respect thereto to the Concessionaire.

h. upon the Concessionaire paying the One-time upfront premium, fixed annual fee and revenue share and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, except in accordance with this Agreement.

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

a. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, Existing Assets, local conditions, physical qualities of ground, technical due diligence, social assessment, environment assessment, subsoil and geology, and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to ariseor may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

b. 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.(a) above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.

c. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.(a) above shall not vitiate this Agreement, or render it voidable.

d. 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.(a) above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.(d) shall not prejudice the disclaimer of the Authority contained in Clause 8.1.(a) and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

e. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

a. The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority, an unconditional and irrevocable bank guarantee for an amount equal to Rs.205.00 Lakhs/- (Rupees Two Crores Five Lakhs Only) in the form set forth in Schedule-E (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 Authority shall release the Bid Security to the Concessionaire.

b. The Concessionaire shall maintain the Performance Security in full force and effect until the expiry of the Concession Period. The Performance Security shall have an initial validity period of 3 years, which must be renewed before the expiry of the 35th month, until the expiry of the Concession Period.

c. The Performance Security shall secure the due performance of the Concessionaire's obligations during the Concession Period. The cost of procuring the Performance Security shall be borne solely by the Concessionaire.

d. If the Performance Security is not renewed by the expiry of the 35th month during the Concession Period, then the Authority shall be entitled to draw down the total amount available under the Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security.

e. The Authority shall be entitled to utilize such retained amount in the same manner as it would utilise the Performance Security.

f. Upon receipt of a renewed or replacement Performance Security, the authority shall return the unutilized cash security amount for the Performance Security to the Concessionaire. The interest earned on any retained amounts or cash security shall be the property of the Authority and the Authority shall not be required to account to the Concessionaire for any such interest.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 28.

Provided that upon appropriation on account of Concessionaire's Default the Concessionaire shall replenish the Performance Security and upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default, save and except as provided in Clause 4.4 of this Agreement, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 28.

9.3 References to Performance Security

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

9.4 Release of Performance Security

The Performance Security shall remain in force and effect throughout the period of Concession Agreement and shall be released within 3 (three) months after the expiry of Concession Period, provided, however, that the Performance Security shall not be released and shall be kept alive by the Concessionaire if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.4, the Authority shall release the Performance Security forthwith.

ARTICLE 10

RIGHT OF WAY

10.1 The Site

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

10.2 Lease, Access and Right of Way

a. The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

b. In consideration of the Project, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and lease rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "Leased Premises"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Leased Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Leased 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.

c. The lease, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way.

d. It is expressly agreed that the lease granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the lease, upon the Termination of this Agreement for any reason whatsoever. For the

avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-lessee, the lease in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

e. The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the lease 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 authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose

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

g. The Concessionaire shall allow access to and use of the Site for laying/installing/ maintaining telephone lines, electric lines, gas lines of the Gas Authority of India Limited or for such other public purposes as the Authority may specify, provided that such access or use shall not result in a Material Adverse Effect to the Concessionaire.

10.3 Procurement of the Site

a. Pursuant to Clause 4.1.(b), the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.(b), be deemed to constitute a valid lease and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid lease and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

b. Without prejudice to the provisions of Clause 10.3.(a), the Parties hereto agree that on or

prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include any land, which shall in any manner prevent the Concessionaire from undertaking construction of the Project. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of any critical element of the Project without which the Completion Certificate or Provisional Certificate may not be granted.

c. On and after signing the memorandum referred to in Clause 10.3.(a), and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

d. Upon receiving Right of Way in respect of land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a period specified in this Agreement and 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 inspection on account of the delay or denial of such access thereto.

e. Subject to the Sub-clauses of this Clause 10.3, the Authority hereby warrants that:

    i. The Site belongs to and is vested with the Authority and that the Authority has full powers to hold, dispose of and deal with the same; consistent and interlaid with the provisions of this Agreement and that the Concessionaire shall, in respect of the Site, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/ resettlement of any person affected thereby.

    ii. The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the whole Site during the Concession Period.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by theAuthority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the

duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Leased Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from Encumbrances

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

10.6 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 Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.7 Access to the Authority and Independent Engineer

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

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the lease granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned

Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

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 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 utility.

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

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

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the 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 Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

ARTICLE 12

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 Authority or its nominee, and the Independent Engineer its design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-F;

b. Appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;

c. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and

d. Make its own arrangements for quarrying and procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

12.2 Drawings

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

a. The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 2 (two) copies each of all Drawings to the Authority and Independent Engineer.

b. By submitting the Drawings to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.

c. Within 7 (seven) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards.

The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 7 (seven) days period and may begin or continue Construction Works at its own discretion and risk.

d. If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, the Concessionaire shall revise the Drawings and resubmit 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.

e. If, within the period stipulated in the preceding Clauses 12.2.(c) and 12.2.(d), the Independent Engineer does not respond to the drawings submitted to it, the Concessionaire shall be entitled to proceed with the Construction Works on the basis of such drawings submitted by it to the Independent Engineer and intimate the same to the Authority. The same should be highlighted in the periodic reporting by the Concessionaire.

f. No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on the Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.

g. Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as- built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Assets.

12.3 Minimum Development Obligations

The Concessionaire shall undertake construction of atleast 2,69,462 sq.ft of built-up area (the "Minimum Development Obligations"). The construction works shall commence from the Appointed Date and shall be completed in accordance with the Project Completion Schedule as set forth in Schedule F.

12.4 Construction of the Project

a. On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in the Scope of the Project. The 2nd (second) anniversary of the appointed date shall be the scheduled date for completion of 50% of minimum development obligations i.e.1,34,731 sq.ft. (the "Scheduled Completion Date for 50% of minimum

development obligation") and the 4th (Fourth) anniversary of the appointed date shall be the scheduled date for completion of 100% of minimum development obligation i.e. 2,69,462 sq.ft (the "Scheduled Completion Date for 100% of minimum development obligation") and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date. The provisions of Clause 12.2, Clause 12.4.(b), Clause 12.4.(c), Article 13, Article 14 and Article 15 shall apply *mutatis mutandis* until 100% of minimum development obligations is achieved.

b. The Concessionaire shall construct the Project in accordance with the Project Timelines Schedule submitted by it to the Authority as per clause 4.1.(c).(viii) and clause 12.4.(a). In the event that the Concessionaire fails to achieve any Project Milestone within a period of 30 (ninety) days from the date set forth for such Project Milestone, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in the project completion schedule shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if the project completion schedule has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.4.(b) shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.(b) shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof. Subject to the provisions of this clause, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority as stipulated in Clause 15.2.

c. In the event that the Project is not completed and COD does not occur within 365 (three hundred and sixty five) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.5 Optional Development Obligation

a. The Concessionaire shall have the right but not the obligation to construct and develop any unutilised land which forms part of the Project Site for building any facility which may include permanent and temporary structures, extension of the building façade etc., for the benefit of the Users which by its nature may lead to the potential increase in the Revenue

from the Project on or after the Project COD during the period up to 5 (five) years prior to the expiry of the Concession Period (the "Optional Development Obligation"), provided, that it obtains a prior written approval from the Authority for undertaking the Optional Development Obligation. In the event that the Concessionaire exercises its right to undertake the Optional Development Obligation, it shall do so at its own risk, cost and expense provided that such obligation does not affect the existing Project Infrastructure. All the terms, conditions, rights and obligations of the Concessionaire in relation to construction and operation of the Minimum Development Obligation including submission of Drawings in accordance with Clause 12.2 shall apply mutatis mutandis for the construction, development and operation of any facility as part of the Optional Development Obligation including, submission of periodic reports and other relevant documents to the Independent Engineer under Article 13, Article 14, and Article 15.

b. It is clarified that in the event that the Authority approves the construction and development of any Optional Development Obligation proposed to be developed by the Concessionaire in accordance with Clause 12.5.(a), the Authority shall be bound to perform all its obligations under this Agreement with respect to such Optional Development Obligation, including its obligations to pay Termination Payments to the Concessionaire in accordance with the provisions of this Agreement.

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on physical progress of the Construction Works 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 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 Drawings, Project Completion Schedule, Scope of the Project, and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

a. For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten percent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall

cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. 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.

b. In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance f 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.(b), if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, 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 COD.

13.5 Suspension of unsafe Construction Works

a. Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Existing Assets, persons related to the Project, Users and general public. Provided, however, that in case of an emergency, the Authority may suo moto issue the notice referred to hereinabove.

b. The Concessionaire shall, pursuant to the notice under Clause 13.4.(a), suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety

of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.4 shall be repeated until the suspension hereunder is revoked.

c. Subject to the provisions of clause 25.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "Preservation Costs") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

d. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

a. No later than 30 (Thirty) days prior to the likely completion of the project facilities, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project Facilities to Tests. The date and time of Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the same. 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, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose penalties on the Independent Engineer and shall ensure that the Tests are completed in time either by the Independent Engineer or any substitute thereof.

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

14.2 Completion Certificate

Upon completion of Construction works and the Independent Engineer determining the tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-H (the “Completion Certificate”).

14.3 Provisional Certificate

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

14.4 Completion of Punch List items

a. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed 0.1% (zero point one per cent) of the Performance Security. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.(a).

b. 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.(a) for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional or Completion Certificate

a. If the Independent Engineer determines that the Project Facilities or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the

Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project Facility 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 Facilities and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

b. Notwithstanding anything to the contrary contained in Clause 14.5.(a), the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Entry into Commercial Service

The Project shall enter into commercial service when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, whereupon the Concessionaire shall be entitled to sub-lease the facilities to industries.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.3% (zero point three percent) of the amount of Performance Security for delay of each day until COD is achieved. Upon failure of the Concessionaire to pay the said Damages, the same shall be paid along with interest of SBI MCLR plus 3%. In the event, the Concessionaire fails to achieve COD within a period of 365 (three hundred and sixty five) days from Scheduled Completion Date, without prejudice to the other rights of the Authority under this Agreement, the Authority shall have the right to terminate the Agreement for Concessionaire Default.

ARTICLE 16

OPERATION AND MAINTENANCE

16.1 O&M obligations of the Concessionaire

a. During the Operation Period, the Concessionaire shall operate and maintain the project facilities in accordance with this Agreement. The obligations of the Concessionaire hereunder shall include:

i. undertaking operation and maintenance of the project facilities in an efficient, coordinated and economical manner, in compliance with the Specifications and Standards;

ii. ensuring safe, hygienic and efficient functioning of the project facilities including prevention of loss or damage thereto, during normal operating conditions;

iii. undertaking operation and maintenance of the project facilities in accordance with the Specification and Standards, operation and maintenance manual provided by the Original Equipment Manufacturers (OEMs) and the terms of this Agreement to ensure that the Concessionaire is able to optimally use the Project Facilities during the Operation Period such that the Project is self-sustained;

iv. carrying out periodic preventive maintenance of the project facilities;

v. undertaking routine maintenance including prompt repairs of all elements and components of the project facilities to ensure compliance with the Maintenance Requirements and the Specifications and Standards;

vi. undertaking major maintenance, replacement of components and parts, repairs to structures, and repairs and development of associated facilities, including the project facilities;

vii. providing round the clock security at the Project Site and preventing with the assistance of the concerned law enforcement agencies, any encroachments on or authorised entry on the Project Site;

viii. protection of environment and provision of equipment and materials therefor in accordance with the Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice;

ix. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the project facilities in conformity with the Good Industry Practice;

x. complying with Safety Requirements; and

xi. operation and maintenance of all Project Assets diligently and efficiently and in accordance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement;

b. The Concessionaire shall remove promptly from the Project Site 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 facilities in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

c. The Concessionaire shall maintain, in conformity with Good Industry Practice and Applicable Laws and Applicable Permits, all stretches of approach roads, or other structures situated on the Project Site.

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

16.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project Facilities are maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the "Maintenance Requirements"), as more specifically set out in Schedule I.

16.3 Safety, breakdowns and accidents

a. The Concessionaire shall ensure safe conditions at the Project Site for the Users and Authority, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures in conformity with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In the

event of occurrence of any damage, breakdowns and/or accidents, the Concessionaire shall undertake removal of obstruction and debris without delay.

b. The Concessionaire's responsibility for rescue operations in the Project Facilities shall include safe evacuation of all Users, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger or interrupt the safe operations of the project facilities.

16.4 Overriding powers of the Authority

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

b. In the event the Concessionaire, upon notice under Clause 16.4.(a), fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Article 16 along with the Damages specified therein.

16.5 Restoration of loss or damage to the Project Facilities

Save and except as otherwise expressly provided in this Agreement, in the event that the Project Facilities 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 Facilities conforms to the provisions of this Agreement.

16.6 Modifications to the Project Facilities

The Concessionaire shall not carry out any material modifications to the Project facilities, save and except where such modifications are necessary for the Project facilities to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the 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 which the Authority may make within [15 (fifteen)] days of receiving Concessionaire's proposal. For avoidance of doubt if the modification has a Material Adverse Effect on the safety thereof or the safety of Users and other persons, the same shall be subjected to inspection as specified in Clause 13.2. For avoidance of doubt all modifications hereunder shall comply with the safety requirements, Specifications and Standards, Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice.

16.7 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 facilities is not available to Users on account of any of the following for the duration thereof:

a. a Force Majeure Event;

b. measures taken to ensure the safe use of the Project Facilities, except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

c. compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project Facilities.

Provided, that any such event and particulars thereof shall be notified by the Concessionaire to the Authority without any delay.

16.8 Authority's right to take remedial measures

In the event the Concessionaire does not maintain, repair and/or rectify any defects and deficiencies in the Project Facilities or any part thereof in conformity with the Maintenance Requirements and fails to commence remedial works within [15 (fifteen)] days of receipt of the O&M Inspection Report or notice in this behalf from the Authority, as the case may be, the Authority, 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 Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to [20% (twenty per cent)] of such cost shall be paid by the Concessionaire to the Authority as Damages.

ARTICLE 17

SAFETY REQUIREMENTS

17.1 Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice for securing the safety of the Project facilities, safety of the Users and other persons present in the premises. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Facilities and shall comply with the safety requirement set forth in Schedule J (the "Safety Requirements").

17.2 Expenditure on Safety Requirements

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

ARTICLE 18

MONITORING OF OPERATION AND MAINTENANCE

18.1 Annual Status Reports

During Operation Period, the Concessionaire shall, no later than [7 (seven)] days after the close of every Accounting Year, furnish to the Authority an annual report, in a mutually agreed format, stating in reasonable detail the status of sub-leasing of the facilities to the industrial and business users, condition of the Project Facilities, including its compliance or otherwise with the Maintenance Requirements and the Safety Requirements, and shall promptly give such other relevant information as may be required by the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

18.2 Inspection

The Authority shall inspect the Project Facilities at least once a year. 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 and Safety Requirements and send a copy thereof to the Concessionaire.

18.3 Remedial measures

The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report referred to in Clause 18.2 and furnish a report in respect thereof to the Authority within [15 (fifteen)] days of receiving the O&M Inspection Report; 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.

18.4 Reports of unusual occurrence

The Concessionaire shall notify the Authority, by facsimile or e-mail, a report incase of any accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project. A monthly summary of such reports shall also be sent within 3 (three) days of the closing of each month, as the case may be. For the purposes of this Clause 18.4, accidents and unusual occurrences on the Project shall include:

a. Death or injury to any person;

b. Any damage or obstruction on the Project, which hampers the quality of theservices being provided by the Concessionaire;
c. Smoke or fire;
d. Flooding of the Project; and
e. Such other relevant information as may be required by the Authority.

ARTICLE 19

INDEPENDENT ENGINEER

19.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm, to be the independent consultant under this Agreement (the "Independent Engineer"). The appointment shall be made no later than 180 (one hundred and eighty) days from the date of this Agreement and shall be for minimum period until 50% of the Minimum Development Obligation has been completed in accordance with the provisions of Schedule-K.

19.2 Duties and functions

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

b. The Independent Engineer shall submit regular periodic reports to the Authority in respect of its duties and functions set forth in Schedule-K.

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

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

19.3 Remuneration

All fees, costs, charges, and expenses payable to the Independent Engineer shall be agreed in advance of its appointment and shall be equally shared by the Authority and the Concessionaire. Such amounts shall be paid to the Independent Engineer by the Authority and shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

19.4 Termination of appointment

a. The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time.

b. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 19.1.

19.5 Authorized signatories

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

19.6 Dispute resolution

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

19.7 Interim arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 19.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

ARTICLE 20

FINANCIAL CLOSE

20.1 Financial Close

a. 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. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five percent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.(b) 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.

b. The Concessionaire shall, upon occurrence of Financial Close shall have provided to the Authority, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with a soft copy of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

20.2 Termination due to failure to achieve Financial Close

a. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 25.6.(a), in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 20.1.(a) 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.

b. Upon Termination under Clause 20.2.(a), the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the

Performance Security, the Authority shall be entitled to encash there from an amount equal to the Bid Security.

ARTICLE 21

PAYMENT TO THE AUTHORITY

21.1 Fee payable to the Authority

a. Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and Undertaking to perform and discharge its obligations in accordance with the terms, conditions and convenants set forth in this Agreement, the Concessionaire agrees to pay to the Authority the following:

   i. One-time upfront land premium

   ii. Fixed Annual Fee and

   iii. Percentage of Revenue Share

b. The one-time upfront land premium of ₹75.00 Lakhs (Rupees Seventy-Five Lakhs Only) shall be paid by the Concessionaire/Selected Bidder to the Authority at the time of signing of this agreement.

c. The Concessionaire shall commencing from the Appointed Date pay to the authority the annual fee as below:

Timeline	Amount
Appointed Date = A	₹25.00 lakhs
A + 12 months	₹25.00 lakhs
A + 24 months	₹25.00 lakhs
A + 36 months	₹28.75 lakhs
A + 48 months	₹28.75 lakhs
A + 60 months	₹28.75 lakhs
A + 72 months	₹33.06 lakhs
A + 84 months	₹33.06 lakhs
A + 96 months	₹33.06 lakhs
A + 108 months	₹38.02 lakhs
A + 120 months	₹38.02 lakhs
A + 132 months	₹38.02 lakhs
A + 144 months	₹43.73 lakhs
A + 156 months	₹43.73 lakhs
A + 168 months	₹43.73 lakhs

A + 180 months	₹50.28 lakhs
A + 192 months	₹50.28 lakhs
A + 204 months	₹50.28 lakhs
A + 216 months	₹60.34 lakhs
A + 228 months	₹60.34 lakhs
A + 240 months	₹60.34 lakhs
A + 252 months	₹72.41 lakhs
A + 264 months	₹72.41 lakhs
A + 276 months	₹72.41 lakhs
A + 288 months	₹86.89 lakhs
A + 300 months	₹86.89 lakhs
A + 312 months	₹86.89 lakhs
A + 324 months	₹104.27 lakhs
A + 336 months	₹104.27 lakhs
A + 348 months	₹104.27 lakhs
A + 360 months	₹125.12 lakhs
A + 372 months	₹125.12 lakhs
A + 384 months	₹125.12 lakhs
A + 396 months	₹150.15 lakhs
A + 408 months	₹150.15 lakhs
A + 420 months	₹150.15 lakhs
A + 432 months	₹180.18 lakhs
A + 444 months	₹180.18 lakhs
A + 456 months	₹180.18 lakhs
A + 468 months	₹216.21 lakhs
A + 480 months	₹216.21 lakhs
A + 492 months	₹216.21 lakhs
A + 504 months	₹259.45 lakhs
A + 516 months	₹259.45 lakhs
A + 528 months	₹259.45 lakhs

d. Apart from the One-time Upfront Land Premium and Fixed Annual Fee, the Concessionaire shall pay the Authority ____% of the Gross Revenue generated from the Project facilities.

e. The payment towards revenue sharing has to be made to the Authority on quarterly basis. The Gross Revenue generated till 30th June, 30th September, 31st December and 31st March of every year shall be the basis for estimation of Revenue Sharing Payment and the GST invoice made till the end of the quarter shall form the basis.

f. The payments towards revenue sharing has to be remitted to Authority within the time period stipulated as given below:

Quarter	Due date for remittance of revenue sharing payment
Apr-Jun	15th July
Jul-Sep	15th Oct
Oct-Dec	15th Jan
Jan-Mar	15th Apr

If 15th is a banking holiday in the geographical region, the amount has to be remitted on the next working day.

g. All amounts due and payable by the Concessionaire under the provisions of this Agreement shall be paid on or before the time period stipulated in clause 21.1.(b), 21.1.(c) and 22.1.(f). In the event of delay beyond such period the Concessionaire shall pay interest for the period of delay, calculated at the rate of SBI MCLR + 3% per annum.

h. The Parties agree that any liability arising on account of GST and all other applicable taxes and levies on the one-time upfront land premium, fixed annual fee and revenue share payable by the Concessionaire to the Authority, shall be borne by the Concessionaire only.

21.2 Mechanism of Payment

The payment of fixed annual fee and revenue sharing shall be done through the Escrow Account as per Article 22 of this Agreement.

ARTICLE 22

ESCROW ACCOUNT

22.1 Escrow Account

The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with this Agreement read with the Escrow Agreement.

All Revenues and receipts of every kind from the operation of the project facilities shall be remitted only in the escrow account.

The nature and scope of the Escrow Account are fully described in the agreement (the "Escrow Agreement") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Lenders (if any) through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-L.

22.2 Deposits into Escrow Account

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

a. all funds received in relation to the Project from any source, including the Lenders, lenders of Subordinated Debt and the Authority;

b. all funds received by the Concessionaire from its shareholders, in any manner or form;

c. all Gross Revenues from project facilities;

d. all proceeds received pursuant to any insurance claims;

e. all payments by the Authority, after deduction of any outstanding payments.

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

22.3 Withdrawals during Concession Period

a. 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:

    i. all taxes due and payable by the Concessionaire for and in respect of the Project;

    ii. all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

    iii. Fixed annual fee due and payable to the Authority;

    iv. Revenue share due and payable to the Authority;

    v. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

    vi. O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

    vii. monthly proportionate provision of Debt Service due in an Accounting Year;

    viii. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

    ix. Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

    x. Any reserve requirements set forth in the Financing Agreements;

    xi. Balance, if any, in accordance with the instructions of the Concessionaire.

b. The Concessionaire shall not in any manner modify the order of payment specified in Clause 22.3.(a), except with the prior written approval of the Authority.

22.4 Withdrawals upon Termination

a. 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:

i. all taxes due and payable by the Concessionaire for and in respect of the Project;

ii. 90% of Debt Due less insurance cover excluding Subordinated Debt if required to be as per the terms of this Agreement;

iii. outstanding fixed annual fee due to the Authority;

iv. outstanding revenue share due to the Authority;

v. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

vi. retention and payments relating to the liability for defects and deficiencies set forth in Article 30;

vii. outstanding Debt Service including the balance of Debt Due less insurance cover;

viii. outstanding Subordinated Debt;

ix. incurred or accrued O&M Expenses;

x. any other payments required to be made under this Agreement; and

xi. balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (x) of this Clause 22.4.(a) until a Vesting Certificate has been issued by the Authority under the provisions of Article 29.

b. The provisions of this Article 22 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 22.4.(a) have been discharged.

Article 23

INSURANCE

23.1 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 Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured. For avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

23.2 Insurance Cover

Without prejudice to the provisions contained in Clause 23.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

a. Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;

b. comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project Facilities;

c. the Concessionaire's general liability arising out of the Concession;

d. liability to third parties for goods or property damage;

e. workmen's compensation insurance; and

f. any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (d) above.

23.3 Notice to the Authority

No later than [45 (forty-five)] days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 23. Within [30 (thirty)] days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure in Article 35 shall apply.

23.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 23 shall be maintained with insurers on terms consistent with Good Industry Practice. Within [15 (fifteen)] days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, 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 Authority.

23.5 Remedy for failure to insure

If the Concessionaire fails to effect and keep in force all insurances which it is required to obtain pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

23.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 23 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

23.7 Concessionaire's waiver

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

23.8 Application of insurance proceeds

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

23.9 Compliance with conditions of insurance policies

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

Article 24

ACCOUNTS AND AUDIT

24.1 Audited accounts

a. The Concessionaire shall maintain books of accounts recording all its receipts (including the Revenues from the lease of project facilities and provision of Associated Services, and all incomes derived or collected by it from or on account of the Project Facilities and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. 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 Statutory Auditors, within [180 (one hundred and eighty days)] days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the Revenue records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only 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.

b. The Concessionaire shall, within [30 (thirty)] days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange

c. On or before the [31st (thirty-first)] day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on Revenues and such other information as the Authority may reasonably require.

24.2 Appointment of Auditors

a. The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm having at least 5 (five) practicing Chartered Accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

b. The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of [45 (forty-five)] days to the Authority, subject to the replacement Statutory Auditors being appointed in accordance with the Clause 24.2.(a).

c. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right but not the obligation, to appoint at its cost from time to time and at any time, another firm of Chartered Accountants (the "Additional Auditors") to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

d. In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Concessionaire shall pay charges reported by the Additional Auditor. The Concessionaire shall also pay interest at 3% above the SBI MCLR on the difference amount for the intervening period. Further, the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than 5% (five percent), the Concessioning Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

24.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

24.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may setoff any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 24.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

24.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the

differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

Article 25

FORCE MAJEURE

25.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 25.2, 25.3 and 25.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event: (a) is beyond the reasonable control of the Affected Party; and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (c) has Material Adverse Effect on the Affected Party.

25.2 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 ionisation radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Facilities);

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 Facilities 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 25.3;

c. any failure or delay of a Contractor but only to the extent caused by another Non- Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

d. any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit; or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract; or (iii) enforcement of this Agreement; or (iv) exercise of any of its rights under this Agreement by the Authority;

e. the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through an inspection of the Project Site; or

f. any event or circumstances of a nature analogous to any of the foregoing.

25.3 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. any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;

c. 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;

d. any civil commotion, boycott or political agitation which prevents operation of the Project Facilities by the Concessionaire for an aggregate period exceeding [7 (seven)] days in an Accounting Year;

e. failure of the Authority to permit the Concessionaire to continue the Development Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

f. any failure or delay of a Contractor to the extent caused by an Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

g. any Indirect Political Event that causes a Non-Political Event; or

h. any event or circumstances of any nature analogous to any of the foregoing.

25.4 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 for which no relief is provided under the provisions of Article 32, resulting in Material Adverse Effect;

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, license, 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, license, 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.

25.5 Duty to report Force Majeure Event

a. 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:

   i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 25 with evidence in support thereof;

   ii. the estimated duration and 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;

   iii. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

iv. any other information relevant to the Affected Party's claim.

b. 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 no later than [7 (seven)] days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on performance of its obligations under this Agreement.

c. 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 under Clause 25.5.(a), and such other information as the other Party may reasonably request the Affected Party to provide.

25.6 Effect of Force Majeure Event on the Concession

a. Upon occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of the Conditions Precedent, and in Clause 20.1.(a) for achieving the Financial Close, shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

i. before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

ii. after COD, whereupon the Concessionaire is unable to provide the Project Facility services despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from providing the aforesaid services on account thereof;

25.7 Allocation of costs arising out of Force Majeure

a. 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.

b. 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:

i. 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;

ii. 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 Authority to the Concessionaire; and

iii. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

c. For avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Development Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues from sub-leasing and all incomes derived or collected by it from or on account of the Project Facilities and Associated Services, 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.

d. Save and except as expressly provided in this Article, 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.

25.8 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 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 the other Party to make a representation and may after the

expiry of such [15 (fifteen)] day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

25.9 Termination Payment for Force Majeure Event

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

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

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

   ii. [110% (one hundred and ten per cent)] of the Adjusted Equity.

c. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 28.3.(b) as if it were an Authority Default.

25.10 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 in accordance with Article 35; 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.

25.11 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:

   i. the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

ii. 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

iii. 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 26

COMPENSATION FOR BREACH OF AGREEMENT

26.1. Compensation for default by the Concessionaire

Subject to the provisions of Clause 26.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof, provided that no compensation shall be payable under this Clause 26.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

26.2. Compensation for default by the Authority

Subject to the provisions of Clause 26.4, in the event of the Authority being in material breach or default 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 breach or default 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 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 on account of Revenues and all incomes derived or collected by it from or on account of the Project Facilities and Associated Services, 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.

26.3. Extension of Concession Period

Subject to the provisions of Clause 26.4, in the event that a material breach or default of this Agreement set forth in Clause 26.2 causes delay in achieving COD or leads to reduction in the realisation of Gross Revenues, as the case may be, the Authority shall, in addition to payment of compensation under Clause 26.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or Gross Revenue was reduced on account thereof, as the case may be;

26.4. Compensation to be in addition

Compensation payable under this Article 26 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

26.5. Mitigation of costs and damage

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

Article 27

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

27.1 Suspension upon Concessionaire Default

Upon occurrence of Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to: (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive any Revenues from sub-lease and all other incomes received by it from or on account of the Project Facilities and Associated Services pursuant hereto; and (b) exercise such rights itself and perform the obligations hereunder or authorised any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding [180 (one hundred and eighty)] days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lender's Representative, the Authority shall extend the aforesaid [180 (one hundred and eighty)] days by a further period not exceeding [90 (ninety)] days.

27.2 Authority to act on behalf of Concessionaire

a. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Revenues under and in accordance with this Agreement, and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 22.3.

b. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or take for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it to use during Suspension, all Intellectual Property belonging to or leased to the Concessionaire with respect to the Project Facilities and their design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under this Agreement.

27.3 Revocation of Suspension

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

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

27.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of the Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding [180 (one hundred and eighty)] days from the date of Suspension, and any extension thereof under Clause 27.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of the Lenders.

27.5 Termination

a. At any time during the period of Suspension under this Article 27, the Concessionaire may by notice request the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake the substitution in accordance with the provisions of this Agreement and within the period specified in Clause 27.4, the Authority shall, within [15 (fifteen)] days of receipt of such notice, terminate this Agreement under and in accordance with Clause 28 as if it is a Concessionaire Default under Clause 28.1.

b. 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 27.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a termination Notice had been issued by the Authority upon occurrence of Concessionaire Default.

Article 28

TERMINATION

28.1 Termination for Concessionaire Default

a. Subject to Applicable Laws and 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 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 the Agreement (the "Concessionaire Default"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

   i. The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of [15 (fifteen)] days;

   ii. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of [120 (one hundred and twenty)] days;

   iii. the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule F and continues to be in default for [90 (ninety)] days;

   iv. the Concessionaire abandons or manifests intention to abandon the development or operation of the Project Facilities without the prior written consent of the Authority;

   v. Project COD does not occur on or before the Scheduled Completion Date;

   vi. Failure to achieve the minimum development obligations within the stipulated timeline;

   vii. More than 50% of the built-up space being allotted to projects not related to 'Aerospace/Defence Industries.

viii. the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;

ix. the Concessionaire has failed to pay 3 consecutive quarterly revenue share payments or 5 quarterly revenue share payments in a rolling period of 5 years within the period specified in this Agreement.

x. the Concessionaire has failed to pay 2 consecutive fixed annual fee payments or 3 fixed annual fee payments in a rolling period of 5 years within the period specified in this Agreement.

xi. Maintenance of any other bank accounts for the project, other than the escrow account;

xii. Diversion of any revenues and receipts from the project facilities to other bank accounts;

xiii. upon occurrence of a Financial Default, the Lender's Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

xiv. a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

xv. the Concessionaire creates any Encumbrance in breach of this Agreement;

xvi. the Concessionaire repudiates this Agreement or otherwise takes an action or evidences or conveys an intention not to be bound by the Agreement;

xvii. a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

xviii. 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;

xix. an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

xx. 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;

xxi. the Concessionaire has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect: 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:

1. 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;

2. 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

3. each of the Project Agreements remain in full force and effect.

xxii. occurrence of any Insolvency Event;

xxiii. 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;

xxiv. the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

xxv. the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;

xxvi. the Concessionaire issues Termination Notice in violation of the provisions of this Agreement; or

xxvii. the Concessionaire commits a default in complying with any other provisions of

this Agreement if such default causes or may cause a Material Adverse Effect on the Authority.

b. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant [15 (fifteen)] days to the Concessionaire to make a representation, and may after the expiry of such [15 (fifteen)] days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 28.1.(c).

c. The Authority shall, if there are Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 28.1.(b) to inform the Lenders' Representative and grant [15 (fifteen)] days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of 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 Lenders' right of substitution in accordance with the Substitution Agreement.

   Provided that the Lenders' Representative may, instead of exercising the Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of [180 (one hundred and eighty)] days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire: Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of [180 (one hundred and eighty)] days by such further period not exceeding [90 (ninety)] days, as the Authority may deem appropriate.

28.2 Termination for Authority Default

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

i. the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

ii. the Authority has failed to make any payment due to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the adjustment in the Fixed Annual Fee or revenue share payable by it to the Authority;

iii. the Authority fails to provide any land which is necessary and required for construction of any essential element or part of the Project Facilities; or

iv. the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be abound by this Agreement.

b. Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant [15 (fifteen)] days to the 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.

28.3 Termination Payment

a. Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to [90% (ninety per cent)] of Debt Due less Insurance Cover; and Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then [70% (seventy per cent)] of such unpaid claims shall be included in the computation of Debt Due.

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

i. Debt Due;

ii. 120% (one hundred and twenty per cent) of Adjusted Equity;

c. Upon Termination on account of the Concessionaire Default at any time prior to COD,

no Termination Payment shall be due and payable to the Concessionaire by the Authority.

d. Termination Payment shall become due and payable to the Concessionaire within [15 (fifteen)] days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to [3% (three per cent) above the SBI MCLR] on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed [90 (ninety)] days. For avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

e. Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire by the Authority.

f. The Concessionaire expressly agrees that Termination Payment under this Article 28 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.

28.4 Certain limitations on Termination Payment

a. Termination Payment, due and payable under this Agreement shall be limited 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. For avoidance of doubt, it is agreed that within a period of [60 (sixty)] days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that, notwithstanding anything contained in this Agreement, for the purposes of computing Termination Payment, the Debt Due shall at no time exceed [70% (seventy per cent)] of the Total Project Cost.

b. The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 28.4.(b) shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within [60 (sixty)] days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in

foreign currency shall be restricted to the financing of the Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

28.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

a. take possession and control of the Project Facilities forthwith;

b. take possession and control of all materials, stores, implements, construction plants and equipment on or about the Project Facilities;

c. be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering the Project Facilities;

d. require the Concessionaire to comply with the Divestment Requirements set forth in Clause 29.1; and

e. succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire.

   For avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

28.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 28.3.(f), 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.

28.7 Extension of Concession Period

Upon expiry of the extended Concession Period hereunder, the Project Facilities shall vest with the Authority under and in accordance with the provisions of this Agreement, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of the transfer of the Project Facilities to the Authority hereunder. Provided that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for this Clause 28.7, shall apply mutatis mutandis to the extended Concession Period.

Article 29

DIVESTMENT OF RIGHTS AND INTEREST

29.1 Divestment Requirements

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

i. notify to the Authority forthwith the location and particulars of all Project Assets;

ii. deliver forthwith the actual or constructive possession of the Project Facilities, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

iii. cure all Project Assets 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 an as is where is basis after bringing them to a safe condition;

iv. deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete as built Drawings as on the Transfer Date, provided that in the event the Concessionaire has used the brand name and/or logo of the {Selected Bidder/Consortium Members}, if any, in relation to the Project or otherwise, the Concessionaire shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For 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 Authority free of any Encumbrance;

v. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

vi. execute such deeds of conveyance, Documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Facilities, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

vii. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Facilities, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

29.2 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 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. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 30 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 29.

29.3 Cooperation and assistance on transfer of Project

a. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Project Site.

b. The Parties shall provide to each other, [9 (nine) months] prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its Concessionaire or agent may reasonably require for operation of the Project until the expiry of [6 (six) months] after the Transfer Date.

c. The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any Encumbrance all or any part of Project Facilities but which

does not form part of the assets specified in Clause 29.1.(a) and is reasonably required in connection with operation of the Project. For avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure in Article 35 shall apply.

29.4 Vesting Certificate

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

29.5 Divestment costs

a. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

b. In the event of any dispute relating to matters covered by and under this Article, the Dispute Resolution Procedure in Article 35 shall apply.

ARTICLE 30

DEFECTS LIABILITY AFTER TERMINATION AND HANDOVER OF PROJECT ASSETS

30.1 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 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 Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 30.2 or from the Performance Security provided thereunder. For the avoidance of doubt, the provisions of this Article 30 shall not apply if Termination occurs prior to COD.

30.2 Retention in Escrow Account

a. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.2.(c), a sum equal to the average of monthly Gross Revenue during the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 30.1.

b. Without prejudice to the provisions of Clause 30.2.(a), the Auhtority shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 30.2.(a) should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Authority shall be retained in the Escrow Account for the period specified by it.

c. The Concessionaire may, for the performance of its obligations under this Article 30, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 30.2.(a) or 30.2.(b), as the case may be, and for the period

specified therein, substantially in the form set forth in Schedule-E (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 30. Upon furnishing of a Performance Guarantee under this Clause 30.2.(c), the retention of funds in the Escrow Account in terms of Clause 30.2.(a) or 30.2.(b), as the case may be, shall be dispensed with.

Article 31

ASSIGNMENT AND CHARGES

31.1 Restrictions on assignment and charges

a. Subject to Clauses 31.2 and 31.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

b. Subject to the provisions of Clause 31.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

31.2 Permitted assignment and charges

The restraints set forth in Clause 31.1 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 or liens or encumbrances required by any Applicable Law;

b. mortgages, pledges or hypothecation of goods or 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 Lenders under the Financing Agreements and/or for working capital arrangements for the Project Facilities. For the avoidance of doubt, the Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement; and

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 Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Lenders under the Financing Agreements.

31.3 Substitution Agreement

a. Lenders' Representative, on behalf of Lenders, may exercise the right to substitute the

Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Lenders, substantially in the form set forth in Schedule N.

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

31.4 Assignment by the Authority

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

b. Any assignment under this Article 31 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

Article 32

CHANGE IN LAW

32.1 Costs

Any increase in costs or reduction in net after tax return or other financial burden, due to Change in Law shall be borne by the respective parties. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

32.2 No claim

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

Article 33

LIABILITY AND INDEMNITY

33.1 General indemnity

a. The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities or enterprises, (the "Authority Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or to any User or from any act and/or omission by the Concessionaire arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

b. The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of: (a) defect in title and/or the rights of the Authority in the land comprised in the Project Site; and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, 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.

33.2 Indemnity by the Concessionaire

a. Without limiting the generality of Clause 33.1 the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

    i. failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

ii. payment of Taxes required to be made by the Concessionaire in respect of the income or other Taxes of the Contractors, suppliers and representatives;

iii. 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;

iv. its omissions or acts of fraud, gross negligence and wilful misconduct;

v. any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or

vi. loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

b. Without limiting the generality of the provisions of this Article 33, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, 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 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 Facilities, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the infringing work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

33.3 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 33 (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.

33.4 Defense of claims

a. 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, the Indemnifying Party shall be entitled, at its option, to assume and control the defense 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 defense. 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.

b. If the Indemnifying Party has exercised its rights under Clause 33.3, 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).

c. If the Indemnifying Party exercises its rights under Clause 33.3, 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:

    i. the employment of counsel by such party has been authorised in writing by the Indemnifying Party;

ii. 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;

iii. 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

iv. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

1. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

2. 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 (ii), (iii) or (iv) of this Clause 33.4 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.

33.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 33, 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.

33.6 Limitation of Liability

Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except where amounts exceeding the Total Project Cost are specifically prescribed in this Agreement as Termination Payment, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to: (a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct; (b) breach of any Applicable Laws or any

Applicable Permits; (c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire; (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or (e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

33.7 Survival on Termination

The provisions of this Article 33 shall survive Termination.

ARTICLE 34

RIGHTS AND TITLE OVER THE SITE

34.1 Lessee rights

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

34.2 Access rights of the Authority and others

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

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

34.3 Property taxes

All property taxes with respect to the Project Site including taxes relating to the buildings constructed on the Project Site and Stamp Duties, if any, due and payable on the grant of lease shall be paid by the Concessionaire.

ARTICLE 35

DISPUTE RESOLUTION

35.1 Dispute Resolution

a. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 35.2.

b. 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.

35.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either Party may require such Dispute to be referred to the Principal Secretary of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 35.1.(a) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 35.3.

35.3 Arbitration

a. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 35.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 35.3.(b). Such arbitration shall be held in accordance with the Rules of Nani Palkhivala Arbitration Centre, Chennai (the "Rules"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Chennai, and the language of arbitration proceedings shall be English.

b. There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

c. The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 35 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

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

35.4 Adjudication by Regulatory Authority, Tribunal or Commission

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 35.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

Article 36

DISCLOSURE

36.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement (hereinafter collectively referred to as the "Specified Documents"), free of charge, during normal business hours on all working days at the Project Site and at the Concessionaire's registered office. The Concessionaire shall prominently display at the Project Facilities, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a no profit no loss basis.

36.2 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 Facilities, 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.

36.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 36.1 and 36.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 36.1 and 36.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 37

REDRESSAL OF PUBLIC GRIEVANCES

37.1 Complaints Register

a. The Concessionaire shall maintain a public relations office at the Site where it shall keep a register (the "Complaint Register") open to public access at all times for recording of complaints by any person (the "Complainant"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each the Site so as to bring it to the attention of all Users.

b. 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.

c. Without prejudice to the provisions of Clauses 37.1.(a) and 37.1.(b), the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

37.2 Redressal of complaints

a. 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.

b. Within [7 (seven)] days of the close of each month, the Concessionaire shall send to the Authority a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

Article 38

MISCELLANEOUS

38.1 Governing law and jurisdiction

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

38.2 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).

38.3 Depreciation

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

38.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within [30 (thirty)] days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to [4% (four per cent)] above the SBI MCLR, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

38.5 Waiver

a. 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:

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

   ii. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

   iii. shall not affect the validity or enforceability of this Agreement in any manner.

b. 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.

38.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

b. the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-Clause (a) above.

38.7 Exclusion of implied warranties

This Agreement expressly excludes any warranty, condition or other undertaking implied by 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.

38.8 Survival

a. Termination shall:

   i. not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

   ii. 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.

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

38.9 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 avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the RFP, shall be deemed to form part of this Agreement and treated as such.

38.10 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 shall 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 in Article 35 or otherwise.

38.11 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.

38.12 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.

38.13 Successors and assigns

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

38.14 Notices

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

a. in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-Clause (b) below may, if they are subsequently

confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority.

{Name:
Designation:
Address:
Fax No.:
E-mail ID:}

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

{Name:
Designation:
Address:
Fax No.:
E-mail ID:}; 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 eases, 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.

38.15 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.

38.16 Confidentiality

a. Each Party shall keep the Confidential Information confidential and shall not disclose the

same to any other person without the prior written consent of the other Party.

b. Sub-Clause (a) shall not apply in the following circumstances:

   i. any disclosure required by Applicable Laws or in respect of information already in the public domain;

   ii. any disclosure required by any applicable stock exchange listing rule; and

   iii. disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.

c. Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.

d. In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and cooperate with other Party's efforts to obtain confidential treatment of material so disclosed.

e. Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.

f. Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive [3 (three) years] from Termination.

38.17 Stamp Duty

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Concessionaire.

38.18 Counterparts

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

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

(Signature)
(Designation)
(Name)
(Address)
(Fax No.)
(e-mail)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the [ ] day of [ ]20[ ] hereunto affixed in the presence of …….. Director, who has signed these Presents in token thereof and,……, Company Secretary/Authorized Officer who has countersigned the same in token thereof:

(Signature)
(Designation)
(Name)
(Address)
(Fax No.)
(e-mail)

SIGNED, SEALED AND DELIVERED For and on behalf of THE SELECTED BIDDER by:

(Signature)
(Designation)
(Name)
(Address)
(Fax No.)
(e-mail)

In the presence of:

1.

2.

SCHEDULES

SCHDULE A

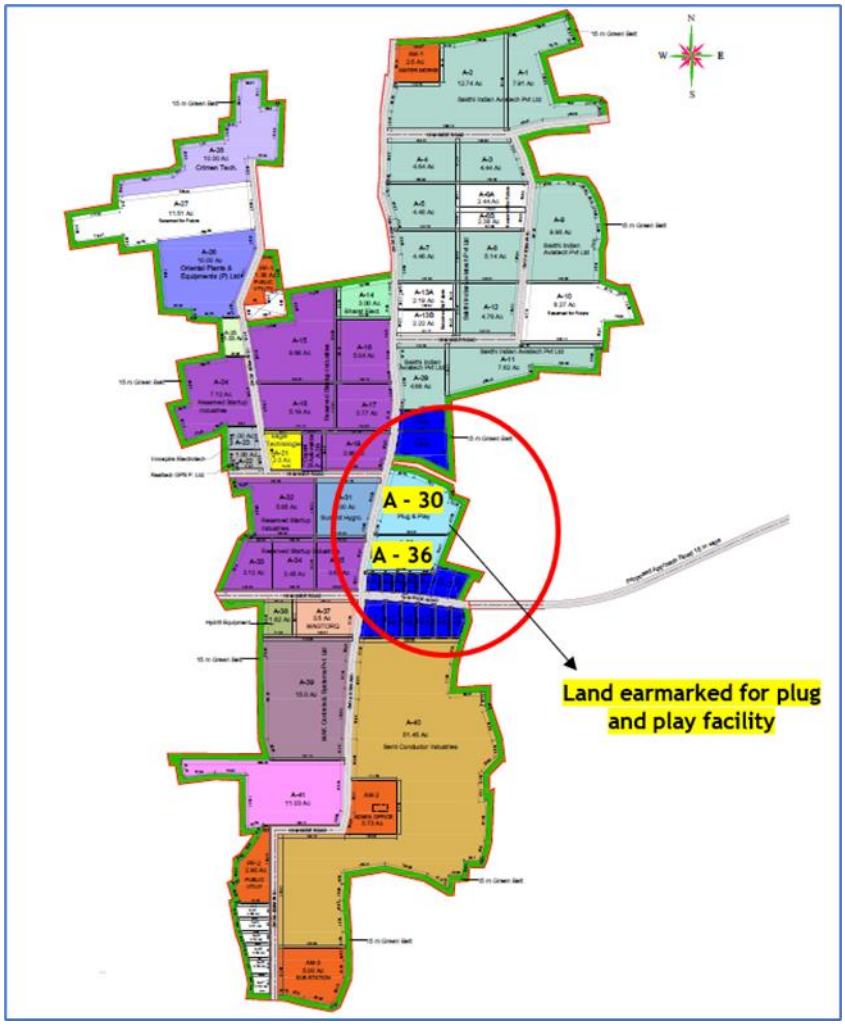
SITE OF THE PROJECT

1. The Project Site

1.1. Site of the Project shall include the land, buildings, structures and road works as described in this Schedule.

1.2. An inventory of the Site including the land, buildings, structures, roadworks, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by Authority Representative and the Concessionaire, and such inventory shall form part of this Schedule A.

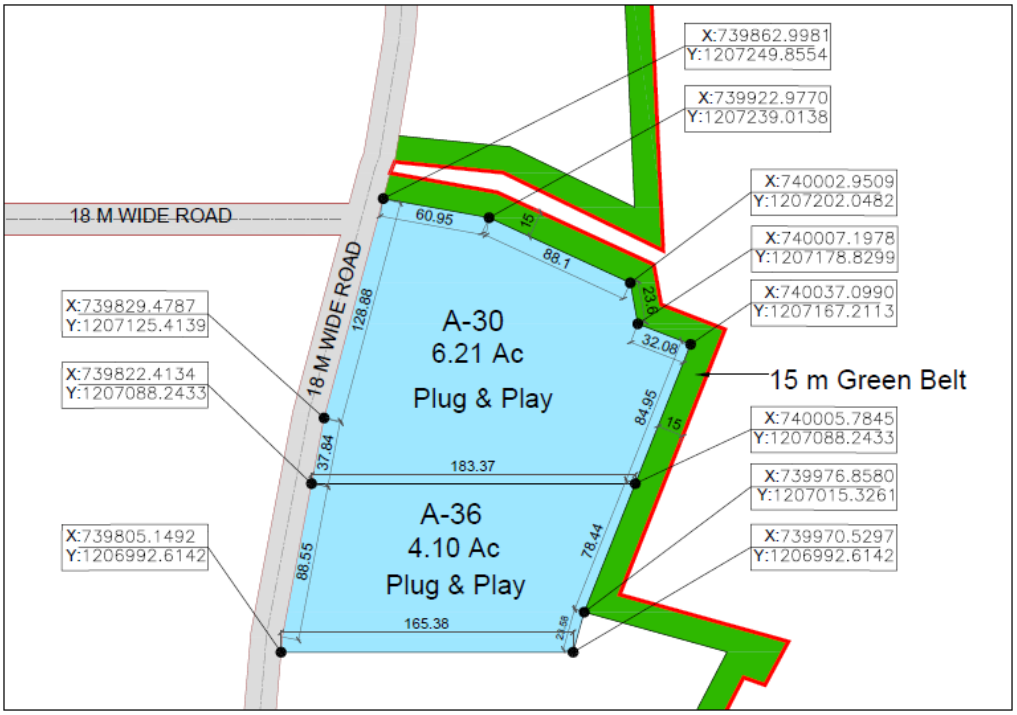
1.3. Overall Layout of Defence Industrial Park



1.4. Land Extent

Plot No	Extent
A-30	6.21
A-36	4.10
Total	**10.31**

1.5. Layout map of the Land:



1.6. Inventory of the Site [to be filled at the time of granting concession]

SCHEDULE B

SPECIFICATIONS AND STANDARDS

1. Project

1.1. The Project Facilities shall conform with the Specifications and Standards as specified in this Schedule-B and in this Agreement.

1.2. The Specifications and Standards applicable to the design and construction of the Project Facilities shall conform with the National Building Code of India, relevant specifications and standards specified by the Bureau of Standards, other Applicable Laws and Good Industry Practice.

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

(i) National Building Code

(ii) Bureau of Indian Standards (BIS); and

(iii) International guidelines including [Griha/LEED/Green Globe]

(iv) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Engineer.

1.4. The latest version of the specified codes and standards which were notified published at least [60 (sixty)] days prior to the Bid Date in respect of this Agreement shall apply.

SCHDULE C

DRAWINGS

1. Drawings

   In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings as listed below:

1.1. General layout and construction details such as fencing /boundary wall, building sectional view, etc

1.2. Plantation and green belt area with species details

1.3. Facilities drawing like internal roads, weighbridges, STP, etc.

1.4. Utilities drawing such as security arrangement, restroom, etc.

1.5. Electric supply, water supply, storm water drainage, Effluent Treatment Plant etc.

1.6. Any additional facilities drawing provided by Concessionaire such as rainwater harvesting, solar power etc.

   Note: Drawing - mean all of the drawings including working drawings for the Project Facilities, designs, calculations and documents pertaining to the Project in accordance with the Construction and O&M Requirements based on the Design Input.

2. Additional drawings

   If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in above, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of this Schedule-C.

3. Permissible Activities in Project facilities

1. Manufacturing / assembling
2. Warehousing and logistics with a cap of 10% of the total built-up area
3. Co-working facility
4. Food Court
5. Training and Skill Development
6. Any other activity connected to (1) to (3) above

4. Suggested facilities

The suggested facilities to be created shall include but not limited to the following;

- Water supply
- Electrical cabling
- Heavy duty lifts
- Truck parking facility
- Dock leveller
- Weighbridge
- Common sewage treatment
- High speed internet connectivity
- Food court
- Roof top Solor power generation
- Rainwater harvesting

SCHEDULE D

APPLICABLE PERMITS

1.1. The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, in accordance with Clause 4.1.(c) of the Agreement:

S.No.	Approval/Clearance	Concerned Authority
1.	Approval for building	Directorate of Town & Country Planning (DTCP)
2.	Consent to Establish & Consent to Operate (CTE & CTO)	Tamil Nadu Pollution Control Board (TNPCB)
3.	NOC from Fire Department	State Fire and Emergency Services

1.2. The Concessionaire shall obtain all the other required Applicable Permits from the relevant local authorities, as per Applicable Laws, for construction and operation of the Project Facilities.

1.3. The Authority shall on a best effort (upon request of the Concessionaire in respect thereof) facilitate the Concessionaire in obtaining, as required under Applicable Laws and the Applicable Permits detailed in clause 1.1 above. It is however clarified that the responsibility of obtaining all the Applicable Permits, in terms hereof, shall vest with the Concessionaire. It is further clarified that the Concessionaire shall not hold the Authority responsible for procurement/ non- procurement of any of the Applicable Permits.

SCHEDULE E

PERFORMANCE SECURITY

.....
.....
.....

WHEREAS:

A. …… (the "Authority") has issued Letter of Acceptance to ..……(the "Concessionaire") for undertaking the establishment, operation, and maintenance of plug and play facilities under PPP mode on DBFOT model (the "Project") at Defence Industrial Park, Varapatti Village, Sulur Taluk, Coimbatore District in Tamil Nadu for a period of 45 years.

B. As per clause 3.2.7 of the RFP, the Selected Bidder has to furnish a Performance Security to the Authority for a sum of Rs.205.00 Lakhs (Rupees Two Crore Five Lakhs Only) (the "Guarantee Amount") as security for due and faithful performance of its obligations, under and in accordance with the Concession Agreement (the "Agreement") to be signed between the Authority and the SPV formed by the Selected Bidder (the "Concessionaire") for the Project.

C. We, …….. through our Branch at ……. (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaires obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of _____ in the Authority, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating

to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force in accordance with Article 9 of the Agreement.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of three years from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this …… day of …….., 20…… at ……..

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:
(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE F

PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

   The Concessionaire shall comply with each of the monthly project completion schedule submitted by it to the Authority.

2. Minimum Development Obligation

   The Concessionaire shall undertake construction of atleast 2,69,462 sq.ft. of built-up area (the "Minimum Development Obligations").

3. Scheduled Completion Date

   The Scheduled Completion Date for 50% of Minimum Development Obligation shall be 2nd (second) anniversary of the appointed date and the Scheduled Completion Date for 100% of Minimum Development Obligation shall be 4th (Fourth) anniversary of the appointed date. On or before the Scheduled Completion Date, the Concessionaire shall have completed the Project Facilities in accordance with this Agreement.

4. Extension of period

   Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHDULE G

TESTS

1. Schedule for Tests

1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Project, notify the Independent Engineer and the Authority of its intent to subject the Project to tests, and no later than 7 (seven) days prior to the actual date of tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.

1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project to tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for tests and notify the same to the Authority who may designate its representative to witness the tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-G.

2. Tests

2.1 In pursuance of the provisions of Clause 14.1.(b) of this Agreement, the Independent Engineer shall conduct, or cause to be conducted the tests specified in this Paragraph 2.

2.2 Visual and physical test: The Independent Engineer shall conduct a visual and physical check of the Project Facilities to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3 Trial run: The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out a trial run of all equipment, facilities and systems to determine that the Project Facilities are in conformity with the provisions of this Agreement.

2.4 Tests for equipment: The Independent Engineer shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Project Facilities.

2.5 Other Tests: The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

2.6 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.7 Safety review: Safety audit of the Project shall have been undertaken by the Independent Engineer as set forth in Schedule-J, and on the basis of such audit, the Independent Engineer shall determine conformity of the Project with the provisions of this Agreement.

3. Agency for conducting Tests

All Tests set forth in this Schedule shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

4. Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

5. Tests during construction

Without prejudice to the provisions of this Schedule-G, tests during construction shall Be conducted in accordance with the provisions of Clause 13.3.(a).

SCHDULE H

COMPLETION CERTIFICATE
(See Clause 14.2 & 14.3)

1. Completion Certificate

I/We, _____ (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated _____(the "Agreement"), for establishment, operation and maintenance of Plug & Play Facilities under PPP Mode on Design, Build, Finance, Operate and Transfer Model for a period of <concession period> years, through _____(Name of Concessionaire), hereby certify that the inspection specified in Article 14 and Schedule-H of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in commercial service.

It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the ****day of **** 20**.

SIGNED, SEALED AND DELIVERED
For and on behalf of
INDEPENDENT ENGINEER by:

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

2. Provisional Certificate

I/We,…… (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement Dated _____(the "Agreement"), for establishment, operation and maintenance of Plug & Play Facilities under PPP Mode on Design, Build, Finance, Operate and Transfer Model for a period of <concession period> years, through _____(Name of Concessionaire), hereby certify that the inspection specified in Article 14 and Schedule-H of the Agreement have been undertaken for the Project/section _____ of the Project to determine compliance thereof with the provisions of the Agreement.

Construction Works / installation of equipments forming part of the Project/section of the Project that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project/section…….. of the Project, pending completion thereof.

In view of the foregoing, I/We am/are satisfied that the Project/section of the Project can be safely and reliably placed in commercial service thereof, and in terms of the Agreement, the Project/section of the Project is hereby provisionally declared fit for entry into commercial operation on this the ____ day of _____ 20_____

ACCEPTED, SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
FOR AND ON BEHALF OF CONCESSIOANIRE by:	FOR AND ON BEHALF OF INDEPENDENT ENGINEER by:
(Signature) (Name and Designation) (Address)	(Signature) (Name and Designation) (Address)

SCHEDULE I

MAINTENANCE REQUIREMENTS

(See Clause 16.2)

1. Maintenance Requirements

   1.1. The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the Maintenance Requirements set forth in this Schedule I.

   1.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule I within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement.

2. Repair/rectification of defects and deficiencies

   2.1. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the Project.

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

3. Other defects and deficiencies

   3.1. In respect of any defect or deficiency, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Authority.

   3.2. In respect of any defect or deficiency, the Authority may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Authority.

4. Extension of time limit

   Notwithstanding anything to the contrary specified in this Schedule I, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Authority and conveyed to the Concessionaire with reasons thereof.

5. Emergency repairs/restoration

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

6. Inspection by the Concessionaire

   The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project and maintain a record thereof in a register. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority at any time during office hours.

7. Divestment Requirements

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

SCHEDULE J

SAFETY REQUIIREMENTS

(See Clause 17.1)

1. Guiding principles

1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.

1.2. Safety Requirements apply to all phases of construction, development, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in this Schedule J.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

(a) Applicable Laws and Applicable Permits;
(b) provisions of this Agreement;
(c) relevant Standards/Guidelines contained in nationally accepted codes; and
(d) Good Industry Practice.

3. Safety measures during Operation Period

3.1. The Concessionaire shall develop, implement and administer a safety programme for the Project Facilities, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.

3.2. The Concessionaire shall keep a copy of every First Information Report (FIR) recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of

accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.

3.3. The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 3 (three) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Clause 3.1 of this Schedule J for averting or minimising such accidents in future.

4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Clause 2 of this Schedule J, shall be borne by the Concessionaire in accordance with the provisions of Clause 17.2.

5. Safety Guidelines

5.1. System integrity

In the design of the Project Facilities, particular care shall be taken to minimise the likely incidence of failure.

5.2. Safety management

A safety statement shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. [2 (two)] copies of the statement shall be sent to the Authority within [15 (fifteen)] days of the close of every year.

5.3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the Disaster Management Manual) to be prepared and published by the Concessionaire prior to COD. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority no later than [30 (thirty)] days prior to Project COD.

5.4. Fire safety

To prevent fire in the Project, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning. Further, to deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the provisions of Schedule B.

5.5. Surveillance and Safety Manual

The Concessionaire shall, no later than [60 (sixty)] days prior to COD, evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.

5.6. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

SCHEDULE K

TERMS OF REFERENCE FOR THE INDEPENDENT ENGINEER

(See Clause 19.2 (a) and (b))

1. Role and functions of the Independent Engineer

The role and functions of the Independent Engineer shall include the following:

(i) review of the Drawings and Documents as set forth in Paragraph 2;

(ii) review inspection and monitoring of Development Works as set forth in Paragraph 2;

(iii) review inspection and monitoring of Divestment Requirements in accordance with the Agreement;

(iv) assisting the Parties in resolution of Disputes as set forth in Paragraph 4; and

(v) undertaking all other duties and functions in accordance with the Agreement.

The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

2. Construction Period

2.1. The Independent Engineer shall undertake a review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within [7 (seven)] days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

2.2. The Independent Engineer shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within [7 (seven)] days of receiving such Drawings or Documents.

2.3. The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within [7 (seven)] days of receipt of such report.

2.4. The Independent Engineer shall inspect the Development Works and equipment (if any) once every month, preferably after receipt of the progress report from the Concessionaire, but before the [20th (twentieth)] day of succeeding month in any case, and make out a report of such inspection (the Inspection Report) setting forth an overview of the status, progress, quality, safety and conformity of Development Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within [7 (seven)] days of the inspection.

2.5. The Independent Engineer may inspect the Project Facilities at least once in a month.

2.6. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of development and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Facilities is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within [15 (fifteen)] days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.

2.7. If suspension of Development Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

3. Assistance in Dispute resolution

4.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

4.2. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

4. Other duties and functions

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

5. Miscellaneous

6.1. The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

6.2. A copy of all communications, comments, instructions, Documents sent by the Independent Engineer to the Concessionaire pursuant to this Schedule shall be furnished by the Independent Engineer to the Authority forthwith.

6.3. The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.

6.4. Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all communications, comments, instructions, Documents, and other relevant records, and hand them over to the Authority, or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form, or in such other medium, as may be acceptable to the Authority.

SCHDULE L

ESCROW AGREEMENT
(See Clause 22.1)

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

AMONGST

1. [*****Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ******* (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. ****(insert name and particulars of Lenders' Representative) and having its registered office at **** acting for and on behalf of the Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. **** (insert name and particulars of the Escrow Bank) and having its registered office at **** (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. The <Insert Name of the Authority> represented by Managing Director and having its principal offices at <Insert Location > (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

A. The Authority has entered into a Concession Agreement dated _____with the Concessionaire (the "Concession Agreement") for establishment, operation, and maintenance of plug and play facilities under PPP mode on DBFOT model for a period of <years> years, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

B. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"Concession Agreement" means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective subaccounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2 and 1.3 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the

terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the …….. (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

a. All monies received in relation to the Project from any source, including the Lenders, lenders of Subordinated Debt and the Authority;
b. All funds received by the Concessionaire from its shareholders, in any manner or form;
c. All revenues in respect of the project including sub-lease of project facilities and other revenues such as rentals, deposits or capital receipts, as the case may be;
d. All proceeds received pursuant to any insurance claims; and
e. All payments by the Authority, after deduction of any outstanding payments.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

a. Any monies disbursed by the Authority to the Concessionaire;
b. All revenues collected by the Authority in exercise of its rights under the Concession Agreement; and
c. Termination Payments.

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any amounts due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Lenders

The Lenders' Representative agrees, confirms and undertakes that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

a. all taxes due and payable by the Concessionaire for and in respect of the Project;
b. all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
c. Fixed Annual Fee due and payable to the Authority;
d. Revenue share due and payable to the Authority;
e. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
f. O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
g. Monthly proportionate provision of Debt Service due in an Accounting Year;
h. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
i. Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
j. Any reserve requirements set forth in the Financing Agreements;
k. Balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

a. All taxes due and payable by the Concessionaire for and in respect of the Project;
b. 90% of Debt Due less Insurance Cover excluding Subordinated Debt if required to be as per the terms of this Agreement;
c. Outstanding Fixed Annual Fee payable to the Authority;
d. Outstanding revenue share payable to the Authority;

e. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
f. Retention and payments relating to the liability for defects and deficiencies set forth in Article 30 of Concession Agreement;
g. Outstanding Debt Service including the balance of Debt Due less Insurance Cover;
h. Outstanding Subordinated Debt;
i. Incurred or accrued O&M Expenses;
j. Any other payments required to be made under this Agreement; and
k. Balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 4.2 until a Vesting Certificate has been issued by the Authority under the provisions of Article 29 of Concession Agreement.

4.3 Application of insufficient funds:

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

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 28 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7(seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

a. may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which tight reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
b. may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
c. shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
d. shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow

Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

a. the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
b. the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
c. the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub- Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation

of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITIES

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the

prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Nani Palkhivala Arbitration Centre, Chennai (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Capital of the State and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in <town/ city where Project Site is located> shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction

contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
d. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

a. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
b. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
c. shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or

deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

11.13 Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the by the Board of Directors of the Concessionaire has been affixed For and on behalf of pursuant to the resolution passed by the LENDERS by the Board of Directors of the Concessionaire Lenders Representative: at its meeting held on the day of _____20__ hereunto affixed in the presence of , Director, who has signed these presents in token thereof and Company Secretary / Authorized Officer who has countersigned the same in token thereof

SIGNED, SEALED AND DELIVERED
For and on behalf of LENDERS by the Lender's representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of THE ESCROW BANK by

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of THE AUTHORITY by

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

In the presence of:

1

2

SCHDULE M

VESTING CERTIFICATE
(See Clause 29.4)

1. The _____, <Insert Name> (the "Authority") refers to the Concession Agreement dated ******(the "Agreement") entered into between the Authority and ****** (the "Concessionaire") for establishment, operation, and maintenance of plug and play facilities under PPP mode on DBFOT model for a period of <years> years.

2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 29.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this **** day of ****, 20 at [****]

AGREED, ACCEPTED AND SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE by:	AGREED, ACCEPTED AND SIGNED, SEALED AND DELIVERED for and on behalf of AUTHORITY by:
(Signature) (Name) (Designation) (Address)	(Signature) (Name) (Designation) (Address)
In the presence of: 1.	2.

SCHDULE N

SUBSTITUTION AGREEMENT

(See Clause 31.3.(a))

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

AMONGST

1. State Industries Promotion Corporation of Tamil Nadu Limited, represented by the _____ and having its principal office at <Insert address >, Tamil Nadu, India (hereinafter referred to as the "Authority" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

2. ***** Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at *****(Hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

3. ***** (insert name and particulars of Lenders' Representative) and having its registered office at *****, acting for and on behalf of the Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes)

WHEREAS:

A. The Authority has entered into a Concession Agreement dated ***** With the Concessionaire (the "Concession Agreement") for establishment, operation, and maintenance of plug and play facilities under PPP mode on DBFOT model for a period of <years> years and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

B. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

C. Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Nominated Company" means a company, incorporated under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

"Notice of Financial Default" shall have the meaning ascribed thereto in Clause 3.2.1; and

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in .the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2 and 1.3 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favor of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favor of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the

Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 27 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

a. Accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;

b. Endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
c. Enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favor of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five percent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favor of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 28 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realization of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

a. Termination of the Agreement; or

b. No sum remains to be advanced and no sum are outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration Centre, Chennai (the "Rules") or such other rules as may be mutually agreed by the Parties and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

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

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

a. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

b. Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

c. Shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

a. Shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and email address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

9.13 Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ****day of the *****20**here unto affixed in to the presence of******the Director, who has signed these presents in token thereof, ****Company Secretary /Authorized Officer who has countersigned the same in token thereof

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and behalf of THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of

LENDERS by Lenders' Representative:
(Signature)
(Name)
(Designation)

(Address)
(Fax No.)
(E-mail address)

In the presence of:

1. 2.